



JUDICIARY OF
ENGLAND AND WALES

MR JUSTICE COULSON

R v DAMIEN FOWKES

SENTENCING REMARKS

HULL CROWN COURT

5 OCTOBER 2011

1. Damien Fowkes, you have pleaded guilty to two very serious offences. On count 1, you have admitted attempting to murder Ian Huntley at Frankland Prison in County Durham in March 2010. On count 3, you have pleaded guilty to manslaughter, by reason of diminished responsibility, following an incident in February 2011 in which you strangled Colin Hatch at Full Sutton Prison near York. I am now required to sentence you for those offences.
2. You are 36. You have been in trouble with the authorities since you were 15. Between 1991 and 2002 you were convicted of six different robberies. On the last occasion, in September 2002, you were sentenced at Northampton Crown Court to a discretionary life sentence, with a minimum term of 5 years and 220 days.
3. Whilst it appears that you began serving that sentence with relatively few problems, in 2006 you began to display a series of worrying behavioural symptoms and your conduct deteriorated significantly. Between 2006 and 2010 you were involved in no less than 27 separate incidents of self-harm. It is against that background that I come to the details of the two offences for which you are to be sentenced.
4. On Sunday 21 March 2010, Ian Huntley was waiting in the healthcare wing at Frankland, where he worked as a cleaner, to be escorted back to his own wing. You were there because you had asked to speak to a listener. You approached Huntley, and without any warning, you slashed his neck with a homemade weapon, fashioned from a razorblade melted into the handle of a plastic utensil. This caused a deep wound in Huntley's neck that was seven inches long and required 21 internal and external stitches to close. The photographs

demonstrate that it was, as one prison officer described it, a “massive gaping cut to the left side of his neck”. Fortunately for Huntley, the wound extended into the subcutaneous fat, but not into the muscle. There was a good deal of blood.

5. You continued to stab and slash at Huntley as he ran down the corridor. This resulted in at least two further blows, including one to the chest. You continued to pursue Huntley back down the corridor where he barricaded himself into the servery. It was only then that the prison officers were able to take the weapon from you. At that point it was discovered that you also had a second stabbing weapon.
6. I am in no doubt that you intended to kill Ian Huntley. That is the only possible conclusion to be drawn from the nature of the wound that you inflicted on him; your sustained pursuit of Huntley and your repeated attempts to inflict further damage upon him; and from the comments that you made to various prison officers in the days following the attack, in which you stated in terms that you had been planning the attack for weeks and that you intended to kill Huntley. You told one officer that you had deliberately taken the weapon to the healthcare wing because you had seen him there the previous week and had decided to attack him.
7. In these conversations you made clear that you had tried to kill Huntley because he was a notorious child killer. You knew, as no doubt everyone else in Frankland knew, that Ian Huntley murdered Holly Wells and Jessica Chapman in Soham, Cambridgeshire, in 2002.
8. By the time you were charged with the attempted murder of Huntley, on 24 November 2010, you had been moved to Full Sutton Prison near York. You were housed on D wing, which was used for vulnerable prisoners. Another prisoner on D wing was Colin Hatch, a man who, like Ian Huntley, was serving a life sentence for the sexually-motivated murder of a child. Although his offence dated back to 1994, Hatch was notorious because he had killed whilst on licence following an earlier sexual attack on a boy of 8.
9. On Tuesday 22 February 2011, in the early evening, you went into the cell of another man called Willey, where Hatch was. You ordered Willey to leave and then barricaded the door shut, using the bed and a locker. Using another homemade weapon of sharpened plastic, you threatened Hatch. You also told the prison officers who had gathered outside in the corridor that you would kill him if they tried to enter the cell. You then ordered Hatch to tie his own feet together. You tied his hands behind his body, using strips that you had torn from a brown sheet in your own cell, and which you had brought with you for that very purpose. You then tore further strips from the green bed sheet in the cell and fashioned them into more ligatures. You blocked up the observation opening so that you could not be seen and you then prepared to kill Hatch by strangling him.

