IN THE COURT OF APPEAL
CRIMINAL DIVISION

Case No: 2021/00818/B3, 2021/00861/B3
[2022] EWCA CRIM 1342

Royal Courts of Justice
The Strand
London
WC2A 2LL

Thursday 22 September 2022

B e f o r e:

LADY JUSTICE SIMLER DBE

MR JUSTICE PEPPERALL

MR JUSTICE GRIFFITHS

R E X

- v -

ZAKARIA LAHRAR

Computer Aided Transcript of Epiq Europe Ltd,
Lower Ground, 18-22 Furnival Street, London EC4A 1JS
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

Mr S Stein KC and Mr J Manning appeared on behalf of the Appellant

Mr A Jackson appeared on behalf of the Crown

J U D G M E N T

Thursday 22 September 2022

LADY JUSTICE SIMLER:

Introduction

1. On 8 March 2018, following a trial in the Crown Court at Basildon before His Honour Judge Lodge and a jury, the appellant then aged 20 was convicted of one count of murder.

2. On 25 September 2018 the appellant was sentenced to custody for life, with a minimum term of 14 years (less time spent on remand). The judge pronounced that the appellant had been on remand for 373 days, when in fact he had been on remand for 372 days. With the agreement of the parties, the judge varied the minimum term to 14 years and one day in order to correct that error. That variation, together with a variation in relation to the victim surcharge order, was dealt with within the "slip rule" period, but not pronounced in open court. That failure does not, of course, render that aspect of the sentence a nullity, but we make clear that is the remand period.

3. There were four co-accused. Daniel Boakye had pleaded guilty to murder before the appellant's trial and was sentenced to life imprisonment, with a minimum term of eleven years and eight months. Two others, Lee Dowman and Connal Cocker-Dawkins were acquitted of murder; and Luis Jordan was acquitted of murder at a subsequent trial.

4. At trial the appellant was represented by leading counsel, Mr Beharrylal KC and his junior, Mr Bonehill. He was also represented by leading counsel at the sentencing hearing.

5. The appellant now renews his application for an extension of time (1081 days) in which to apply for leave to appeal against conviction, following refusal by the single judge. He also renews his application for leave to introduce fresh evidence in support of his application for leave to appeal against conviction, pursuant to section 23 of the Criminal Appeal Act 1968. The fresh evidence he seeks to adduce comprises three psychological reports prepared by Dr Alison Beck, and two short witness statements, dated 11 February 202,2 from Ms Laurent and Ms Weston. The appellant also appeals against sentence with the leave of the single

judge.

6. Mr Sam Stein KC and Mr James Manning have appeared on the appellant's behalf before us. Mr Andrew Jackson has appeared for the prosecution. We are grateful to all counsel for their comprehensive written and focused oral submissions today.

The Renewed Application for Leave to Appeal: Conviction

The facts

7. On 21 August 2017, Daniel Adger was in a ground floor flat at Eden Green, South Ockenden, Essex. He had visited the flat to take drugs. At about 1pm the appellant and Boakye entered the flat. Boakye produced a machete and struck Mr Adger repeatedly with it. Mr Adger attempted to escape but died at the scene.

8. The prosecution case at trial was one of joint enterprise, namely that this was a pre-planned attack on Mr Adger: the appellant went to the flat to provide such assistance or encouragement as was necessary to support Boakye's attack, whether by intervening himself or by preventing others from intervening, and that he did so with the intention that Mr Adger would be caused at least really serious bodily harm.

9. At trial the prosecution relied on evidence from witnesses within the flat who described Boakye and the appellant rushing into the flat, Boakye repeatedly striking Mr Adger with the machete, and the appellant repeatedly either punching or barging Peter Turrant, one of the occupants of the flat. There was evidence from witnesses from outside the flat who saw Mr Adger fleeing the property, pursued by Boakye, who continued to assault him with the machete. There was also telephone evidence, CCTV footage and ANPR evidence that showed the appellant and his co-accused's movements and communications before the attack. The prosecution also sought to rely on inferences to be drawn from the appellant's silence when he was interviewed by the police, during which he was assisted by a solicitor and an appropriate adult.

