Sentencing remarks of Mr Justice Wall: R -v- Chase Kelly

26 July 2022

In the crown court at Warwick

Before:

Mr Justice Wall

Between:

R

-v-

Chase Kelly

SENTENCING REMARKS

1. You may sit until I reach the end of my remarks.
2. In the early hours of 1 June last year Mildred Whitmore was in her bed at home where she should have been safest. She was 84 years old and lived alone. You forced your way into her home, went into her bedroom, punched her once and then killed her by strangling and suffocating her on her bed. She could not save herself from your attack given your respective ages (her in her 80s and you in your early 30s) and builds (she a slightly built woman of 5 foot in height, you a powerfully built weightlifter). You did not know her and had no apparent motive for this vicious attack on a defenceless elderly lady. That is count 2.
3. This attack was the culmination of a series of violent incidents. The first was on 26 May 2020 when you attacked an elderly man in a shop in Hinckley with a pickaxe handle. Your attack resulted in him sustaining a fractured skull and a bleed on the brain. There was persistence in your violence on this occasion. After attacking the elderly man in the way I have described, you chased the shopkeeper still brandishing the weapon and frightened him such that he had to lock himself in a stock room to get away from you. Following this attack you were charged, perhaps surprisingly, only with affray and possession of an offensive weapon.
4. You had pleaded guilty to those offences and were on court bail awaiting sentence when, on 18 November 2020, you became embroiled in an argument with your supervisor at work and attacked him by repeatedly hitting and kicking him. It arose from nothing and appeared to your victim as if a switch had flicked in your head as you launched your attack. The assault on him was sustained and carried out initially while he was standing next to you and then, when he fell over, while he was prone on the ground. This offence is count 3.
5. On 19 February 2021 you were sentenced to a prison term of 12 months which was suspended for 24 months in respect of the offences you had committed in May 2020.
6. Only six days after receiving that sentence, on 25 February, you became involved in further street violence. Your violence on that occasion was sudden and sustained. That resulted in your being charged with two offences of assault and one of using threatening words and behaviour. On 18 May you received a further suspended sentence of 4m suspended for 18 months for those offences.
7. Thus it was that when you killed Mildred Whitmore you were subject to two suspended sentences in respect of two separate incidents and were under investigation for the assault which is count 3 on the indictment.
8. You were originally charged with the murder of Ms Whitmore. You indicated that you would plead guilty to manslaughter on the basis of diminished responsibility at the Plea and Trial Preparation Hearing. That was, in my judgment, the first realistic time that this plea could have been intimated. The Prosecution, having investigated the background to your offending by instructing a second psychiatrist, accepted that plea shortly before trial. You then formally entered that plea and the allegation of murder was not pursued. At that stage you also pleaded guilty to the assault which is count 3, having previously indicated that you were going to deny that offence and advance the proposition that any violence used by you was used in lawful self defence. I indicate now that I intend to give you full credit for your guilty plea to manslaughter which you were not in a position to offer before you did and 15% for the guilty plea to count 3 which was indicated after the PTPH but before trial and represented a change in stance by you.
9. You have a background of psychiatric illness. The witness statement of your mother is evidence of the fact that this has been an enduring difficulty in your life and that of your ex-girlfriend, of the fact that your condition was apparently less stable in the period leading up to the killing. Your behaviour before and after your arrest supports the view that you were suffering mental ill health at the time of the killing. You attended hospital on the evening before the killing and once there behaved bizarrely and were found confused and half-dressed in a park after the killing the next morning.
10. You have been assessed by two psychiatrists: Dr Rampling instructed by the defence and Dr Kennedy by the Prosecution. They have produced individual reports on your condition and on the issue of retained responsibility (to which I shall return). They have also produced a joint report setting out the main areas on which they agree. I have read all of those reports.
11. Their evidence leads me to sentence you on the basis that at the time of the killing you were subject to an active psychotic episode which was likely caused by taking an amphetamine medication which had been prescribed for you.
12. I further accept that you had sought help for your condition before you committed this offence. You were a voluntary patient at a hospital between 26 February and 26 March 2021 and thereafter had private telephone consultations with Dr du Waal, a psychiatrist, in early May.
13. However, I have also concluded on the evidence that you took an excessive amount of your prescribed medication having been warned about the possible dangers of taking it to excess by Dr du Waal. The evidence of Dr Rampling is that you admitted taking 10 times the prescribed dose of the medication on the day of the killing. It is true that previously when you had told Dr du Waal that you had been taking more than the prescribed dose of the amphetamine based medication, he responded by increasing the dose. That reaction, whether appropriate or not, does not absolve you from responsibility for abiding by the medication regime fixed for you. It was in any event simply his reaction to what you chose to tell him. You had chosen to conceal from him your bad reaction to taking amphetamines in South Africa which had resulted in you having a previous psychotic episode. Had you told him that, it might have resulted in a different diagnosis or at least in your being given a different prescription.
14. At around the time of the killing you were also taking steroids. I also accept what you told the psychiatrists that you had ingested a significant amount of alcohol on the day of the killing: half a litre of vodka according to Dr Rampling. That was alcohol which was voluntarily consumed. Finally I bear in mind that there is no evidence that the other acts of violence which I have already summarised were committed in the course of an active psychotic episode but may well have been committed under the influence of alcohol. The proper conclusion to draw is that your violence is not solely a product of your mental health condition.
