Neutral Citation Number: **[2015] EWCA Crim 1426**

Case No: 201500354 A2

IN THE COURT OF APPEAL (CRIMINAL DIVISION)

ON APPEAL FROM LEEDS CROWN COURT

HIS HONOUR JUDGE COLLIER QC

T20147570

Royal Courts of Justice

Strand, London, WC2A 2LL

Date: Thursday 27th August 2015

Before :

LADY JUSTICE MACUR DBE

MR JUSTICE GREEN

and

HIS HONOUR JUDGE BIDDER QC

- -

Between :

Martin Christopher BELL Appellant

- and -

Regina Respondent

- -

(Transcript of the Handed Down Judgment of

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Official Shorthand Writers to the Court)

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Mr P Greaney QC (instructed by D**avid Ake & Co Solicitors**) for the **Appellant**

Mr S Myerson QC (instructed by **Crown Prosecution Service**) for the **Respondent**

Hearing dates : 31 July 2015

- -

Judgment

Lady Justice Macur DBE :

1. On 15 December 2014 in the Crown Court at Leeds before H.H.J Collier, the Recorder of Leeds, the appellant pleaded guilty to the manslaughter of Gemma Simpson, as an alternative to murder. The offence had been committed on the 5 th May 2000. Both the prosecution and defence had available detailed reports on the appellant's mental state at the time of the offence. As a result of those reports, the prosecution were prepared to accept the guilty plea to manslaughter on the ground of diminished responsibility.

2. On 19 th December 2014, the Recorder sentenced the appellant to imprisonment for life, and specified the period of 12 years (less 160 days on remand) as the minimum term under s82A Powers of Criminal Courts (Sentencing) Act 2000.

3. There is no appeal against the sentence of life imprisonment but there is an appeal against the minimum term specified by the Recorder. Indeed it is not contended by Mr Greaney QC, who appears here and appeared before the Recorder that, had the offence been committed in, say, 2013, the minimum term specified by the Recorder would have been manifestly excessive or wrong in principle. The ground of this appeal is that, the killing having occurred in 2000, the Recorder should have fixed the minimum term in accordance with the practice of the Courts at that date and that to specify the term he did, the Recorder offended against article 7.1 of the European Convention on Human Rights, which prohibits a heavier penalty being

imposed, to quote the article, “than the one that was applicable at the time the criminal offence was committed”.

4. He also contends that, had the appellant pleaded guilty to murder rather than manslaughter in 2014, he would have received, a shorter minimum term than that which was imposed in 2014 by the Recorder. Thus, the sentence was, he contends, both wrong in principle and manifestly excessive.

5. The facts are as follows: At the time of Ms Simpson’s death, the appellant was suffering from a psychotic mental illness which one psychiatrist characterised as schizophrenia. In 1999 the appellant was admitted as an in-patient in a hospital for 9 months under s.2 of the Mental Health Act 1983; he was suffering from a psychotic illness and had serious delusional beliefs. He was discharged from the hospital some 6 weeks prior to him killing Ms Simpson.

6. On 5 May 2000, having been discharged from hospital, the appellant (then aged 30) met Ms Simpson (then aged 23) at Leeds Railway Station by prior arrangement. The appellant had known Ms Simpson for a number of years. They went to his flat.

7. At the flat the appellant told Ms Simpson that God wanted him to kill her. He gave her the opportunity to leave but she did not and asked him where his children lived. This caused him to ‘snap’ as he perceived her question to be a threat. He fetched a hammer. He repeatedly struck Ms Simpson with the hammer rendering her unconscious but still breathing. He got a knife from the kitchen and stabbed her in the back and in the head. He stabbed her repeatedly.

8. He told the police and the psychiatrists that her body still appeared to be making some movement. He dragged her body into the bath and filled it with water, completely submerging her body. He returned to the living room but feared that she would come back to life as he believed her to be a witch. He went back to the bathroom and tied her hands behind her back. She remained in the bath for four days. The appellant painted over the bloodied walls and attempted to scrub blood from the floors.

