Neutral Citation Number: **[2011] EWCA Crim 73**

Case No: 2010/2087/A8

IN THE HIGH COURT OF JUSTICE

COURT OF APPEAL (CRIMINAL DIVISION)

ON APPEAL FROM THE CENTRAL CRIMINAL COURT

His Honour Judge Barker QC, The Common Serjeant of London

T20080738

Royal Courts of Justice

Strand, London, WC2A 2LL

Date: 01/02/2011

Before:

LORD JUSTICE MOSES

MR JUSTICE MADDISON

and

HIS HONOUR JUDGE SCOTT-GALL

- -

Between:

Colin Christopher Welsh Appellant

- and -

The Crown Respondent

- -

- -

Ms Kim Hollis QC and Mr G Payne (instructed by **Tuckers Solicitors**) for the **Appellant**

Mr J Laidlaw QC (instructed by **the Crown Prosecution Service**) for the **Respondent**

Hearing dates: 16th December, 2010

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Judgment

Lord Justice Moses :

1. On 19 July 2008 the appellant stabbed Elliott Guy in the neck and killed him. The appellant pleaded guilty to manslaughter on the grounds of diminished responsibility on 28 January 2010 in the Central Criminal Court, following a substantial period during which he was unfit to plead. He was sentenced by the Common Serjeant on 16 March 2010 to imprisonment for life, with a minimum term specified of 12 years. His appeal raises the difficult issue as to whether it was correct to order a discretionary life sentence or to impose a hospital order pursuant to s.37 of the Mental Health Act 1983, with a restriction requirement pursuant to s.41 of the 1983 Act. It is accepted that if a hospital order coupled with a restriction was not appropriate then the discretionary sentence was the correct sentence.

2. This was a dreadful offence. The appellant, now aged 43, armed himself with a knife and joined a friend's party at a block of flats in Tufnell Park. In the early hours of 19 July 2008 his victim, Elliott Guy, aged 27, was in the toilet. The appellant kicked the bathroom door open and, for no reason, struck the deceased in the neck with the knife he had brought to the party. The knife severed Elliott Guy's jugular vein causing massive blood loss and death shortly after. A defensive wound was seen on the deceased's hand. When confronted immediately after, the appellant said "it wasn't my fault" and "I didn't shoot first".

3. The appellant was seen in the street a short time later. He had changed his shoes. He disappeared from the flat where he was staying for 10 days and handed himself into the police in the early hours of 29 July 2008.

4. The appellant's plea to manslaughter was accepted. There was no material dispute as to his mental condition.

5. There were before the Common Serjeant reports from psychiatrists: Dr Farnham, on behalf of the defence, Dr Parrott on behalf of the prosecution and Dr Rogers, who treated the appellant at Chase Farm Hospital. There was no dispute but that since 2002 the appellant had suffered from schizophrenia. His symptoms led him to believe that a device had been

implanted in his Eustachian tube which transmitted voices making derogatory and threatening comments about him.

6. Both Dr Farnham and Dr Parrott had agreed that the appellant was not fit to plead. But on transfer from prison to Chase Farm Hospital the appellant was treated and improved to a stage when he became fit to plead in November 2009. At the hearing before the Common Serjeant on 16 March 2010 both the prosecution psychiatric expert, Dr Parrott, and Dr Rogers, agreed in their recommendation that a hospital order should be made, coupled with a restriction order. Dr Rogers gave evidence that a place was available for the defendant at Chase Farm Hospital.

7. The Common Serjeant, in a detailed and careful analysis, concluded that the combination of the appellant's own culpability for what the judge described as an horrific and totally unprovoked killing, coupled with the need to protect public safety, necessitated a sentence of imprisonment for life. It is that submission which is impugned in the cogent and forceful submissions by Miss Hollis QC on behalf of this appellant.

8. The essence of the appeal was that the safest course to maintain protection of the public was to ensure that the appellant received both medication and treatment whilst in a secure hospital. The appellant's abnormality of mind was such that without treatment he would lack the capacity to make an informed decision to consent to taking anti-psychotic medication. In prison he would not receive the necessary treatment and would, accordingly, not take anti-psychotic medication. He would remain a danger, both to other prisoners, prison officers and to himself, whereas, if he remained in Chase Farm Hospital, he would receive treatment and medication and his condition would substantially improve. This was not a matter of mere forecast. The contrast between his condition in prison and when in hospital was plain. Whilst in prison on remand and after sentence he did not receive treatment and, because of his mental condition, did not take medication. After he had been sentenced he returned to prison. But there his condition deteriorated and the Secretary of State was compelled to make an order removing the appellant to hospital, pursuant to s.47 of the Mental Health Act 1983. Miss Hollis painted the dispiriting picture of this

appellant being transferred from prison, where his condition was likely to deteriorate, to hospital, where it would improve, and back again repeatedly throughout the period of his sentence.

