IN THE COURT OF APPEAL

CRIMINAL DIVISION

[2023] EWCA Crim 893

No. 202203625 A1

Royal Courts of Justice

Tuesday, 18 July 2023

Before:

LORD JUSTICE WILLIAM DAVIS
MR JUSTICE GARNHAM
HIS HONOUR JUDGE LICKLEY KC

REX
V
STEVEN PAUL CRAIG

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5 New Street Square, London, EC4A 3BF
Tel: 020 7831 5627 Fax: 020 7831 7737
CACD.ACO@opus2.digital

Mr C. Tehrani KC appeared on behalf of the Appellant.
Mr R Pakrooh appeared on behalf of the Crown.

J U D G M E N T

LORD JUSTICE WILLIAM DAVIS:

1 Steven Craig is now aged 59. In about 1995, when he was in his early 30s, he began a relationship with a woman named Jacqueline Kirk. (For ease of reference, we shall refer to them by their surnames only. No discourtesy is intended thereby.) Kirk was born in 1957, so she was about seven years older than Craig. Their relationship was volatile in that Craig used violence against Kirk. From time to time, her family saw her with bruises on her face. She once suffered a cracked cheekbone. On one occasion he had gone into her bedroom with a can of petrol. He poured the petrol over her and threatened to set it alight. Overall, his behaviour towards Kirk was controlling. At least some of his actions and behaviour were the result of drug and alcohol abuse on his part.

2 On 15 April 1998, Craig was with Kirk at Bath Railway Station. He was violent and threatening towards her. He then locked her in a toilet cubicle at the station and abandoned her. She was only found some hours later by a cleaner. Two days later, Craig told Kirk that he was taking her to Plymouth in his car. She agreed to do so, so as to not upset him. They left Bath. En route, Craig stopped at a petrol station. He filled an empty Coke bottle with petrol. Craig then diverted to Weston-Super-Mare. During that part of the journey he struck Kirk repeatedly even though he was driving at the time. Once they arrived in Weston, Craig appeared to calm down. They slept in the car overnight in Weston.

3 On 18 April 1998, Craig and Kirk were still in Weston. They were sitting in the car in a car park. Craig was expressing his anger in relation to Kirk's previous boyfriends. He said he was going to torture Kirk. He hit her in the mouth, drawing blood. Anticipating another beating, Kirk bent her head over as she sat in the passenger seat. In fact, Craig poured the petrol which was in the Coke bottle over her head and neck. Kirk got out of the car as did Craig. He had a cigarette in his hand. He suggested that Kirk should have one, as it may be her last. With that, he held the flame of the lighter close to her face. The petrol ignited, causing dreadful injuries which we shall describe in detail shortly. Craig's reaction was to tell Kirk to keep away from him. He apparently was concerned that he should not get burned. He did nothing to help Kirk, by trying to extinguish the flames or otherwise.

4 Initially, Kirk did not make a complaint against Craig. He told lies, saying the offence had been an accident which had occurred when Kirk had spilled petrol on herself and then lit a cigarette.

5 The relationship between Craig and Kirk, perhaps unsurprisingly, came to an end after the attack on 18 April.

6 Craig took up with a new partner. In January 1999 he raped his new partner and caused her grievous bodily harm with intent. He caused those injuries by repeatedly beating his victim with a wooden slat. However, in the course of the attack he did pour lighter fuel over her face and threatened to ignite it. In the end, he did not carry out the threat. Those offences were committed against the background of the victim wishing to end the relationship with Craig in favour of someone else.

7 When Kirk learned of what Craig had done to his new partner, she told the police exactly what had happened to her. Thus, in due course, Craig stood trial for causing grievous bodily harm to Kirk and for raping and causing grievous bodily harm to the new partner. He was convicted by a jury of all three counts.

