



APPEAL COURT, HIGH COURT OF JUSTICIARY

[2024] HCJAC 38  
HCA/2024/127/XC

Lord Justice Clerk  
Lord Matthews  
Lady Wise

OPINION OF THE COURT

delivered by LADY DORRIAN, the LORD JUSTICE CLERK

in

APPEAL AGAINST SENTENCE

by

IAIN PACKER

Appellant

against

HIS MAJESTY'S ADVOCATE

Respondent

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**Appellant: Jackson, KC; Paterson Bell, Solicitors**  
**Respondent: Jessop KC, AD, Sol Adv; the Crown Agent**

28 August 2024

**Introduction**

[1] On 28 February 2024 the appellant was convicted of 33 charges, including the murder of Emma Caldwell in April 2005, an attempt to defeat the ends of justice in connection with that murder, and of the sexual abuse, abduction and assault of various

complainers over a 26 year period between 1990 and 2016. The latter charges included: eleven charges of rape (charges 3, 6, 10, 11, 13, 14, 22, 25, 30, 31, 39) against nine different complainers, some repeatedly over an extended period; eight charges of penetrative indecent assault (PIA) at common law, of which seven involved oral penetration and one anal penetration, and which would now be classified as rape under the Sexual Offences (Scotland) Act 2009 (charges 7, 8, 12, 15, 17, 19, 21, 23); one charge of attempted rape (charge 24); three charges of indecent assault not amounting to rape (charges 2, 17, 32); three charges of sexual assault against three separate complainers (charges 34, 37, 38); two charges of assault (charges 9, 28); two charges of abduction (charges 29, 33); and one charge of lewd and libidinous practices (charge 1). The murder involved both manual and assisted strangulation, and the attack was libelled with intent to rape. The detail of the charges appears in an appendix to this opinion.

[2] The trial judge sentenced the appellant to life imprisonment with a punishment part of 36 years. Two years was attributed to the charge of attempting to defeat the ends of justice and twelve years to the matters covered in the other offences. On these latter charges the judge imposed concurrent sentences of 6 years and 28 years' imprisonment respectively.

### **The circumstances of the offences**

[3] The appellant's offending mostly occurred in three scenarios. First, there was domestic violence in relation to his partners, as well as the sister of one partner. Second, the majority of the crimes on the indictment involved sexual assaults of sex workers at brothels, in vehicles used by the appellant, at places known to sex workers or in Limefield Woods, Lanarkshire in a conspicuously remote area about 40 miles from Glasgow where the appellant took a number of sex workers and assaulted them. Third, were sexual offences

which occurred at sex parties at which the appellant worked as a steward/barman for a friend.

### **Domestic offences**

[4] Four of the appellant's long-term partners gave evidence. These were CD, with whom he was in a relationship between 1990 and 1996; SR, from 1996 until 2001/2; KP, from 2003 until mid-2006; and ZB, from 2012/13 until 2018. CD, SR and KP spoke of becoming impoverished despite there being two incomes. The appellant would often go out for no obvious reason or offer unconvincing reasons. He would return at all hours of the night and sometimes not at all. With the exception of SR, these women spoke of suffering violence at the hands of the appellant and sexual violence in the case of CD.

[5] Charges 1, 2, 3, 6, 9 and 10 on the indictment all occurred against the background of the appellant's relationship with CD. Charges 1-3 (lewd practices, indecent assault, and rape) were committed against CD's younger sister, MR, who gave evidence that the appellant began abusing her when she was 14 years old, whilst she and CD stayed overnight at his parent's house. He lay on top of her whilst pulling his trousers down. As she crawled away from him, he said he would tell CD it was MR's fault. The appellant was a regular visitor to their home and any time they were alone in a room he would put his hands down her trousers and touch her vagina and up her top and touch her breasts. On one occasion he had come back from a Halloween party at CD's workplace. He said to MR that he wanted her to be his girlfriend and she played along a bit but then he said he wanted to have sex with her and got into bed with her. He took her lower clothing down and got on top of her. She tried to push him away but could not do so. He persisted and raped her.

[6] In respect of charge 6 (rape), CD described recurring situations during their marriage, between 1991 and 1996, where she would lie in bed with her back to the appellant. He would start poking at her and she would tell him to leave her alone, only for him to climb on top of her. Despite her protestations the appellant would not get off her and would prise her legs open, using his knees and his weight. She would try to push him off but he was heavy, really strong and he would force his penis inside her vagina. She would tell him she was hurting and to stop but this had no effect, he carried on until he finished. Charges 9 and 10 (assault; rape) occurred post separation, the former involving the appellant assaulting her by emptying the contents of an ashtray over her head and the latter occurring in Christmas 1996, when she awoke to find the appellant in her bed. He held her hands above her head, used his whole weight to prise her legs apart and raped her.

