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No: 2019 03824 A3

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Tuesday 19 November 2019

B e f o r e:

LORD JUSTICE HOLROYDE

MR JUSTICE WILLIAM DAVIS

HIS HONOUR JUDGE LODDER QC

**REFERENCE BY THE ATTORNEY GENERAL UNDER SECTION 36 CRIMINAL
JUSTICE ACT 1988**

R E G I N A

v

NICOLA TOWNSEND

Computer Aided Transcript of the Stenograph Notes of Epiq Europe Ltd Lower Ground, 18-22
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Mr Tom Little QC appeared on behalf of the **Attorney General**
Mr Peter Binder appeared on behalf of the **Offender**

J U D G M E N T

1. **LORD JUSTICE HOLROYDE:** After a trial in the Crown Court at Bristol, Nicola Townsend was convicted of the manslaughter of her father, Terence Townsend, and witness intimidation in relation to her brother-in-law, Douglas Campbell. She later pleaded guilty to an offence of breach of a restraining order in respect of her sister, Deborah Makin. For these three offences she was sentenced on 20th September 2019 to a total of 2 years 8 months' imprisonment. Her Majesty's Attorney General believes that sentence to be unduly lenient. Application is accordingly made, pursuant to section 36 of the Criminal Justice Act 1988, for leave to refer the case to this court so that the sentencing may be reviewed.
2. Miss Townsend is now aged 50. At the time of the offences she was living alone in a house which her parents had bought for her. Her mother died some years ago but she frequently spent time with her father at his home. Terence Townsend was aged 78 at the date of his death. He suffered from emphysema and osteoporosis. His breathing was laboured, his mobility was restricted, and he had suffered a number of falls. He was light in weight and very frail. His daughter was of course well aware of his general condition and his frailty.
3. Miss Townsend has had a number of health problems during her life, including epilepsy, which began in her childhood and worsened, but which has not affected her since about 2004 following surgery. As a young adult she developed a skin condition and then severe acne.
4. Miss Townsend has also shown herself over a number of years to be emotionally volatile. She has been aggressive and on occasions violent towards members of her family. In particular, she had on occasions lost her temper with her father and had sometimes scratched or bruised him. Such incidents were kept within the family and not reported.
5. On 27th December 2017 Miss Townsend and her father had been out together during the day and were then in his house. Miss Townsend lost her temper. She threw a television remote control at her father. It struck him on the back of the head, causing a cut which immediately began to bleed. Mr Townsend went into the kitchen in order to clean the cut. Miss Townsend followed him in. In the kitchen she pushed him, causing him to fall to the floor. The result of that assault was that Mr Townsend (no doubt because of his osteoporosis) sustained fractures of six ribs on his right side and the right transverse processes of five of his thoracic vertebrae. There was also some soft tissue bruising to the left side of his chest. The fractured ribs damaged his right lung, with the result that he suffered a pneumothorax. Miss Townsend did not summon any medical assistance; it was Mr Townsend who dialled 999. When the ambulance arrived, Miss Townsend pointed to where her father was, but then left the house saying, "No, I can't do this. I haven't got time. I've got to go."