10. At all times you continued to maintain to the prison officers outside that you were going to cause Hatch no harm but that you would stab him if they tried to enter the cell. But, using 5 cloth strips, some of which you had brought with you and some of which were torn at the scene, you created a single strong ligature. You pulled Hatch onto the bed and tied his feet to the end of the bed with the green material. You pulled hard on the ligature through the bed head, thus trapping Hatch's head against it and allowing for considerable force to be exerted on the strips of sheet around his neck. Although you assured the officers that Hatch was alive you also said "he's a nonce, he does not deserve to live".
11. When the prison officers eventually entered the cell, Hatch was dead. You were found to have a sharpened piece of wood as well as the sharpened piece of plastic. The force used to pull the ligatures had caused them to cut a deep indentation in Hatch's neck across his windpipe. When the police came to search your own cell, they found not only the remains of the sheet which you had cut up to create the ligatures, but they also found your possessions neatly stacked up and organised on your desk, indicating that you knew that you would be sent to the segregation wing following your attack.
12. Again, all of the evidence points unequivocally to the fact that you intended to kill Hatch. That is particularly clear from the preparations on which you embarked, including the cutting of the strips from the sheet in your own cell, and the careful plan by which you barricaded yourself in the cell and threatened to kill Hatch if the prison officers endeavoured to enter. Subsequently you told prison officers that sex offenders like Hatch and Huntley "do my head in".
13. The following matters are not in dispute:
 - (a) You are a dangerous offender within the meaning of the Criminal Justice Act 2003.
 - (b) A hospital order would not be feasible in your case because of the clear danger you pose to others, particularly those vulnerable offenders that you would encounter as a result of such an order.
 - (c) A life sentence is the only appropriate disposition of your case.
 - (d) A whole life order would not be appropriate in all the circumstances.
14. Accordingly, I sentence you to a term of life imprisonment. The remaining matter for me is the fixing of the minimum term, that is to say, the minimum period you must serve before you can even be considered for release. In undertaking that exercise I have had particular regard to the decision of the Court of Appeal in **R v McNally** [2009] EWCA Crim 2823. In that case, the Vice President of the Court of Appeal, Criminal Division, Lord Justice Hughes, said this:

"A life sentence is designed itself to cater for the defendant of whom it cannot be foreseen when, if ever, he will cease to be a danger to the public. A life sentence means that a defendant cannot be considered for release unless and until the Parole Board is satisfied that he is no

longer a danger to the public. Under a life sentence the Parole Board keeps the case under regular review. That review by the Parole Board does not begin until the end of any minimum term which is set. The minimum term is governed not by the dangerousness of the defendant, but by the gravity of what he has done and the extent of his culpability for it.”

15. At paragraph 15 of his Judgment, Lord Justice Hughes made an observation which is, in my view, equally relevant to your own position today:

“No one can deal with the case without being extremely concerned that it may well be that he [the defendant] will never cease to be a danger, but if he does not, or it cannot be clear that he has ceased to be a danger, he will never be released. What no one can say with certainty, contemplating a lifetime ahead of him which may well be 40 years or more yet, is that the conditions may never change. One simply cannot know.”

16. The two matters referred to by Lord Justice Hughes as being of particular relevance when setting the minimum term were i) the gravity of the criminal act, and ii) the extent of the defendant’s culpability for it. Culpability must not, however, be the ‘exclusive focus’ in assessing the seriousness of an offence of manslaughter on the grounds of diminished responsibility: see **R v Wood** [2009] EWCA Crim 651. In that case, the issue which arose was the extent to which a court sentencing a defendant for manslaughter on the grounds of diminished responsibility should have regard to the starting points for minimum terms in Schedule 21 of the CJA 2003, bearing in mind that that Schedule relates to murder, not manslaughter. The Court of Appeal concluded that there was “no logical reason why, subject to the specific element of reduced culpability inherent in the defence, the assessment of the seriousness of the instant offence of diminished responsibility manslaughter should ignore the guidance [in the CJA]. Indeed we suggest that the link is plain.”

17. Having regard to the decisions in **R v McNally** and **R v Wood**, and the other cases to which I was referred, and having regard to both Schedule 21 and the Sentencing Guidelines Council guidelines on attempted murder, I have reached the conclusion that the appropriate minimum term in your case is one of 20 years. I have arrived at that period by two different routes.