[7] Charges 28 and 29 (assault; abduction) were committed against KP. One night in June 2006 she came home early and found the appellant with a naked woman on top of him. She wanted to end the relationship as a result. The appellant ultimately persuaded her to return to the home in which they resided together. He detained her there for the next two weeks. Anytime she tried to leave he would lock the door and retain the key. On one occasion he stood between her and the front door. He took her phone away and unhooked the landline. Charge 28 libelled a particular incident in which the appellant came through with a kitchen knife and said she was not going and pointed it at her chest. The appellant admitted in his evidence that he had prevented KP from leaving the house. The trial judge directed the jury to convict on charge 29.

### **Offences against sex workers**

[8] Most of the complainers in respect of these charges spoke to having engaged in sex

work during a desperate period in their lives, either to fund drug addiction, at a time of extreme financial difficulty and/or to support children. Many knew Emma Caldwell. Some knew the appellant by different names, but came to realise that this was in fact the appellant upon viewing a BBC investigative documentary on Ms Caldwell's murder. Some of the complainers were now deceased and evidence was led of statements given to police.

[9] KH gave statements to police which spoke to the events in charges 7 and 8 (PIA).

The appellant picked her up at the Barras to perform oral sex on him in his van in the surrounding streets. He became rough, grabbing hold of her hair and pushing her head down causing her to gag. She told him not to be so rough and eventually he took a telling. Around a week later the same thing happened.

[10] DH (charge 11, rape) knew the appellant from the brothel which was Blythswood Sauna. They commenced consensual intercourse at her house in exchange for money. The appellant put his fingers in her vagina. She told him not to do this. She felt the condom had come off. She tried to stop him, but he leaned on her. She froze and panicked. He continued and ejaculated inside her.

[11] AH (charge 12, PIA), then aged between 15 and 19/20, worked in the Barras, Glasgow Green and "the drag" near the city centre. On various occasions between 1998 and 2006, she would take the appellant to Forge Retail Park in Shawfield and perform oral sex on him for £15 or £20. He would push her head down until she choked. It would choke her and sometimes she would have to stop when she was gagging. She had not agreed to this. This was not a one off, it was what he liked and it happened every time.

[12] RS (charge 13, rape) worked at Aquarius Sauna from 1998 until 2006. She saw the appellant there two to three times per week. He only picked her once and he was aggressive, held her wrist down, pulled her hair so as to move her head back and put his

hand on her throat while they were having sexual intercourse. He had four fingers on one side of her throat and his thumb on the other. She only managed to get him off by threatening to hit him with her high heels and he left without paying her.

[13] CB (charge 14, rape), now deceased, gave statements to police in which she stated that she had got into the appellant's van in March 1999 and agreed £60 for an hour of sexual activity. He only had £30 so she agreed to oral sex and he pulled over in a street in Carntyne. She put a condom on his penis but he took it off and tried to force her head down onto his penis. She resisted and struggled. He threatened her, pinned her down against the front seats and banged her head against the window of the van. In a later statement she said that the man had put his hands around her throat. He forcibly penetrated her vagina with his penis and raped her.

[14] AM (charge 15, PIA) gave evidence that, between 2000 and 2005, the appellant would pick her up and ask if she wanted to have sex from behind, with her handcuffed and then he would take her to places in the middle of nowhere. If she met him during the day he would be working and it would just be quick oral sex. At night-time, he would take her out further and he was more relaxed. He punched her head on a number of occasions, he got a "kick" from it. He would try to force her head down during oral sex so she would be choking. He would take her hair down, pull and twist it and force her head down during oral sex. He would try to put his fingers inside her vagina and, on one occasion, his whole hand. It was quite forceful to the point she found she had bled. They would have vaginal intercourse in the back of the van. She did not want any of this. The appellant was always rough with her but it was that first time he was the roughest. He grabbed her hair and twisted it to pull her head towards him. He was punching the top of her head. He was trying to get his whole

hand inside her vagina and was scratching her inside. He pulled her closer by grabbing her pubic hair and pulling her towards him.

[15] CL (charge 16, indecent assault) had a sexual encounter with the appellant between 2003 and 2006, probably doing oral sex on him which she agreed to. He tried to get a feel by putting his hand up her skirt after the sex he had paid for. He was sometimes rough and would pull her hair and squeeze her chest so hard it made her scream.

[16] YM (charge 17, PIA) agreed to perform oral sex on the appellant. He drove her to the area of the Rotunda Casino in the Anderson area. She got in the back of the van with him and started to do oral sex, kneeling as he was standing. He got rough and was pulling at her head and trying to strangle her. He was pulling at the back of her head trying to force his penis in more, saying "deep throat." She was trying to push him off and he grabbed her by the throat. He tried to and did strangle her with his hand. He applied pressure and she could not breathe properly. A security guard came and he let her go and she ran away.

[17] Charge 19 (PIA) involved Emma Caldwell. A witness, Jason Connor, saw the appellant go into bushes near London Road with Emma Caldwell and chase her when she came out. She was distraught, upset and sobbing. She said he had tried to make her do something she did not want to do; he made her try to do anal. Ms Caldwell also told KAJ the man had tried to give her anal and forced her. The appellant was interviewed by police in 2006 related to this incident. He told police that he asked Ms Caldwell if she would do anal sex and she agreed. However he admitted having continued thrusting after she said she did not want to do it anymore. She ran away upset. He kept looking for her to apologise and eventually did so. The trial judge directed the jury to convict the appellant on this charge in light of that admission.