15. When I pass sentence in this case I have in mind the impact statement made by Mildred’s son, Gary Whitmore, and read out in open court. It painted a vivid picture of Ms Whitmore as a independent and caring woman who was loved and depended on by her immediate and extended family. Your actions in killing her will have an impact on all of the members of her family for the rest of their lives.
16. It is trite to record that I can do nothing to restore Ms Whitmore to the family and friends who loved her. All I can do is pass appropriate punishment on you in accordance with established legal principles and thereby seek to prevent you being able to inflict losses such as this on other families in the future.
17. I turn to the sentence itself. This is not a case in which either psychiatrist is of the opinion that a hospital order or a hybrid order is appropriate. The only possible sentence is therefore one of imprisonment. In fixing the length of that sentence I have regard to the Sentencing Council’s Definitive Guideline on Manslaughter by Reason of Diminished Responsibility.
18. My first duty is to decide on the level of responsibility retained by you for your actions. That finding will dictate the starting point for my sentence. I have concluded that you retained a medium level of responsibility. While the medical opinion that the psychotic episode drove your actions at the time of the attack might suggest that you bore a lower level of retained responsibility, I must factor in your voluntary decision to taken an excessive dose of your medication, your voluntary consumption of alcohol, your lack of candour with Dr du Waal and my finding that you have used significant violence on other occasions when not in the grip of a psychotic episode. It is by balancing all of the relevant factors together that I have concluded that you retained a medium level of responsibility for your actions.
19. That finding means that the starting point for my sentence is 15 years with a range of between 10 and 25 years.
20. There are factors which serve to aggravate the offending. Importantly you were on bail for one offence and subject to two suspended sentences when you killed Ms Whitmore. Ms Whitmore, as an elderly woman in her own bed at night, is to be regarded as having been particularly vulnerable.
21. I take into account as mitigating features that there was no premeditation and that you have expressed remorse.
22. The aggravating features far outweigh those which serve to mitigate. I would have arrived at a determinative sentence of 20 years for the manslaughter had I not also to sentence for count 3 and for the breaches of the suspended sentences. I have concluded that I should increase the sentence for manslaughter so that it reflects the totality of your offending and then pass concurrent sentences for those other offences. I have concluded that the totality of the offending would merit a determinative term of 22 years.
23. I now give you appropriate credit for your guilty plea. That reduces the term to one of 14 years 8 months.
24. I must next consider whether I should treat you as a dangerous offender. Your counsel accepts that it is appropriate for me to do so and I have decided that I must for two reasons. Firstly, the repeated acts of often serious violence committed by you in the recent past. Secondly, the fact that you were not open and honest with Dr du Waal and have not complied with your drugs regime means that, even if your condition is in theory susceptible to treatment, I cannot be confident that it can be treated because of your previous lack of compliance.
25. I must next consider whether, having found you to be dangerous, I should impose a life sentence on you. This offence is serious enough to justify the imposition of such a sentence involving a it does a fatal attack on a vulnerable lady in her own home. I also have regard to your previous acts of explosive violence. In addition I cannot be satisfied that, were I to pass an extended sentence, you would be safe for release into the community at the expiry of the fixed custodial term. In that way, neither a fixed term prison sentence nor an extended sentence of imprisonment would be proper punishment. In those circumstances I have no hesitation in deciding that I must pass a sentence of life imprisonment so that the public can be adequately protected from you in the future.
26. I must now set the minimum term that you must serve before you can apply to the Parole Board for release on licence. It is important that you understand three things. Firstly, this is the minimum term that you must serve. Once it has expired you will only be released if the Parole Board consider it safe and appropriate to release you. If they never reach that conclusion, you will remain in prison indefinitely. Secondly, you will have to serve the whole of the minimum term I set before you can apply for release. There is no power in the Parole Board to direct your release before that term is at an end. Thirdly, if you are ever released from this sentence you will be on licence for the rest of your life and can be returned to prison at any time.
27. The appropriate minimum term is two thirds of the notional fixed term I would have passed less any days you have spent on remand. That is because, had I passed a fixed term, you would have become eligible for release at the two thirds point in the sentence whereas you must serve every day of the minimum term I set before becoming eligible for parole. In addition, days spent on remand would automatically be credited to a fixed term sentence but are not credited to the minimum term on a life order. Thus the minimum term I set is two thirds of 14 years 8 months which is 9 years 9 months less 418 days on remand.
28. As previously indicated I will pass concurrent terms for the other matters. That is, sentences which will run concurrently with each other and with the life sentence. In respect of each suspended sentence, the sentence will be activated in full. For count 3 on this indictment, assault occasioning actual bodily harm, the sentence is one of 17 months imprisonment. It is a case in which there is higher culpability because of the use of a shod foot as a weapon and harm category 2. There are many obvious aggravating features to that offending. In fixing that term I have afforded you approximately 15% credit for guilty plea.
29. Stand up.
30. On Count 2 of this indictment I sentence you to life imprisonment with a minimum term to serve of 9 years 9 months less 418 days spent on remand. On count 2, I sentence you to a term of 17 months to be served concurrently with that sentence. Each of the suspended sentences will be activated in full and again run concurrently. The surcharge applies and the order must be drawn up appropriately.

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