

Neutral Citation Number: [2019] EWCA Crim 610

No: 201804226/A1

**IN THE COURT OF APPEAL**  
**CRIMINAL DIVISION**

Royal Courts of Justice  
Strand  
London, WC2A 2LL

Thursday, 7 March 2019

**B e f o r e:**  
**LADY JUSTICE SHARP DBE**  
**MR JUSTICE GOOSE**

**THE COMMON SERJEANT**  
HIS HONOUR JUDGE MARKS QC  
(Sitting as a Judge of the CACD)

**R E G I N A**  
v  
**MARTIN AYRES**

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**Mr P Prior** appeared on behalf of the **Appellant**

**J U D G M E N T**  
(Approved)

1. MR JUSTICE GOOSE: On 28 September 2018 in the Crown Court at Norwich, the appellant Martin Ayres, who is now aged 36, was sentenced to imprisonment for life, with a minimum term of 10 years' custody for attempted murder. He had previously pleaded guilty on 4 May 2018, being at the earliest reasonable opportunity. The appellant now appeals with leave against that sentence. His appeal is confined to the minimum term of custody imposed. He accepts that imprisonment for life cannot be the subject of any arguable appeal.
2. At the time when this offence was committed the appellant was a serving prisoner at HMP Wayland. On 5 February 2004 the appellant was sentenced to imprisonment for life for an offence of murder, with a minimum custodial term of approximately twelve-and-a-half years.
3. On 15 August 2017 the appellant was sharing a cell with the complainant, another serving prisoner. Although it was believed that the relationship between the appellant and the complainant was peaceful, there had been an altercation between the two men earlier in the week. At around 12.15 pm the prison wing was in lock down, due to staff shortages. This meant that all prisoners were locked in their cells. At lunchtime food was taken to the prisoners who were required to remain in their cells. Whilst the appellant and the complainant were eating their lunch, the appellant used a razor blade to cut strips from the bottom of a sheet that was acting as a shower curtain. The complainant was unaware of the appellant's intentions as he prepared a tourniquet. In an unprovoked attack the appellant put the tourniquet around the neck of the complainant using it as a ligature to strangle and murder him. He held on forcefully for a significant period of time whilst the complainant struggled and lost consciousness. Adjourning cell mates had heard the disturbance and also the appellant say: "I've done something stupid you'd better get some help." The alarm was raised and prison officers arrived to observe the complainant with the ligature still around his neck and in an unconscious or recovering state. It was obvious that a clear attempt had been made to kill the complainant. The appellant was isolated from other prisoners and later arrested.
4. The appellant was interviewed by police officers and made full and frank admissions, stating that he had attempted to kill the complainant. He had become annoyed with him and had been planning to kill him for a few days.
5. In the sentence hearing before His Honour Judge Holt, the Honorary Recorder of Norwich, it was accepted on behalf of the appellant that a sentence of imprisonment for life was inevitable given his previous murder conviction. Equally, it was accepted that this was at the most serious level of attempted murder because had it been a charge of murder it would have fallen within paragraphs 4 or 5 of schedule 21 to the Criminal Justice Act 2003. Accordingly, this was clearly a Level 1 offence within the Attempted Murder Guideline of the Sentencing Guidelines Council. The issue before the sentencing judge was where within the range of sentencing at Level 1 this offence fell. The prosecution submitted it fell within the upper range with a starting point of 30 years custody, because the complainant had suffered serious and long-term psychological harm. It was submitted on behalf of the appellant that it fell within the middle of the range with a starting point of 20 years' custody because some

psychological harm was caused falling short of serious and long-term psychological harm.

6. The sentence hearing was adjourned so that Dr Halsey, a consultant clinical and forensic neuropsychologist could give evidence upon the psychological harm caused to the complainant. On 28 September 2018 at the adjourned hearing, when the appellant was sentenced, Dr Halsey gave evidence and was cross-examined on behalf of the appellant. In his sentencing remarks the judge summarised the contents of Dr Halsey's written report dated 17 September 2018 and what he said in evidence. The judge then found that he was satisfied that long term and serious psychological harm had been caused. He said:

"... on the psychological expert evidence that I have had, I find that he has suffered long-term and serious psychological harm." (see page 5C of the transcript)

It is this finding of fact that the appellant now challenges with leave of the single judge.