8 The trial judge's sentencing remarks in 2000 were brief. She said that it would be difficult to conceive of a more horrendous offence than the one committed against Kirk. She said that the consequences of the offence would be with her for the rest of her life. The judge

said that Craig had inflicted appalling injuries on the new partner. Though they were not to be minimised, they did fall into a different standard to those suffered by Kirk. The judge found that Craig presented "the gravest danger to the public". That is, in summary form, the substance of the judge's sentencing remarks. She imposed a sentence of life imprisonment in relation to each offence. The minimum term was nine years less time spent on remand. She identified the notional terms in relation to the individual offences as 18 years in respect of the attack on Kirk, and six and eight years in relation to the offences against the new partner. It would appear though that the overall sentence must have been aggregated to reflect all offending.

9 Returning to the injuries sustained by Kirk, they were life threatening and life changing. She was transferred from a hospital in Weston to a specialist intensive care unit in Bristol where she remained for three-and-a-half weeks. She had significant external burns on 35 per cent of her body, including face, neck, chest, hands, torso, upper thighs and buttocks. The burns meant that she was unrecognisable. She had severe inhalation injuries. Her mouth, respiratory tract and lungs were burned. Her vocal chords were left in a fixed and closed position. After two weeks, a tracheostomy was inserted. This allowed her to continue breathing unassisted but it by-passed her vocal chords. She did eventually learn how to speak but only very softly and with difficulty. The tracheostomy remained in place until her death. Kirk was in hospital altogether for eight-and-a-half months after the injuries were inflicted, during which time she underwent 14 operations.

10 Kirk had a son and a daughter. In 1998 the son was aged 22 and the daughter was aged 13. Both made victim personal statements after Kirk died. They described the horror of seeing their mother in hospital in the aftermath of the attack. They said their mother was in constant pain with itching from the scarring being particularly troublesome. Eating was a struggle. Their mother slept badly and suffered nightmares. She was frequently depressed. Nonetheless, she had made a life for herself despite the effects of the injuries. She did have to go to hospital on many occasions, particularly when she suffered a chest infection.

11 In August 2019, Kirk was admitted to hospital. She was seriously ill. Her intestines were swelling and herniated. As a result, pressure was being placed on her diaphragm. Had she been fit for surgery, it would have been possible to relieve the pressure; she was not, because of the injuries she suffered in 1998. Because her chest and abdomen were not able to expand, the diaphragm was fatally ruptured. On 23 August 2019, Kirk died.

12 Craig was charged with murder, the date of the offence on the indictment being identified as 23 August 2019. He was tried in the Crown Court at Bristol. The only issue for the jury was whether the injuries inflicted by him in April 1998 played a significant part in Kirk's death. The prosecution alleged that the injuries were causative in two respects. First, the scarring meant that the chest and abdomen were not able to expand; second, surgery could not be undertaken because of the risks inherent in somebody of Kirk's condition. The prosecution case was accepted and Craig was convicted of murder.

13 On 10 November 2022, Craig was sentenced to imprisonment for life with a minimum term of 15 years and five days. The judge concluded that the appropriate minimum term by reference to Schedule 21 of the Sentencing Code would have been 34 years. She deducted all of the time spent in custody in relation to the offence of causing grievous bodily harm of which Craig was convicted in 2000, namely the time on remand prior to that conviction and the entirety of the period in custody thereafter, including periods after the expiry of the minimum term when the Parole Board considered it not safe to release Craig or when Craig would have been recalled. That total period was just short of 19 years.

14 Craig now appeals his sentence with the leave of the single judge. He has three grounds of

appeal. First, that the judge should not have applied Schedule 21 of the Sentencing Code because the true date of the commission of the offence for sentencing purposes was 18 April 1998, i.e., when the injuries were inflicted. Thus, the transitional provisions in paragraph 12 of Schedule 21 should have applied and the appropriate minimum term should have been set by reference to the practice followed by the Secretary of State in 2002. That would have led to a minimum term of somewhere between 15 and 20 years. Second, if and in so far as Schedule 21 did apply, the judge erred when she concluded that the seriousness of the offence was particularly high so as to give a starting point of 30 years. Third, even if it were appropriate to use the starting point of 30 years, there were no matters justifying increasing that starting point to 34 years.