9. The appellant then decided to dispose of her body. He hired a car. The boot of the car was too narrow for her body as rigor mortis had set in. He purchased a saw, chains and padlocks. He then sawed off the bottom of her legs and wrapped her and her severed limbs in a sleeping bag which he secured with chains and padlocks. In the early hours of the morning he put her body into the boot of the car, which he had lined with plastic sheeting, and drove to a local beauty spot. He carried her body up a dirt track, dug a hole and placed her body into it.

10. Thereafter, the appellant carried on with his life without coming to the attention of the police or any other official body, save for a conviction for common assault in 2004. In July 2014 the appellant broke down and told his then partner that he had killed someone 14 years ago. Later that day he attended a local police station and confessed to killing Gemma Simpson.

11. The appellant indicated to the police where he had buried Ms Simpson. She was formally identified by her dental records. A forensic examination of her remains supported the account given by the appellant. The post-mortem examination concluded that she had died due to multiple injuries, encompassing blunt force head injury and sharp force injuries to the head and torso with a hammer and knife. Severe force would have been required to inflict those injuries.

12. The arguments which Mr Greaney QC has developed before us today were canvassed before the Recorder who adjourned sentence to consider them. It was accepted on the medical evidence that a hospital order was not appropriate. At the time of sentence the appellant’s mental condition was not such as to call for treatment in hospital and he also suffered from a personality disorder which was untreatable.

13. It was common ground between the prosecution and the defence that, in order to determine whether a sentence of life imprisonment was appropriate, the Recorder had to apply the law as it was in 2000, which meant applying the principles laid down in the case of AG Ref No 32 of 1996 (R v Whittaker) [1997] 1 Cr. App. R (S) 261, namely, that the offender was convicted of a very serious offence and there were good grounds for

believing the offender might remain a serious danger to the public for a period which could not be reliably estimated at the time of sentence.

14. The Judge considered whether the minimum term should be calculated with reference to the principles in place in 2000 or the current, post-Criminal Justice Act 2003, regime.

15. The appellant contended that the Judge should follow what was called in argument, a “2000 and no more” approach. Article 7.1 was relied on and it was contended that the minimum term should be calculated having regard to the practice at the time the offence was committed, according to the principle that it was argued was established in R v Sullivan [2005] 1 Cr. App. R 3 and had been consistently applied in relation to cases of murder which predated the coming into force of the Criminal Justice Act 2003.

16. The novel point that was argued by Mr Greaney QC was that that principle must apply to discretionary life sentences. Indeed, in argument before this court, he contended that it would apply to all discretionary life sentences, whether imposed for homicide or for other serious offences such as rape.

17. He accepted, following R v Masefield [2012] EWCA Crim 1873 , that had the judge determined that a determinate sentence must be imposed then the judge would have to calculate that sentence in accordance with current practice. We merely note in passing that if the law is as is argued by Mr Greaney, logic might require that a far longer term might have to be imposed on the appellant than that which he might be required to serve under a life term and the determinate term would be calculated on a far higher tariff than that of the minimum term under the life sentence.

18. The prosecution argued, correctly, as we understand it, that there was no clear authority to the effect that R v Sullivan applied to manslaughter. They further argued that the determination of minimum terms in cases of murder went through a number of incremental increases between the 1997 Practice Direction of Lord Woolf, CJ and Schedule 21 of the Criminal Justice Act 2003. Each dealt with differing degrees of seriousness. By contrast, there were no specific classifications of levels of seriousness for

manslaughter and accordingly, Article 7.1 was not engaged. We summarise the submissions according to how the judge dealt with them in his ruling. The submissions were rather more subtle than that bare summary.

19. The Judge concluded, against the historical background that there were two different approaches to tariff setting adopted in relation to mandatory and discretionary life sentences, that the principles which led to the decision in R v Sullivan did not apply in discretionary life cases and that the Court should apply the reasoning expressed in R v H [2011] EWCA Crim 2753, in which this court, presided over by Lord Judge, Lord Chief Justice, considered the correct approach towards sentencing historic sex abuse cases, having regard to article 7.1 but concluding that sentence should be imposed at the date of the sentencing hearing, on the basis of the legislative provisions and practice then current while respecting the maximum sentences that applied at the time of commission of offences for which defendants had to be sentenced.

