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IN THE COURT OF APPEAL

CRIMINAL DIVISION

CASE NO 202302075/A3

[2024] EWCA Crim 319

Royal Courts of Justice
Strand
London
WC2A 2LL

Tuesday, 12 March 2024

Before:

THE VICE-PRESIDENT OF THE COURT OF APPEAL, CRIMINAL DIVISION
LORD JUSTICE HOLROYDE
MRS JUSTICE MAY DBE
HIS HONOUR JUDGE LICKLEY KC

REX
v
LOUISE LENNON

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MISS J BICKERSTAFF KC and MISS T SHROFF appeared on behalf of the Applicant

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J U D G M E N T
(Approved)

1. THE VICE-PRESIDENT: This applicant and her former partner, Jake Drummond stood trial at the Central Criminal Court on charges arising out of the death of the applicant's 15-month-old son, Jacob. The applicant gave evidence. She then pleaded guilty to an offence of cruelty to a person under 16 years (count 4). She was convicted of causing or allowing the death of a child (count 3). She was subsequently sentenced by the trial judge, Sweeting J, to 10 years' imprisonment for that offence, with a concurrent sentence of six years on count 4. Drummond was convicted of murder and wounding with intent. He was sentenced to life imprisonment with a minimum term of 32 years, less the days he had spent remanded in custody.
2. The applicant applied for leave to appeal against her sentence. That application was refused by the single judge. It is now renewed to the full court.
3. The facts have been fully set out by the Criminal Appeal Office in a document available to the applicant, and for present purposes the following very brief summary is sufficient.
4. The applicant was aged 29 at the time of Jacob's death. She had no previous convictions. She had suffered domestic abuse at the hands of more than one former partner. She was the mother of two sons, the older of whom was then aged four. The boys had different fathers, neither of whom appears to have been actively involved in their care.
5. In late 2019 she began a relationship with Drummond, whom she had known for many years. Over a period of weeks Drummond repeatedly inflicted serious violence on Jacob, causing injuries which the applicant knew about but did not prevent or report.
6. On 27 August 2019 she made a 999 call requesting an ambulance. She reported that Jacob had not been breathing for some minutes. Jacob was taken to hospital but had plainly suffered serious head injuries and was pronounced dead a short time later. In the

999 call and subsequently, the applicant and Drummond jointly put forward a false explanation for Jacob's injuries. The cause of death was severe head injury in the context of two previous occasions of head injury. Observations when Jacob was first seen, and subsequent investigations, showed that he had suffered more than one impact-related and/or shaking injury to his brain. Some were several days or weeks old. That which had caused his death rendered him unconscious some hours before the ambulance was called. Consistent with those injuries, there were some 20 external injuries to Jacob's head and face. When admitted to hospital he was severely bruised in both eyes and his eyes were so swollen that they could not be opened. There was bruising to other areas of the head and face, some indicative of blows being struck. The entire skull was very swollen and of sponge-like consistency.

7. Jacob's limbs and body had also been repeatedly injured. There was a 3cm laceration of his penis, possibly caused by forceful pinching or a bite, which had penetrated through the full thickness of the skin. There was an injury to his scrotum which had been inflicted with a sharp implement.

8. The judge summarised what Drummond had done to a young and vulnerable child by saying that Drummond's conduct involved:

> "... a course of conduct of a deliberate, cruel and sadistic nature. There was a pattern of behaviour. The penile and scrotal injuries can only be explained as sadistic in nature. They must have been excruciatingly painful. The other injuries show a deliberate course of conduct involving gratuitous violence."

9. There was clear evidence that the applicant knew the injuries which Jacob had suffered and the judge in sentencing rejected the suggestion that she had been subject to any degree of coercive control by Drummond.

10. In text messages passing between her and Drummond, Drummond referred to Jacob's bedroom as "the torture chamber" and the applicant described Jacob as "looking like a little madman" because of his bruises. The applicant nonetheless tried to cover up what had happened by putting forward false accounts of accidental injury and claims of an improvement in Jacob's condition. She lied to a close friend who saw Jacob at a time when the applicant herself described his head as "looking like a basketball". She lied to another friend to whom she sent a photo showing Jacob's bruised face. A few days before the fatal incident she lied to a social worker in order to avoid a planned visit at which the severe bruising to Jacob's head and face would have been observed. All those lies contributed to the continuing violence towards Jacob escaping detection by the authorities until after his death.
11. The judge was assisted by a pre-sentence report and a psychiatric report. He accepted from the pre-sentence report that the applicant now recognised the extent of her guilt and was genuinely remorseful, and that she had suffered a difficult life. He took into account that the applicant's older son had been removed from her and adopted. He accepted from the psychiatric report that the applicant may have suffered from post-traumatic stress disorder at the material time. He did not consider that that condition impaired her ability to make rational choices, but did take it into account in considering the effect of the sentence upon her.
12. The judge considered the Sentencing Council's relevant definitive sentencing guidelines. He placed the count 3 offence in category B1 of the guideline which gave a starting point of nine years' custody and a range from seven to 14 years. He found that the offence was aggravated by the prolonged suffering which Jacob endured prior to his death and by the

applicant's attempts to cover up or conceal the offending. The count 4 offence also came within category B1 of its relevant guideline, with a starting point of six years' custody and a range from four to eight years. In those circumstances, he imposed the sentences to which we have referred.