15 We deal first with the issue of the date of the offence. The judge provided a written ruling on that issue. She had written submissions from the parties. She noted that the purpose of these transitional provisions in Schedule 21 was to avoid the imposition of a sentence which offended Article 7.1 of the European Convention on Human Rights which prohibits the imposition of a heavier penalty than one that was applicable at the time the criminal offence was committed.

16 In argument, the defence had relied on *R v Wright and Hennessy* [2022] EWCA Crim 68 as authority for the proposition that the offence of murder may be complete when the causative act is committed. In that case, the trial judge had sentenced on that basis. The judge noted that it was not an issue on the appeal as to whether the trial judge's approach was correct. On the facts of the case the transitional provisions did not apply, the injuries being caused in 2006, namely well after the Criminal Justice Act 2003 had come into force. The approach taken by the judge was intended to reflect the youth of the appellants in that case at the time of the original infliction of the injuries. Thus, so found the judge, *Wright and Hennessy* provided no support for the defence argument.

17 The judge concluded that an essential element of the offence of murder was the death of the victim. The definition of murder requires the offender to have unlawfully killed the victim with intent to kill or to cause really serious harm. Unless and until the victim had died, there can have been no unlawful killing. Thus, Kirk was murdered on 23 August 2019. The passage of time between the unlawful act and the death may give rise to circumstances highly relevant to an offender's culpability and to factors aggravating or mitigating the offence. By that route, the court can adjust the starting point in so far as is necessary to ensure there is no injustice to an offender. The judge gave the obvious example of where the offender was particularly young at the time of the unlawful act.

18 We are quite satisfied the judge was correct in her ruling. The view taken by the trial judge in *Wright and Hennessy* was noted by this Court on appeal. It was not the subject of any argument. The Court did not discuss the issue of the date of the commission of the offence, whether for sentencing purposes or otherwise. It was of academic interest given the facts of the case. In our view, an offence cannot be committed until all elements thereof have been proved. Until 23 August 2019 the prosecution could not prove that Kirk had been killed. Until that date the appellant could not have been charged with murder. It was only when he was charged with murder that he could be sentenced for that offence.

19 The grounds of appeal stated that he had been sentenced more harshly than when he commenced the chain of causation which led to death. Even if that were correct, it would be of no consequence. The relevant point is when the offence was committed. The judge's ruling did not offend Article 7.1 of the Convention. Sentencing the appellant by reference to the current sentencing regime did not offend Article 7.1.

20 The second and third grounds require us to consider the judge's reasoning which led her to

conclude that without any deduction of time spent in custody hitherto the appropriate minimum term was 34 years. The judge concluded that the starting point should be 30 years. The factors which led her to conclude that the seriousness of the offence was particularly high were as follows: the planned and premeditated nature of the attack; the sadistic nature of the appellant's conduct in the build-up to the attack; the appellant's awareness of the level of seriousness involved in his use of petrol. She considered the case of *R v Dunstan* [2016] EWCA Crim 2098 which had been referred to in the course of argument. She rejected any suggestion that that case provided support for the proposition that the appropriate starting point should be 25 years. She concluded that *Dunstan* was distinguishable on its facts.

21 The judge found that thereafter there were aggravating factors. First, and most significant, she identified the pattern of violence by the appellant towards Kirk which had increased over time. The appellant in a chilling way had forced her into submission over a course of months and years. Kirk was vulnerable. The appellant's behaviour was an abuse of trust. The judge, in making those observations, clearly had well in mind the overarching principles in relation to domestic abuse issued by the Sentencing Council and effective from 24 May 2018. Second, the appellant was drunk when he committed the offence. Third, the appellant's actions after he had set fire to Kirk were cowardly; he had done nothing to help her.

22 The judge went on to refer to two further aggravating factors. First, the appellant's actions involved a high level of sadism. The nature of the attack was extreme. Second, Kirk endured physical and mental suffering for 21 years, and the impact on her family over the same period had been substantial. Those various aggravating factors served to increase the minimum term to 35½ years.

