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[2023] EWCA Crim 847  
IN THE COURT OF APPEAL  
CRIMINAL DIVISION



No. 202300401 A5

Royal Courts of Justice

Tuesday, 4 July 2023

Before:

LADY JUSTICE WHIPPLE  
MRS JUSTICE CUTTS  
HIS HONOUR JUDGE SLOAN KC  
Recorder of Newcastle

REX  
V  
CARRIE McGUINNESS

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Mr N. Rhodes KC appeared on behalf of the Applicant.  
The Crown were not represented.

J U D G M E N T

## LADY JUSTICE WHIPPLE:

- 1 This is a renewed application for leave to appeal against sentence following refusal on the papers by the single judge, Mr Justice Eyre.
- 2 On 6 December 2022, the applicant, who was then aged 35, pleaded guilty to manslaughter by reason of diminished responsibility. On 20 January 2023, Mr Justice Kerr sentenced her to an extended determinate sentence of 18 years and six months, comprising a custodial term of 15 years and six months plus an extended licence period of three years. It is against that sentence that she now seeks leave to appeal.

### The Facts

- 3 On 9 June 2022, the applicant inflicted a fatal wound on her partner Steven Davies who was then aged 39. Mr Davies was found dead at his home on 15 June 2022. A post-mortem was conducted. The cause of death was recorded as a stab wound to the abdomen associated with a puncture of the descending colon followed by peritonitis. It was not possible to establish precisely when death occurred.
- 4 It is not necessary for present purposes to detail the sequence of events leading up to the applicant's guilty plea. It is sufficient to note that after initial denials the applicant did accept responsibility for inflicting that single stab wound albeit on the basis that her responsibility was diminished at the time by her dependence on alcohol. This was attested by psychiatric experts called on behalf of the defence and prosecution.

### Sentence

- 5 In passing sentence, the judge rightly noted the anger, pain and grief of Mr Davies's family. The judge considered the background facts of the applicant's relationship with Mr Davies and what happened in the days leading up to Mr Davies's death.
- 6 The judge had before him two psychiatric reports: one from Dr Phil Huckle for the defence

and one from Dr Owen Davies for the prosecution. He also had a pre-sentence report authored by Ms Julie Williams of the probation service. He noted that the psychiatrists were in agreement that the applicant suffered from depression and anxiety. While there was no evidence of major brain damage as a result of chronic use of alcohol, the applicant did have severe alcohol dependency syndrome to the point where it could properly be said that her drinking was involuntary and that she suffered seizures when using alcohol which would affect her memory of events. It was agreed that the alcohol dependency led to an abnormality of mental functioning at the time that the applicant committed this offence, and that abnormality of mental functioning impaired her ability to exercise self-control. (It was on that evidence that the plea of guilty on the grounds of diminished responsibility was accepted by the prosecution.)

- 7 The judge referred to the guideline on manslaughter by reason of diminished responsibility which requires a court to assess the extent to which responsibility was diminished by reason of that mental disorder. He concluded that the level of retained responsibility was medium, rejecting the applicant's submission that it was low. The guideline provides for a starting point of 15 years' imprisonment, in a range of 10 to 25 years' imprisonment, where the retained responsibility is medium. He took into account a number of aggravating features as well as the mitigation that was offered, including the fact that there was only one stab wound which the applicant did not intend to be fatal, that there was a background of mutual violence, and that she felt some remorse in the sense of personal loss although she lacked victim empathy. He concluded that the aggravating features outweighed the mitigating features, leading to a notional sentence after trial of 17 years.
- 8 He was satisfied that the applicant was dangerous in the light of her previous convictions. He noted the content of the pre-sentence report which suggested a risk of further violence to a future partner within a domestic relationship in circumstances where there was a past history of disregarding police and court-imposed conditions and failing to comply with

safeguarding measures. He applied a reduction of around 10 per cent, which is not challenged, to take account of the late guilty plea and arrived at a custodial sentence of 15½ years to which he added an extension period of three years.

### Grounds of Appeal

- 9 The applicant argues that sentence was manifestly excessive on three grounds. First, the judge was wrong to assess the applicant as dangerous and in consequence to impose an extended sentence. Secondly, the judge was wrong to assess the applicant's level of retained responsibility as medium rather than low. Thirdly, the judge wrongly balanced the aggravating and mitigating factors so as to arrive at a starting point for sentence on a guideline which was too high.
- 10 We are grateful to Mr Rhodes KC, who appears pro bono for this applicant, who has argued these points before us with careful analysis and commendable focus. We consider each in turn.

### Ground 1, Dangerousness

- 11 The applicant had previous convictions for driving with excess alcohol in 2012, for assault occasioning actual bodily harm in 2013 which was in a domestic setting (an assault on a former partner) and harassment by breaching a restraining order in 2014. There had also been a history of violence between her and Mr Davies, including a recent complaint by Mr Davies of assault, meaning that she was on bail at the time of this offence.
- 12 The pre-sentence report addressed the abuse within the applicant's relationship with Mr Davies and the circumstances, involving an excessive abuse of alcohol, leading up to the stabbing. This offence represented an increase in the seriousness of past offending and suggested concerning behaviour in the context of intimate relationships under the influence of alcohol. Although the applicant had periods of abstaining from alcohol in the past, she

admitted at times of stress she always returned to the use of alcohol. The pre-sentence report concluded that she posed a high risk of harm to previous and future intimate partners.