13. We have been assisted by written and oral submissions by Miss Bickerstaff KC and Miss Shroff who appear before us today, having represented the applicant at her trial. Miss Bickerstaff puts forward an over-arching submission that the total sentence is manifestly excessive. She advances a number of arguments. She no longer pursues an initial written submission that the principal offence should have been placed into category C1; rather, she accepts that the judge was entitled to place it into category B1, but submits that having done so, the judge should have made an initial downward adjustment from the starting point for that category. He should have done so, she submits, in particular having regard to these features of the offending: that the applicant's involvement was limited to a period of 12 days; that there was no suggestion that she had personally inflicted or witnessed the inflicting of any of the injuries; that she had made some efforts to assist Jacob; and that the visible injuries to him did not alert her to the very serious underlying brain injuries which Jacob was suffering.

14. Miss Bickerstaff goes on to submit that if the judge was correct to treat it as a category B1 offence, he then fell into the error of double counting by treating Jacob's prolonged suffering as an aggravating feature. That is because one of the category B high culpability factors which the judge found to be applicable to the case is "prolonged and/or multiple incidents of serious cruelty including serious neglect."

15. Next, Miss Bickerstaff submits that the only aggravating factor which should have been taken into account was the attempted cover-up but that, she argues, was balanced by the

absence of previous convictions and the applicant's remorse. Furthermore, she argues, although the judge was correct to follow the guideline he did, he should have made an allowance for the fact that the offence was committed at the time when the statutory maximum penalty for it was one of 14 years' imprisonment, whereas the guideline had come into effect following an increase by Parliament to a maximum of life imprisonment.

16. Finally, Miss Bickerstaff argues that the judge must have given insufficient weight to the personal mitigation and to the mental health position revealed by the psychiatric report in reaching what was, on any view, a severe sentence.

17. We are very grateful to counsel for their submissions, the more so because they have been good enough to act pro bono in preparing and presenting this renewed application. We are not however persuaded by the submissions.

18. We consider first the point made to the effect that the count 3 offence was committed before the statutory maximum penalty for such offences was increased but the relevant guideline came into effect after that increase. That fact cannot assist the applicant. As the single judge, Hilliard J, observed, the appropriate application of the guideline in circumstances such as these was stated by this court in R v AZT [2023] EWCA Crim 1277, in particular at paragraph 3. The judge here was obliged to give effect to the guideline, save that he could not impose a sentence which was longer than the statutory maximum in force at the time of the crime.

19. Next, we observe that the guideline specifically applies both to offences involving the causing of death and to offences of allowing the death of a child. The facts and circumstances of individual cases of course differ, but the guideline does not assume or presuppose that an offence of permitting the death will always and necessarily be less serious than an offence of causing the death.

20. As to the categorisation of this offending under that guideline, the applicant had failed to protect Jacob from offences in which at least three features of high culpability were present: multiple incidents of serious cruelty, sadistic behaviour by Drummond, and the use of very significant force by Drummond. The applicant had also deliberately disregarded her son's welfare. There can therefore be no successful criticism of the judge's decision to place the offence in category B1. With respect to the judge we accept Miss Bickerstaff's submission that there was an element of double counting in treating as an aggravating factor the prolonged suffering which was the inevitable result of the multiple incidents of serious cruelty. As against that, however, the presence of at least three high culpability factors would of itself have justified an upwards movement from the category B1 starting point. The judge would moreover have been entitled to treat as a further serious aggravating factor the impact of the offending on the applicant's older son, who has suffered the death of his younger brother.

21. We have given careful thought to Miss Bickerstaff's submissions as to the weight properly to be given to the applicant's personal mitigation and mental health issues. We are not persuaded that there is any basis on which it can be argued that the judge failed to accord sufficient weight to these factors. It is important to note that the judge conducted the trial and had heard the applicant give her evidence. He was entitled to conclude that her PTSD did not materially reduce her culpability. He made plain that he took account of her mental health in terms of the impact on her of serving a custodial sentence. In our view, the judge plainly did take into account the personal mitigation. The sad reality however is, as the judge said, that the applicant had prioritised her relationship with Drummond over concern for her child.

22. For those reasons, we reach the same conclusion as did the single judge. There is no arguable basis on which it can be said that the total sentence was manifestly excessive. Grateful though we are to Miss Bickerstaff, whose submissions have been as well made as they possibly could have been, this renewed application therefore fails and must be refused.

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