18. First, a minimum term of 20 years was the term imposed by the court in **R v McNally**. That is a case with a number of striking similarities to this one. McNally had, like you, been involved in early offences of violence. He was convicted of murder in February 2003 when there was already evidence that he suffered from an emotionally unstable personality disorder. A few months later, he killed his cellmate by strangling him with a ligature. On that occasion his plea of guilty to manslaughter on the basis of diminished responsibility was accepted. His severe personality disorders were very similar to your own. So too was his

degree of culpability. After considering the various interlocking guidelines, the court concluded that a 20 year term was the appropriate minimum term to be served in that case.

19. Of course, there are differences too. In McNally, the existing life sentence was for the crime of murder, whilst yours was for robbery. Moreover, the 12 year minimum term had only just commenced when the second killing was carried out, whilst your original 5 year minimum term had expired by the time of your further offences. On the other hand, I must sentence you not only for the killing of Hatch, but also for the attempted murder of Huntley, whereas in McNally the court was only considering one further offence. In the round, I consider that your overall culpability was very similar to that of the defendant in McNally so that a minimum term of 20 years is justified by reference to that authority.
20. My other route to a minimum term of 20 years is rather more complicated but it has the advantage of being in accordance with the general methodology that was adopted by both leading counsel.
21. I start with the manslaughter of Hatch, count 3. Following the approach in R v Wood, I turn first for guidance to Schedule 21 of the Criminal Justice Act 2003. Under paragraph 5 of the Schedule, if I considered that the seriousness of the offence was particularly high, then the starting point would be 30 years. However, this case does not fall within any of the particular categories identified in paragraph 5(2) and I am not persuaded that the 30 year starting point is appropriate or relevant. Mr Reeds for the Crown did not suggest to the contrary.
22. The particular difficulty is created by paragraph 5A of Schedule 21 which was added in 2010, principally to deal with the escalation in knife crime. That provides that, where an offender takes a knife or other weapon to the scene intending to commit any offence or have it available to use as a weapon, and uses that knife or other weapon in committing the murder, the starting point for the determination of the minimum term is 25 years. That is to be contrasted with paragraph 6 which states that, in any other murder case, the starting point is 15 years. There was an argument between counsel as to whether the ligatures that you took with you into Willey's cell counted as a weapon for the purposes of Schedule 21.
23. It would be unfortunate if this sentencing exercise became bogged down in legal niceties as to whether or not the ligatures with which you killed Hatch could be described as a weapon for the purposes of paragraph 5A. For what it is worth, it seems to me that, on the face of it, they were a weapon. I also have to reflect the fact that, in addition to the ligatures, you had a deliberately-sharpened weapon which assisted you in killing Hatch because you used it to threaten him and to get him to do what you wanted. On the other hand, I also accept that it may be artificial to take a 25 year starting point in circumstances where paragraph 5A was intended to deal with a very different kind of offence to the present one.