[18] PM (charges 21 and 22, PIA; rape), now deceased, gave statements to police in 2005. She identified the appellant, whom she knew as Peter, as a regular punter. He offered her £50 extra to go out of town. It was always down the M74 for about 40 minutes. He took her to a layby, a good wee drive off the motorway with grass and trees. They would have either oral or vaginal sex. In due course she took the police to the place she was describing which was in Limefield Woods within a few metres of where Emma Caldwell's body was found. She became upset and scared. The appellant became mad, banging the sides of his head with his fists. PM managed to calm him down. She then gave him oral sex in the front of the van and he ejaculated so there was nothing else. He drove her home and apologised for getting upset. She went in his van again around a week or two later. He was shouting at her about her not calling him back and again started punching his head saying she had betrayed him as he drove very fast. He stopped in Glasgow and she calmed him down the same way as before. He drove her again to the same remote place and this time she watched all the landmarks and he parked further down the road at a silver gate. They walked up a small path and he said one of his fantasies was to have sex outside. He asked her to strip. She did not do so fully and he started stamping his feet like a child and shouting. Feeling that she had no choice, she gave him oral sex followed by doggy style vaginal sex as she did not want to lie down on the twigs.

[19] SM (charge 23, PIA) agreed to oral sex with the appellant. He took her on a drive outside Glasgow. He was too rough, beyond an acceptable level. He grabbed her neck, shoulders, head and hair and forced her head down during oral sex. He was holding her down so she could not get back up, and insulting her.

[20] ML (charge 24, rape) worked in the Club Royale Sauna and encountered the appellant, a regular attendee, who called himself John. When he selected her for the first



time she agreed to oral and vaginal sex with a condom. He demanded she take her clothes off. He pinned her down on the bed and grabbed her hands really tightly. He ignored her when she told him to stop. She pulled her knees up, to stop him trying to penetrate her vagina with his penis, and was trying to push him away. In response, he put one hand around her neck and then two hands so she could hardly speak. He let go and she said that he had to stop hurting her and to put a condom on. When he tried to grab her again and put his hand around her neck and tried to penetrate her without a condom, she put her knees up and referred to a bouncer. There was no bouncer but this was her ploy and he backed off. He called her rubbish, a slut and stupid. She sustained bruising from him grabbing and squeezing the top of her arms.

[21] MM (charge 25, rape), now deceased, made statements to police in 2006 and 2015 in which she said she got into the appellant's van for between 30 and 60 minutes. She gave a description of the locus which matched where Emma Caldwell's body was found. She decided to give him oral sex as she sat in the front passenger seat. He was pushing her head down so that she was choking and he then grabbed her hair and pulled her head up and down. She told him to stop and he did. She agreed to have sex and gave him a condom. He lay on top of her. He was pushing his penis too hard into her vagina, pushing her body and crushing her against the door. She exclaimed in pain and repeatedly told him it was sore but he ignored her until he finished. He had pinned her down and was going to finish no matter what.

[22] EE (charges 30 and 31, rape) said that in February/March 2010, a man in a white transit van approached her in the Glasgow Green area and asked if she was looking for business. He gave the name Derek on this occasion but when she met him later in the year he gave the name Iain. She got in having agreed a charge of £50. He drove somewhere for

what she thought was about 20-30 minutes and she did not think it was as far as Strathclyde Park but involved a motorway. They ended up in a place with fields and trees. He parked at a dirt road off a road in an area of forestry. She later came to recognise it, from a documentary she saw in 2019, as the place where Emma Caldwell's body was found, Limefield Woods. She got in the back of the van with the appellant, he lay on top of her and they had vaginal sex with a condom to which she agreed. He immediately began to thrust quite hard and put his hands around her throat. This change came very suddenly. She told him to stop. She was also pushing against him because he was choking her and making her scared but he persisted until he ejaculated. In December 2010, when she encountered the appellant again, he said he would not choke her. They went to the same place. He started heavy thrusting and she told him to calm down and he put his hands around her neck and she asked him not to but he did not stop. Once he ejaculated, he was back to normal again.

[23] AT (charges 32 and 33, indecent assault, abduction) said that in 2006/07 the appellant had picked her up in a white transit van on a couple of occasions. The first was at the Barras. He approached her on foot. They agreed £30 for vaginal sex. She masturbated him and he asked her to suck his penis to make him erect but she wanted money for that. He got agitated and tried to force her head down and she pushed him which prompted him to push on her shoulders saying "just give it a wee suck." She said no, stepped back and pushed his chest, ducked out and walked fast towards the city centre. On a later occasion she got in his van having agreed £15 for masturbation. She wanted to stay in the car park where they were but he was not happy. He was having trouble ejaculating and then asked about full sex which would be £30. He gave her the money and drove out of the car park, which she was not happy with. He was holding her by the wrist as he drove. She jumped out when he stopped at a red light and went to Base 75. This was the second abduction charge.