6. Mr Townsend was taken to hospital, where the full extent of his injuries was established, and he was admitted. Whilst he was an in-patient, he told his son-in-law (Douglas Campbell) that he and Miss Townsend had had what he described as "some fisticuffs" in the kitchen, she had pushed him, and he had fallen over.
7. On 28th December (the following day) Miss Townsend telephoned her sister Sally (the wife of Douglas Campbell) and said, "I pushed him. Yes, I admit that. I did push him out of the way because he was pissing me off and then he landed on the floor." She also said that she had chucked the remote control at their father because she was annoyed with him.
8. Mr Townsend's condition deteriorated whilst he was in hospital. He developed pneumonia and sadly died on 8th January 2018. The medical cause of his death was acute bronchopneumonia following chest trauma, on a background of pre-existing chronic obstructive pulmonary disease.
9. Miss Townsend was arrested and interviewed under caution both before and after her father's death, but the prosecution, for unexplained reasons, did not begin until January 2019. From that point onwards, Miss Townsend repeatedly tried to contact Douglas Campbell, who was obviously an important witness against her. She persisted in these attempts despite being told not to. Over a period of about six weeks, she left 46 voicemail messages on his phone, threatening that if he continued to give evidence against her she would tell the court that he had pushed her. She also made a veiled threat to take some unspecified action against his brother. It seems she wrote similar letters or left similar messages to the officer in charge of the case.
10. As we have said, Miss Townsend subsequently stood trial on the charges of manslaughter and witness intimidation and was convicted of both. Sentence was adjourned so that reports could be prepared.
11. In the interim, a restraining order was made prohibiting her from contacting named members of her family, including her sister Deborah Makin, who suffers from health problems of her own. Despite that order, Miss Townsend sent to Deborah Makin a letter which purported to be sent by a legal adviser on the subject of Mr Townsend's will. The letter claimed a larger share of Mr Townsend's estate for Miss Townsend, saying that that was what the deceased had wanted. The letter, which was handwritten and therefore did not bear the appearance of coming from a legal adviser, ended with these words:
 - i. "As an executor you have to sort out the finances of your father and make sure the will is distributed correctly to your sisters ... If

you don't respond then the magistrates' court will have to get involved, and if there is any meddling with the will then a prosecution will be likely to happen."

12. Deborah Makin immediately recognised the handwriting as being that of her sister. The matter was reported. Miss Townsend was charged with breach of the restraining order. She pleaded guilty at the first opportunity and was committed for sentence. So it was that the three matters came before the judge for sentence on 20th September 2019.
13. Miss Townsend had no previous convictions.
14. The judge was assisted by both a pre-sentence report and a psychiatric report. Miss Townsend had told the author of the pre-sentence report that she struggled to manage her emotions and her temper, which she attributed to hormonal complications. She said that she had thrown the television remote control because her father had seemed offhand and uninterested in what she was saying. She said that it had struck him "accidentally". She said that subsequently in the kitchen she moved her father aside so that she could pass and he had "toppled over". This too she described as an accident. She showed no acceptance of responsibility, no remorse and limited empathy. She felt that her actions towards Mr Campbell were justified and blamed him for her being prosecuted.
15. Dr Tomison, the consultant forensic psychiatrist who had prepared a report, found Miss Townsend to be of average intelligence, with no evidence of mental illness or mental impairment. However, the history of frequent aggression towards parents and family members upon whom Miss Townsend was emotionally dependent suggested a possible personality disorder. Dr Tomison also noted a history of anxiety disorders, which he felt might be linked to the early onset of disabling epilepsy and subsequent disfiguring acne. No firm diagnosis was possible. Dr Tomison concluded that it was at least possible that Miss Townsend's personality development had been compromised and that she had a personality disorder. He referred to the history of anxiety disorders and said this:
 - i. "Whilst these observations as to her personality might provide some explanation, at least in part, for the circumstances obtaining on the day in question, there is nothing to suggest that at the material time she was suffering from any disease of the mind and neither is there any evidence of current mental disorders."
16. It is convenient to note at this stage a further report which has been prepared for the assistance of this court. This too records that Miss Townsend shows no remorse for her father's death, blames her brother-in-law for her being in custody and regards herself as the victim. She displayed anger towards her parents, blaming them for her epilepsy and her skin complaints.

17. The judge considered the Sentencing Council's Definitive Guideline on sentencing for offences of Unlawful Act Manslaughter. He noted that Miss Townsend knew her father to be frail. He described Miss Townsend as having unlawfully assaulted her father by "giving him a shove in the kitchen, which meant he fell to the floor and broke his ribs". He identified as an aggravating feature the history of incidents of domestic violence in which Miss Townsend had lost her temper and inflicted minor injuries on her father despite knowing of his frailty and his vulnerability. The judge took into account the matters advanced in mitigation, the reports which he had received, and his own observations of Miss Townsend over a period of about six days during the trial. He noted -- correctly -- that the guideline specifically says that the court should avoid an overly mechanistic application of the culpability factors listed at step 1.

