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No: 200802854 C4

IN THE COURT OF APPEAL

CRIMINAL DIVISION

Royal Courts of Justice

Strand

London, WC2A 2LL

Tuesday, 23 November 2010

B e f o r e :

LORD JUSTICE TOULSON

MRS JUSTICE DOBBS

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R E G I N A

v

LESLIE JOHN MAYNARD

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Mr A Evans QC and Miss N Bahra appeared on behalf of the **Applicant**

Mr M Heywood QC appeared on behalf of the **Crown**

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JUDGMENT

1. LORD JUSTICE TOULSON: The appellant has a long history of mental ill-health. He is now aged 57 and has been receiving care from mental health authorities in one way or another for the best part of 30 years. In 1999 he was diagnosed as schizophrenic and drug and alcohol dependent. In 2004 he became a resident at Garthowen care home in Chiswick. On 4 February 2006, he stabbed to death a fellow resident, Roy Barber, who was aged 62 and was also suffering from schizophrenia.

2. On 5 October 2007 at the Central Criminal Court before HHJ Paget and a jury, he was convicted of murder. On 6 March 2008, he was sentenced to life imprisonment, with a minimum specified term of 15 years, less 415 days spent on remand. He later applied out of time for leave to appeal against conviction. The application was based on fresh psychiatric evidence from Professor Nigel Eastman. The Crown in turn obtained a psychiatric report from Dr Andrew Johns, who agreed with the opinion of Professor Eastman that, at the time of the offence, the appellant was suffering from a serious psychotic illness.

3. On 20 May 2009, this court allowed his application for leave to appeal, quashed the conviction for murder and substituted a conviction for manslaughter on the ground of diminished responsibility. On that occasion both Professor Eastman and Dr Johns attended court. It was agreed by them, the prosecution, the defence and by the court that the appropriate sentence would be a hospital order, with a restriction order unlimited in time, but the court was unable to make such an order on that occasion because it had no evidence about an available hospital placement. 18 months on, the appellant remains in prison and there is no available placement. There are a number of reasons for this. The difficulties have been explained in successive medical reports. There is no purpose in going through them all, but an important reason for there being no possible medical disposal now available to the court is that the appellant himself is adamantly opposed to such a course and has refused to co-operate with any assessment which might lead to that result. The reason for that is that he believes that he is likely to be released sooner if he receives a prison sentence than he would if he were made the subject of a hospital order with

a restriction. For those reasons, he has declined to co-operate in a further psychiatric review which had been planned prior to today's hearing.

4. It is plain in these circumstances that no useful purpose would be served by adjourning the matter further, and the court is no nearer to being able to make a hospital order now than it was 18 months ago.

5. Mr Evans QC has appeared on behalf of the appellant on this occasion as he has on previous hearings, and we are grateful for his assistance. That assistance has been limited because it has been impossible for him to obtain instructions from the appellant, who is not willing to talk to his legal team. However, Mr Evans has confirmed that he is unable to advance any reason why the court should either adjourn the case further or take further steps to explore the possibility of a medical disposal. He acknowledges that the only course this court can now realistically take is to impose a custodial sentence.

6. The first question which then presents itself is whether the appellant satisfies the statutory criteria of dangerousness such that the appropriate sentence should be an indeterminate sentence. Mr Heywood QC on behalf of the prosecution has produced a helpful note in which he has identified the relevant factors and reasons for the court concluding that an indeterminate sentence would be the right sentence in this case. Mr Evans has not felt it possible to advance any contrary argument. Nevertheless, it is a judgment which this court must itself make.

7. We are in no doubt that the appellant does satisfy the criteria of dangerousness. That follows from a combination of the nature of the offence itself and his highly unstable mental personality, details of which emerge from the many medical reports before the court. From those reports, we make a brief selection. Professor Eastman, in his report dated 27 February 2008, said at page 36:

"Psychosis, including schizophrenia or schizo-affective disorder, can have both a general disinhibiting effect upon behaviour, as well as sometimes involving specific symptoms which, so to speak, drive or further disinhibit a

person towards attacks on others. In my opinion, both of these effects of psychosis apply in relation to the defendant."

8. Dr Johns, in his report a year later dated 15 March 2009, said at paragraph 81:

"Having regard to the nature of the offence, the antecedents of the offender and the risk of his committing further offences if set at large I conclude that it is necessary for the protection of the public from serious harm for the court to order a section 41 restriction order (Mental Health Act 1983 & 2007)."

9. At the hearing before the court when a conviction of manslaughter was substituted for murder, it was made plain that the psychiatrists were agreed that such a restriction order should be without limit of time.

10. The psychiatrist currently responsible for overseeing the appellant's care in Belmarsh Prison is Dr Ian Cumming. In a report dated 19 April 2010, he said at paragraph 22:

"As in the community, Mr Maynard is a challenging individual to manage and keep safe. Mental health services appear to be the default position and arguably have not been successful in either containing or managing him in the long term. I have real concerns that in the event of a long custodial sentence he will continue to need placement in the inpatient area of prison. Within the main prison he generates considerable anxiety in professionals and this is not aided by an established history of self-harm and also a heady brew of psychiatric issues and uncertainty around these. I would have concern that in the event of long custodial sentence that he will not be able to be managed in the long term outside of the health care centre. This will have a major impact upon Mr Maynard moving on to another prison and undertaking work within offender management systems."

