APPEAL COURT, HIGH COURT OF JUSTICIARY

[2024] HCJAC 20
HCA/2023/562/XC

Lord Justice General
Lord Matthews
Lady Wise

OPINION OF THE COURT

delivered by LORD CARLOWAY the LORD JUSTICE GENERAL

in

NOTE OF APPEAL AGAINST SENTENCE

by

CHRISTOPHER McGOWAN

Appellant

against

HIS MAJESTY'S ADVOCATE

Respondent

Appellant: Jackson KC; Paterson Bell
Respondent: C Fyffe KC (sol adv); the Crown Agent

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3 May 2024

[1] On 28 September 2023, at the High Court in Stirling, the appellant was convicted of an offence which libelled that:

> "(3) on 28 November 2021 at … Stirling you …. did assault Claire Inglis, your partner … and did repeatedly strike her on the head and body, seize her by the neck and compress same, burn her on the nose, ear, and thumb with a lighter … strike her

> on the head and body with a screwdriver … force a tissue … down her throat and you did murder her and you did previously evince malice and ill-will towards her;
>
> You … did commit this offence while on bail having been granted bail on 30 March 2021, on two occasions on 15 … and … 21 September 2021, all at Stirling Sheriff Court and on 19 October 2021 at Falkirk Sheriff Court;
>
> And it will be proved in terms of section 1 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016 that the aforesaid offence was aggravated by involving abuse of your partner ...".

[2] On 25 October 2023 the appellant was sentenced to life imprisonment. The punishment part was set at 23 years. Although the trial judge reported that one year concurrent sentences were imposed for the bail and abuse of partner aggravations, the minutes record that, of the 23 years, one year was imposed in respect of the bail aggravations and one year by the abuse of partner aggravation.

[3] The deceased was 28 at the time of her death. The locus was the flat which she shared with her 7 year old son. By November 2021 the deceased had been in a relationship with the appellant for a relatively short time. He had moved into her flat about eight weeks before the murder. The appellant was a habitual abuser of both drink and drugs. The deceased also abused these substances, but to a significantly lesser extent. In the days before the murder, and during the evening leading up to its commission, the appellant was accustomed to being verbally abusive, overbearing, contemptuous and controlling of, and towards, the deceased.

[4] At about 5am on 28 November the appellant left the flat and began shouting in the street, banging on the doors of neighbours and apparently pleading for help. He maintained that the deceased had fallen down the stairs from the flat. He claimed that he had not done anything to her. He was apparently hysterical and highly intoxicated. The deceased was not found near the stairs but in her bedroom. She was lying on the floor, in her underwear.

Her face was extensively bruised. She could not be revived although she had not been in cardiac arrest for long. The paramedics had tried to intubate her but discovered that her airway was blocked by a wet wipe.

[5] The trial judge reports that nothing that he could say could convey the true horror of the death. The deceased's body was a sea of bruising, her face bloodied and battered, her hands, ears and nose burnt by a naked flame, her face slashed by a broken screwdriver and her features grotesquely distorted. She had 76 separate sites of injury on her head and neck, trunk, arms and legs. Her entire scalp was haemorrhaged, her brain swollen and her hyoid bone fractured. In combination, the injuries suggested that death was caused by strangulation with the wet wipe forced down her throat.

[6] As the trial judge put it, the appellant had carried out a sustained and savage attack upon the deceased. He had beaten her senseless. He had strangled her. He had forced a wet wipe down her throat. He had slashed her with a broken screwdriver and burnt her with a lighter. The judge explains that over the decades that he had been practising in the High Court, he had rarely seen as brutal and heartless a killing. During the trial, the appellant had shown not a flicker of emotion, no hint of remorse nor a ghost of regret. Poignant victim impact statements from the deceased's son, sister, mother and father were produced.

