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**Neutral Citation Number: [2022] EWCA Crim 1421**

CASE NO 202202510/A4

**IN THE COURT OF APPEAL  
CRIMINAL DIVISION**

**A Reference by His Majesty's Attorney General  
Under S.36 of the Criminal Justice Act 1988**

Royal Courts of Justice  
Strand  
London  
WC2A 2LL  
Wednesday 19 October 2022

**B e f o r e :**

**LORD JUSTICE WILLIAM DAVIS  
MR JUSTICE PEPPERALL  
MRS JUSTICE FOSTER DBE**

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(Official Shorthand Writers to the Court)**

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**Miss J Ledward appeared on behalf of HM Attorney General  
Mr Z Ali KC appeared on behalf of the Offender**

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**HTML VERSION OF JUDGMENT**

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**Lord Justice William Davis:**

1. On 14 July 2022 Sheryar Khan (born on 20 February 2005 and now aged 17) was convicted of murder and of wounding with intent. On 15 July 2022 he was sentenced as follows:

Murder: detention at Her Majesty's Pleasure, minimum term 16 years less 274 days on remand;

Wounding with intent: eight years' detention concurrent.

2. Two other men, Arbaz Khan (aged 21) and Mohammed Hussain (aged 17) were convicted of manslaughter and unlawful wounding. In each of their cases a substantial determinate sentence was imposed.
3. His Majesty's Attorney General believes the sentence in relation to Sheryar Khan 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.

### The facts

4. Shortly after 5.00 a.m. on the morning of 10 October 2021 Arbaz Khan, the offender's older brother, was driving around Bradford City Centre in a Seat car. Friends of his were also in the car. Khan spotted a young man in the street. This young man supposedly had been causing trouble for the offender. Khan and another man got out of the car to speak to that young man. A fight broke out. Other men came from the car to assist. Friends of the young man got involved in the violence. Two of those who were fighting with Khan and his friends were Kian Tordoff and Matthew Paige. Khan's friends got back into the Seat which initially drove away leaving Khan in the street. He was able to run after the car and get into it. In the course of the fighting Khan dropped his mobile phone which was left in the street. He was extremely angry as a result of what had happened. He had suffered minor injury. More significantly he perceived that he had been humiliated. He decided to take the law into his own hands and to return in order to take revenge on those responsible.
5. A girl named Reanna picked up the telephone after Khan had left. She was a former girl-friend of the offender. The screen picture was of some of the offender's relations. She contacted the offender via Instagram to tell him that she had found the telephone.
6. The offender was asleep in bed at this time. Whether as a result of the message from Reanna or because one of his other brothers was contacted by Arbaz Khan or both, the offender got up, got dressed and left his home. He and another went in a BMW car to the home of Arbaz Khan. There they met Arbaz Khan. Six men (including the offender) then drove in the BMW into the centre of Bradford. By the time the car arrived in the city centre the offender was armed with a knife and a machete. From where he got his weapons cannot be stated with certainty but it is clear that he brought weapons to the scene. Others in the car were similarly armed.
7. Kian Tordoff and Matthew Paige were still in the centre of Bradford. The time by now was 5.45 a.m. Together with some friends they were messing around with some pieces of cardboard in Rawson Square, Bradford. Arbaz Khan saw them. The BMW pulled up on the square. Khan and Hussain got out of the car. Khan shouted: "We've got you now you little bastards". The offender also got out of the car. He had a machete in one hand and a large knife in the other. When Kian Tordoff saw the occupants of the BMW emerging with weapons in their hands, he ran into the square. The offender chased after him. Kian Tordoff slipped and fell on a raised pedestrian crossing. As he lay on the ground the offender stabbed him multiple times. One 11 centimetre deep stab wound cut into his lung and severed his aorta. Another stab wound over the hip injured Tordoff's colon and small intestine. There were further stab wounds to the neck and chest. Kian Tordoff tried to protect himself. He suffered defensive wounds to his right hand and his left arm. Despite the severity of his injuries he was able to get to his feet and to run a short distance to where his friends were before he collapsed.
8. Having attacked Kian Tordoff, the offender then ran towards Matthew Paige. He stabbed Paige once to the upper chest. The stab wound penetrated Paige's lung which collapsed. The offender also slashed at Paige with the machete causing a wound across Paige's stomach.

9. The offender and the other men who had got out of the BMW then went back to the car. They did so in a purposeful and controlled way, still carrying their weapons. As they got to the car the offender was overheard laughing and saying, "We've killed him". All of the men left in the BMW. The weapons were never recovered. They were probably disposed of in a park away from the centre of Bradford. The offender and the others then went back to his family home where the offender washed his clothes to remove any blood staining. Both the Seat and the BMW were abandoned in the days following the attack.
10. Kian Tordoff was treated at the scene. However, he sustained massive blood loss. He was dead on arrival at hospital. Matthew Paige's injury was life-threatening. On his arrival at hospital he was in a critical condition. He required significant surgical intervention to save his life. He very easily could have died.