20. The judge concluded that the manner in which the appellant killed Ms Simpson, his dismemberment and his concealment of her body were deliberate acts which were aggravating features. His culpability was lessened by reason on his diminished responsibility. The appellant had no previous convictions for violence at the time of the offence. His assistance to the police was to be counterbalanced with the 14 years of silence he had maintained.

21. The judge took his starting point for the minimum term as 18 years. He took into account the appellant's mental disorder and his "callous silence". He correctly allowed full credit of one third reflecting the longstanding differences in approach between mandatory and discretionary life sentences. The minimum term was set at 12 years, less time spent on remand.

22. It is relevant to this appeal that the Judge took the view that, had this been a murder committed in 2014 the minimum term would have been in the upper 20s. That would have been reduced because of the appellant's mental disorder to the mid teens but was raised again by the appellant's

callous silence to a starting point of 18 years, equivalent today, reflecting a full 1/3 discount, to a starting point of 27 years.

23. Following the full Court's grant of leave to appeal, the issue before this court is:

"Where an offender kills in 2000 in circumstances amounting to manslaughter and is sentenced to a discretionary life sentence 14 years later in 2014, does article 7.1 of the ECHR operate to prevent the Court imposing on the offender a longer minimum term that would have been imposed on him at the time of the commission of the offence?"

24. In his written submissions Mr Greaney QC contends correctly that the case of Sullivan has determined that where the court is imposing a mandatory life sentence for a murder committed before the 18 th December, 2003, which is the date for the coming into force of the relevant provisions of the Criminal Justice Act 2003, the court may not impose a minimum term longer than would have been imposed at the time at which the offence was committed. That was the effect, recognised by this Court in Sullivan, of section 276 and Schedule 22 of the 2003 Act, the transitional provisions.

25. He further contends that there is now no difference in purpose or structure between the imposition of a minimum term as part of a mandatory life sentence for an offence of murder committed in 2000 but sentenced in 2014 and the imposition of a minimum term as part of a discretionary life sentence for an offence of manslaughter committed in 2000 but sentenced in 2014. Both, he correctly submits, involve a sentencing exercise and both involve the imposition of a penalty. The term "penalty" in article 7.1 has an autonomous meaning in ECHR jurisprudence and it is common ground between the prosecution and defence that a minimum term constitutes a penalty.

26. In argument, we asked Mr Greaney why this court should not draw a simple distinction between mandatory and discretionary life terms to which he responded that when a court is fixing a minimum term, whether discretionary or mandatory the minimum term must be article 7.1 compliant

and must not be a heavier penalty than could have been imposed at the time of the offence. That answer seems to us to assume what it seeks to prove.

27. A subsidiary point taken by Mr Greaney to the article 7 point is that even if the Judge was correct to adopt the post 2003 approach, he failed to reflect the need to ensure that the minimum term he fixed was shorter than the minimum term he would have fixed had he been sentencing the appellant for murder.

28. Mr Greaney begins by arguing what would have been the minimum terms for both murder and manslaughter in 2000 in the circumstances of normal or unexceptional murder. Mitigating factors present in this case would have been mental abnormality, spontaneity, lack of premeditation, a plea of guilty or hard evidence of remorse or contrition, including in this case, surrender, a voluntary confession and cooperation with the police. Aggravating factors would have been the macabre attempts to dismember or conceal the body, but the Recorder accepted that those were the consequence of the appellant's mental illness and the extent of aggravation was, thus, limited in this case. A judge would, he submits, have had to follow the practice set out in the letter of the then Lord Chief Justice Lord Bingham of the 10th February 1997. 14 years was the starting point for the average murder.