[24] LR (charge 34, sexual assault) worked at a flat in Riverford Road, Glasgow. She knew the appellant as Biker John. In August/September 2011 she agreed to have sexual intercourse with him on a bed there, but he was very forceful. He was on top of her and put his forearm across her neck. She had to kick him to stop. She wanted to go on top but he did not want that and he asked if he could do it from behind. He then slapped her on her bottom and she said no, no more.

### **Offences at sex parties**

[25] LM (charge 37, sexual assault) gave evidence that in October 2013 she was attending an adult party for the first time along with her husband and her friend. Her husband became involved with another woman and the appellant became involved with her on the bed nearest the wall and the door. He started kissing, touching and grabbing her in a way which became hard and uncomfortable straight away. He grabbed and squeezed her breasts. He was trying to get inside her underwear and managed to get his fingers inside her vagina. It was just rough and not pleasurable. She did not want to kiss, she was not comfortable and started to say no. She said no a few times and it had no effect on him. He just kissed her mouth so she could not say anything. He was limiting what she was saying, covering her mouth and telling her to shush. His hand was moving down to her neck, he would almost grab at her throat and then move his hand back to her mouth. He had his thumb on one side of her throat with four fingers on the other. Despite her saying no, he carried on. When he inserted his fingers, the more she said no the more he liked what he was doing. It ended when the couple beside them moved allowing her space to get up and leave the room.

[26] HB (charge 38, sexual assault) attended a party with her partner and friend in March 2016. She spoke of having a newly pierced nipple. The appellant accosted her and attempted to touch her breasts and put his hand in her pants. He tried to grab her breast and put it in his mouth. He tried to put his hand up her dress and into her pants. Her breast had not fully healed and she panicked. He backed off and said that if she ever wanted to do anything she knew where he was. She went to find her friend and her partner and they left in a taxi.

[27] RK (charge 39, rape) also attended an adult party in March 2016 with her friend and friend's partner. She was sitting in the smoking area, the appellant was to her right and they were chatting. He suddenly inserted his fingers in her vagina which caught her off guard. He then turned her head and put his penis in her mouth but not for long. She was in shock after that. She tried to push him off and it ended. She was distraught afterwards.

### **The murder of Emma Caldwell**

[28] Charge 45 on the indictment libelled that the appellant had murdered Ms Caldwell at an area of woodland known as Limefield Woods, near Biggar, South Lanarkshire on 5 April 2005 by restraining her, seizing her wrists, compressing her neck with his hands and a cable and strangling her, and that all this had been done with the intent to rape her.

[29] At the time of her death, and for some years beforehand, Ms Caldwell had engaged in sex work to support herself and her addiction to heroin. According to the statement of her friend, JP, now deceased, she had gone out for this purpose late on the night of 4 April 2005, to Glasgow Green. Facts established by joint minute went a long way to suggest that Ms Caldwell had died not long after she was last seen in the early hours of 5 April 2005. She had gone out from Inglefield Hostel late on 4 April. She was last seen standing on a street

near to Glasgow Green in the early hours. Her parents had expected to hear from her on 5 or 6 April but they never did. They reported her as a missing person and spent the following weeks combing the streets of central Glasgow in the hope of finding her. Her naked body was found on 8 May 2005, over a month later, by chance when a dog found it about 30 metres into Limefield Woods.

[30] Ms Caldwell was found to have died from compression of her neck and had bruises suggestive of manual strangulation. Also found around her neck was an improvised ligature. The appellant's former wife said that this broadly matched the kind of cabling she had seen in the appellant's van. AD spoke of her involvement with the appellant in 2013 and, in particular, a message he sent her. He said that he wanted to "take someone, like find someone that he could take to do his fetish like basically to rape them from behind while holding their throat." He specified that he would like to do this in woods. The circumstances, in particular the location used for the purposes of several of the sex offences, suggests a degree of premeditation. The method, strangulation manually and with a cable, suggests deliberate and calculated action, as well as significant force.

[31] ZB said she had been arguing with the appellant everyday in 2018 including lies he told her about cheating and "about Emma." During the course of one argument he attacked her and she thought she might die as he squeezed her throat as hard as he could with his hand.

[32] Charge 46 libelled an attempt to defeat the ends of justice in connection with the murder by disposing of Ms Caldwell's naked body, disposing of her mobile telephone, clothing and other personal belongings, as well as cleaning the interior of the motor vehicle used in the crime. It was a matter of inference that the person who killed Ms Caldwell must have secreted her clothing and telephone somewhere as they were not with her body. On a

site visit during the trial, the jury saw for themselves the ditch where her body was found and a graphic representation of the position it occupied largely below ground level. Beyond some jewellery on her body, none of her possessions were recovered.