10. The defence case was that the appellant played no part whatever in any joint attack and did not know of any plan to attack Mr Adger. Although he was present in the flat, he did not

intend to assist or encourage Boakye in the attack; and nor did he know that Boakye had the machete on his person.

11. The appellant gave evidence at his trial. He said that he went to the flat to buy drugs. He met Boakye when he arrived. Boakye instructed him to come inside with him. Boakye did not appear to be armed, and the appellant did not know that he intended to attack Mr Adger. During the attack, the appellant did not provide any assistance or encouragement. Nor did he punch Peter Turrant.

12. Before the trial, the appellant's legal team obtained a report from Dr Marriott, dated February 2018. She concluded that the appellant's cognitive abilities fell within the lowest two to ten per cent of the population. His IQ was on the cusp of significant impairment and his verbal comprehension and working memory were below average. His overall suggestibility score was significantly above average, which meant that if presented with leading questions, he might change his answers. She said that discrepancies in his evidence could be explained by that suggestibility. Dr Marriott made a series of recommendations to ensure the appellant's full participation at his trial. These included the taking of regular breaks, proactive checks by his legal team to ensure that he understood the proceedings, and the putting of concise, non-leading questions. The report did not recommend that an intermediary be instructed. We consider that there is no reason to think that had it done, that recommendation would not have been acted upon. The report was provided to the judge and to prosecution counsel, and there was a discussion between counsel and the judge about the recommendations made within it, with a view to deciding how best to achieve those recommendations. Leading counsel for the appellant agreed with the judge that the breaks recommended were only necessary when dealing with witnesses within the property or immediately outside the property, and that the approach to the other recommendations could be flexible, given that the appellant had the benefit of an extensive legal team. Leading counsel made clear that, given the contents of Dr Marriott's report, real care should be exercised in avoiding sarcasm, idioms, comment and double questions in the questions that

were asked of the appellant, and in particular that he should be asked clear, short, specific questions. Trial counsel did not seek to prevent the prosecution from asking leading questions. Moreover, he indicated to the judge that he did not intend to apply for an intermediary, because the report did not recommend that one was required.

13. There was no ground rules hearing that might, had it taken place, have included a list of agreed questions to be put to the appellant, but both leading counsel and indeed the judge made clear that they would intervene if questions were asked that might inhibit the appellant's full understanding or pose problems for him in answering, or that were otherwise problematic.

The fresh evidence

14. The fresh evidence is in the form of three reports from Dr Beck: the first dated 21 October 2019; the second dated 2 November 2020; and a third more recent report, dated July 2022, prepared after the decision of the single judge. The reports contain Dr Beck's conclusions that the appellant's intellectual functioning and memory were poor. She said that he suffers from an anxiety disorder and ADHD which were likely to have disadvantaged him during the trial. She referred to the fact that during his evidence he made repeated references to being unable to remember events and said that this could have been misinterpreted as malingering or avoidance behaviour. He also asked for clarifications, which might have alerted his trial lawyers to the need for an intermediary.

15. The second report Dr Beck repeated and reinforced points made earlier. She concluded that the appellant had poor real-world adaptive functioning, which demonstrated that he was intellectually disabled. He had very poor processing speeds which would have impacted on his ability to understand what was happening at the time of the offence.