24. Doing my best, and seeking to reflect your overall criminality, I take the view that the right starting point for this particular offence was half way between the 25 year term identified in paragraph 5A and the 15 year term identified in paragraph 6 of Schedule 21. That gives a starting point of 20 years. There were, however, a number of aggravating factors. One is the high degree of planning and preparation that went into the killing of Hatch, as witnessed in particular by the cutting of the brown strips in your own cell some time before the killing. Another aggravating feature was the fact that you had already been charged with the attempted murder of Huntley when you killed Hatch. In addition, I have to reflect your earlier violent crimes in any sentence now imposed.
25. All of those factors would lead me to a starting point of 23 years for the killing of Hatch. However, there would then have to be a significant discount to reflect both your diminished responsibility and your guilty plea. The principal element of the discount would be for your diminished responsibility, because it reduced - although it far from extinguished - your culpability. I note that in the authorities the reduction for diminished responsibility has been assessed at about 30% (**R v Wood**) and 33% (**R v Oakley** [2010] EWCA Crim 2419). In my view, your culpability was just as great as that of the defendant in those two cases. I have to bear in mind the clear planning that went into the killing of Hatch, your insight that what you were doing was wrong (hence your planning for the segregation wing) and the admissions that you made afterwards.
26. Accordingly, I have concluded that the right reduction to reflect both your mental condition and to give you some further discount for your guilty plea is an overall reduction of one third, or 33%. Thus, if I was sentencing you solely for the killing of Hatch, the minimum term would be two thirds of 23 years, namely 15.3 years.
27. Of course, there is also the attempted murder of Huntley. The attempted murder guidelines, published by the SGC are expressed in determinate periods, so these need to be halved so as to translate them into possible minimum terms.
28. The first difficulty with the guidelines is that, whilst a Level 1 offence is said to include all attempted murders that, if successful, would have fallen within paragraphs 4 or 5 of Schedule 21, they make no reference to paragraph 5A, because paragraph 5A did not come into force until after the guidelines had been produced. That was one of the reasons put forward by Mr Hall on your behalf to the effect that this was a Level 2 offence, not a Level 1 offence.
29. I do not accept that submission. It seems to me plain that, within the SGC Guidelines, Level 1 was intended to include all those categories of murder other than what might be termed the standard offence that came within paragraph 6 of Schedule 21. Accordingly, because this was significantly more serious than a paragraph 6 offence, this was a Level 1 offence under the Guidelines. It would be in the middle bracket ("some physical or psychological harm") which provides a

sentencing range of between 17 and 25 years. Even if I was wrong about the appropriate Level, and this was a Level 2 offence, the recommended sentencing range is still said to be between 12 and 20 years.

30. In all those circumstances, it seems to me that, if I was sentencing you to a determinate term for the attempted murder of Huntley, I would take as my starting point 18 years. As I have said, in order to calculate a minimum term for a life sentence, I would halve it, to arrive at a period of 9 years. I then have to reduce that to reflect both your reduced culpability, and a discount for plea. I would make the same reduction as I have already made for the previous offence, namely one third, which would produce a minimum term of 6 years.
31. Accordingly, on this basis of calculation, the minimum term would be 15.3 years on count 3, plus 6 years on count 1, making a total of 21.3 years. However, I would have to make a further reduction to reflect issues of totality. Such a reduction, although modest, would not be insignificant. A reduction of 1.3 years from the total would give rise to a minimum term of 20 years.
32. Accordingly, having arrived at a minimum term of 20 years on two different bases, I am in no doubt that that is the correct term in your case.
33. **Accordingly, Damien Fowkes, you are sentenced to life imprisonment for the manslaughter of Colin Hatch and the attempted murder of Ian Huntley. The minimum term that you will serve is one of 20 years. After that, you will only be released if the Parole Board deems that it is safe to permit it.**
34. I should make three final points. The first is to express my thanks to Leading Counsel for the Crown and for the Defendant for the clear and helpful way in which they dealt with the issues that arose prior to the guilty pleas being entered and during the sentencing exercise itself. They have provided considerable assistance to the court.
35. Secondly, I should say that the notoriety attached to the two victims in this case, Ian Huntley and Colin Hatch, although giving rise to considerable media interest has been wholly irrelevant to this sentencing exercise. Whilst I am aware that the view has been expressed in some parts of the press that the killing of Colin Hatch and the attempted murder of Ian Huntley were somehow lesser offences – deserving lesser sentences - because of the crimes that they had themselves committed, such a view is manifestly wrong, both as a matter of common sense and as a matter of law. All long term prisoners, whatever crimes they may have committed in the past, are entitled to the same level of protection when in prison as any other prisoner. For the avoidance of doubt, can I stress that that would be so, whether the Human Rights Act was in force or not.
36. That brings me on to the third and final point. It is troubling that these two attacks were carried out in two different high security prisons. I am particularly concerned that the killing of Hatch took place with prison officers outside the cell

but apparently powerless to save him. I am also aware that over the last few days, another prisoner has been killed at HMP Frankland. Whilst everyone is acutely aware of the costs of monitoring vulnerable and high risk prisoners, from what I have seen in this case it appears that the management systems currently in place require urgent review.