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(subject to editorial corrections)**

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IN HIS MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE KING

v

LESLEY ANN DODDS

Ms McDermott KC with Mr Taylor Campbell (instructed by Donnelly & Wall Solicitors)
for the Applicant

Mr McDowell KC with Mr Chambers KC (instructed by the PPS) for the Crown

Before: Keegan LCJ, Treacy LJ and Rooney J

KEEGAN LCJ (*delivering the ex-tempore judgment of the court*)

Introduction

[1] This is a renewed application for leave to appeal against a sentence of five and a half years imprisonment, split equally between custody and licence, imposed on the applicant Lesley Ann Dodds on 22 June 2023 by Mr Justice Scoffield ("the judge") sitting as a Crown Court judge, after a plea of guilty to manslaughter.

Background

[2] The background to the case is comprehensively set out in the decision of the judge. This reflects an agreed basis of plea and facts which were non-contentious for the purposes of this sentencing exercise.

[3] As the judge recorded, the victim in this case, Mr Pat McCormick, was a 55-year-old father of four. On the night of 30 May 2019, he went to the home of Lesley Ann Dodds, a flat in Castle Street in Comber. Dodds was David Gill's fiancée, but she had been having a relationship with Mr McCormick whom she had met through their work. Mr McCormick had been lured to the flat predominantly by way of text messages sent from Dodds on her Facebook messenger account. These messages had encouraged Mr McCormick to meet her there. However, rather

than meeting Ms Dodds, when Mr McCormick went to the flat, he encountered David Gill.

[4] Mr McCormick had been in the company of Ms Dodds earlier that day, in the morning. During the afternoon and into that evening, there was a range of communication between Mr McCormick and Dodds; and, between her and Gill. As the judge records from around 9:20pm onwards, before Mr McCormick went to Dodds' flat, she was in contact with him encouraging him to come to her flat. Mr McCormick replied in a text, which the judge describes as prophetic, stating that he thought she was trying to set him up "for to get a kicking." Notwithstanding this note of concern, Dodds, nonetheless, encouraged Mr McCormick to come to her flat, reassuring him that she had left Gill in favour of him, and that he was not being set up.

[5] Gill then travelled to the flat, while Dodds remained at Gill's house some distance away. There was further messaging during this period to disguise that fact. The evidence as the judge states showed that at the time Mr McCormick approached Dodds' flat, Gill took steps to remove his mobile phone connection from the network. The judge records that Dodds was, again, in contact with Mr McCormick shortly before his arrival encouraging him to go there and providing reassurance. This included telephoning him from the landline at Gill's house but with the number withheld, and also being in contact with Gill by the same means. The judge records that Mr McCormick was concerned for his safety and had contacted police.

[6] Gill pleaded guilty to murder, on the agreed basis that he did not intend to kill the deceased when he engaged in an altercation with him. However, he admitted that he caused the injuries attributable to the altercation and accepted that he intended to cause Mr McCormick serious harm.

[7] It is of note that Gill also agreed that the altercation arose over Dodds and, as the judge records, it was clear from the evidence in the case that Gill had been in contact with Mr McCormick's wife on the day of the attack concerning his knowledge of the affair between Mr McCormick and Dodds. No weapon was used when the victim was assaulted but a number of serious injuries were inflicted.

[8] The sad circumstances of this case continue in that after what was clearly a vicious assault upon the deceased, from which he ultimately died, the next day, Gill and others disposed of his body which was not found until some six weeks later.

[9] This applicant and Gill were arrested on 3 June 2019. They both gave a false account about the events of the evening in question and their knowledge of the deceased's death. The progress of the case before the lower court, was that Gill pleaded guilty to murder of Mr McCormick on 20 May 2022. At a later stage on 8 November 2022, the applicant pleaded guilty to a single count of manslaughter with the remaining counts left on the books.

Grounds of appeal

[10] The grounds of appeal are well set out in the skeleton argument that has been put before the court in this case. There are essentially five grounds of appeal advanced in writing and orally now today by Ms McDermott KC. The first ground relates to the judge's reliance on *R v Magee* [2007] NICA 21. The argument is advanced that the *Magee* case is not a comparator for this case given its different facts. The second ground of appeal is essentially that the judge made an error in relation to how he considered aggravation in the case. The third ground of appeal is that the judge failed to set a clear and transparent starting point. The fourth ground of appeal is that the judge did not apply enough weight to mitigation in the case. Finally, the fifth ground of appeal is that the judge did not give sufficient reduction for the guilty plea.

Consideration

[11] In evaluating the strength of these grounds of appeal, we first turn to the sentencing remarks of the judge. These are characteristically comprehensive and cover all of the issues now raised on appeal. In other words, the judge has not left out any important point of law or fact in reaching his decision.

[12] Dealing with the substance of the judge's sentencing we note that the judge in referred to the decision in the case of *Magee*. In our view that decision is an applicable decision for a number of reasons. First, it gives some guidance in relation to a range in manslaughter cases where it cannot be proved that the offender intended to kill or cause really serious harm to the victim but where deliberate substantial injury has been inflicted. It also makes the point which we reiterate that there are a potentially limitless variety of factual circumstances where manslaughter is committed, and so flexibility should be allowed to sentencers.