The Proposed Grounds of Appeal

16. There are four proposed grounds of appeal against conviction which are supported by the fresh evidence from Dr Beck. The proposed grounds of appeal have been set out and fully and comprehensively developed in writing by Mr Stein KC and Mr Manning. We do not

propose to set out in detail the written submissions made on the appellant's behalf. The central submission was that the appeal depends upon the court's consideration of the fresh evidence from Dr Beck. That evidence meets the criteria in section 23 of the 1968 Act. Mr Stein emphasised that Dr Beck's reports add to the evidence that was available at the time of trial from Dr Marriott in relation to the appellant's psychological condition. The additional reports from Dr Beck confirm that the appellant was highly suggestible, and that he had poor intellectual functioning, a problem with his working memory, and difficulty expressing himself. Significantly, his ability to process was exceptionally slow. Dr Beck's opinion was that this would have affected his understanding both at the time of the offence and at trial. His low intellect, slow processing and memory function meant that he depended heavily on social cues. But his communication and personal skills appeared relatively better than his intellectual functioning and understanding and would have given the impression that he understood more than he actually did. She also highlighted his unwillingness to ask for help.

17. Dr Beck's reports address how those psychological issues and intellectual low functioning detrimentally impacted on the appellant's trial. She referred to the use of complex and/or leading questions which confused him. He had told her that he was asked questions that he did not understand, but nonetheless had answered them because of his suggestibility. She said there was a misunderstanding around questions asked of him. She gave an example of him being asked about whether he had "barged" Mr Turrant. The use of the word "barged" was understood by the appellant, not as something accidental, but as indicating that he was being asked whether he had behaved aggressively. She also referred to the telephone schedule and concluded that it was highly unlikely that he would have been able to follow that evidence and in consequence, repeatedly answered that he could not remember when asked about it.

18. In her third report, lodged on 15 July 2022 after the single judge's refusal on the papers, Dr Beck concluded that the trial adjustments were highly unlikely to have been sufficient to meet the appellant's needs. It was her opinion that to ensure fair and full participation in the

trial, it would have been necessary, thoroughly to understand the appellant's needs. Secondly, there should have been regular checks of his understanding. Thirdly he should have been asked to explain events in his own words and asked whether he understood the "big picture"; and how he appeared to the jury. Dr Beck said that the appellant had significant memory issues that were apparent from his cross-examination. It was necessary for the jury to understand the nature of his impairments in order to make sense of his behaviour. However, the jury were not informed of his impairments. She referred to his ability to understand information as being comparable to the ability of a four year old child and said that he did not realise how little he understood. It was highly likely that that meant that he relied on social cues in cross-examination and did not understand the situation.

19. In summary, Dr Beck's three reports made clear that the appellant suffered from significant mental impairments, but the jury was not directed on the effect of those impairments on his behaviour, either at the time of the offence or when giving evidence. She concluded that it was highly unlikely that he understood the trial or that he was able to explain his actions effectively. In her view, an intermediary would have mitigated those difficulties. Insufficient steps were taken to address the appellant's full participation in the trial.

20. Against that background, Mr Stein submitted that the failure to tell the jury about the appellant's mental health impairments meant they were unable to take such mental health and intellectual impairments into account when assessing his intent and when assessing his evidence. He submitted that the jury could only properly judge the appellant's intent with the assistance of expert evidence. But, despite Dr Marriott's report being before the court, neither the judge nor trial counsel considered whether the appellant's mental health was relevant to the jury's assessment of intention. Moreover, despite the clear evidence from Dr Marriott as to safeguards that should be in place, the safeguards were inadequate to achieve full participation.

21. Mr Stein relied on *R v Masih* [1986] Crim LR 395; *R v Henry* [2005] EWCA Crim 1681;

and *R v BRM* [2022] EWCA Crim 385. He submitted that in those cases the Court of Appeal has held that expert evidence can be relevant, particularly in a case in which a defendant's IQ was 69 or below. Here such evidence was directly relevant to whether the appellant had the necessary intention to be guilty of murder. The appellant's ability to understand a "fast moving situation" was impaired by his very poor processing speed. The jury was deprived of information about the appellant's background and impairments and was not therefore in a position properly to assess the issue of intent. The conviction was accordingly unsafe and this court should extend time and grant leave to adduce the fresh evidence so that the full court can consider the evidence of Dr Beck, which is plainly relevant, reliable, and ought, in the interests of justice, to be considered because it goes directly to the ground of appeal on which the appellant relies.