13 This morning, Mr Rhodes has sought to persuade us that such intimate partners, whether past or future, were not within the class of individuals within the contemplation of the statute. They are not "members of the public". We reject that suggestion. Past and future partners are clearly within the contemplation of the "dangerous offender" provisions of the Act.

14 On the evidence before him, the judge was entitled to conclude that the applicant was dangerous and would remain so on release from custody. He said it was difficult to assess the extent to which the risk would be mitigated by counselling and treatment while in custody and following release, and that he could not be confident that the risk would be mitigated satisfactorily.

15 For these reasons we refuse leave on the first ground of appeal.

#### Ground 2, Level of Retained Responsibility

16 The guidelines suggest that the degree of retained responsibility should be assessed by reference to the medical evidence and relevant information before the court. The offender's acts and omissions, including voluntary use of alcohol and drugs and failing to follow medical advice may be relevant. The judge noted that although the applicant's drinking was involuntary, she had drunk particularly large amounts even by her own standards. She was not seeking any treatment at the time. But when treatment had been successful in the past, she had remained abstinent. He said that in lucid moments she must have known that she and Mr Davies were a danger to each other. There were bail conditions in place to stop them having contact precisely to avert that danger. In those circumstances the judge considered the responsibility she retained was medium level.

- 17 Mr Rhodes has suggested that her drinking was involuntary and that she lacked self-control precisely because she was now alcohol dependent, that she had chosen to go to her own home for several days but the deceased had come to her home, and that she was suffering abuse and violent behaviour at his hands at that time. These, he says, were all relevant and all suggested that the level of retained responsibility was properly to be assessed as low.
- 18 None of these factors were lost on the judge. He had to assess the degree of responsibility retained by the applicant against all the information available. He identified certain features which led to his assessment that her responsibility was medium.
- 19 We have reviewed the information available. Notwithstanding Mr Rhodes's able submissions, we conclude that the following are important features of this case and suggest that the responsibility retained was, indeed, medium in level. The applicant was well aware of the risk of violence when she and Mr Davies were together. That was clear from the past. That risk occurred when they were drinking together, as they had done in the past and as they routinely did. Nonetheless, she chose to allow him to stay with her over his birthday in March. That was unwise given the risk of violence and it was also in breach of bail conditions which had been imposed to protect both her and him. There were arguments between the pair on 2, 3 and 4 June at least, because there is evidence of those occurring, leading to noisy shouting and to the applicant sustaining injuries. Yet, she did not ask Mr Davies to leave. Meanwhile, there is no psychiatric explanation why she and Mr Davies drunk the amounts of alcohol they did in the days leading up to this offence. She admitted she had drunk around double her usual consumption.
- 20 There were, realistically, things that she could have done to avoid this violence towards Mr Davies but she did not do them. Instead, she stayed with Mr Davies and events unfolded to their tragic end. She must carry medium level responsibility for what happened. The judge's assessment was appropriate.

21 We refuse permission to appeal on this ground.

Ground 3: Starting Point

22 The judge recited a number of aggravating features: previous convictions (some involving domestic violence in drink), the fact that this offence was committed whilst on bail on a charge of assaulting the same victim, the use of a knife, the failure to seek medical attention after the assault, the attempts to deflect responsibility afterwards.

23 Mr Rhodes complains that there was some double counting but we are not persuaded that is so. To the extent the judge noted the same feature of the evidence in the context of both retained responsibility and as part of the aggravating factors, he was, in our judgment, alighting on different aspects of that single feature. So, for example, the fact that the offence was committed on bail was relevant to the level of retained responsibility because it showed that the applicant knew of the past difficulties in the relationship; it was also an aggravating feature because it put her in breach of a court order. A similar point can be made in respect of the background toxicity in the relationship between the applicant and Mr Davies. That was relevant to retained responsibility, because it showed the applicant's knowledge of the dangers of this relationship; it was also proper to take it into account as an aggravating feature given the past history of violence by her on Mr Davies.

24 We reject the proposition that the judge had double counted these features. To the contrary, in our judgment, he carefully considered different aspects of these features, as he was entitled to do as part of his sentencing exercise.

25 Further, we reject the suggestion that the failure by the applicant to call medical treatment was in some sense unfairly held against her as an aggravating feature. It is right of course to say that the deceased did not help himself by calling medical assistance. But she had used a knife on the deceased, she could and should have called for assistance, yet she did not. And that did make her offending more serious.

- 26 The judge was entitled to conclude that these were serious aggravating factors.
- 27 The judge also took account of the mitigation. He noted, in particular, the single stab wound and the lack of intent to kill, these being the two features that Mr Rhodes particularly alighted upon. He had in mind various other points of mitigation which have been highlighted today.
- 28 Standing back, we are satisfied that the judge was entitled to come to the conclusion that the aggravating features in this case did outweigh the mitigation, and we reject the proposition (as unarguable) that the starting point of 17 years was too high.
- 29 We, therefore, refuse leave to appeal on the third ground.

#### Conclusion

- 30 Notwithstanding the able assistance that Mr Rhodes has given us this morning, and in agreement with the single judge, we refuse this renewed application for leave to appeal against sentence.

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This transcript is subject to the Judge's approval.