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Neutral Citation No. [2023] EWCA Crim 931

IN THE COURT OF APPEAL  
CRIMINAL DIVISION  
CASE NO 202301625/A1



Royal Courts of Justice  
Strand  
London  
WC2A 2LL

Wednesday 12 July 2023

Before:

LORD JUSTICE DINGEMANS

MR JUSTICE TURNER

SIR ROBIN SPENCER

**REFERENCE BY THE ATTORNEY GENERAL UNDER S.36 CRIMINAL JUSTICE ACT 1988**

REX  
V  
PAULINE CASTER

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MS J LEDWARD appeared on behalf of the Attorney General.

MR D HUGHES appeared on behalf of the Offender.

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

LORD JUSTICE DINGEMANS:

**Introduction**

1. This is the hearing of an application on the part of His Majesty's Attorney General for leave to refer a sentence to this Court on the basis that it is unduly lenient. On 20 April 2023, in the Crown Court at Sheffield, the respondent, Pauline Caster, was sentenced for the offence of murder of Kevin Caster (her husband), to which she had pleaded guilty on 19 April 2023, which was the third day of her trial. Mrs Caster was sentenced to life imprisonment with a minimum term of 7 years 3 months, less time spent on remand.
2. It is submitted on behalf of His Majesty's Attorney General that the trial judge failed to give any or appropriate weight to the multiple aggravating features which were present. First, the sentence required some initial upward adjustment from the 15-year starting point for the minimum term. Secondly, the learned judge afforded significantly excessive weight to the absence of an intention to kill and reduced the minimum term by 4 years in relation to that factor alone. Thirdly, taking all the aggravating and mitigating features into account, although it was accepted that the mitigation overall outweighed the aggravating features, the excessive weight given to the mitigation resulted in a minimum term that was unduly lenient even before the application of a generous 10 per cent reduction for plea entered on the third day of trial.
3. It is submitted on behalf of Mrs Caster that the term imposed by the judge was entirely appropriate. This was an exercise which required meticulous care and the case was tragic and extremely unusual, in that Mr Caster had taken so many drugs, including a vast amount of Lamotrigine, that he was going to die within a range of 20 minutes to 4 hours of the medication being ingested and the situation could not be retrieved. Mrs Caster's actions only accelerated death by a short period of time. There were few, if any,

aggravating features. The judge had not reduced the sentence by 4 years for an absence of an intention to kill alone, the judge had said it was against the backdrop that he had set out. Thirdly, the reduction was not excessive. There were extensive mitigating factors, including effective good character because Mrs Caster had only some old driving matters recorded against her. There was a plea of guilty. She suffered from psychiatric ill-health and the relationship between Mr and Mrs Caster had been toxic over a period before, and there had been evidence about that from the children of the marriage in the victim personal statement. We grant leave for the Reference.

#### **Relevant circumstances of the offence**

4. Mrs Caster was born on 14 September 1978 and is aged 44 years. She met her husband, who had joined the Army, when they were both in their early 20s. Mrs Caster had a 3-year-old son from a previous relationship and Mr Caster bought him up as his own. Mr and Mrs Caster then had two further children.
5. Their relationship towards the end was described as “volatile and toxic”, punctuated with frequent, almost daily arguments. There was some evidence that Mr Caster was the one who inflicted physical violence upon Mrs Caster on a regular basis and this was the effect of the victim personal statement given by their son. But it seems that the sentence proceeded on the basis that the relationship was characterised by low-level violence inflicted by each upon the other, and it seemed that they habitually abused controlled drugs, particularly medication, and alcohol and had done so for many years. It appears that they had both taken each other's medication and drugs and that was also the source of arguments between them.
6. It was also right to report, when referring to Mrs Caster, that prison reports since her arrest, shows that she has made good progress and is on enhanced status after receiving

many positive comments about her conduct.