22. Secondly, Mr Stein submitted that the court failed to take account of the appellant's vulnerabilities in relation to the measures put in place. There was no ground rules hearing, and the defence team plainly failed to appreciate the severity of the appellant's needs. In this regard, Dr Beck's report confirms that counsel was wrong to conclude that the appellant was not sufficiently vulnerable to require a ground rules hearing. His psychological issues created difficulties for him when giving evidence and his needs were not fully addressed.

23. Thirdly, given his low IQ and cognitive issues, it was essential that he was afforded an intermediary at his trial. Mr Stein adverted to trial correspondence that suggested that there may have been a recommendation for the use of an intermediary in an earlier report from Dr Marriott – a matter, he submitted, that was raised with the appellant's family. Nonetheless, there was no such application, and Dr Beck's report makes clear that this, too, was unfair and results in the conviction being unsafe.

24. Fourthly, the failure to inform the jury that the appellant was vulnerable, had a low IQ and was highly suggestible was unfair. This was particularly so given that his communication and presentation were liable to suggest an understanding and ability greater than he actually had. The impression given by him during evidence failed to account for his vulnerabilities

and disabilities, so that the jury were left with a misleading impression of him, which led to the trial being unfair and the conviction being unsafe.

25. In view of the criticisms made of trial counsel in the grounds of appeal, the appellant was invited to and did waive legal professional privilege. This court has been provided with a number of documents setting out responses from trial counsel. In short summary, in relation to ground 1, they say that the appellant did not present as someone with a low IQ and that Dr Marriott's opinion would not have been admissible in relation to the issue of intent.

26. In relation to ground 2, they say that the appellant did not present as suggestible, and nor did he have, in their conversations and in the course of the evidence which he gave, the "receptive language abilities of a four year old". They say that there was no suggestion that he presented as severely vulnerable. To the contrary, he understood the case throughout and gave clear instructions to them and clear evidence to the court.

27. In relation to ground 3, trial counsel maintain that Dr Marriott did not recommend an intermediary. Moreover, the transcripts of the appellant's evidence demonstrate that the lack of an intermediary caused him no disadvantage. He gave clear answers in cross-examination and participated fully in the trial.

28. Finally, in relation to ground 4, trial counsel say that the appellant's presentation did not support the matters now advanced on his behalf in Dr Beck's report to the effect that he could not tolerate questions in cross-examination, or was unable to recall, explain, or justify his actions. They say that he gave clear evidence and was not believed. He did not make culpable admissions; nor were his answers confused or plagued by the discrepancies referred to by Dr Beck.

29. The renewed application for leave to appeal against conviction and to adduce fresh evidence is resisted by the Crown. Mr Jackson has produced a detailed, written response to the proposed grounds of appeal. Again, we do not set that out. In short, however, he contested the admissibility of Dr Beck's evidence. In his submission, the opinion evidence of Dr Beck can only be admissible if it is relevant to the issues that the jury had to consider,

namely whether the appellant participated in a joint attack and shared the requisite intention. He submitted that neither Dr Marriott nor Dr Beck engaged with that issue. Their evidence went to the question of how a fair trial could be ensured and what needed to happen to ensure it.

30. Mr Jackson rejected the contention that the evidence might be said to go to the jury's assessment of the appellant's decision-making ability, both at the time of the offending and when giving evidence at trial. He submitted that it was clear to the jury from the adaptations that were made in the course of the trial that this was a young man who had limited intellectual ability. The jury heard about his attendance in the police interview with an appropriate adult and would have understood the need for caution and care in assessing his evidence. This was a straightforward case involving a visceral issue as to intent and nothing more sophisticated. He submitted that sufficient safeguards were put in place to enable the appellant to deal with the questions that were asked of him and to ensure his full participation at trial. He was able to tell the jury about his activities, including as a drug runner. He was able to explain his presence at the flat was to sell cannabis. He was able to explain that he had no prior knowledge or understanding of the attack. Looked at in the round, this was a case that did not require evidence from an expert to set out the limits of the appellant's intellectual abilities or his impairments, and the conviction is safe.