[7] The appellant is now aged 28. He has had a chaotic lifestyle. This commenced with violence by his father towards his mother and excessive alcohol use by both of them. His father died when he was 9. His relationship with his mother was turbulent, partly because of his behavioural difficulties. The appellant and his family have been the subject of compulsory social work intervention for years, commencing with issues of neglect by the appellant's parents and continuing with the appellant's violent behaviour at school. He had

a significant involvement with the Children's Hearing system and was referred to alcohol and drug services. At one time he had been in a long term relationship which resulted in two children being born in 2015 and 2017. He had inconsistent contact with them because of his behaviour and chaotic lifestyle. He is said to have been employed in various fields. From a young age he became involved in cannabis use and this graduated to cocaine.

[8] The CJSWR summarised his extensive previous convictions, which currently number 57. He first appeared at Stirling Sheriff Court at the age of 14 and has offended consistently since then, other than when in custody. The convictions are primarily for public order offences, theft, misuse of drugs, road traffic contraventions and assaults. Some of these offences involved domestic violence. His list of previous convictions is indeed substantial. Looking at the more recent ones, he was imprisoned for 10 months on 23 September 2019 in respect of a variety of offences including shoplifting, two statutory breaches of the peace (Criminal Justice & Licensing (Scotland) Act 2010, s 38(1)), with a racial aggravation, and resisting arrest. At the same sentencing diet he was given 9 months imprisonment for assault. There had been multiple deferrals from September and November 2019 before these sentences were imposed. In March 2020 he was sentenced to 21 months for another statutory breach of the peace and resisting arrest. A year later, on 17 March 2021, he was sentenced to 15 months for assault and assault to injury.

[9] The appellant's interaction with the criminal justice system became so frequent that it is difficult to track the many processes of which he was the subject. On 30 March 2021 he appeared on an assault and robbery charge and was granted bail. On 17 June he was on a charge of police assault, and refused bail. He pled guilty at a trial diet on 15 September and allowed bail, pending an assessment for a drug treatment and testing order. By this time his bail address was that of the deceased. The deferral was until 27 October, but that diet was

deferred five times, ultimately until 16 February when he was admonished. Meantime, on 19 July 2021 he was convicted of resisting arrest whilst on bail. Sentence was deferred six times from then until 16 February 2022, by which time the murder had been committed. On 26 August 2021 he was convicted of dangerous driving (Road Traffic Act 1988, s 2). Multiple deferrals occurred until 23 November when the sentence included a 3 year supervision period and a conduct requirement to attend at a drug treatment centre. That sentence was imposed five days before the murder. On the same day he was convicted of another statutory breach of the peace with a bail aggravation.

[10] The appellant had appeared on another statutory breach of the peace charge on 3 September 2021 but, on pleading guilty on 15 September, he was released on bail. The sheriff seems to have been anxious to ensure that the appellant undergo a DTTO assessment. That appears to have been the reason for bail being granted in the face of opposition by the Crown. Sentence was deferred on a variety of matters until 16 February 2022 when he was imprisoned for 5 months. On 29 October he appeared on charges of assault, vandalism and breach of bail conditions. Bail was opposed but granted. Finally on 23 February 2022, he was sentenced to 18 months for the assault and robbery.

[11] The submission for the appellant was that the punishment part of 23 years was excessive. A substantial punishment part was appropriate but here no weapon such as a knife had been used (cf *Boyle* v *HM Advocate* 2010 JC 66 and *MacDougall* v *HM Advocate* [2021] HCJAC 32). In *Boyle* a 16 year punishment part was envisaged as a starting point for murders committed with a knife. In *MacDougall* the punishment part of 23 years was reduced to 20 where the appellant had a significant previous conviction involving a knife. The victim had almost been decapitated.

[12] The question for the court is whether a miscarriage of justice has occurred by virtue of the sentence being excessive. The court does not consider this punishment part of 23 years to be excessive, given the brutality of the attack, the appellant's extensive criminal record and the domestic context in which the murder took place.

