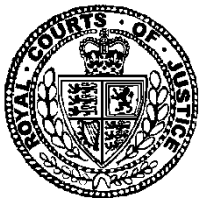

Neutral Citation Number: [2024] EWHC 1557 (Admin)

Case No: 2023/1/MTS

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28 June 2024

Before :

MRS JUSTICE MAY

IN THE MATTER OF LOGAN JACKSON

- -

APPROVED JUDGMENT

Decision upon a Reference under section 273 of the Criminal Justice Act 2003

Mrs Justice May :

1. This is a reference by the Home Secretary under section 273 of the Criminal Justice Act 2003 ("CJA 2003") for the setting of a minimum term. On 21 December 2021 at the Central Criminal Court in Dublin, the offender, Logan Jackson ("LJ") was given a life sentence for the offence of murder. In March 2023 he was transferred, at his request, to prison in this jurisdiction to serve the remainder of that sentence. The task for the court on this reference is to determine the minimum term which LJ is required to serve here, after which the early release provisions referred to in section 321(4) of the Sentencing Act 2020 ("the 2020 Act") will apply.

2. For the purposes of this decision I have been provided with a dossier containing the following documents:

   (1) A Transfer Application cover letter from the Irish Prison Service dated 15 February 2022

   (2) LJ's request for transfer dated 13 January 2020 setting out his reasons and attaching further documents as follows:

      (i) A copy of the Court Order of Imprisonment

      (ii) Extracts from Irish legislation relating to the offences of murder and reckless endangerment

      (iii) A Garda Report prepared for the purposes of transfer dated 11 February 2022

      (iv) A report on LJ from the Governor of Limerick Prison dated 21 February 2022

(3) A PNC report from this jurisdiction relating to LJ setting out his offending record

(4) Two Victim Personal Statements from Tracey Tully, mother of the deceased, the first undated but presumably prepared shortly before sentence in December 2021, the second dated 26 June 2023.

3. I have also requested and been provided with a transcript of the sentencing hearing before the Honourable Ms Justice Eileen Creedon on 21 December 2021.

4. There have been no written representations filed on behalf of LJ.

Facts of the offending

5. The facts of LJ's offences in Ireland are set out in the Garda report but may be shortly summarised as follows. In the early hours of 1 July 2019 following a house party in the Hyde Road area of Limerick City, LJ, then aged 29, was present with others outside on the road when an argument broke out. LJ got into his Mitsubishi Shogun jeep, with his young cousin as passenger. Initially he drove away towards the city centre but at the end of the residential road he performed a U-turn and drove back at speed, knocking down one bystander (Mr Quinliven), rendering him unconscious before hitting another and dragging him down the road. At the other end of the road LJ performed another U-turn before driving back and over the young man who had been dragged along previously. There was eyewitness evidence, supported by forensic test results from an examination of the car, that the young man was conscious and had been trying to get to his feet when the car struck him again. LJ then performed a third U-turn before driving back once more, this time mounting the footpath and running over the by now prone young man for a second time. After this third passage along the road LJ drove off.

6. Emergency services were called but the young man who had been run over could not be saved; very sadly he was pronounced dead at the scene. The deceased was Kevin Sheehy, aged 20. He had been a promising young boxer, five times an Irish boxing champion. His first child, a daughter, was about to be born. His whole life was ahead of him. The dossier contains the personal statement made by his mother, Teresa Tully, at trial together with a further victim personal statement from her dated 26 June 2023. I have read and considered these very carefully. No term which LJ will serve in prison can bring her son back, or lessen the grief which she and others who knew Kevin Sheehy must continue to experience.

7. LJ presented himself at Tullamore Garda Station on the evening of the same day, 1 July 2019. He was arrested and charged with two offences: murder and reckless endangerment. At the start of his interviews he alleged that his car had been under attack, later, after being shown CCTV images, he accepted that there had been no attack on his car and no threats made to him or his cousin and he accepted responsibility for Mr Sheehy's death, saying that he had been drinking and was angry. It appears that LJ nevertheless defended the case alleging provocation.