[13] The judge noted that manslaughter cases cover a very wide spectrum and that the instant case was unusual involving a joint enterprise where the applicant was remote from the scene. In his remarks, the judge also records that he had the benefit of victim impact statements in this case which are stark. He had the benefit of a large number of expert reports in relation to the applicant's background and history and, in particular, her psychological and emotional presentation.

[14] A notable feature of this case is that there was an expert meeting whereby the prosecution and defence effectively through their experts agreed that there was some reduction in the applicant's culpability in this case as a result of her emotionally unstable personality disorder. The judge reflects this fact in his judgment.

[15] The judge also refers to a number of aggravating factors as follows:

- (i) The applicant was party to a pre-planned and premeditated attack.

- (ii) The applicant was intricately involved in the deception which lured the deceased to her flat.
- (iii) The applicant was aware the victim would receive a beating which would amount to deliberate substantial harm albeit she did not contemplate really serious harm being inflicted.
- (iv) The applicant was aware of the physical mismatch between the victim and Gill.
- (v) The applicant made attempts to cover her tracks. She tried to contact the victim despite knowing this was futile.
- (vi) During the period of the police search and appeal relating to the victim, the applicant lied to police about her recent contact with the victim and remained silent despite evidence which indicates she knew the murder had taken place.

[16] The judge then sets out his decision having reflected on the above factors. He also specifically states that the applicant's mental health was a significant mitigation in this case.

[17] Having considered the above our conclusions on the grounds of appeal are as follows. We have considered Ms McDermott's point as to the use of the case of *Magee*. On this we agree with the single judge's articulation that the point has no strength because the judge acknowledged, as *Magee* itself does, that manslaughter cases cover a wide variety of factual circumstances. True it is, that this case is different from the factual circumstances of *Magee*. True it is, that this case is unusual. However, the judge reflects this in his judgment. He also noted that the applicant had chosen to engage in a pre-planned scheme to inflict substantial harm on the deceased. In the event, we do not consider that the judge was wrong to utilise the case of *Magee*, as he recognised the flexibility afforded by that case which allows a sentencing judge to meet the justice of the case by imposing an appropriate sentence. We dismiss the first ground of appeal.

[18] Turning to the second ground of appeal which relates to the aggravating factors we have listened carefully to what Ms McDermott has said. She gained some support from the single judge in relation to two of the factors which he said could be said to be part of the offence itself and so not strictly aggravation. However, we prefer what Mr Chambers KC has said and on an overall view, we consider, that the judge has not fallen into material error in relation to his articulation of aggravating factors. Some of the factors, as Mr Chambers has articulated, may have more weight than others. Therefore, we think that overall, the judge has not fallen into error in his consideration of the aggravation. We dismiss the second ground of appeal.

[19] Dealing with the third ground of appeal, we are not at all satisfied that this sentencing exercise was opaque. The judge states at para [61] of his judgment that the aggravating features that he identified in this case would suggest a starting point of somewhere higher than eight years, but still within the lower half of the range identified in *Magee*. When the unusual circumstances of this offence and the powerful mitigation mentioned is taken into account, he reduced that to seven years. We think this is tolerably clear and that the judge cannot be criticised for the approach he took. We reject the third ground of appeal.

[20] We have found the fourth ground of appeal which is a consideration of mitigating factors to have most merit. The reason for that view is there were mitigating factors in this case. There was a plethora of expert reports, and they clearly pointed in the direction of a lowering of culpability in this case due to the applicant's own personal circumstances. However, we are satisfied that the judge was alive to this issue. He specifically referred to a reduction in culpability. He specifically referred to the difficulties that the applicant had suffered. Therefore, we do not consider that the judge has made an error in terms of his assessment of mitigation. The issue of weight to be given to mitigation is quintessentially within the judge's discretion. In this case, we consider the judge has rightly taken into account all factors to reach the seven years starting point before reduction for the plea of guilty. We dismiss the fourth ground of appeal.

[21] The final ground of appeal is in relation to the reduction for the guilty plea. The reduction in this case was 20%. The maximum possible reduction afforded in cases is one third for a guilty plea at the earliest opportunity. The reduction to be applied is a matter which falls within the discretion of the trial judge who is best placed to consider what is appropriate in all of the circumstances. Mr Chambers has rightly said that there is a range available, and we agree with him. The reduction for the guilty plea chosen by the judge was within range. We consider the fifth ground of appeal is also one that should be dismissed.

Conclusion

[22] Overall we do not find that the judge has fallen into error of law or that he has made a mistake in principle in this case. The sentencing exercise for this fatal and tragic incident was conducted with care. The undeniable fact of this case is that the applicant cajoled and persuaded the deceased to his ultimate fate. This was against Mr McCormick's own suspicion of what may happen to him. He attended at the location where he thought he would be safe, but he was ultimately beaten and killed by the other co-accused, Gill.

[23] The applicant has to be punished for her part in this crime discussed above. She also lied to police in the aftermath of this incident when the deceased's body was not recovered for weeks. Taking into account all of the relevant factors in the case, which we have highlighted, and which the judge set out in his judgment, we do not

consider that the judge's sentence was manifestly excessive. Accordingly, we refuse leave and dismiss the appeal.