[33] EM, a former neighbour of the appellant and then partner KP, witnessed the appellant cleaning his blue works van between February and August 2005, and she thought it might be around Easter. He was using some kind of cleaning product. He had seemed to fidget on an occasion when he had said that the police were taking it for forensic investigation, which police officers confirmed that they did.

### **The appellant's position**

[34] In his evidence the appellant acknowledged that he had been a prolific user of sex workers for most of his adult life. This was frequently the reason for his absences spoken of by his former partners. He would pick up sex workers in his van or car and have sex inside it, often oral sex performed as he sat in the front seat or vaginal sex in the rear of the van or outside in the places sex workers knew in the city centre and Glasgow Green area. He would also frequent saunas and other clubs and premises which were really a front for brothels.

[35] He denied all but two of the charges (in his evidence he admitted charge 19, PIA of Ms Caldwell; and charge 29), either stating that he was not the person involved, that the sexual activity had not occurred or that it had but was consensual. As for the charges relating to the murder of Emma Caldwell the appellant incriminated two Turkish nationals who were amongst the police's initial suspects.

### **The sentence**

[36] The trial judge, as he was bound to, sentenced the appellant to life imprisonment.

The appellant had pursued a campaign of violence and appalling sexual mistreatment of a very large number of women over more than 25 years. This had caused them enduring trauma. He referred to the victim impact statements. Emma Caldwell's mother, brother and her brother's partner spoke of the lasting effects which the murder had on the family. Her mother was unable to move on with her life. She would never feel closure. Her brother had suffered anxiety, isolation and extreme grief which has blighted his work and his whole life. The complainers on the other charges described the enduring psychological impact. Some described suffering forms of Post-Traumatic Stress Disorder and other mental health difficulties. They had experienced difficulties in maintaining healthy relationships, both with men and their respective families. The trauma some had experienced had life-ruining effects. In particular, DH had fallen back into depression following the renewed murder inquiry and had lost her job as a result.

[37] There was very little that could be said in mitigation. The appellant had not previously appeared in the High Court and had some history of employment. His younger age at the time of the earlier offences in the libel carried little weight standing the continuation of his conduct into his thirties and forties. The appellant also had relevant previous convictions. He had been convicted of domestically aggravated offences on four occasions since 2007. The most recent was on indictment in the sheriff court in 2020. He was convicted of assaulting his partner to her injury and danger of life, of stalking her and breaching his bail conditions. All carried a domestic aggravation. He was sentenced to imprisonment for 18 months on the first offence, 6 months for the second and 5 months for the third. He was also subject to a NHO for 5 years.

[38] It is clear from the trial judge's sentencing remarks that he regarded the present case as one in which the offences on the indictment other than murder had to be reflected in the

punishment part (see *Chalmers v HM Advocate* 2014 JC 220, para [24]). He observed that he had to take account of the seriousness of the crime of murder, combined with the other offences. He first addressed the offences other than charges 45 and 46. The judge said that the appellant had engaged in an

“extraordinary campaign of sexual violence carried out in a single-minded pursuit of [his] sexual desires leaving no room for the wishes or wellbeing of the women [he] abused. [He] did this in almost every sphere of [his] life. [He] would look for vulnerability and exploit it. [He] also abused women who were not necessarily vulnerable but were in a vulnerable position. [His] conduct has caused extreme and enduring suffering for so many women and their families.”

The judge imposed a *cumulo* sentence of 28 years' imprisonment on these charges, to be served concurrently with the punishment part to be imposed on charge 45. Insofar as the sentence on these other charges required to be reflected in the punishment part, the figure of 28 years fell to be reduced substantially, in order to strip out the significant component which related to protection of the public and to account for the loss of any prospect of early release. Whilst not stated in terms in the sentencing remarks, in his report the trial judge explains that the figure attributed in the punishment part to these offences was 12 years.

[39] Next, he addressed charges 45 and 46. The murder, whatever the appellant's motive, had been committed in circumstances which must have been truly terrifying for Ms Caldwell. It involved significant force; manual strangulation and the use of a ligature. The appellant was the man who had indecently assaulted her by penetration previously, an offence which had caused her significant distress. The murder took place in an isolated and remote area with no one else around. The appellant then covered up his actions in an effort to avoid detection and punishment. The trial judge sentenced the appellant on charge 46, concurrently, to 6 years. Again, he did not specify the proportion of that period which he applied to the punishment part, but in his report states that it was 2 years.



[40] The trial judge concluded his sentencing remarks by specifying a punishment part, “in the whole circumstances”, as 36 years. In his report he explains that the murder charge, had it stood alone, would have attracted a punishment part of 22 years. The overall sentence was to be backdated to 28 February 2022, when the appellant was remanded in custody.

### **Submissions for the appellant**

[41] Senior counsel accepted that the judge was entitled to increase the punishment part for charge 45 to reflect the other offending. He took no issue with the methodology adopted. The sole argument was that it would not be in the interests of justice not to allow an application for parole for such a significant period of time. Notwithstanding that this series of crimes was “as bad as it gets” it was not appropriate in a civilised society that someone should not be eligible for parole until his mid 80s.