23 The judge then turned to personal mitigation. She said that his behaviour from 2000 to the date of death did not assist him. The passage of time had not led him to make the most of himself. The Parole Board had not considered him safe for release until 2015. Within three years his behaviour whilst on licence had led to his recall to prison. She said that little weight could be given otherwise to the passage of time that had elapsed since the appellant had inflicted the injuries given the effect on Kirk and her family over that period. The judge accepted that there had been no intention to kill. However, she said that this had "reduced significance, almost to vanishing point, because of the risk of her dying from what the appellant did was so obvious even if it was not his intention". She said she gave some weight to the fact that the appellant had a sense of disappointment at being subject to further incarceration for what he had done in 1998.

24 The judge reduced the minimum term by 18 months to take account of personal mitigation thereby reducing that to 34 years. The judge considered that justice required that the minimum term to be imposed for the offence of murder should be reduced by the total time that the appellant had already spent in custody. The appellant's previous sentence was based on identical facts. Reduction was to take into account the time the appellant had spent on remand prior to the trial in 2000 and all the time that he had been detained pursuant to that sentence in 2000, including periods of recall. So it was that 18 years 11 months and 25 days was deducted from the period of 34 years, giving a minimum term of 15 years and five days.

25 Mr Tehrani KC argued that the judge had erred in setting the starting point of the minimum term at 30 years; the starting point should be reserved for the most serious of cases of which this case was not one. His submission to us was that the court in 2000, when setting a specified period of nine years' imprisonment in relation to the three life sentences, must already have taken account of the matters that placed this case in the category of particularly

serious offending. Following his conviction for murder, all that the sentencing judge should have concerned herself with was how much longer the minimum term ought to have been over and above the specified period of nine years' imprisonment. This would involve a minimum term reflecting simply the fact of death and the deceased's pain and suffering prior to death. Paragraph 3(1) of Schedule 21 reads as follows:

> "3(1) If -
>
> (a) the case does not fall within paragraph 2(1) but the court considers that the seriousness of the offence ... is particularly high, and
>
> (b) the offender was aged 18 or over when the offence was committed, the appropriate starting point, in determining the minimum term, is 30 years."

Paragraph 3(2) of the Schedule gives examples of cases that would normally fall within paragraph 3(1). The list of examples is not exhaustive. It is for the court in any particular case to assess whether the facts and circumstances render the seriousness of the offence particularly high.

26 In *Dunstan*, to which we have already referred, this court took the view that where the offender had spontaneously poured white spirit on a woman with whom he was staying and set fire to her the case did not fall within paragraph 3(1). It distinguished the line of cases commencing with *R v Jones* [2005] EWCA Crim 3315 which indicate that a 30-year starting point is appropriate where there has been a deliberate and planned arson attack on a house. The court concluded in *Dunstan* that the starting point should have been 15 years though the many aggravating features served to increase the starting point to 25 years. However, the court said at [24]:

> "That is not to say that there will not be cases where death is caused by deliberate arson in circumstances similar to the facts of this case which will properly be described as being particularly serious for the purposes of Schedule 21 ... Inevitably, these are and will be fact-sensitive and difficult assessments for a judge to make."

27 We have no doubt that the judge was wholly justified for the reasons she gave that the facts of this case meant that the seriousness of the offence was particularly high. Her fact-sensitive assessment cannot be criticised. The circumstances and facts in this case were very different to those in *Dunstan*.

28 We reject the submission made by Mr Tehrani as to what the judge's task was when sentencing the appellant in 2022. The judge had to sentence the appellant for the offence of murder. The fact that another judge in 2000 imposed a sentence when the appellant was convicted of causing grievous bodily harm was of relevance to her overall assessment of the appropriate sentence, that is after she determined the correct minimum term for the offence of murder. That sentence was not to be used when considering the appropriate sentence for the offence for which this judge had to sentence the appellant in 2022.

