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

**[2021] EWCA Crim 1670**

**Case No: 2020/00968/B4**



**Royal Courts of Justice**  
**The Strand**  
**London**  
**WC2A 2LL**

**Tuesday 26<sup>th</sup> October 2021**

**B e f o r e :**

**LORD JUSTICE COULSON**

**MR JUSTICE JEREMY BAKER**

**MR JUSTICE JACOBS**

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**R E G I N A**

**- v -**

**JOHN ROBERT ALLISON**

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**Mr P Lewis** appeared on behalf of the Applicant

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**J U D G M E N T**

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Tuesday 26<sup>th</sup> October 2021

**LORD JUSTICE COULSON:**

1. The applicant is now aged 36. On 17<sup>th</sup> February 2020, following a trial in the Crown Court at Warwick before Her Honour Judge De Bertodano ("the judge") and a jury, the applicant was convicted of one count of murder. A month earlier he had pleaded guilty to a second count of conspiracy to pervert the course of public justice, which count had just been added to the indictment. On 2<sup>nd</sup> March 2020 he was sentenced by the judge to life imprisonment, with a minimum term of 22 years (less time spend on remand).

2. The applicant originally sought permission to appeal against both conviction and sentence. Both applications were rejected by the single judge. The application for leave to appeal against conviction has lapsed in the absence of renewal. The applicant has, however, renewed his application for leave to appeal against sentence to the full court. Mr Lewis QC appeared on his behalf this morning and we are very grateful to him for his short and realistic submissions.

3. The victim of the murder was Daniel Pitham, a man aged 33. In 2018 he had been involved in a car accident and had been seriously injured. He lost most of his left arm and suffered a bad head injury. As a result he became depressed and a user of drugs. He was, therefore, a particularly vulnerable individual.

4. The applicant lived with his wife at 44 Bulkington Road in Bedworth ("the address"). On the weekend of 4<sup>th</sup>/5<sup>th</sup> May 2019 Daniel Pitham went to the address. It was there, following an altercation with the applicant, that he was murdered.

5. The weapon used by the applicant to kill his victim was a 10 inch hunting knife which was displayed on the television stand. The judge found that the knife had no practical purpose. It

was not used for cooking or for work, and the applicant could not explain why it was displayed on the television stand in the sitting room. That knife had been used to inflict five separate injuries on Daniel Pitham. When his body was found, he had a sharp force stab wound to the left side of his chest. The track of the wound was 8.5 centimetres in length. It penetrated the pericardial sac, damaging the heart and causing significant bleeding. That was the fatal injury. About 10 centimetres lower down the chest was a further sharp force stab wound which had a depth of 1 centimetre, together with a similar wound at the same height. He had a sharp force stab wound to the abdomen that penetrated a lobe of the liver. The track depth there was 9.5 centimetres. He also had a stab wound to the back of his left shoulder the depth of which was 5 centimetres. There were abrasions to his right ear and lower arm and two fingers on the right hand. There were also abrasions to his back.

6. After the murder, the applicant and his friend, Scott Warner, set about clearing up the address and preparing to dispose of the body. The body was wrapped in a carpet and put in an understairs cupboard. The applicant called a number of friends asking for vans or cars so that he could take the body and "tip him in the slatery". At the same time Daniel's family were becoming more and more concerned about his whereabouts. Rumours began to reach them that he might have been murdered. They were told that the applicant was the last person to see him alive. They were fed misinformation to the effect that Daniel was still alive and well. However, the attempt to conceal the body did not succeed. Two days later the police broke into the address and found the body in the understairs cupboard.

7. The applicant was unanimously convicted of murder. As we have indicated, although the applicant sought leave to appeal against that conviction, the application was refused and it has now lapsed. Warner was acquitted of murder, but was sentenced to 3 years' imprisonment for the count of conspiracy to pervert the course of justice.

8. We therefore turn to the renewed application for leave to appeal against sentence. The judge's sentencing remarks were clear and careful. She had gone to the time and trouble of setting out those sentencing remarks in writing so that there could be no doubt what she had decided and why. We commend them as a model of how to approach a sentencing exercise in a murder case.

9. The judge was, of course, obliged to pass a life sentence. The issue was the length of the minimum term. By reference to Schedule 21 to the Criminal Justice Act 2003, the judge said that the appropriate starting point for the minimum term in this case was 15 years. There is no dispute about that.