8. LJ was convicted of both offences after a trial at Dublin's Central Criminal Court over two weeks in December 2021. On 21 December 2021 the trial judge, the Honourable Ms Justice Eileen Creedon, passed a sentence of life imprisonment for the offence of murder, with a concurrent sentence of 7 years for the offence of reckless endangerment.

Request for Transfer

9. Less than a month later, on 13 January 2020, LJ applied to be transferred back to the UK to serve the remainder of his sentence, giving as his reasons a desire to be closer to his mother and sister in the UK (he is a UK citizen).

10. LJ was transferred back to the UK on 13 March 2023. I understand that he is currently being held at HMP Lowdham Grange.

The legal framework

11. LJ's case was referred to this court by the Secretary of State under the provisions of Section 273 of the CJA 2003, by letter from Her Majesty's Prison and Probation Service dated 2 June 2023. Section 23 of the CJA 2003 provides as follows:

> ***"273 Life prisoners transferred to England and Wales***
>
> *(1) The Secretary of State must refer the case of any transferred life prisoner to the High Court for the making of one or more relevant orders.*
>
> *(2) In subsection (1) "transferred life prisoner" means a person—*
>
> > *(a) on whom a court in a country or territory outside the British Islands has imposed one or more sentences of imprisonment or detention for an indeterminate period, and*
> >
> > *(b) who has been transferred to England and Wales after the commencement of this section in pursuance of—*
> >
> > > *(i) an order made by the Secretary of State under section 2 of the Colonial Prisoners Removal Act 1884 (c. 31), or*
> > >
> > > *(ii) a warrant issued by the Secretary of State under the Repatriation of Prisoners Act 1984 (c. 47),*
> >
> > *there to serve his sentence or sentences or the remainder of his sentence or sentences.*
>
> *(3) In subsection (1) "a relevant order" means a minimum term order or a whole life order under section 321 of the Sentencing Code."*

10. Section 321 of the 2020 Act provides that a court must make a minimum term order unless it is required to make a whole life order. Under subsection (4) a minimum term order

> *"is an order that the early release provisions (see section 324) are to apply to the offender as soon as the offender has served the part of the sentence which is specified in the order in accordance with section 322 or 323 ("the minimum term")*"

11. Section 322 of the 2020 Act sets out the matters to which the court must have regard when setting a minimum term:

> ***"322 Mandatory life sentences: further provision***
>
> *(1) This section applies where a court passes a life sentence for an offence the sentence for which is fixed by law.*
>
> *Minimum term*
>
> *(2) If the court makes a minimum term order, the minimum term must be such part of the offender's sentence as the court considers appropriate taking into account-*
>
> *(a) the seriousness of-*
>
> *(i) the offence, or*
>
> *(ii) the combination of the offence and any one or more offences associated with it, and*
>
> *(b) the effect that the following would have if the court had sentenced the offender to a term of imprisonment-*
>
> *(i) section 240Z of the Criminal Justice Act 2003 (crediting periods of remand in custody); and*
>
> *(ii) section 240A of that Act (crediting periods on bail subject to certain restrictions);*
>
> *including the effect of any declaration that the court would have made under section 325 or 327 (specifying periods of remand on bail subject to certain restrictions or in custody pending extradition)*
>
> *Determination of seriousness*
>
> *(3) In considering the seriousness of the offence, or of the combination of the offence and one or more offences associated with it, under-*

(a) Section 321(3) (determining whether to make a whole life order), or

(b) Subsection (2) (determining the minimum term),

the court must have regard to-

(i) the general principles set out in Schedule 21, and

(ii) any sentencing guidelines relating to offences in general which are relevant to the case and are not incompatible with the provisions of Schedule 21.

Duty to give reasons for minimum term or whole life order

(4) Where the court makes a minimum term order or a whole life order, in complying with the duty under section 52(2) to state its reasons for deciding on the order made, the court must in particular-

(a) state which of the starting points in Schedule 21 it has chosen and its reasons for doing so, and
(b) state its reasons for any departure from that starting point."