29 The third ground of appeal is that the judge fell into the trap of double counting when increasing the minimum term to take account of aggravating factors. In writing, Mr Tehrani

argued that matters taken into account by the judge must have been taken into account by the judge who sentenced the appellant in 2000 for the offence of causing grievous bodily harm with intent. Thus, the judge should not have taken them into account in 2022. We reject that argument. We reiterate the appellant was being sentenced for the offence of murder. All of the factors relevant to the commission of that offence had to be taken into account by the judge. The fact that they may have been considered at the time of the earlier sentence was irrelevant to the judge's assessment of the case. The consequences of the earlier conviction and sentence properly were reflected in the adjustment of the minimum term after the starting point had been identified and adjusted to take account of aggravating and mitigating factors.

30 We should say that it is not at all clear the extent to which the judge in 2000 took into account, for instance, the domestic abuse of which the setting fire to Kirk was the culmination. Her sentencing remarks were brief. They concentrated on the horrific nature of the offence and on the danger presented by the appellant. This is a practical example of why it would not be appropriate in any case of murder to discount factors which may have been taken into account at an earlier sentencing exercise for a different offence.

31 In oral argument, Mr Tehrani also submitted that the aggravating factors identified by the judge were what had led her to the minimum term of 30 years and, therefore, should not further increase the custodial term.

32 We disagree. Her analysis related, first, to the particular circumstances of the offence and then, quite separately, a detailed recitation of the aggravating factors with particular reference to the element of domestic abuse. The judge is criticised for giving insufficient weight to the mitigating factors. It is said she identified the relevant factors but either discounted them altogether or did not give them the weight they deserved. This was a matter for the judgment of the trial judge. She was fully seized of the mitigating factors being advanced. We would have to conclude that the judge was wrong in her assessment in order to interfere. We do not and cannot reach that conclusion. If anything, we consider that the judge may have been generous to the appellant.

33 This was a horrifying and cruel attack on a defenceless woman by a controlling man. The circumstances of the attack justified the starting point of 30 years. The background of domestic abuse made the offence particularly serious. A substantial uplift from the starting point was justified. The uplift chosen by the judge cannot be described as manifestly excessive. Proper account was taken of such mitigation there was. It follows that we reject the argument that the minimum term imposed was manifestly excessive.

34 The appellant's minimum term of 15 years and five days was calculated, as we have said, by reference to all of the time he spent in custody up to the date of sentence. That overall reduction was not something to which he was entitled by statute. References in section 240ZA and section 241 of the Criminal Justice Act 2003 to credit the time served relate to periods of custody pursuant to a court order, namely a remand order or an order committing an offender to custody. Once the minimum term imposed in 2000 had expired, the appellant was being held until the Parole Board considered it safe to release him. From that point on he was not being held pursuant to a court order. When he was recalled to prison that was also not pursuant to a court order.

35 The judge had a discretion to go beyond the statutory regime if she was satisfied that the circumstances were exceptional: see *Wright and Hennessy* at [29]. That is the view she took. Self-evidently, it is not something we are asked to review now. However, we observe that the appellant may consider himself fortunate that the judge exercised her discretion to the extent she did. First, the sentence imposed in 2000 was not solely in respect of the facts

which related to the fatal attack. The appellant was also sentenced in respect of quite separate offending in relation to a different victim. In so far as the overall sentence was affected by that separate offending, admittedly difficult to identify from the sentencing remarks in 2000, that part of the sentence should have had no part to play in reducing the minimum term.

36 Second, unlike the appellants in *Wright and Hennessy*, the appellant had not just been detained pending the Parole Board's satisfaction that it was safe to release him. He had also been recalled to prison after his initial release and prior to any recall following the death of Kirk. Whether justice required that period to be credited to him, is, in our view, arguable. In any event, the upshot is that the appellant was given full credit for all time spent in custody. That was to his advantage. It further underlines that the sentence imposed on him in 2022 was not manifestly excessive. Taking into account all the matters we have rehearsed, we dismiss this appeal.

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