9. In support of the appeal, Dr Bartlett, the psychiatrist who is presently treating the appellant at Camlet Lodge, gave evidence as a Consultant Forensic Psychiatrist orally before this court. She reiterated that the appellant lacked capacity to consent to medication. He had made significant progress since his last admission to hospital. She confirmed that the specialist services he requires were not available in prison, where he would continue to present a danger. As she concluded in her report, the appellant has been unwell for the past eight years and is unlikely to respond to medication on his own.

10. The principles are not in issue. It is their application which is so difficult. The resolution depends on whether the defendant's responsibility for his actions, although diminished, remains substantial. The relevant jurisprudence was summarised by the Lord Chief Justice in R v Wood [2009] EWCA Crim 651:-

> "The mere fact that the case is one of manslaughter on the grounds of diminished responsibility does not preclude a sentence of imprisonment for life. In reality this sentence would be rare in such cases, usually reserved for particularly grave cases, where the defendant's responsibility for his actions, although diminished, remains high." (Paragraph 18)

11. This creates a question of acute difficulty. How is a judge to assess the degree of responsibility in someone who suffers from paranoid schizophrenia? A sudden outburst of ferocious violence may be followed by normal behaviour. This case provides an example: after violence explicable only by reason of the appellant's schizophrenia he sought to conceal his responsibility by changing his shoes and disappearing for about 10 days. In helpful and frank submissions Mr Laidlaw QC, on behalf of the Crown, accepted that his rational behaviour afterwards provided no clue to his degree of responsibility at the time.

12. Yet there were significant features which to the Common Serjeant suggested a substantial of responsibility. First, this appellant had a bad record of violence before 2002, the year when it is accepted he started to suffer from schizophrenia. He was guilty of wounding as a young man in 1983, grievous bodily harm with intent in 1986, robbery in 1990, wounding in 1996 and possessing offensive weapons in 1998 and 1999. It was not suggested that he was suffering from schizophrenia at the time of those offences. It can, accordingly, be said with justification that he had within his character a propensity for violence.

13. In addition, the Common Serjeant attached significance to the fact that the appellant, who had attended the party earlier in the afternoon of the day before the killing, had returned in the early hours of the morning armed with a knife. The judge was right to conclude that the appellant must bear some responsibility for taking the knife to the party. That fact, coupled with the appellant's previous convictions, formed a discernable factual basis for attributing substantial responsibility to this appellant for the killing.

14. The death of the victim, Elliott Guy, a young man who had recently become a father, was terrible. That does not, of itself, justify imprisonment rather than a hospital order. That, we accept, is unpalatable to the grieving members of the victim's family. For them, there can only be a comprehensible and satisfactory solution by the imposition of a life sentence. That is entirely understandable but cannot be dispositive of the issue. But it does raise another important factor which the Common Serjeant and this court is bound to take into account: that is, public confidence in the approach of the court when choosing between a hospital order with restriction and life imprisonment. That confidence can only be satisfied by ensuring that the issue is resolved in a way which best protects the public and reflects the gravity of the offence.

15. By s.28(6)(b) (Crime (Sentences) Act 1997 a life prisoner in respect of whom a minimum term order has been made may not be released on the direction of the parole board unless the board is satisfied that "it is no longer necessary for the protection of the public that the prisoner should be confined".

16. By way of contrast, the First Tier Tribunal must discharge a patient absolutely if it is not satisfied that he is suffering from mental disorder of a nature or degree which makes it appropriate for him to be liable to be detained in a hospital for medical treatment (s.72(1)(b)(i)) and is satisfied that it is not appropriate for the patient to remain liable to be recalled to hospital for further treatment (s.73(1)(a) and (b)). If it is not satisfied that he is suffering from the mental disorder we have described, but is not satisfied that it is not appropriate for the patient to remain liable to be recalled to hospital for further treatment the Tribunal is required to direct a conditional discharge (s.73(2)). Whilst we accept Dr Bartlett's view as to the rigour with which any discharge would be considered under the mental health regime, nonetheless we must bear in mind the views of the House of Lords in R v Drew [2003] 1 WLR 1213, 1228 (Paragraph 21):-

> "Defendants made subject to hospital orders, whether restricted or not, are entitled to release when the medical conditions justifying their original admissions cease to be met…further, they are liable to recall only on medical grounds. They may be a source of danger to the public even though these medical conditions are not met."

17. In the light of our conclusions as to this appellant's propensity for violence, even before he suffered from paranoid schizophrenia, and the gravity of the offence, we do not accept that public confidence in the resolution of this case will be maintained by making a hospital order, coupled with a restriction. We take the view that there was ample justification for the conclusion of the Common Serjeant that this appellant bears substantial responsibility for this most grievous of offences and that there is a risk he will remain a source of danger even if his condition substantially improves once he has received treatment and medication. For those reasons, this appeal is dismissed.