(emphasis by underlining added)

Schedule 21 to the 2020 Act (formerly Schedule 21 to the 2003 Act) ("Schedule 21")

12. Paragraphs 2 to 5 of Schedule 21 set out "starting points" for the setting of minimum terms in murder cases, depending on the age of the offender and factual matters affecting the seriousness of the particular case. Having set out starting points commensurate with the varying degrees of seriousness, Schedule 21 goes on to specify (non-exhaustive) lists of aggravating and mitigating factors which the court is required to take into account (at paragraphs 9 and 10 of Schedule 21).

Repatriation of Prisoners Act 1984 ("RPA 1984")

13. LJ was transferred from the Republic of Ireland pursuant to a warrant issued under the RPA 1984. This statute was enacted to give effect to the UK's obligations under the Council of Europe's Convention on the Transfer of Sentenced Persons ("the Convention"). The purpose of the Convention is to facilitate and regularise the transfer

of prisoners serving a sentence in Country A to be returned home to Country B to serve out their sentence there. Its provisions stipulate that where a transfer occurs, the responsibility of Country B is either to enforce the sentence passed in Country A, by adapting it if necessary (Article 9.1(a), taken together with Article 10), or to convert the sentence passed in Country A to one that is compatible with the justice system in Country B (Article 9.1(b), taken together with Article 11). As noted by the House of Lords in *R v Secretary of State for the Home Department ex.p. Read* [1989] AC 1014, when ratifying the Convention, the UK elected not to apply the conversion procedure provided for by Article 9.1(b). It follows that the UK will implement a sentence passed in another Convention country by continuing enforcement of, and where necessary adapting, the sentence passed by the court in that country. Enforcement is subject to Article 10.2 which provides that:

> *"If, however, this sentence is by its nature or duration incompatible with the law of the administering State, or its law so requires, that State may, by a court of administrative order, adapt the sanction to the punishment or measure prescribed by its own law for a similar offence. As to its nature, the punishment or measure shall, as far as possible, correspond with that imposed by the sentence to be enforced. It shall not aggravate, by its nature or duration, the sanction imposed in the Sentencing State, nor exceed the maximum prescribed by the law of the administering State"*

14. In the case of *Hull* [2011] EWCA Crim 1261 the Court of Appeal considered an appeal brought by a transferred prisoner given a life sentence in Ireland for a murder committed there, in respect of whom a judge here had set a minimum term of 18 years. The court looked at the provisions of the Convention and the RPA 198 before discussing the principles to be applied to the setting of a minimum term under section 269 of the Criminal Justice Act 2003 (now section 321 of the Sentencing Act 2020). The court in *Hull* highlighted the difficulty arising from the fact that there was no regime in the Republic of Ireland for the imposition of a minimum term. It had been argued by counsel for Mr Hull that as life prisoners in Ireland were entitled to a Parole

Board review after seven years, the minimum term in his case should have been set at 7 years, not 18. The Court of Appeal rejected this argument. In the judgment at [29] to [30] the court referred to a statement made by the Irish Minister for Justice in April 2010 responding to questions about the length of time life prisoners were serving in prison before being released, recording that the average was at that time 17 ½ years. The court recorded information given to it through the UK Ministry of Justice that:

> "Since the establishment of the Parole Board [in the Republic of Ireland] in 2001 no life sentence prisoner had been released after only 7 years. The average was currently 17 ½ years. Some life prisoners were still in custody having served over 30 years."

The minimum term of 18 years was upheld.

15. In *Antar [2022] EWHC 12 (Admin)* at [39] to [49] May J reviewed the Court of Appeal decision in *Hull v. R* together with decisions on other references in the case of transferred life prisoners before concluding as follows, at [50]:

> "Following *Hull*, the approach to setting a minimum term in a case to which the Convention applies appears to be as follows:
>
> (1) The High Court should be provided with as much information as possible about the sentencing regime in the transferring state, so that the court can understand and attempt to estimate how long the prisoner would have remained in prison there before being released on licence if the transfer had not taken place.
>
> (2) Where the Convention applies, the High Court is bound by the legal nature and duration of the sentence passed in the transferring state but may adapt that sentence to ensure that it is compatible with the laws of England and Wales, under Articles 9(1)(a) and 10 of the Convention. In practice, this means that the minimum term set here should be the length that corresponds as closely as possible to the period of time the prisoner would have remained in custody in the transferring state before being released on licence, had the transfer not occurred. That will be so even if the strict application of Schedule 21 would have led the High Court to impose a longer minimum term. The explanation for this is that the High Court must ensure, so far as possible, that the UK complies with its international obligations under the Convention."