10. The judge then considered the aggravating factors. These included the use of the 10 inch hunting knife, which was not in the house for any useful purpose; the fact that the victim was particularly vulnerable due to the injuries caused by his earlier car accident; the concealment of the body and the conspiracy to pervert the course of justice; the fact that the murder had taken place under the influence of drink and drugs; the applicant's previous convictions for violence, including one offence for which he was sentenced to three years' imprisonment; and the fact that at the time of the murder the applicant was the subject of a suspended sentence for an offence of violent assault.

11. The judge considered that there was only one mitigating factor, namely that there had been no real premeditation; the murder had arisen as a result of a spontaneous loss of temper. Despite that, the judge was clear that there was an intention to kill. She reached that conclusion by reference to the fact that Daniel Pitham had been stabbed five times; that at least moderate force had been used for the three significant injuries that he sustained; and that at least one of those stab wounds was in the most vulnerable area of the body, namely the heart.

12. Taking all of those aggravating factors and the single mitigating factor into account, the judge increased the minimum term from the starting point of 15 years to the minimum term imposed of 22 years.

13. On behalf of the applicant, Mr Lewis complains that the minimum term of 22 years was manifestly excessive. The written argument that he has provided to the court focused on the fact that, because there was no premeditation, the appropriate minimum term should not have exceeded 18 years. In his realistic oral submissions, Mr Lewis also suggested that the judge placed too much emphasis on the presence of the knife which, he points out, the applicant was legally entitled to have in his house.

14. We have carefully considered those submissions. There are a number of reasons, both general and particular, why we have concluded that they are not arguable.

15. The general reasons are these. The necessary exercise of considering the aggravating and mitigating factors was undertaken by the judge who had presided over the trial. Although it might be trite to say that she was in the best possible position to weigh them up and come to a view as to the appropriate minimum term, it is also inescapably true. It is not for this court to substitute its own views on the comparative weight and importance of the different factors for those of the trial judge. Moreover, as we have already said, the judge's sentencing exercise was careful and cogent. It is a major responsibility to sentence in a murder case and it is one which the judge discharged admirably in this case.

16. Turning to the particular facts of the case, we do not consider that it can realistically be said that the minimum term was manifestly excessive. The starting point in Schedule 21 is 15 years' imprisonment. To that in this case must be added something like 2-3 years for the

separate offence of conspiracy to pervert the course of justice. We know that that is the right sort of uplift to apply because the term imposed on Warner for the very same offence was 3 years, making allowance for the early guilty plea. Although that was a determinative term (of which only half would normally be served), rather than an element of a minimum term (which would all be served) that is counter-balanced by the fact that the applicant took the lead role in the conspiracy.

17. Then there were the aggravating factors in respect of the murder offence. In our view, the judge was right to attach weight to each of them. We start with the presence of the hunting knife, on which Mr Lewis concentrated his submissions this morning. It seems to us that the judge was entitled to take the size and nature of the knife into account as an aggravating factor. It was a 10 inch hunting knife, proudly displayed on the television stand; it was almost an advertisement for the violence to come. That was compounded, in our view, by the applicant's many previous convictions for violence, including those which meant that he was the subject of a suspended sentence at the very time that he murdered Daniel Pitham. The applicant's culpability was also aggravated by the fact that he had been drinking and taking drugs at the time of the murder.

18. All of that needs to be set against a consideration of the victim who was, as we have said, a particularly vulnerable individual. He was a man with only one arm and who had a drug problem.

19. Against all of those aggravating factors, it is our judgment that the fact that there was no real premeditation is a mitigating factor, but not one of undue significance. We say that for two reasons. The first is because, on the facts, the applicant's propensity for violence, as manifested in his previous convictions and the hunting knife on display, was linked to a short temper. It might, therefore, be said that the applicant was always likely to do somebody major

injury or to kill them without really thinking about it first.

20. Secondly, there is the judge's express finding that, even though the incident was spontaneous, there was still an intention to kill. In some ways, that is the most important finding that the judge made. It was a finding that was plainly open to her, given the circumstances of the murder and the number, force and areas of the stab wounds. In a murder case, the finding of an intent to kill will always be reflected in the sentence passed. Here, the finding of an intention to kill meant that the lack of any real premeditation, although a point in the applicant's favour, did not carry any significant weight.

21. Thus, this was a case where the aggravating factors clearly outweighed the single mitigating factor. That meant that it was inevitable that the sentence would increase further from the notional minimum term of approximately 17-18 years referable to the two counts on the indictment. An increase to 22 years was, in our view, more than justified in all the circumstances. We do not consider that the contrary is arguable.

22. For all those reasons, therefore, we do not consider that the 22 year minimum term was manifestly excessive.

23. We are grateful to Mr Lewis for his submissions this morning, but this renewed application for leave to appeal against sentence must be refused.

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