#### Material available to the judge

11. Kian Tordoff was 19 when he died. His mother, Danielle Laycock provided a victim personal statement. Kian was her oldest child, the eldest of her four children. She was 22 years old when he was born. She described him as her best friend; as a kind, loving, caring, happy-go-lucky lad who had helped her bring up his younger siblings and always supported her. She could not begin to describe the pain of losing him. Her life and that of her other children had not been the same since he had died and never would be. She had been an outgoing person but now found simply going to the local shop or supermarket almost impossible. She had trouble motivating herself to do anything and dreaded leaving home knowing Kian would not be there on her return. She had to deal with his grieving siblings and had not been able to protect them from the awful details of Kian's death. They too were similarly affected and no longer motivated to do anything. Ms. Laycock was anxious and paranoid when her other children were out with friends.
12. Matthew Paige also made a victim personal statement. He described the incident as having ruined his life. As well as suffering life-threatening injuries he had watched one of his closest friends die. They did everything together, meeting up first thing in the morning and staying together until last thing at night. They even looked alike and people thought that they were brothers. He said that Kian had struggled with his own mental health in the year before his death but had finally seemed to be turning a corner and had been trying to live his life: "Losing him has destroyed me. I associate everything with him and cannot face moving on and doing anything without him." He had not been able to return to his own home because the memories of Kian were too painful and as a result, he, his partner (who also had witnessed the attack) and their young child were living in a room at his mother's address. He suffered from anxiety, 4nightmares, flashbacks and other symptoms. He had become a recluse, rarely leaving the house save to visit Ms. Laycock; this in turn put a strain on his relationship. He had been unable to access counselling until the trial had concluded. The friendship group which he and Kian Tordoff had been part of was slowly disintegrating as those who were present on the night found it hard to go on with their lives: "It's like we've all got stuck at that one night." He found it "unthinkable" that he too might have died when his son was too young to remember him.
13. The offender was 16½ at the time of the offences. He had no convictions. In May 2018 (when he was aged 13) he received a youth conditional caution for possessing an offensive weapon in a public place.
14. There were two psychiatric reports before the court. The offender had raised the partial defence of diminished responsibility before the jury. He had relied on the evidence of Professor Fazel who had diagnosed a psychotic illness of unknown aetiology and who concluded that the offender's capacity to exercise self-control was substantially impaired.
15. The psychiatrist instructed on behalf of the prosecution, Dr Crawford, acknowledged that the offender experienced auditory hallucinations but considered that the offender did not suffer from any major mental disorder. The psychiatric reports did not deal specifically with the offender's maturity, i.e. whether he was more or less mature for his chronological age. Dr Crawford noted a history of behavioural problems at school as a result of which he had attended a number of secondary schools. He had left without any qualifications. He was not in training or work at the time of the offences.

#### The sentence

16. Having rehearsed the facts as we have set them out, the judge turned to paragraph 5A of Schedule 21 of the Sentencing Act 2020 as amended by the Police, Crime, Sentencing and Courts Act 2022. The amended provisions of the 2020 Act applied to any person convicted on or after 28 June 2022. Had the offender been 18 or over he would have been subject to paragraph 4(1) of Schedule 21 because he took weapons to the scene intending to commit an offence or having them available to use as weapons which he then used in committing the murder. The starting point would have been 25 years' custody. By the amended provisions in paragraph 5A the appropriate starting point for someone aged 15 or 16 in such a case was 17 years' custody. That was the starting point which the judge applied in the offender's case.
17. The judge identified aggravating factors: the ferocity of the assault which, to use the judge's term was caught "graphically" on CCTV; the presence of young people who witnessed the violence and its aftermath which included Kian Tordoff dying in front of them; disposing of evidence, namely the knives and machetes; taking steps to conceal evidence, namely washing bloodstained clothes; the deliberate stabbing of a second person, namely Matthew Paige.
18. The judge found that there was no mitigation in the fact that the offender may not have intended to kill Kian Tordoff. He said that the attack on Tordoff was so ferocious and sustained that any mitigation on that basis was entirely extinguished.
19. The judge also concluded that the offender's psychotic symptoms did not significantly reduce his culpability. His view was that the real driver for the offending was the encouragement of the offender's older brother. He said that the influence of Arbaz Khan could not be underestimated.
20. However, the judge did find that the offender's development had been affected by his 5mental illness. He noted the offender's tendency to act impulsively, the evidence of the offender's exclusion from school for fighting and the similar behaviour of the offender since he had been on remand. He regarded "the combination of your age, your immaturity and your mental disorder as reducing your culpability by a significant degree".
21. Balancing the aggravating factors against the mitigating factors led the judge to decide that the appropriate minimum term was 16 years before any deduction of days on remand. In relation to the offence of wounding with intent, the judge identified the offence category in the current sentencing council guideline as 1A due to the nature of the weapons used and the life-threatening injury to and long-term psychological effects upon Matthew Paige. The starting point for an adult offender would have been 12 years with a category range of 10 to 16 years. The offender's youth and immaturity meant that the appropriate period of detention was eight years.