Setting the minimum term in the present case

16. It is necessary first to consider the likely minimum term which a court would have passed had LJ been tried and sentenced here. This is the approach which is mandated by the application of sections 321 and 322 of the Sentencing Act 2020.

17. LJ was aged 29 at the date of the offence. Where factors indicating greater degrees of seriousness set out in paragraphs 2 to 4 of Schedule 21 do not apply the starting point is one of 15 years, before consideration of aggravating and mitigating features. I have considered whether, had the same offence been committed in this jurisdiction, a court here would have concluded that the case came within paragraph 4 of Schedule 21 (where the starting point is one of 25 years) on the basis that LJ could be said to have taken a weapon (ie his car) to the scene "intending to use it to commit any offence"; however although LJ undoubtedly used his car as a weapon, which is a very significant aggravating factor, I do not think it could be said that he had taken it to the scene intending to use it to commit an offence. Accordingly the relevant starting point under Schedule 21 is one of 15 years.

18. A court here would then have considered any aggravating and mitigating features applicable to the offence of murder. Paragraph 9 of Schedule 21 sets out a (non-exclusive) set of factors of which (c) ("mental or physical suffering inflicted on the victim before death") applies here, given the evidence that Mr Sheehy was conscious and struggling to his feet before LJ drove at him and hit him for a second, and then a third, time. Other aggravating features include LJ's use of the car as a weapon, the fact that he was in drink at the time, and that the offence was committed late at night on a public street in the presence of bystanders, all of which a court here would have regarded as increasing the severity of the offending. LJ had a substantial offending

history, having amassed 25 convictions for offences in this jurisdiction, including drink driving, possession of drugs and low-level assault offences. However as none of these offences approached the nature or seriousness of murder a court here is likely to have disregarded his offending history as a significant further aggravating feature.

19. The minimum term also needs to reflect the additional offence of reckless endangerment, in respect of which the judge in Dublin passed a 7-year concurrent sentence. There is no directly comparable offence here. As the offence related to the actions of LJ in driving the car in such a manner as to knock Mr Quinliven to the ground, rendering him unconscious, there are two possible offences in this jurisdiction which might be considered comparable: dangerous driving (engaging a statutory maximum sentence of 2 years) or assault occasioning actual bodily harm contrary to section 47 of the Offences against the Person Act 1861/unlawful wounding contrary to section 20 of the same act (both offences carrying a statutory maximum of 5 years). Neither offence engages the higher statutory maximum of 7years applicable to the Irish offence of reckless endangerment but as the information does not allow me to find that Mr Quinliven sustained grievous bodily harm I cannot be sure that the more serious offences of causing serious injury by dangerous driving or causing GBH with intent would have been engaged on these facts. With this in mind, and given the elements of injury and recklessness, the section 47 offence appears the most directly in point. A court here would have considered and applied the relevant sentencing guideline for that offence by reference to the twin factors of culpability and harm. Culpability was high since injury was caused by the car as a weapon; as Mr Quinliven was knocked unconscious, harm was also at the highest level. Cat A1 has a starting point of 2 ½ years with a range of up to 4years.

20. Mitigating features identified in paragraph 10 of Schedule 21 include a lack of premeditation and lack of intent to kill. I have considered the extent to which either factor would have applied here. Given that LJ made three U-turns and hit/drove over Mr Sheehy three times I do not believe that a court here would find either factor applied in LJ's case so as significantly to reduce the appropriate minimum term. There is some mitigation in the fact that LJ attended at a police station the same evening and that he accepted being the driver of the car and causing Mr Sheehy's death, however as he contested the offences of murder and reckless endangerment at a trial no discount for plea could have applied. Finally, as appears from the transcript of the sentencing hearing, LJ evidently expressed remorse through his counsel, but in circumstances where he had entered no plea to either offence his expressed remorse would be unlikely to have reduced the minimum term to any significant extent.