### **Decision**

[42] Where a conviction for murder is returned on an indictment containing other charges, the resultant punishment part requires to be fixed taking into account *inter alia* the seriousness of the offence, or of the offence combined with other offences of which the life prisoner is convicted on the same indictment as that offence. The extent to which, and how, such other offences should be reflected in the punishment part is a matter for the sentencing judge. The correct approach to be taken in such a case where there are other convictions on the same indictment is set out in *Chalmers v HM Advocate* 2014 JC 229, Lord Justice General Gill, paragraphs 19-20, and 24-28. The process was summarised in *Owens v HM Advocate*, 2022 SLT 1181, para [16]:

“... The sentencing judge should decide whether the conviction on the lesser charge should be reflected in the punishment part. He or she should then make an overall judgment having regard to the punishment part that would have been appropriate if

the murder conviction stood alone, the element of retribution and deterrence attributable to the conviction on the lesser charge and the loss of the opportunity for early release that an independent sentence on that charge would have given. The sentence on the lesser charge must be imposed to run concurrently with the sentence on the murder charge and would become relevant if the conviction on the murder charge was quashed.”

It has not been suggested that the trial judge approached this exercise erroneously. In his report he explains that the punishment part consisted of: 22 years attributed to the murder charge; 2 years (reduced from 6 years) on charge 46; and 12 years (reduced from 28 years) on the other charges. The trial judge made it clear in his sentencing remarks that the punishment part reflected the offending on the indictment over and above the murder charge. He did not, nor was he bound to, specify the period attributed to the punishment part on each of the charges as he has since done in his report, although we recognise that this might have been helpful for clarity. Nevertheless, after identifying the *cumulo* sentence of 28 years on the charges other than charges 45 and 46, he went on to explain that the

“extent to which this contributes to the punishment part of your life sentence is, by law, substantially reduced to only a fraction of that figure. If the charges other than 45 and 46 stood alone, the sentence would include a significant component for public protection which must be left out of account in a punishment part. The court must also allow for the loss of any prospect of early release, which would have existed if the sentence of 28 years stood alone. That opportunity is absent where a sentence is taken account of within the punishment part of a life sentence.”

[43] We did not understand senior counsel to take any issue with the periods attributed to the punishment part so far as relating to charges 45 and 46. Rightly so. There can be no legitimate criticism of the trial judge’s specification of 22 years for a sexually motivated murder in the circumstances described above. In reducing the element attributed to charge 46, that is the attempt to defeat the ends of justice, the trial judge in fact applied a significant reduction : see, for example, *Chalmers v HM Advocate* 2014 JC 229 where a 6 year

sentence for attempting to pervert the course of justice was reflected in the overall punishment part by the addition of 3 years.

[44] In essence the submission was that the *cumulo* sentence of 28 years was excessive for the offences concerned, and that being so, applying 12 years of that period to the punishment part was in turn excessive. We cannot accept that submission. The other offences, which we have narrated above, were of a truly appalling nature, extended over a 26 year period and affected a large number of vulnerable women. The offences were committed against 22 separate women. The appellant's predatory activities covered all aspects of his life, from the domestic setting to his use of sex workers, and attendance at sex parties. The appellant was convicted of nineteen charges involving rape and indecent assault that would now be considered rape against fifteen different women. Charge 24 represented an earnest and violent attempt to rape a sixteenth. He sexually assaulted a further five women. In all he was convicted of offences against over twenty separate complainers. Some of the rapes were repeated over a number of years. He repeatedly raped his partner CD over a period of years and raped her again when their relationship was over. He raped her younger sister MR when she was 15 having sexually abused her aged 14-16.

[45] The court's duty when assessing the relevant punishment part is to impose a sentence which satisfies the requirements of retribution and deterrence. It is well-recognised that the effect of a lengthy sentence on an older person may be that they spend the rest of their life in prison. We note, incidentally, that the argument eventually advanced bears no relation to the grounds of appeal.

[46] It is clear that the total punishment part sentence selected was within the reasonable range for the offending of which the appellant was convicted. Stripping out 16 of the 28 years to remove the element of retribution and deterrence and to reflect the absence of any

prospect of early release was entirely appropriate. Against that background, and the nature and length of the offending in the present case, we are satisfied that the sentence imposed was fair and proportionate.

[47] The appeal is refused.