#### The submissions of the parties

22. On behalf of the Attorney General the principal submission is that the minimum term failed to reflect the separate offence of wounding with intent. The judge was correct when he said that he had to take into account that offence when fixing the minimum term for the offence of murder. The minimum term ought to have been increased significantly beyond the starting point of 17 years to reflect the separate offence and the other aggravating factors set out by the judge. Those matters substantially outweighed the mitigating factors. Age (to which the judge referred) was taken into account by the reduced starting point in paragraph 5A. The judge made a specific finding that the offender's mental disorder had not reduced culpability to any significant degree. Thus, the judge fell into error when setting the minimum term below the starting point in paragraph 5A. The minimum term should have been significantly above that starting point.
23. Mr Zafar Ali KC represented the offender at trial and has made submissions to us on his behalf. He argued that the fact that there were more aggravating factors than mitigating factors should not lead to the conclusion that the former outweighed the latter. The judge was entitled to attach greater weight to mitigating factors. Mr Ali relied in particular on the judge's findings in relation to mental disorder and the part played by the offender's brother in the offending. As to the offence involving Matthew Paige, that was part of a single incident and did not significantly affect the overall culpability of the offender. Mr Ali emphasised the fact that the sentences were imposed by an experienced judge who had heard the trial. He was best placed to assess the competing factors. Finally, Mr Ali argued that even if the

sentence could be said to be unduly lenient, for an offender aged 17 it was not necessary for the court to exercise its powers to increase the sentence.

### Discussion

24. We remind ourselves of what was said by Lord Lane CJ in **Attorney-General's Reference No 4 of 1989 [1990] 1 WLR 41** when section 36 of the 1988 Act was in its infancy:

"A sentence is unduly lenient, we would hold, where it falls outside the range of sentences which the judge, applying his mind to all the relevant factors, could reasonably consider appropriate. In that connection regard must of course be had to reported cases, and in particular to the guidance given by this court from time to time in so-called guideline cases. However it must always be remembered that sentencing is an art rather than a science; that the trial judge is particularly well-placed to assess the weight to be given to various competing considerations; and that leniency is not in itself a vice."

25. The principles set out by the then Lord Chief Justice in 1989 hold good today. We have to ask whether the minimum term imposed by this judge fell outside the reasonable range open to him. In doing so we must pay proper regard to the advantage held by the judge who has sentenced after hearing the trial. We also must acknowledge the great experience of the judge in this case.

26. Had the offender been convicted prior to 28 June 2022 paragraph 6 of Schedule 21 of the 2020 Act would have applied. As someone aged under 18 at the time of the offences the appropriate starting point in determining the minimum term would have been 12 years. The judge, in setting the appropriate minimum term, would have taken into account the taking of weapons to the scene. He would have treated it as an aggravating factor requiring an uplift to the starting point. He also would have considered other aggravating factors and any mitigating factors in order to set the minimum term to be served. The amendment to Schedule 21 effected by the 2022 Act has removed part of the process of setting the minimum term for an offender under 18 by creating an equivalence with the different minimum terms applicable to adult offenders.

27. The table set out in paragraph 5A of Schedule 21 of the 2020 Act cannot be determinative of the appropriate starting point in any given case. First, the section of the table applicable to this offender applies to those aged 15 or 16 i.e. those who have just passed their 15th birthday and those approaching their 17th birthday. Very different considerations may apply to an offender in the first group as opposed to those in the second. We are not concerned with a 15-year-old. How the minimum term in the table would apply to such an individual will have to await a case involving a 15 year-old. Second, and of direct relevance to this case, the principles set out in **Peters [2005] 2 Cr App R (S) 101** remain valid, in particular what was said at [11]:

"Therefore although the normal starting point is governed by the defendant's age, when assessing his culpability, the sentencing judge should reflect on and make allowances, as appropriate upwards or downwards, for the level of the offender's maturity."