7. It appears that, in the circumstances leading up to the particular events of the fatal evening, that Mrs Caster had become jealous of Mr Caster, and suspected that he had seen another woman, although there was no evidence to suggest the truth of that accusation. At about 6.30 pm on the evening of 19 October a neighbour of the Casters could hear an argument coming from their bedroom, in particular she heard Mrs Caster shouting saying: "Go back to that fucking slag then". Another neighbour overheard Mrs Caster at the same time telling her husband: "Get back to that slag and don't bother coming home".
8. A little later, at around 7.00 pm the first neighbour heard Mrs Caster shouting: "Help me, help me" and about half-an-hour after that from outside the address: "Help me, help me, my husband is beating me up". At around 7.00 pm another neighbour was in her upstairs bedroom watching TV, with the window open, upon hearing shouts for help she looked out of her window and saw Mrs Caster standing outside her own house with the front door and living room curtains wide open. Mrs Caster was running in and out of the house and up and down the street saying that her husband had beaten her up, but the neighbour could not see any visible injuries.
9. Between what the neighbour thought was 8.30 and 9.00 pm-ish she saw Mrs Caster through the side window of the house. The front door was open, and she could hear Mrs Caster, shouting: "Are you hurting? You bastard"; she could also hear a grunting or exhaling sound as if Mrs Caster was hitting Kevin Caster. It appeared as if she was stamping down and moving her body in an aggressive way. We have seen on the Digital Case System a timeline compiled from the video footage. That footage covered the Casters' address. It showed Mrs Caster stamp and kick Kevin Caster, who was prone on

the floor in the doorway of the front door, on seven separate occasions between 19.54 hours and 20.17 hours, so over a 25-minute period. Between each occasion Mrs Caster was seen to walk away for a short distance and then return. At one point she could be seen to use a doorframe as a bracing point, seeming to add more force to the stamps. At various times, sometimes in response to those actions and sometimes on his own, Mr Caster appeared to move, rolling over or his arms or legs flailing near the ground, suggesting that he had retained some level of consciousness during the assault. He was last seen moving at 20.17 hours on the CCTV. It is again right to point out, at this stage, Mrs Caster was wearing only slippers.

10. Another neighbour returned home at about 10.00 pm after an evening out. As she got out of the vehicle, she heard someone screaming: "Help me, help me, I think my husband is dead". The neighbour contacted the emergency services which arrived soon afterwards. Mr Caster was taken to Rotherham Hospital but declared dead at 23.03 hours.
11. A post-mortem examination was undertaken on 20 October 2021, and that revealed that Mr Caster had suffered numerous facial injuries, bruising and abrasions around both eyes, bruising to the nose and chin and bruising and lacerations to the upper lip. There was deep scalp bruising to both the sides, top and back of his head. There was further bruising to the chest, abdomen and back of the trunk. Internal examination on the post-mortem revealed extensive bruising over the back and lumber regions and multiple rib fractures on both sides (more than 20 in total). It is fair to record that some of those fractures might have been caused by resuscitation attempts but the overall pattern and extent of those fractures was typical of a blunt force physical assault rather than resuscitation. Similarly, the overall pattern and nature of the injuries was typical of a sustained blunt force assault involving multiple blows. There was bruising to the

abdominal wall and to the small bowel, and part of the lower oesophagus, which was said to be likely to reflect a blow or a kick or stamp, which had resulted in the oesophagus being compressed against the spinal column.

12. Forensic toxicology analysis was carried out and that showed that the deceased had taken a cocktail of drugs. This included Lamotrigine, cocaine and other substances which were all found in his blood. The Lamotrigine was detected at 105 micrograms per litre, well in excess of the ranges reported in a number of related fatalities and therefore it was considered sufficient to provide a positive toxicological cause of death, and this was a particularly unusual feature of this case. The evidence, it is common ground before us, showed that Mr Caster was going to die in any event because of his ingestion of medication and drugs during the evening.

#### **The Sentence**

13. There were victim personal statements from Mr Caster's mother and from Lewis Caster, one of Mr and Mrs Caster's children. The mother set out the details of Mr Caster's career and his substantial contributions to the care of his father and the effect of his father's death on Mr Caster. Mr Lewis Caster had recorded that both parents had showed the children love and care as they had grown up and they had happy holidays together. The children however had reported that the parents had loved each other too much, and that they had abused medication and drugs and spent much of their life in a stupor.
14. The judge when sentencing began by describing the lives of Mrs and Mr Caster and described it as: "... comprehensively wretched. Your conduct was corrosive for both of you. It was and has been described by family members as 'a toxic relationship'. I accept that you and your husband loved each other, but you both abused the medication of each other... There was, within your relationship, a relentless avalanche of abusive conduct to

each other and self-abuse.”