11. On 12 June 2010, Dr Cumming provided an updated report for the court. In it he said:

"2. ... At the time of my last report we had tried to relocate Mr Maynard in the main prison. This was attempted again in early May. Despite being

willing to leave the health centre and try once more the main prison, on this occasion Mr Maynard lasted around three hours in the main prison before being returned to the health care centre once more over issues with self harm.

3. He subsequently began to bang his head against the wall - he became very distressed and his mental state began to disengage ...

...

7. Although the clinical and diagnostic issues remain the same, I once more write to the court to express my concern about the long term management of Mr Maynard. I am very doubtful that we will ever be able to move Mr Maynard on either to the main part of the prison or another prison. He remains a vulnerable individual whose mental state quickly and dramatically changes. Although I would accept that there are issues around his personality, I am still of the view he has psychotic symptoms though it is practically difficult to ascertain which is the primary issue at any one time."

12. In his most recent report dated 21 November 2010, Dr Cumming states:

"3. ... Mr Maynard remained in the health centre until 22 June when he asked to go to the main prison."

He went on to say that he has coped better in the main prison than Dr Cumming would have expected, but he concludes his report as follows:

"11. I have little to add in terms of my opinion on his clinical state from my earlier reports. Mr Maynard has a chronic mental illness and has a history of self harm and suicide attempts. I remain of the view that safely managing Mr Maynard in prison will continue to prove challenging. However he has managed to survive outside of the health care centre for much longer periods and in my most recent interview with him clearly stated that he did not want to go to hospital. This was predicated upon his view that he believes he will receive an indeterminate sentence and that this is preferable to hospital which he sees as likely to be longer.

12. I am aware that he has gradually disengaged from the court process. He has avoided seeing his legal team and thus the further psychiatric reviews

that had been due to take place for sentencing on 23.11.2010. I remain of the view that he is a vulnerable prisoner - he has chronic symptoms of mental illness and additionally self harms and makes attempts upon his life - sometimes this is linked to specific issues but on other occasions there is no easily identifiable trigger. He remains a challenging prisoner to manage in prison and particularly if he receives a significant indeterminate sentence."

13. There is here some apparent evidence of manipulation in that Mr Maynard has chosen to behave in the main part of the prison and to refuse any up-to-date assessment because he believes this is in his own long-term interests. But whilst capable of manipulative conduct, he is also clearly somebody whose mental state can change quickly and unpredictably. The risks which have in the past caused psychiatrists to consider that any hospital order should be subject to a restriction order without limit of time equally make it necessary for the safety of the public that any custodial sentence must be indeterminate. With his history, it is impossible to know whether a time is ever likely to come when he can with confidence be safely managed in the community.

14. The next question is what form an indeterminate sentence should take. Sentences of life imprisonment are reserved for the gravest cases. In our judgment, this case falls within that category. The gravity in terms of result speaks for itself. This was a killing of a vulnerable and defenceless man. The gravity in terms of culpability is relevant both to what form the indeterminate sentence should take and also what should be the minimum specified period.

15. Mr Heywood has identified a number of features which aggravated the seriousness of the offence. There was some premeditation. The appellant lay in wait for the deceased and hid before doing so, having armed himself with a large kitchen knife taken from staff accommodation. He chose to attack a vulnerable victim at a moment when he was sitting in the day room unprotected, and the attack was carried out without warning in what was for all purposes the victim's own home. There was some evidence that the appellant intended to kill against a background of a degree of previous animosity directed at the deceased. The attack was sustained and directed

at the deceased's vital organs. In part the attack was occasioned by the appellant's bad reaction to attempts on the part of the staff to stop him drinking alcohol, which he continued to do despite warnings, compounded also by refusals to take medication. After the killing, the appellant cleaned the knife and disposed of it. He then advanced a story of coming across the deceased already dead, and for a substantial time he maintained that he was not in any way responsible for the killing. He must have known that to be false. He has remained indifferent to the killing. His previous convictions include offences of violence.

16. Notwithstanding that he did suffer from serious psychosis on the medical evidence, we nevertheless take the view that this was a case in which there was still a substantial measure of responsibility for his actions. As already summarised, they were planned, they were carried out at a moment when nobody else was around, and there were attempts at concealment afterwards. This was no moment of sudden, unplanned, aberrant violence.

17. In all the circumstances, we conclude that the right sentence is one of life imprisonment. There remains the question what should be the minimum sentence. As already noted, the minimum period set by the trial judge on the appellant's conviction for murder was 15 years in accordance with the guidelines in the Act. This would be equivalent to a determinate sentence of 30 years' imprisonment. We do not have the judge's sentencing remarks, but we are entitled to conclude that the judge must have weighed both the aggravating features to which we referred, but also his knowledge that the appellant was in a care home at the time and had some history of mental illness, although he did not have anything like the medical details which this court now has.

18. In our judgment, the right sentence which justly allows for the substantial impairment of responsibility necessary to found a plea of diminished responsibility but also reflects the gravity of the features which we have identified would be a notional determinate sentence of 20 years' imprisonment. The specified minimum period which we set will therefore be ten years' imprisonment, dating from the date of original sentence - that is 6 March 2008 - less 415 days on remand.

19. We are grateful to counsel for both parties for their assistance in this difficult case. We will direct that a copy of the transcript be sent to the governor of the prison where the appellant is housed and should accompany him on any transfer to any other prison.

Addendum: April 2011

20. It has been brought to our attention that the number of days on remand was inaccurately calculated by the prison service. Accordingly the figure of 759 days be substituted so that the sentence of the court should read:

"The specified minimum period which we set will therefore be ten years' imprisonment, dating from the date of original sentence – that is 6 March 2008 – less 759 days on remand."