31. Mr Jackson also submitted that it is not unusual for a person convicted of murder to express a negative view of his trial counsel. Moreover, a psychological assessment carried out following conviction is inevitably different to one carried out before trial. Much of Dr Beck's opinion, particularly regarding the issue of an intermediary, is informed by the negative account given by the appellant. In any event, there is little difference between the conclusions reached by Dr Beck and Dr Marriott in terms of the appellant's suggestibility, understanding of language and vocabulary, and difficulty in processing questions. To that extent the opinion of Dr Beck is not fresh evidence, as those matters were properly considered by the judge. Even if the opinion of Dr Beck had been available, there is no

reason to think that the trial would have been handled differently, or that the judge would have taken a different course. In summary, he submitted that there was no proper basis for admitting the report.

Our Analysis and Conclusions

32. As the single judge observed, all four grounds advanced relate to the appellant's intellectual ability and the way in which that was dealt with in the trial process. There is considerable overlap between the four grounds.

33. The law on the question of expert evidence going to the issue of specific intent is clear. In *R v Turner* (1974) 60 Cr App R 80, Lawton LJ said (at page 83):

> "... An expert's opinion is admissible to furnish the court with scientific information which is likely to be outside the experience and knowledge of a judge or jury. If on the proven facts a judge or jury can form their own conclusions without help then the opinion of an expert is unnecessary. …"

That approach was followed in subsequent cases, including *R v Masih* and *R v Henry*, to which we were referred. In *Henry* the court made clear that "An intention that someone should be killed is a visceral matter of no great complexity..." Such an intention extends from instinct, rather than intellect. In our judgment, the position has not arguably been altered by the Supreme Court's decision in *R v Jogee* [2016] UKSC 8. The issue of intent is ordinarily the province of the jury. It is right that such evidence might be admissible, depending on the facts and issues in a particular case; but such cases will be rare.

34. In the instant case there was no evidence, admissible or otherwise, that the appellant's intellectual ability meant that he could not form an intention to go along with an attack on a rival drug dealer. Neither the reports of Dr Marriott or Dr Beck suggest otherwise. What is said, however, is that the evidence from the experts – and in particular Dr Beck – goes to the jury's assessment of the appellant's decision making ability, both at the time of the offence in what was a fast moving incident, and when giving evidence at trial. A factual assessment of

the appellant by the jury required a proper understanding of his impairments; and a fair trial required full and careful warnings to the jury about his difficulties, and a clear understanding of what those difficulties were.

35. We have given anxious consideration to those arguments, advanced alongside Dr Beck's reports, but have concluded that they raise no arguable ground of appeal.

36. The appellant gave evidence over the course of two days. During the course of that evidence he had no difficulty in explaining that he had not intended to kill or to cause grievous bodily harm. He said that he had not known that Boakye intended to attack Mr Adger. During the course of cross-examination, and following a series of open questions concerning his phone contacts with his co-accused, and in the lead up to the murder, he volunteered this:

> "Can I just say this, please? This was a normal day. I didn't expect what was going to happen, which happened. I didn't have knowledge of Mr Boakye holding a machete. This was a normal day, just another day. I was going to collect weed, and that is it."

37. We have carefully considered other parts of the transcripts of the two days of the appellant's evidence. They show that the appellant did not respond to leading questions by simply agreeing with them. He was able to withstand suggestions made to him and to make clear that he disagreed. Where he did not understand a question, he made clear that that was so. By way of example, there were a number of occasions where he demonstrated an ability to correct counsel and to ask for an explanation or repetition. Trial counsel and the judge were alive to potential difficulties and alert to intervene if they arose. For example, on one occasion the appellant was asked about a phone number. The judge and the appellant's counsel both intervened to stop counsel for the co-accused asking that question in a way that was not clear. Shortly afterwards the appellant was asked about an individual and asked: "Is he a friend?" He answered: "He's an associate". That, we consider, demonstrates that he understood a question and its implications and gave an answer which reflected a nuanced

approach.