15. The judge continued that the relationship was volatile: “... punctuated with frequent, almost daily, arguments, which involved low-level violence inflicted by each of you upon the other... This conduct had existed for many years...”
16. The judge went on to find that: “... the particularly unusual feature of this case is that, regardless of what you did to the victim, he would have died in any event within a few minutes of you inflicting the physical injuries upon him.”
17. We pause there to interpose to note that Ms Ledward, on behalf of the Attorney General, has pointed out that that is not a completely fair representation of the expert evidence, and the evidence was that Mr Caster would have died in any event at some stage later that evening but not necessarily within a few minutes. It does not seem to us that anything material turns on that. The judge said: “I have little doubt that you were angered, annoyed and acutely irritated by what he had done to himself...” which the judge suggested was the overdose and that it was at that stage that Mrs Caster had then assaulted her husband. The judge said that Mr Caster was vulnerable due to his drug addiction at the time of the assault, bordering comatose and materially on his way to death. He had no means of defending himself. The judge described the assault as determined and sustained and commented that Mrs Caster had delayed before seeking assistance, although she was herself under the influence of drugs and alcohol at that stage. Although identified as being factually present, the judge did not describe these as aggravating features.
18. He did identify mitigating features, which was the lack of previous convictions, the lack of premeditation, the intention to cause serious bodily harm rather than to kill and he referred to Mrs Caster as “vulnerable by reason of her problems in her life”, saying that

he had well in mind her psychiatric history, summarising the reports as this: “You had yourself an abusive and baleful upbringing. Over the years you have been involved in abusive relationships, what may only be characterised as a wretched marriage and there were a variety of sexual antics within the marriage that caused a great deal of mental harm. As a result of all of this you were suffering from a depressive disorder.”

19. The judge also noted the personal mitigation that she was doing well in prison.
20. As to the level of discount for plea, the judge said that the plea was entered after the trial had started but when the case was at an extremely early stage of the proceedings because Mrs Caster could not have pleaded until the commencement of the trial because of the outstanding application to dismiss on the basis of the medical evidence and causation: “I also have well in mind your psychiatric state. You have by your guilty plea saved a great deal of court time. There are many other advantages to the public by a guilty plea. It was also an act of courage. It is an unusual state of affairs for a defendant to plead guilty in a murder trial, but you did.” The judge came to the conclusion that it was fair to reduce the sentence by one-tenth.
21. So far as the sentence was concerned, the judge went through the following exercise. He started at 15 years, which it is common ground was the appropriate starting point set out in the schedule to the Sentencing Act. He said that the absence of an intention to kill, against the background of the case, reduced the minimum term to 11 years. It was reduced again to 9 years from 11 years by reason of the fact that Mr Caster was going to die in any event and then there was the personal mitigation, the upbringing, the psychiatric state, the family support and her progress in prison which merited a further reduction to 8 years. The 10 per cent discount was then applied giving 7 years and 3 months less time spent on remand.



### **The discount for plea**

22. So far as the discount for plea is concerned, we should just record that the judge did give a discount of 10 per cent, even though the trial had started. No complaint is made about that given the particular circumstances of the case and the fact that there had been changes of legal representation because of the disruption caused by the listing of the case and therefore the dismissal argument had been delayed until the start of the trial.
23. The difficulty with the discount was that it was for an offence of murder. The discount is usually half of that that is allowed for other cases because the sentence is life and the minimum period is fixed and the defendant will not be released at the half-way stage. This means the reduction should have been perhaps for half of the 10 per cent and the Overarching Sentencing Guideline on Reduction for Guilty Plea addresses mandatory life sentences for murder and emphasises the need to weigh carefully the minimum term. The maximum reduction for a sentence, for a plea of guilty to murder, is one of one-sixth rather than one-third, to reflect that the minimum term is a fixed number of years. However, this is not a ground on which the Attorney General brings or pursues the Reference, and this has been clarified with Ms Ledward this morning.