29. On the basis of the Practice Statement of Lord Woolf in 2002 the starting point would have been 12 years and a reduction to 8 to 9 years could be justified because if the appellant had been convicted of murder it would have been close to the borderline between murder and manslaughter because of the degree of mental illness. While the 2002 practice statement post dated the homicide, the court in Sullivan made clear that it merely set out what was an established position with greater specificity.

30. Thus, Mr Greaney QC argues that in the circumstances of this case a judge in 2000 could not have fixed a minimum term for murder in excess of 9 years.

31. In order to arrive at the likely sentence at that time for manslaughter, Mr Greaney relies, in addition to the indications cited above in relation to

murder, on the observations of this Court in R v Bryan [2006] 2 Cr App R (S) 66 that, having considered a large number of appeals to the Court of Appeal in relation to manslaughter by reason of diminished responsibility the longest sentence imposed was 9 years.

32. Thus Mr Greaney argues that having regard to the substantial decrease in responsibility due to mental illness of this appellant a Judge in 2000 could not have fixed a minimum term for manslaughter in excess of 6 years.

33. We acknowledge the correctness of Mr Greaney's submission that article 7 is an absolute and non derogable obligation under the ECHR.

34. Mr Greaney refers to section 269 of the Criminal Justice Act 2003, which came into force on the 18 th December 2013 and which included transitional provisions to ensure that in cases of mandatory life sentences imposed for murders committed before the Act came into force. He relies on the observations of Lord Woolf, Lord Chief Justice, in Sullivan and on that basis argues that a minimum term passed in 2014 as part of a discretionary life sentence for a 2000 manslaughter engages article 7.1 in no different way and to no lesser extent than a minimum term passed in 2014 as part of a mandatory life sentence for a 2000 murder.

35. He contends that the sentencing judge was wrong to conclude that there were in murder and manslaughter two quite different approaches to tariff setting and, therefore, to reject the "2000 and no more approach". Both are sentencing exercises imposing penalties caught by article 7.1, notwithstanding that the Home Secretary in 2000 fixed the minimum term for a mandatory life sentence and a judge for a discretionary life sentence. There are undoubtedly authorities to which Mr Greaney refers which confirm that the Home Secretary was carrying out a judicial exercise. We have no doubt, however, as Mr Myerson argues, that when the Recorder referred at paragraph 14 of the transcript to "different approaches" he was not suggesting that one approach was judicial and one was not but merely that no relationship existed between the tariffs applied by the Home Secretary in murder cases and the judiciary in imposing discretionary life sentences.

36. It is plain that for Mr Greaney's main argument to have merit it must be necessary for this court to accept that the case of Sullivan should be followed and is indistinguishable in its ratio from the current case, otherwise it must be that we are bound to follow the principles laid down in H , as the Recorder considered he, too, was bound to do.

37. In our judgment, however, the case of Sullivan is plainly distinguishable. In the most simple terms it is distinguishable because it was a case of murder and not manslaughter. However, Mr Greaney argues that, as Sullivan lays down that the minimum term is a penalty within the meaning of article 7 and the calculation of the minimum term is similar in both murder and manslaughter where a discretionary life term is ordered, we should follow the ratio in Sullivan.

38. However, there is, in our judgment, a very important sense in which the calculation and imposition of the minimum term when Sullivan was decided differed from the calculation and imposition of a minimum term in 2014 under a discretionary life sentence.

39. In 2003 the Criminal Justice Act introduced an entirely new structure for the calculation and imposition of minimum terms which only applied to the minimum term of a mandatory life sentence in murder cases. As the history of the mandatory life sentence narrated by Lord Mustill in R.v Secretary Of State For The Home Department ex parte Doody made clear, after the abolition of the mandatory death penalty for murder, the penalty of life imprisonment went though a process of metamorphosis from being initially a compulsory sentence involving no active judicial consideration at the time of sentence, with the decision making as to release being vested entirely in the Home Secretary and the judiciary merely playing an advisory part, to the statutory regime imposed in the Criminal Justice Act 1991 involving a discretion in the Home Secretary to refer to the Parole Board, followed by a recommendation for release by the Board, a consultation with the judiciary and then a power in the Home Secretary to release. It is notable that, even then, there was a clear statutory distinction between the regime for release of mandatory life prisoners and that for discretionary life prisoners.