18. The judge concluded that the case could not easily be fitted within either category C or category D of the guideline because the features of the case were "unusual and fairly unique". He regarded the proper sentence as falling at the bottom of level C or the top of level D. He said (at page 30G of the transcript):
 - i. "The features of your case do involve you having been reckless as to whether harm would be caused. I am not of the view that there was no obvious risk of anything more than minor harm because you knew of your father's health conditions very closely, and indeed your younger sister had highlighted these when you and she were together with your father on a number of occasions. But for your mental health issues and your general health issues, it would have been my view that the proper sentence, before considering also matters of mitigation, would have been a sentence of 3-and-a-half years' imprisonment for the manslaughter; but you have no previous convictions, you are aged 50, and that provides you mitigation. You have problems with your mental health, which in my view do reduce your responsibility somewhat for your offending. You had this hanging over your head for well over a year before you were charged. You have lost all support networks now, and you have received the public naming and shaming which has occurred as a result of your offending and your conviction."

19. The judge went on to quote an observation of Mr Douglas Campbell to the effect that Miss Townsend's life was tragic, with little support other than from members of her family in the past.

20. Taking into account the mitigation and his assessment of Miss Townsend's level of responsibility, the judge imposed a sentence of 2 years 6 months' imprisonment for the offence of manslaughter. On each of the other two offences he imposed consecutive sentences of 1 month's imprisonment, thus making the total term 2 years 8 months.

21. On behalf of the Attorney General, Mr Little QC submits that on the court's own findings this case fell within category C of the guideline. He submits that the judge was in error in placing the case into category D; that the judge gave insufficient weight to the aggravating features and too much weight to the mitigating features; and that the judge failed properly to reflect the seriousness of the offence of witness intimidation.
22. Mr Little identifies as aggravating features of the case the following: the vulnerability of Mr Townsend through a combination of his age and his health; the previous history of losses of temper and some violence towards Mr Townsend; the injury to Mr Townsend's head which Miss Townsend had caused; the fact that the manslaughter was committed in the victim's own home by his own daughter; the failure to provide any assistance having injured Mr Townsend; his suffering prior to death whilst in hospital; and the sustained nature of the witness intimidation, which related to a very serious offence.
23. As to mitigation, Mr Little recognises that there was an absence of previous convictions, though points out that that fact must be seen in the context of undisclosed previous incidents in which Miss Townsend had injured her father. He accepts that there was no premeditation of the assault which led to death. He accepts that mitigation is to be found in the mental health difficulties suffered by Miss Townsend, in the unsophisticated nature of the offences of witness intimidation and breach of the restraining order and in the guilty plea for the latter offence. He accepts that the judge was entitled, having regard to Miss Townsend's mental health problems, to move downwards from the category C starting point of 6 years' imprisonment. But, he submits, the sentence of 3-and-a-half years, which the judge appears to have regarded as appropriate after considering all the aggravating features but before taking account of mitigation, was itself far too low and the eventual sentence, totalling 2 years 8 months' imprisonment, was unduly lenient.
24. Mr Binder, representing Miss Townsend before this court as he did below, emphasises that the judge was in the best possible position to assess the appropriate sentence, having presided over the trial and thus had the opportunity to both see and hear the defendant Miss Townsend. Mr Binder submits that every aspect of this case was highly unusual, including the character and conduct of Miss Townsend herself. He argues that this case provides a vivid illustration of the essentially fact-specific nature of sentencing for offences of manslaughter and he places emphasis on the direction in the guideline that the court should not apply an overly mechanistic approach when considering the culpability factors which are listed.
25. As to the witness intimidation offence, Mr Binder points to a phrase in the judge's sentencing remarks in which the judge spoke of Miss Townsend tending to "get things stuck in a loop" so that they went round and round in her head. Mr Binder emphasises that it was obvious to everyone that the messages to Mr Campbell had been left by her,

and equally obvious that the letter purporting to come from a legal adviser had also been written by her. She had indeed sent comparable messages, to the general effect that she was being most unfairly treated, to the officer in charge of the case.