(001) on various occasions between 1 July 1990 and 17 October 1991, [at addresses in] Glasgow and in a motor vehicle ... in Glasgow, did use lewd, indecent and libidinous practices and behaviour towards MR, born 18 October 1975, aged 14 to 15 years, ... a girl then of or above the age of 12 years and under the age of 16 years, and did push her to the floor, lie on top of her, make a sexual remark to her, touch her breasts, buttocks and vagina over and under her clothing, sit on her bed and watch her whilst she slept, push her and attempt to pull down her trousers: CONTRARY to the Sexual Offences (Scotland) Act 1976, Section 5;

(002) on various occasions between 18 October 1991 and 31 May 1992, [in] Glasgow, ... did indecently assault MR, ... and did touch her breasts, buttocks and vagina over and under her clothing;

(003) on an occasion between 1 October 1990 and 30 November 1990, [in] Glasgow, ... did assault MR born 18 October 1975, aged 14 or 15 years, ... and did make sexual remarks to her, lie on top of her, pull down her lower clothing, penetrate her vagina with your penis and you did thus rape her;

(006) on various occasions between 1 June 1991 and 23 February 1996, [in] Glasgow, ... did assault CD, your partner, ... and did lie on top of her, force her legs apart, penetrate her vagina with your penis, and you did thus rape her;

(007) on an occasion between 31 October 1993 and 30 September 2004, both dates inclusive, in a motor vehicle [in] Glasgow, ..., having penetrated the mouth of KH, now deceased, ... with your penis with her consent, did indecently assault said KH and did seize hold of her hair and continue to penetrate her mouth with your penis whilst forcing her head down on to your penis causing her to choke;

(008) on an occasion between 31 October 1993 and 30 September 2004, both dates inclusive, being an occasion other than that referred to in charge (007) hereof, in a motor vehicle [in] Glasgow, or elsewhere ... having penetrated the mouth of KH, now deceased, ... with your penis with her consent, did indecently assault said KH and did seize hold of her hair and continue to penetrate her mouth with your penis whilst forcing her head down on to your penis causing her to choke;

(009) on 1 January 1996 [in] Glasgow ... did assault CD, your partner ... pull her clothing, shout at her, empty the contents of an ashtray over her head, behave aggressively towards her;

(010) on an occasion between 25 December 1996 and 31 December 1996, ... [in] Glasgow, ... did assault CD, your partner, and did kiss and attempt to kiss her, place your hands inside her nightdress and attempt to touch her body, lie on top of her, force her legs apart, penetrate her vagina with your penis and you did thus rape her;

(011) on an occasion between 1 January 1998 and 31 December 1999, [in] Glasgow, did assault DL, ... and did attempt to kiss her, and did lie on top of her, penetrate her vagina with your fingers, penetrate her vagina with your penis and you did thus rape her;

(012) on various occasions between 1 January 1998 and 31 December 2006, ... in motor vehicles [in] Glasgow, ... having penetrated the mouth of AH ... with your penis with her consent, did indecently assault said AH did continue to penetrate her mouth with your penis whilst forcing her head down on to your penis causing her to choke;

(013) on an occasion between 22 July 1998 and 13 September 2006, ... [in] Glasgow, did assault RS and did seize her wrists, hold her down, pull her hair, place your hand around her throat, penetrate her vagina with your penis and you did thus rape her;

(014) on 12 March 1999 in a motor vehicle at a location in .. Glasgow, ... did assault CB, now deceased, ... and did threaten her, restrain her, seize her hair, seize her arms, strike her head against the window of the said vehicle, pull down her lower clothing, penetrate her vagina with your penis and you did thus rape her, to her injury;

(015) on various occasions between 20 July 2000 and 1 April 2005, ..., in a motor vehicle [in] Glasgow, at the entrance to a field near Glasgow Airport ..., at an area of woodland ... Biggar, South Lanarkshire, and elsewhere ... unknown, ... did indecently assault AM, ... and did call her derogatory names, pull her hair and repeatedly punch her on the head whilst penetrating her mouth with your penis, repeatedly push her head down on to your penis causing her to choke, attempt to penetrate her vagina with your hand, scratch her vagina with your finger nails, seize her pubic hair and pull her towards you, penetrate her vagina with your fingers, and slap her;

(016) on an occasion between 1 January 2003 and 31 December 2006, ... in a motor vehicle near Glasgow Green ... did indecently assault CL, ... and did seize her hair and breasts whilst penetrating her mouth with your penis and place your hand underneath her skirt;

(017) on an occasion between 13 August 2003 and 5 March 2005, ... in a motor vehicle in ... Glasgow did indecently assault YM ... and did repeatedly pull her hair whilst penetrating her mouth with your penis, repeatedly push her head down on to your penis causing her to choke, seize hold of her, push her, seize her neck, compress her neck and restrict her breathing;

(019) on an occasion between 1 August 2004 and 31 August 2004 [in] Glasgow... did indecently assault Emma Jane Caldwell, now deceased ... and did penetrate her anus with your penis;

(021) on an occasion between 1 January 2005 and 30 June 2005, ... at an area of woodland ... Biggar ... did indecently assault PM, now deceased, ... and did instruct her to remove her clothing, shout at her when she refused, seize her, strike your head with your fists, place her in a state of fear and alarm, and penetrate her mouth with your penis;

(022) on an occasion between 1 January 2005 and 30 June 2005, ... being an occasion after that referred to in charge (021) hereof, at an area of woodland ... Biggar, ... did indecently assault PM, now deceased, c ... and did instruct her to remove her clothing, cause her to partially remove her clothing, place her in a state of fear and alarm whereby she did remove the remainder of her clothing, penetrate her mouth with your penis, penetrate her vagina with your penis and you did thus rape her;