40. In the 2003 Act Parliament imposed a statutory structure on the judiciary when fixing the minimum term of the mandatory life sentence. As Lord Woolf made clear in Sullivan, the structure allowed a considerable amount of judicial discretion but, as he also pointed out at paragraph 16, when talking of the structure of schedule 21 of the Act and the various starting points for different types of murder:

“ The Schedule sets out a well established approach to sentencing. It makes clear (in paragraph 9) that despite the starting points, the judge still has a discretion to determine any term of any length as being appropriate because of the particular aggravating and mitigation circumstances that exist in the case. **This discretion must, however, be exercised lawfully and this requires the judge to have regard to the guidance set out in schedule 21, though he is free not to follow the guidance if in his opinion this will not result in an appropriate term for reasons he identifies . (our stress)”**

41. Thus, while the judge has a wide discretion, he is bound by statute (as opposed to practice) to follow the guidance unless he is of the opinion that an appropriate term will not follow. As is clear, and as, no doubt, was the intention of Parliament, the Courts began to impose longer minimum terms in mandatory life sentences in murder. As a consequence, terms in manslaughter cases also rose. However that might be, Parliament had imposed certain requirements on the judiciary which were directly intended to standardise the level of sentences for certain types of murder.

42. In R (on the application of Uttley) v Secretary of State for the Home Department , the House of Lords considered the retroactive penalty prohibition in article 7.1. The case concerned the changes in licence regime between 1983 in and before which the claimant for judicial review had committed a number of sexual offences including three rapes and that which applied in 1995 when he was ultimately prosecuted for the offences and received a total of 12 years’ imprisonment. Under the release regime applicable in 1983 the Claimant would have been released unconditionally after serving 2/3 of his sentence but because of the provisions of the Criminal Justice Act 1991 his release was, in 1995 subject to licence until he

reached the ¾ point in his sentence. He sought a declaration that the provisions of the 1991 Act were incompatible with article 7.1.

43. In rejecting that application their Lordships focussed on the word "applicable" in article 7 which referred to penalties which the law authorised the court to impose at the time that the offence was committed, and, thus, they held that article 7.1 would only be infringed if a sentence was imposed on a defendant which constituted a heavier penalty than that which could have been imposed on the defendant under the law in force at the time that he committed the offence. It followed that in the Claimant's case the applicable penalty was the maximum sentence that could have been imposed for rape at the time of commission, namely, life imprisonment. As the sentence of 12 years with release on licence after 8 years imposed under the 1991 Act was manifestly less severe than the sentence of life imprisonment which could have been imposed on him under the regime applicable in 1983 it followed there had been no infringement of article 7.1.

44. If that interpretation of article 7.1 is applied to the facts of Sullivan, it can be seen that the obligation to impose a particular minimum term in a mandatory life sentence for murder, which fell within the Scheduled categories, was a penalty authorised by statute and, indeed, was required by the 2003 Act unless the judge determined, and gave reasons for that determination, that the application of the Schedule resulted in an inappropriate term.

45. We consider that is why Lord Chief Justice Judge, when, at paragraph 5 in H , dealing with "historic cases" which were not confined to sexual crime but included "cold" cases of homicide said:

" In such cases, ignoring any express statutory provisions, such as those to be found in Sch 21 and 22 to the Criminal Justice Act 2003 (the 2003 Act), the broad sentencing principles should coincide ."

In other words, His Lordship was recognising the clear difference in regimes between the calculation of minimum terms in discretionary life sentences, including those in homicides, and those calculated in mandatory life terms for murder.

