



Neutral Citation Number: [2010] EWHC 1064 (QB)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Case No: MTS/687/2004

Royal Courts of Justice
Strand, London, WC2A 2LL

14 May 2010

Before:

MR JUSTICE KEITH

Between:

The Queen

- and -

Anthony John Hardy

Approved Judgment

Introduction

1. On 25 November 2003 at the Central Criminal Court, Anthony Hardy pleaded guilty to the murder of Sally White, Elizabeth Valad and Bridgette MacLennan. I presided over his trial. Having sentenced him to life imprisonment for each of the murders, I had to decide whether I could make any recommendation to the Home Secretary about whether Hardy could ever be considered for release from prison on licence. I concluded that this was one of those exceptionally rare cases in which, to use the language recommended by what was then para. 49.19 of the Practice Direction (Criminal Proceedings: Consolidation), there was no minimum term which could properly be set. That amounted, in effect, to a recommendation that in Hardy's case life should mean life, for which the current phraseology is a whole life order.

2. Schedule 22 to the Criminal Justice Act 2003 ("the Act") came into force on 18 December 2003. By then, the Home Secretary had not notified Hardy either of the minimum period which he thought Hardy should serve before his release on licence, or that he did not intend that Hardy should ever be released on licence. Accordingly, the Home Secretary referred Hardy's case to the High Court under para. 6 of Schedule 22 to the Act for the making of an order under sections 269(2) or 269(4) of the Act – in effect, an order that Hardy should never be released on licence, or an order that his release on licence can be considered by the Parole Board after he has served a specified time in custody. Section 270(1) of the Act requires me to give the reasons for such order as I make in ordinary language.

The facts

3. The nature of Hardy's crimes were such that they received a good deal of publicity. He was 52 years old at the time of his trial. He was a university graduate who had worked for a number of years. In the 1980s he was made redundant, and he and his wife (by whom he had had four children) separated in 1986. Thereafter, his life went into decline. There were periods during which he received psychiatric treatment for a depressive condition as an in-patient at various psychiatric hospitals, and by the time when he killed the first of his three victims, he was an alcoholic, living alone in a flat in Camden Town.

4. The naked body of the first of Hardy's three victims was found in his flat on 20 January 2002 by the police, who were investigating the squirting through a neighbour's letterbox of what subsequently turned out to be battery fluid. Hardy declined to answer any of the questions put to him about the woman (who was subsequently identified as Sally White, a local prostitute). The post-mortem on her did not produce any positive evidence as to how she had died, but the pathologist concluded that such evidence as there was suggested that she had died from a heart attack. In the circumstances, no further action was taken against Hardy at the time in respect of Sally White's death.

5. On 12 March 2002, Hardy pleaded guilty to an offence of racially aggravated criminal damage in respect of the damage done to his neighbour's door. A hospital order was made under section 37 of the Mental Health Act 1983. He was discharged from hospital on 4 November 2002.

6. On 30 and 31 December 2002, body parts of two women were found at Hardy's flat and in dustbins in the vicinity. The heads and hands (as well as other body parts) were missing and were never found. After going missing for a few days, Hardy was arrested following a nationwide search for him. The body parts were eventually identified as those of Elizabeth Valad and Bridgette MacLennan. They had both been local prostitutes. Post-mortems revealed that their bodies had been dismembered after death. The absence of the head and the upper part of the neck made it difficult for the precise cause of their death to be established, but a fractured voice-box in one torso and bruising to the lower neck and upper chest in the other were consistent with strangulation. Ms Valad was last known to be alive on 19 December 2002. Hardy told police that Ms MacLennan had died on Christmas day.

7. Following Hardy's arrest, the police developed some negatives from a film which Hardy had sent by post to a friend, telling him to keep them "at all costs". The photographs show Ms Valad and Ms MacLennan separately after they had died. They had been photographed naked, in a variety of sexual positions, and with a vibrator inserted into the vagina. The faces of both women had been concealed either with a latex devil's mask or a baseball cap. Hardy refused to answer any of the questions put to him by the police when he was interviewed.

8. In mitigation, it was said on Hardy's behalf that his three victims had died in the course of otherwise consensual, but nevertheless extreme, sexual activity. His pleas of guilty were tendered on the basis that he had intended to cause them really serious harm by inhibiting their breathing in the course of that activity, which in the case of Sally White had triggered her pre-existing but unknown heart condition. He denied having intended to kill them so that he could photograph them after their death in the way that he did with his last two victims.

9. There is no reason to doubt the assertion made on Hardy's behalf that he dismembered the bodies of his last two victims only so as to enable him to dispose of them quickly. But the prosecution did not accept the basis on which Hardy's pleas of guilty were tendered, and it was accepted that it was for me to decide what Hardy's intention had been. It may be that he had not intended to kill Sally White, but I could not accept that he had not intended to kill his last two victims. It was far too improbable for the deaths of all three women to have been the unintended consequence of the really serious harm which Hardy admits intending to inflict, though whether he intended to kill them for the reason advanced by the prosecution is a matter of speculation. What I can say is that although they may have consented to having sex with him, I do not believe that they would have consented to the sadistic form of sexual activity which resulted in their death. I have therefore addressed the question of whether it is appropriate to set a minimum term before Hardy's release should be considered on the footing that he intended to kill Ms Valad and Ms MacLennan in the course of sadistic sexual activity.

10. Although Hardy pleaded guilty only on the day of his trial, he had never denied that the three women had died at his hands. At an early stage, the defence indicated that Hardy's responsibility for their deaths would not be disputed, the defence statement asserting that the only defence to be relied upon at his trial would be the defence of diminished responsibility. The psychiatric reports on Hardy revealed a personality disorder which constituted an abnormality of the mind. However, by his pleas of guilty Hardy accepted that his abnormality of mind had not been such as to impair substantially his mental responsibility for what he had done.

A whole life order

11. Since being sentenced, Hardy has been transferred to Broadmoor Hospital under the Mental Health Act 1983. He has been diagnosed as suffering from a schizo-affective disorder. Although his mental state had improved by the time his detention had been reviewed by the Mental Health Review Tribunal in March 2008, he was said to be psychotic and apathetic, lacking in motivation, and with a tendency to isolate himself. He continued to experience what was described as “delusional interpretations of ‘his world’”, and he was said to have predicted his own death.

12. It is not, of course, for me to assess the danger which Hardy would pose to members of the public if he was ever to be released. That would be a matter for the Parole Board. Whether it would be appropriate for me to set a minimum term has to be decided by what is necessary to meet the requirements of retribution and deterrence. But cases which would normally fall within those for which the appropriate starting point is a whole life order includes the murder of two or more persons, where each murder involves sexual or sadistic conduct. This is unquestionably such a case. Indeed, this case is one of the utmost gravity, in which exceptionally Hardy’s early acceptance of responsibility for his victims’ death, his personality disorder at the time, his eventual pleas of guilty and such remorse as he expressed through his counsel carry little weight. The fact is that Hardy killed, and killed again, his last two victims at a time when he must have thought that he had “got away with” the murder of his first. These were truly horrific crimes, made even worse by the indignities to which he subjected the bodies of his last two victims after their death.

Conclusion

13. In the circumstances, I have concluded that a lengthy finite term will not suffice in Hardy’s case, and that he should never be released from prison. I therefore make a whole life order in his case.