7. Whilst the complainant provided a Victim Personal Statement in which he described how he felt as a result of the offence, it does not provide any significant evidence in relation to the assessment of how serious or long term the psychological harm was. Accordingly, it is necessary to review the evidence before the judge.
8. In his written report, Dr Halsey recorded that he had interviewed the complainant and obtained a history of the offence. The complainant described that the impact of the offence upon him had been devastating; he felt violated and angry. The complainant explained that he had a past history of mood swings but, since the offence these had increased. He now felt wary of others. There was evidence of some background of mental ill-health. The complainant stated that he had suffered a "breakdown at the age of 27" when he had a brief admission as a voluntary patient into a mental health clinic. The complainant described that he was "damaged goods" when he entered custody but "I am going to be worse when I leave". Dr Halsey observed that the complainant had not received any counselling or structured treatment. The complainant found it difficult to say whether he had been permanently affected by what had happened to him.
9. Dr Halsey completed a psychometric assessment of the complainant, the Beck Anxiety and Beck Depressive Inventories. These involved self-administered structured questions for the complainant to answer in controlled testing. In Anxiety testing the complainant fell within the "mild range", but in Depression testing he fell within the "severe range". No other testing was carried out. In paragraph 5.1 of the report, Dr Halsey gave his opinion with caution, stating:

"I have not had access to any prison or medical records in the completion of the current report. The historical information contained within this report is based entirely upon Mr Rowe's account provided to me during interview, without reference to any corroborative information. The opinions contained herein are therefore preliminary..."

With that caveat Dr Halsey expressed the opinion that the complainant had symptoms that were consistent with a diagnosis of Post Traumatic Stress Disorder ("PTSD"). Whilst giving evidence in the sentence hearing, Dr Halsey confirmed both his written opinion and his view. He was asked:

"... in regard to the long-term effects of the assault upon Mr Rowe, can you, just briefly, explain your opinion now, please."

Dr Halsey replied:

"Yes, again a caveat, which is that it is very difficult to predict the long-term effects of these sorts of problems, because of the variability between individuals. What can be said is that there are a significant proportion of individuals for which, fortunately, the symptoms that they suffer from, will gradually resolve given sufficient time.

However, for approximately one-third of sufferers of PTSD the symptoms will remain a significant problem that require specialist treatments and intervention. It is very difficult to know in Mr Rowe's case whether or not his symptoms will respond positively to psychological interventions... because he has yet to engage in any psychological work in regard to these symptoms."

10. In cross-examination Dr Halsey accepted that he had not had access to the previous prison records in respect of the complainant, nor his medical records, so as to understand his pre-offence presentation. He said:

"If there was anything within the previous medical records, which indicated that the sorts of cognitive problems that Mr Rowe presented with to me, then of course that would provide an indication of the extent of any damage that may have occurred as a result of the assault."

11. Notwithstanding the fact that Dr Halsey's report was provided in advance of the sentencing hearing, the parties did not seek to obtain any further records relating to the complainant. Accordingly, the judge was required to make his assessment of harm based on the material before him.
12. Based upon this evidence, the judge found that the complainant had suffered serious and long term psychological harm. No doubt, the judge was also influenced by the fact that the symptoms were still in place a year after the offence had occurred. On behalf of the appellant, however, it is argued that the evidence was incapable of establishing serious and long term psychological harm. On behalf of the respondent, it is argued that such a finding was open to the judge on the evidence of Dr Halsey.
13. It has been necessary to set out the evidence of Dr Halsey, both in his written report and in evidence so as to understand the basis on which the judge reached his conclusion and the seriousness of the harm caused. It is clear from the evidence that the complainant was suffering from harm, which still continued a year after the offence.

He was vulnerable, because he had some history of depression, which undoubtedly would have made his symptoms more serious after the attempt to murder him. Further, the effects of the assault upon him, to attempt to strangle him to death in a locked and confined cell, would have also substantially contributed to the seriousness of the psychological consequences for the complainant.

14. Ultimately this was a question of judgement for the judge who heard Dr Halsey give evidence and the result of oral examination and cross-examination. The judge was entitled to find on the evidence that the harm caused by this attempted murder, was both serious and long term. We see no reason therefore to interfere with that finding. Further, on behalf of the appellant it is argued that the judge failed to give sufficient account to the fact that the appellant sought some help for the complainant after the attack. In our judgement that carried little weight in the circumstances of a case such as this where the attack upon him had been so severe and with such great intent.
15. Therefore, in reaching a substantive sentence of 30 years, which he discounted to 20 years for his early plea and then halved to 10 years to arrive at the minimum term, we are satisfied that the judge cannot be faulted.
16. Accordingly, we dismiss this appeal against sentence.

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