38. There were many other occasions on which the judge or counsel intervened to ensure that a question asked was short and clear. There were occasions when the appellant said, “Can you rephrase that, please?" We were taken to a passage in the transcript where the appellant was asked in cross-examination about his involvement in a football team. The question was designed to elicit whether he understood the concept of teamwork. He was asked about the way in which defenders protect or assist a goalkeeper. It was a clear, easy to understand illustration of what was being put, and the appellant, it appears, understood, but disagreed with what was being suggested. There are also many passages in the transcript which demonstrate the appellant's ability to make clear his lack of understanding. This passage suffices as an example:

> "Q. Well, why did you ignore this threatening man?
> A. Can you say that again, please?
>
> Q. Why did you ignore ---
> A. I think – you're confusing me a bit. I'm not gonna lie to you.
>
> Q. All right.
> A. You're confusing me.
>
> Q. I don't want to confuse you.
> A. You're confusing me.
>
> Q. Let’s just go back.”

This passage demonstrated the appellant's refusal to accept a suggestion put to him, his determination to ask for the question to be repeated, his ability to challenge the questioner when he did not understand, and to reject what was being suggested.

39. Indeed, we have not identified (or been shown) any passage in the transcript where the appellant accepted a suggestion put to him which was an admission or acceptance of culpability or the prosecution case. To the contrary, the appellant consistently denied the suggestions that he participated knowingly in the assault and that he knew about the weapon

that was to be used.

40. In short, in our judgment, the expert opinion provided to the court by Dr Marriott made adequate recommendations about measures that would ensure that the appellant was able to give evidence effectively. Those recommendations were followed. With the assistance of frequent breaks, the appellant gave his evidence well. The questions asked of him were short and clear, and there were interventions when that was not the case.

41. The issues for the jury were straightforward. The first was whether, in advance of going into the flat, the appellant knew that Boakye was armed. He maintained that he did not. The second was whether he knew that Boakye intended to attack the victim. He clearly said that he did not. The third was whether he was there as a supporter because of his big build. Again, he said that he was not. The fourth was whether, when the weapon was produced, he could have left or withdrawn. He said that he was shocked and did not have the time or the opportunity to react. He was able to understand and contradict the assertions that he did not accept. We conclude that there was a clear evidential basis upon which the jury could properly conclude that the appellant went to the flat knowing that Boakye intended to carry out a serious assault on the victim; that he joined in the intended assault as a supporter of Boakye; and that he shared the intention that Boakye would carry out an assault that caused at least really serious harm.

42. We have identified no significant discrepancies in the evidence given by the appellant. In relation to the critical central issues, as we have indicated, he maintained his position throughout. Accordingly, this was not one of those cases which required the jury to hear evidence about the appellant's cognitive abilities. In our judgment, such evidence would have added nothing to that of which the jury were already aware from the evidence they saw and heard, and his presentation in the witness box.

43. The issue of knowledge and intent had to be decided by the jury on an assessment of all the evidence in the case. This was not a case where the defence was that the appellant did not understand what was happening either before or at the time of the attack. He advanced a

positive case that he was present for a drug purchase and nothing more. The defence legal team had material that would have enabled them, had they chosen to use it, to run this case on the basis that the appellant's intellectual and mental impairments meant that he did not understand what was going on. They chose not to do that. We fully understand why that is the case.

44. As we have said, the jury had a lengthy opportunity to assess the appellant. In our judgment they would have picked up from the questions that the appellant was unable to answer, or where he said that he did not understand, that he was a young man who had low intellectual functioning. We agree with Mr Jackson that the adaptations made for the appellant, but not for others, would have alerted the jury to this issue. Moreover, the jury were told that he had an appropriate adult at the police station. Again, this would have alerted them to the difficulties.