[13] The introduction of the need for the court to set a minimum punishment part, before a prisoner can apply for parole, when pronouncing a mandatory life sentence (Prisoners and Criminal Proceedings (Scotland) Act 1993, s 2 as amended by the Convention Rights Compliance (Scotland) Act 2001, s 1(31)) has undoubtedly increased the period which a person convicted of murder is likely to serve. The manner in which punishment parts were selected in the post 1993 era was explored in some depth in *Smith* v *HM Advocate* 2011 SCCR 134. That was a case of the utmost depravity involving the sexual and sadistic murders of a mother and her 10 year old daughter. A punishment part of 32 years was selected, but this had been discounted by 3 years for an early plea of guilty. Reference was made to the earlier perceived ceiling of 30 years following the selection of that term (reduced to 27 on appeal) for the murders of three soldiers in *Walker* v *HM Advocate* 2002 SCCR 1036. This was endorsed in *HM Advocate* v *Al Megrahi*, High Court at Glasgow, unreported, 24 November 2003 (cf *McMurray* v *HM Advocate (No. 2)* 2004 SCCR 702).

[14] *HM Advocate* v *Boyle* 2010 JC 66 set what has been regarded as a benchmark in the modern era in what might be called common gang violence, stabbing cases. This was 16 years or more (LJG (Hamilton), delivering the opinion of the court, at para [16]). In fact, in *Boyle*, the first two respondents were given headline sentences of 20 and 18 years with a third, who had murdered a 64 year old women who was delivering Provident Cheques, receiving 22 years. More recently, in *Laurie* v *HM Advocate* [2019] HCJAC 3, 18 years was selected for an attack, for unknown reasons, on a 37 year old alcoholic in his own home. It

was a brutal murder by punching, kicking and stamping, by a 31 year old with summary previous convictions including assaults. The appellant points to *MacDougall* v *HM Advocate* [2021] HCJAC 32 where 23 and 21 years were selected for the murder, in drug related circumstances, of a young woman by stabbing.

[15] If the sentence were to have been selected prior to the commencement of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016, there is little doubt that, as the judge has done here, regard would have been had to the domestic context of the crime. However, before the Act, there was a tendency by some judges to look upon that context as a mitigating rather than an aggravating factor (cf for the murder of a wife *Thomson* v *HM Advocate* [2010] GWD 21-417, 17 years for a "domestic tragedy"; *Broadley* v *HM Advocate* [2003] GWD 34-965, 14 years).

[16] The Act makes it clear that the reverse should be the case by elevating that context to one of a formal aggravation. The sentencing exercise, no matter how artificial it may seem in some cases, thereby becomes one of selecting a punishment part for the offence, were it to occur in a non-domestic context, and then increasing it to take account of the aggravation (*Rizzo* v *HM Advocate* 2020 SCCR 397, LJG (Carloway), delivering the opinion of the court, at para [18]). In *Rizzo*, the appellant was aged 23 with one previous domestic violence conviction. It was also a brutal murder of a partner, in which the appellant showed little remorse, and continued to maintain his innocence. Twenty two years was selected as the punishment part. This appellant's criminal record is considerably worse.

[17] No fixed percentage or other level of additional penalty is stipulated in respect of an abuse of partner aggravation of this nature, but its inclusion acknowledges the appropriate seriousness with which domestic offences are to be treated. It will no doubt depend on the circumstances of the cases, but it must be assumed that, although Parliament was content to

leave the overall sentence to the discretion of the judge, it intended that the courts should normally add a significant penalty to that which would have attended a similar, but non partner abuse aggravated, crime. In this case, the trial judge had added one year to a 22 year punishment part (including the bail aggravation). In doing so, it is relatively clear that he had already taken the domestic context into account in selecting the headline sentence. Given the terms of the 2016 Act, this may not be the correct approach. It results in the penalty attributable to the aggravation being seen as very slight (less than 5% of the total sentence). However, the overall punishment part is, as already explained, not excessive.

[18] The appeal is refused.