(023) on an occasion between 1 March 2005 and 5 May 2005, ... in a motor vehicle ... in or near Glasgow, ... did indecently assault SM, ... and did repeatedly push her head down on to your penis whilst penetrating her mouth with your penis;

(024) on an occasion between 1 June 2005 and 31 December 2005, [in] Glasgow, ... did assault ML, ... and did seize her arms, hold her down on a bed, lie on top of her, seize her neck, repeatedly compress her neck with your hands, call her derogatory names, repeatedly attempt to penetrate her vagina with your penis and you did thus attempt to rape her, to her injury;

(025) on an occasion between 1 December 2005 and 9 January 2006, .... in a motor vehicle, at an area of woodland ... Biggar, ... did indecently assault MM now deceased, ... and did seize her hair and repeatedly push her head down on to your penis whilst penetrating her mouth with your penis causing her to choke, and thereafter you did lie on top of her, hold her down, penetrate her vagina with your penis, and you did thus rape her;

(028) on an occasion between 23 June 2006 and 16 July 2006, [in] East Kilbride, ... did assault KP your wife, ... and did present a knife at her, place the tip of said knife against her chest and threaten her;

(029) on two occasions between 23 June 2006 and 16 July 2006, both dates inclusive, [in] East Kilbride ... did abduct KP, your wife, ... and did stand in front of her and prevent her from leaving said house and did detain her there against her will;

(030) on an occasion between 1 January 2010 and 30 April 2010, ... at an area of woodland ... Biggar, ... having penetrated the vagina of EE, ... with your penis with her consent, did assault said EE and did seize hold of her neck, compress her neck and restrict her breathing all whilst continuing to penetrate her vagina with your penis and you did thus rape her, to her injury;

(031) on an occasion between 1 December 2010 and 31 December 2010, ... at an area of woodland ... Biggar ... having penetrated the vagina of EE ... with your penis with

her consent, did assault said EE and did compress her neck and restrict her breathing whilst continuing to penetrate her vagina with your penis and you did thus rape her; CONTRARY to Section 1 of the Sexual Offences (Scotland) Act 2009;

(032) on an occasion between 1 January 2006 and 31 December 2007, [in] Glasgow, ... did indecently assault AT ... and did repeatedly ask to penetrate her mouth with your penis, push her body down towards your penis, attempt to penetrate her mouth with your penis, seize hold of her clothing, and shout and swear at her;

(033) on an occasion between 1 January 2006 and 31 December 2007, ... in a motor vehicle in ... Glasgow, ... did abduct and assault AT ... and did shout at her, seize her wrist and detain her in said motor vehicle against her will;

(034) on an occasion between 1 August 2011 and 30 September 2011, [in] Glasgow, ... did sexually assault LR, ... and did lie on top of her, place your arm across her neck, and strike her on the buttocks with your hand: CONTRARY to Section 3 of the Sexual Offences (Scotland) Act 2009;

(037) on an occasion between 1 October 2013 and 31 October 2013, [in] Glasgow ... did sexually assault LM ... and did kiss her, bite her lip, hold her down by the hair and with your leg across her body, cover her mouth with your hand, touch her throat with your hand, place your hand inside her underwear, sexually penetrate her vagina with your fingers, penetrate her mouth with your tongue, and lie on top of her: CONTRARY to Sections 2 and 3 of the Sexual Offences (Scotland) Act 2009;

(038) on 14 May 2016 [in] Glasgow, ... did sexually assault HB c ... and did seize hold of her breasts, attempt to suck her nipple, pull her dress up, touch her body, and attempt to touch her vagina: CONTRARY to Section 3 of the Sexual Offences (Scotland) Act 2009;

(039) on 14 May 2016 [in] Glasgow, ... did assault RK ... and did sexually penetrate her vagina with your fingers, seize hold of her head, penetrate her mouth with your penis and you did thus rape her: CONTRARY to Sections 1 and 2 of the Sexual Offences (Scotland) Act 2009;

(045) on 5 April 2005 at an area of woodland ... Biggar, ... did assault Emma Jane Caldwell, ... and did restrain her, seize her wrists, compress her neck with your hands and a cable and strangle her, and this you did with intent to rape her, and you did murder her;

(046) on 5 April 2005, at an area of woodland known ... Biggar and elsewhere ..., having committed the crime libelled in charge (045) hereof and being conscious of your guilt in respect thereof, did dispose of the naked body of Emma Jane Caldwell, dispose of her mobile telephone, clothing and personal belongings by means to the Prosecutor unknown, and clean the interior of motor vehicle registered number SNO5 EKG, and all this you did to conceal the crime libelled in charge (045) hereof, to conceal and destroy evidence in connection therewith and to avoid detection,



arrest, and prosecution in respect thereof and with the intent to defeat the ends of justice and you did thus attempt to defeat the ends of justice.