26. Mr Binder invites this court to conclude that the judge, being in the best position to do so, made a most careful consideration and assessment of all relevant factors and that the sentence he imposed was not even lenient, still less unduly lenient.

27. He points out that one of the category D culpability factors is described in these terms:

- i. "... the offender's responsibility was substantially reduced by mental disorder, learning disability or lack of maturity."

28. In this regard he relies on Dr Tomison's report.

29. We are grateful to both counsel for their submissions and we have reflected on them. The judge was faced with a difficult sentencing process and we recognise that he had the advantage, which we do not, of having presided over the trial. We understand why Miss Townsend's health problems over the years, the contents of the psychiatric report and the forlorn future which Miss Townsend faces would have attracted the judge's sympathy. It is, however, important to bear in mind that Miss Townsend admitted, and the judge expressly found, that she knew of her father's frailty and vulnerability. One of the category D factors in the guideline is that death was caused in the course of an unlawful act "where there was no intention by the offender to cause any harm **and** no obvious risk of anything more than minor harm" (emphasis added). It is clear from the judge's findings that this was not such a case. It is not a case of a failure to foresee a risk of injury which would have been apparent to a sober and reasonable person: Miss Townsend shoved her father, knowing that he easily could be injured and being reckless as to whether he was injured. She did so, moreover, when she had already inflicted minor injury on him and at a time when he was trying to treat that injury. Far from showing dismay and remorse at the consequences of what she claims was an accident, she left it to her father to summon help for himself and she departed the house when that help arrived. The psychiatric report certainly identified factors which the judge needed properly to take into account, but it did not show that Miss Townsend's responsibility for her acts was "substantially reduced".

30. In those circumstances we conclude that, on the judge's own findings, this was a category C case within the guideline. The judge was entitled to conclude that the mental health history of Miss Townsend did to some extent reduce her responsibility for her actions, and for that reason entitled to move downwards from the category C starting point before considering the aggravating and mitigating factors. Having done so, however, the remaining mitigation was, at the most, counterbalanced by the aggravating features which the Attorney General has identified, if not outweighed by them.

31. We conclude, again emphasising that we do so on the judge's own findings, that in all the circumstances of the case, and making the most favourable allowances we can, the sentence for manslaughter could not properly be less than 4 years 6 months' imprisonment.

32. The witness intimidation was not the most serious offence of its kind, but it involved persistent conduct, including unpleasant threats, and it was a type of offence which calls for an element of deterrence in sentencing. Had it stood alone, that offence would, in our view, have merited a sentence of the order of 6 months' imprisonment. However, we must make allowance, as did the judge, for totality. We must make a similar allowance when considering the breach of the restraining order, an offence which was serious because it was committed whilst on bail awaiting sentence, but which was committed in the most clumsy manner, involving a handwritten letter which was immediately identified as coming from Miss Townsend and not from a professional lawyer. Having regard to totality, and again making all allowances that we can in Miss Townsend's favour, we conclude that those two offences should collectively have increased the sentence for manslaughter by at least 3 months.

33. For those reasons, we grant leave to refer. We quash the sentences imposed below as being unduly lenient. We substitute for them the following: for manslaughter, 4 years 6 months' imprisonment; for each of the offences of witness intimidation and breach of the restraining order, 3 months' imprisonment, those two sentences being concurrent the one with the other but consecutive to the sentence for manslaughter. Thus, the total sentence is increased to one of 4 years 9 months' imprisonment.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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