46. That heavier penalty authorised by statute in murder cases was recognised by the Court in Sullivan and by the legislature itself, to impose, potentially, a penalty greater than had been imposed prior to the commencement of the Act and thus, as Lord Woolf recognised, transitional provisions were thought by Parliament to be necessary to avoid infringement of article 7.1. He said at paragraph 6 of his judgment:

" The general principles in Sch.21 apply to determinations made after December 18, 2003 even if the offence was committed before that date. The 2003 Act therefore contains transitional provisions that are intended to ensure that an offender is not made subject to a determination which contravenes Arts 5 and 7.1 of the Convention. Under Art.5 every one has the right of liberty and security of person and Art.7.1 prohibits the imposition of a heavier penalty "than the one that was applicable at the time the criminal offence was committed "

47. While, therefore, the approach to the calculation of the minimum term has been similar in cases of manslaughter to those of murder since the 2003 Act in the sense that a tariff sentence is calculated for the minimum term, the calculation of the minimum term in manslaughter cases (and in other cases where discretionary life terms have been imposed) has been entirely an exercise in judicial discretion and was not imposed by Parliament.

48. Thus, in our judgment, the ratio identified in Sullivan is plainly not applicable or in any sense binding on this court when considering the level of the minimum term for a discretionary life sentence for manslaughter.

49. That was Mr Myerson QC's argument before the Recorder and it followed, he argued, that this court was obliged, therefore, to follow the reasoning in H, the ratio in which was indistinguishable from this case.

50. The Recorder considered the historical background and concluded, correctly in our judgment, that there were, as he said in his sentencing remarks, 2 quite different approaches to tariff setting and that the principles that led to the decision in Sullivan did not apply in discretionary life cases. He therefore followed the reasoning expressed in H and considered himself bound by Masefield in which case this court held that the principles

enunciated in H in cases of historical sexual abuse should be adopted analogously in a case of a determinate sentence imposed for manslaughter.

51. Mr Myerson QC in his most helpful skeleton, makes some additional and very valid points. First he suggests that the article 7.1 point made by Mr Greaney assists him only if the Court is prepared to construe the words in article 7 " Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed " as meaning " .....that was likely to have been actually imposed." The sentence that was "applicable" both prior to 2003 and now was life imprisonment and even if it was also part of the applicable sentence that **a** minimum term be imposed it does not follow that the number of years in that minimum term is to be equated with the applicable sentence. That seems to us to be making substantially the same point as was made in Uttley and as we have made earlier in dealing with the distinction to be drawn between the ratio of the sentence in this case and the ratio of the decision in Sullivan.

52. Mr Myerson suggests that Sullivan imposed too broad a principle. We note it was decided before the House of Lords decision in Uttley in the same year. In any event the phrasing used by Lord Woolf in paragraph 26 of the decision in Sullivan was, we judge, merely describing what he considered must have been the view of Parliament when enacting the transitional arrangements in the Act rather than specifically construing what "applicable" meant.

53. In the light of our reasoning above, it is, perhaps, unnecessary further to distinguish Sullivan but we acknowledge that when the mischief intended to be prevented by article 7.1 is considered, namely, where an offender should know what the maximum penalty for his offence will be before he commits it, here it can forcefully be argued that this appellant chose to put it out of the ability of the authorities to bring him to justice in 2000 by his own actions.

54. Mr Myerson further contended that the mandatory life sentence already has built into it "by executive fiat" as he put it, Parliament's view that those who commit murder are deemed to present risks which require an indeterminate sentence and the judiciary make no input into that assessment. In contrast, in imposing a discretionary life sentence the judge

assesses the seriousness of the offence and the blameworthiness of the offender, applying current standards and guidance of the Court of Appeal and, in addition, looking at the offender, assesses that the offender's risk factors justify an indeterminate sentence. Thus both aspects of the sentence are entirely based on a judicial exercise. We agree that that encapsulates the central distinction between the two sentences and further underlines why the approach of this Court in Sullivan should not be applied to discretionary terms and why the approach of this Court in H should be followed.