45. This was a straightforward case. The question for the jury and for the appellant was whether there was a plan to beat up Mr Adger. The jury were perfectly able to assess him and to determine on their assessment whether he was part of that plan and whether he had the necessary intent.

46. The decision about what an offender intended is properly a matter for a jury to determine and not for expert opinion. Cases where expert opinion might assist on this issue are, as we have said, rare. In our judgment, this was not one of those rare cases, even arguably, where such evidence was or would have been admissible. While we acknowledge that the new opinion evidence may go further than the original report, we have concluded that the fresh evidence is not admissible and does not satisfy the statutory test. This proposed ground of appeal is not arguable.

47. We deal briefly with the remaining three proposed grounds of appeal. We consider that ground 2 is also not arguable. We have already dealt with the report of Dr Marriott and its recommendations, and the response by both trial counsel and the judge. In our judgment, the steps taken were adequate to ensure the appellant's proper participation in the trial and to

ensure that he received a fair trial.

48. Ground 3 concerns the failure to appoint an intermediary. This, too, is not arguable for the reasons we have given. The discussion before trial about how the trial process would be adapted reflects a careful consideration by the judge in accordance with the relevant law and guidance on the issue, to ensure effective participation. It seems to us that the judge and counsel were alive to the appellant's difficulties and alive to the need to intervene. The judge was best placed to assess the appellant as he gave evidence and could have identified any measure considered necessary, including the use of an intermediary. He did not do so. We are quite sure that the absence of an intermediary did not arguably render the trial process unfair.

49. Finally, so far as ground 4 is concerned, the jury were not told about the appellant's intellectual difficulties and his suggestibility, but in the circumstances of this case, which raised the straightforward issues that it did, it was not necessary for the jury to be told about those matters. The evidence would have added nothing to that which the jury would already have been aware from the features we have already identified.

50. For all these reasons, and notwithstanding the comprehensive and forceful submissions made on the appellant's behalf, the renewed application for leave to appeal against conviction is refused. Had there been any merit in the application we would have extended time. In light of our conclusion however such an extension would be academic, and we accordingly refuse the application to extend time.

The Appeal against Sentence

51. We turn to address the appeal against sentence, for which the single judge gave leave. The appellant was 20 years old at the date of conviction and sentence. He was of previous good character. A Victim Personal Statement from Diane Bailey (the mother of Mr Adger), dated 29 January 2018, was read to the judge.

52. The judge did not call for, and was not provided with, a pre-sentence report. A report was not then necessary in the circumstances of this case, and we are satisfied that no report is

now necessary.

53. The judge concluded that the appellant attended the flat knowing that Boakye was going to carry out an attack with the intention of causing very serious injury. His role was to prevent others from intervening, through intimidation and the use of force. The judge said that he could not be sure that the appellant knew that Boakye was armed with a machete taken to the scene. In those circumstances, the judge correctly adopted a minimum term starting point of 15 years, rather than the 25 year starting point taken in Boakye's case.

54. The judge found that the offence was aggravated by both the nature of the attack and by the background of drug dealing. He increased the minimum term to 19 years to reflect those features. However, the judge observed that the appellant played a lesser role and did not intend that Boakye would act with intent to kill. The appellant did not himself use a weapon and he had shown a willingness to give evidence against Boakye when Boakye sought to limit his role.

55. In addition to those mitigating features, there was the significant personal mitigation in the appellant's limited intellectual abilities, his ADHD, the fact that he was significantly suggestible and, as the judge ultimately expressed it, "not especially bright, easily led and persuadable … a child trapped in a man's body". The judge reduced the minimum term to one of 14 years, to reflect all of those features.