28. Further, section 59(1) of the Sentencing Act 2020 obliges the court to follow any relevant sentencing guidelines unless it would be contrary to the interests of justice to do so. Paragraph 1.5 of the Sentencing Children and Young People Guideline reads:

"... Children and young people are not fully developed and they have not attained full maturity. As such, this can impact on their decision making and risk taking behaviour. It is important to consider the extent to which the child or young person has been acting impulsively and whether their conduct has been affected by inexperience, emotional volatility or negative influences. They may not fully appreciate the effect their actions can have on other people and may not be capable of fully understanding the distress and pain they cause to the victims of their crimes. Children and young people are also likely to be susceptible to peer pressure and other external influences and changes taking place during adolescence can lead to experimentation, resulting in criminal behaviour. When considering a child or young person's age their emotional and developmental age is of at least equal importance to their chronological age (if not greater)."

29. Thus, the court when determining the minimum term applicable to a child or young person convicted of murder is obliged to look beyond simple chronological age. The Attorney General does not argue to the contrary.
30. The first issue for us is whether the judge erred when he referred to age as reducing the offender's culpability in the context of a statutory starting point set by reference to age. We accept that in the case of an offender aged 16½ the reduction in culpability for age simpliciter may be reflected in the starting point as identified in the table in paragraph 5A. However, the judge referred to the combined effect of age, immaturity and mental disorder. We do not consider that it was wrong to rely on age as one part of the picture relevant to an assessment of culpability. Compartmentalising factors when dealing with someone in the offender's position is not a realistic approach. As the guideline to which we have referred makes clear, the emotional and developmental age is not necessarily the same as an individual's chronological age. It was the former with which the judge was concerned.
31. The second issue is whether the judge erred in the balancing of aggravating and mitigating factors. We accept the submission that this balancing exercise is not a simple arithmetical exercise. The fact that there were more aggravating factors than mitigating factors cannot be determinative. Sentencing in a case such as this must be a qualitative exercise. It involves judgment on the part of the sentencer who has heard the trial. We consider that, if the judge here had been concerned solely with the proper sentence to be imposed in relation to the murder of Kian Tordoff, the balance he struck would have been regarded as lenient. As submitted on behalf of the Attorney General, there was a degree of inconsistency between the judge's initial conclusion in relation to the effect on culpability of the offender's mental disorder and the judge's final assessment of culpability. We can see that the judge sought to distinguish the lack of a direct link between mental disorder and the offence from the effect of the mental disorder on the offender's maturity. That distinction was narrow. We also observe that this was not a case of true impulsive behaviour. The offender armed himself in advance, travelled to the scene with the intent to attack one or more persons and took steps to conceal what he had done in the aftermath of the killing. The judge's approach, given all those matters, led to a sentence that in relation to the murder of Kian Tordoff taken on its own was lenient.
32. Although his approach led to a lenient sentence, we are not persuaded that this leniency alone was such that it led the judge to depart from what could reasonably be considered appropriate in balancing the aggravating and mitigating factors as they related directly to the murder of Kian Tordoff. However, the judge also had to deal with a second offence. 8The offender, having attacked and fatally injured Kian Tordoff went after Matthew Paige. He inflicted very serious injury on him. We accept that the attack on Matthew Paige occurred immediately after the offender had inflicted the fatal wounds to Kian Tordoff. We reject the proposition that that second attack did not significantly affect the offender's overall culpability. To stab Matthew Paige when the offender already had committed a ferocious attack on his friend increased the culpability of the offender to a substantial degree. More to the point, the attack on Matthew Paige caused very serious harm to a second victim. The overall sentence necessarily had to reflect the additional harm caused by the offender. We conclude that the minimum term identified by the judge failed to do so. The judge determined that the offence committed against Matthew Paige merited a sentence of eight years' custody even allowing for the offender's age and immaturity. He said that the offence involving Matthew Paige had to be reflected in the minimum term to be imposed in respect of the offence of murder. In our judgment the minimum term of 16 years less time on remand failed to achieve that requirement. We consider that this minimum term did not reflect at all the very serious offence committed against Matthew Paige.

### Conclusion

33. We give leave to the Attorney General to refer the sentence imposed on the offender. We find that the sentence imposed in relation to the count of murder was unduly lenient for the reasons we have set out. The minimum term failed to give any or any proper regard to the separate offending against Matthew Paige. Not only was he caused very serious harm but the attack on him significantly increased the offender's culpability.
34. In our judgment, even allowing for the age and immaturity of the offender and the mental disorder of which he did and continues to suffer, the minimum term should have been 19 years less time on

remand. This would properly have reflected all of the aggravating factors relating to the murder of Kian Tordoff and then the grave offence committed against Matthew Paige.

35. It follows that we quash the sentence imposed by the judge on the count of murder. In its place we substitute a sentence of detention at His Majesty's Pleasure with a minimum term of 19 years less 274 days spent on remand. The sentence in respect of wounding with intent will remain unaltered.