### **Aggravating factors**

24. We turn therefore to address each of the grounds that are pursued on this application. So far as aggravating factors are concerned, we accept that Mr Caster was particularly vulnerable due to his state at the time, because he was incapacitated because he had taken an overdose of drugs. We also accept that there was physical suffering inflicted on him in the period before death and that there was a sustained assault, albeit wearing slippers, over a period of some 20 minutes and the offence was committed in Mr Caster's own home.

25. We do note that in the case of R v Inglis [2010] EWCA Crim 2637; [2011] 2 Cr App R(S) 13, a mother was sentenced to 9 years at first instance for killing her son, who had suffered catastrophic head injuries in an accident and was in a persistent coma from which there was some hope that he might recover. The mother decided however that it would be an act of mercy to kill her son. The Court noted the concept of mercy killing and assisted dying were for Parliament and the Court had to decide the case on the law before it. The Court decided that there were factors which would normally aggravate the sentence but those should not be taken to aggravate a murder committed by an individual who genuinely believed that their actions were an act of mercy. The Court considered, in the particular circumstances of that case, the mother's responsibility had been diminished, although short of a statutory defence. The Court of Appeal (Criminal Division) reduced the sentence to life imprisonment with a minimum term of 5 years. We have also considered the case of R v Zebedee [2012] EWCA Crim 1428; [2013] 1 Cr App R(S) 37.
26. This was not a mercy killing; this was a killing in which the evidence showed that although Mr Caster was bound to die later that evening in any event, the actions of Mr Caster's assault accelerated his death to a material degree. We do however note that there was some issue about what had been said at the trial below in relation to aggravating factors. It appears that, at one stage, prosecuting counsel suggested that there would not be any argument that the starting point of 15 years should be increased to take account of aggravating factors, although it is only fair to note that in submissions this morning Mr Hughes, on behalf of Mrs Caster, confirms that that did not induce the plea, and by the time the sentence came round the next day there had been produced a note which identified the aggravating factors.
27. On the other hand, in the submissions on behalf of the Attorney General in the final draft

of the application to refer, it is noted at paragraph 61 that the judge fell into error in relation to the aggravating features but at paragraph 64 it was said in terms: “Standing back and avoiding a mechanistic approach, there was a constellation of aggravating features here, which do not appear to have been reflected in the sentencing exercise at all. Whilst not enough to render the sentence unduly lenient on their own, this increases the disparity between the minimum term imposed and what it ought to have been, and contributes to the sentencing passed being not just lenient, but unduly so.”

28. In our judgment, it is right to take an overall view of the case, but it is inevitable that we must follow the procedure set out and mandated by the Sentencing Code. In these circumstances, we need to look at aggravating factors. Although we consider this to be a very difficult case to decide, in the particular circumstances of what was said at the time to the judge below and the way in which it is put, and even though it is apparent that there was an assault on a man who was incapacitated because of his ingestion of drugs and the assault was sustained, we do not in the circumstances consider that the failure to increase from the starting point of 15 years was unduly lenient. We record that we are all agreed that it was lenient.
29. We then turn to consider the second and third matters, which was the discount for the fact that there was no intention to kill, and the fact that the aggravating and mitigating factors have not been balanced properly against each other. In our judgment, when one looks at the judge's sentencing remarks fairly, it is apparent that the judge was reducing to 4 years not just because there was no intention to kill but against the background of the case. Whether that was a coded reference to the violence which both parties seemed to have inflicted in the past on each other, it is difficult to tell. Looking fairly at the mitigating factors it is common ground that there were the following mitigating factors present:

there was no intention to kill, there was only an intention to cause really serious bodily harm; there was an absence of premeditation; the victim in this case would have died within a short period of time and certainly that evening; there was a lack of previous convictions; Mrs Caster suffered from long-standing mental difficulties; and she was and is now making good progress in custody.

30. Looking at those factors and balancing against the aggravating features that we have referred to before, we find it impossible to say that the judge was not entitled to take the approach that he did, namely to make a substantial reduction to reflect those mitigating features before coming to a sentence of 8 years and then reducing it again to reflect the 10 per cent discount for plea. In all those circumstances, we therefore grant permission for the Reference, as already indicated, we find that the sentence was lenient, but we find it was not unduly lenient and we therefore do not alter the sentence that was imposed on Mrs Caster.

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

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