56. There are two grounds of appeal against sentence for which leave was granted by the single judge. First, it was submitted by Mr Stein that the judge failed to give sufficient weight to the appellant's youth and immaturity. He was aged 19 at the time of the murder and, aged 20 at the date of sentence.

57. In *R v Peters* [2005] EWCA Crim 605, Mr Stein submitted that, when dealing with offenders aged between 18 and 20, the court regarded it as appropriate to adjust the minimum term starting point to reflect the offender's age and immaturity, rather than to treat it as one of the many mitigating features. Here, that was not the approach adopted by the judge. But whether or not that is an approach that finds favour, and whether the judge determines to

make a downward adjustment first, before any uplift, or to approach the minimum term in the way that this judge did, it is essential for full consideration to be given to personal mitigation such as existed in this case. The appellant is a young man with real challenges, whose language and other intellectual abilities were significantly impaired. Whether the judge reduced the starting point to reflect those difficulties to one of 12 years before adjusting it for aggravating and mitigating features, or approached the sentence in the way that he did, on either basis Mr Stein submitted that the five year reduction to reflect the appellant's role and personal mitigation was, insufficient in light of all the evidence in the case.

58. We have considered those submissions with care but do not accept them. There is and can be no criticism of the 15 year starting point for the minimum term taken by the judge, before the adjustments upwards and downwards that he made. As we have said, the judge increased the notional minimum term by four years to reflect the fact that this was a joint attack, carried out in the course of criminal activity and also because of the particularly violent nature of the attack, which was carried out publicly in front of horrified witnesses. Those factors properly justified the substantial uplift that was made.

59. In *R v Peters*, as Mr Stein realistically acknowledged, the court's suggestion about reducing the minimum term to reflect an offender's age and immaturity in a case involving an offender aged between 18 and 20 was expressed to be "one way" of approaching sentencing in such a case. That, of course, is not the only way. In our judgment, it must be right that so long as a judge reflects the mitigating factors correctly, whether by way of adjustment to the starting point or by way of taking account of those matters as mitigating features in the case, it seems to us that the order in which the adjustments are made is of little consequence.

60. Here, the judge undoubtedly took account of Dr Marriott's report and the opinions she expressed about the appellant's difficulties. He recognised the relevance of the appellant's immaturity and did not limit his consideration to chronological age. He treated as the principal mitigating factors in the case this combination of factors, namely, age, immaturity, and the effect of his limited intellectual capacity. They formed a substantial part of the

overall five year reduction he made.

61. The account taken by the judge of the principal mitigating factors would have allowed him to reduce the minimum term starting point to 12 years at the first stage. A further appropriate reduction to reflect the other mitigating features of two years might have reduced the notional term to ten years. However, the aggravating features would then have had to be accounted for, and here that would have led to the 14 year minimum term which was imposed.

62. As we have said, it seems to us that the order in which the judge calculated the adjustments to arrive at the minimum term made no difference to the outcome in this case, since we are satisfied that the mitigating and aggravating features were correctly reflected and balanced fairly. Here, the minimum term arrived at by the judge properly reflected the principal mitigating factors in the case. The judge had the clinical opinions of Dr Marriott which set out with clarity the nature of the appellant's difficulties. The further clinical opinions of Dr Beck add little to those already expressed. The judge took full account of Dr Marriott's opinions and of the appellant's mental health difficulties. These were properly and fairly accounted for in the calculation of the minimum term and, in our judgment, no further or separate reduction was necessary.

63. For all these reasons, balancing the seriousness of the offending, the culpability of the appellant and all of the mitigation, we have concluded that the minimum term in this case was not manifestly excessive. Accordingly, and save to the extent that we have corrected the remand period and the minimum term expressed, this appeal against sentence is dismissed.

64. We are, as we said at the outset, very grateful for the assistance that all counsel have provided to us.

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

Lower Ground, 18-22 Furnival Street, London EC4A 1JS

Tel No: 020 7404 1400

Email: rcj@epiqglobal.co.uk