55. Mr Myerson also relies on the approach of this Court in R. v Bryan [2006] EWCA Crim 379, a most serious case of multiple manslaughters where this Court was considering whether it was correct to direct that the early release provisions of section 28(5) to (8) of the Crime Sentences Acts 1997 should not apply. In that case, this Court, when setting the tariff for the minimum term that was imposed ultimately in that case, extensively reviewed many manslaughter authorities and conspicuously did not consider any linkage between tariff setting in diminished responsibility manslaughters and those in murder cases. Thus, both prior to and after 2003 there was no necessary connection between sentencing in murders and manslaughters. That, too, was a point specifically referred to by the Recorder in his very careful sentencing remarks.

56. Mr Greaney's reliance on paragraph 38 of Bryan in which this Court says that that review suggests sentencing for manslaughters at that time rarely exceeded 9 years does not give any authority for an argument that a tariff had been set. It is not clear, moreover, that the Court was referring to other than determinate sentences.

57. It is also necessary to consider the subsidiary point argued for by Mr Greaney, namely, that the Court failed to reflect the need to ensure that the minimum term he fixed was shorter than the minimum term he would have fixed if sentencing in murder. The murder term would, of course, following Sullivan, be bound to follow Lord Woolf's practice direction.

58. Mr Myerson points out that Mr Greaney's arguments as to the maximum term of 6 years in those circumstances are based on fallacious reasoning. Had the appellant admitted murder instead of manslaughter, that is, had

admitted intending to kill (as would have been the case here on the facts) and being responsible for what he did, then the mitigating factors would not have been as great as Mr Greaney has argued for. Premeditation would, he concedes, not have been a likely finding but mental abnormality could not have assisted the appellant to any substantial extent. The basis of the prosecution's acceptance of the plea to diminished responsibility was that the presence of psychosis meant that he suffered more than trivial but less than total diminution of responsibility. Thus the highest the appellant could have put his mitigation consistent with a guilty plea to murder was that the psychosis was trivial. Moreover the medical evidence was that his psychosis was affected by voluntary drug taking. Additionally the plea of guilty and his giving himself up was more than offset by 14 years of silence, concealment and lies at the time, which caused incalculable anguish to the family of the deceased.

59. The aggravating features would have included the infliction of gratuitous violence as well as macabre attempts both to dismember and conceal the body. Thus, we accept Mr Myerson's contention that this could not have been an average, normal or unexceptional murder or one whose starting point was 12 years and we accept that, having regard to Mr Myerson's arguments the tariff for murder would have exceeded the sentence imposed by the Recorder and would have been around 16 years. The Recorder's assessment of what the tariff term would have been in 2014 had this been a murder case is, we judge, consistent with Mr Myerson's argument.

60. Moreover, Mr Myerson makes the entirely valid points that the submission that it is illogical and wrong in principle that someone pleading guilty to manslaughter in 2014 should receive a longer sentence than he would have received for murder in 2000 ignores that the cause of that contrast is the defendant's own concealment of the body and the crime and that, if a very short minimum term should be imposed, the public interest may very well be better served by a far longer determinate term, which it is conceded by Mr Greaney, following Masefield, would have to reflect current sentencing practice.

61. Mr Myerson also submits that the Court is also subject to an obligation to have proper regard to the fact that both Parliament and the Courts have come to the view that previous sentencing regimes for homicide were too lenient, a view that was clearly enunciated by this court in R v Appleby and others [2009] EWCA Crim 2693 .

62. We agree with those arguments.

63. Thus we conclude that the reasoning of the Judge was entirely sound. He rightly distinguished Sullivan and followed the principles in H . There are strong reasons of public policy why, in our judgment, the essentially judicial exercise of determining that an offender presents a sufficient uncertain and long term risk to justify the imposition of a discretionary life term and the fixing of the minimum term should reflect current standards and current sentencing policy. Those public policy arguments were canvassed extensively by this Court in H and we consider it wrong in principle that there should be a distinction between the approach of the courts in setting the minimum terms in discretionary life sentences. Nor are we persuaded that the application of the H principles offends against article 7.1 in the setting of the minimum terms in discretionary life sentences any more than it does in the imposition of determinate sentences.

64. On that basis there can be no sensible argument that the minimum term imposed by the Recorder was manifestly excessive or wrong in principle and we dismiss the appeal.