21. Taking the two offences together, therefore, in my view a court here would be likely to have imposed a life sentence with a minimum term of 22 years.

22. As LJ is a transferring life prisoner, however, and applying the principles derived from *Hull* as discussed and reviewed in *Antar*, the term of 22 years must be considered alongside and, if appropriate reduced by reference to, the likely term which LJ would have been required to serve in prison in the Republic of Ireland had he stayed there. The situation in the Republic of Ireland remains that courts do not at present specify an appropriate minimum term when passing a life sentence (although I understand that this is currently under discussion and may change). Since the decision in *Hull* the Republic of Ireland has introduced new legislation in the form of the Parole Act 2019 ("the PA 2019"). By the operation of sections 24(1)(a) and 24(10) of the PA 2019 it appears that a serving life prisoner in the Republic of Ireland is now entitled to apply for a first

review after 12 years (as indicated above, at the time of the decision in *Hull*, life prisoners in Ireland were entitled to apply after 7 years). By section 20(1)(b) of the PA 2019 such prisoners will be eligible to re-apply, if parole is refused, every two years thereafter.

23. Following the approach adopted by the Court of Appeal in *Hull*, it would be wrong to conclude that the appropriate minimum term in LJ's case would be one of 12 years. It is necessary instead to arrive at the best assessment of the likely length of time which LJ would actually have served before being granted parole. Section 27(2) of the PA Act 2019 specifies the following matters which the Parole Board in the Republic of Ireland must take into account in deciding on parole:

"The Board shall, in deciding whether to make a parole order in respect of a parole applicant, have regard to—

(a) the nature and gravity of the offence to which the sentence of imprisonment being served by the parole applicant relates,

(b) the sentence of imprisonment concerned and any recommendation of the court that imposed that sentence in relation thereto,

(c) the period of the sentence of imprisonment served by the parole applicant,

(d) any offence of which the parole applicant was convicted other than the offence to which the sentence of imprisonment being served by him or her relates,

(e) the conduct of the parole applicant—

(i) while serving the sentence of imprisonment,

(ii) while previously the subject of a parole order, if any,

(iii) while the subject of a direction under section 2 of the Act of 1960, if any, or

(iv) during a period of temporary release, if any, to which rules under section 2 of the Act of 1960, made before the coming into operation of the Criminal Justice (Temporary Release of Prisoners) Act 2003 , applied,

(f) the risk of the parole applicant committing an offence while on parole,

(g) the risk of the parole applicant failing to comply with any conditions attaching to his or her release on parole,

(h) any treatment, education or training the parole applicant has undergone, or programmes he or she has participated in, while serving the sentence of imprisonment,

(i) any report relating to the parole applicant prepared and furnished to the Board pursuant to a direction in that regard under section 13 ,

(j) any meeting with the parole applicant conducted in accordance with procedures determined under section 14 ,

(k) any submissions made by or on behalf of the parole applicant, including any submissions made in relation to a draft decision on parole, in accordance with procedures determined under section 14 ,

(l) any submissions made by or on behalf of the relevant victim in accordance with procedures determined under section 14 , and

(m) any such other matter as the Board considers appropriate."

24. The sentencing judge in Dublin made no recommendation (section 27(2)(b) of the 2019 Act, above, refers) in LJ's case. However under paragraphs (a) and (d) of section 27(2) the Parole Board would have been obliged to take into account the particular elements of seriousness inherent in this offence of murder, where a car was used as a weapon, together with the associated offence of reckless endangerment. Bearing this in mind, it seems highly unlikely that the Board would have considered LJ suitable for a parole order after just 12 years.

25. The authorities in the Republic of Ireland have provided up to date information as to the average length of time life prisoners there are serving before being released on parole. I am told that it is currently 19 years. In the present case, given the aggravating factors and the presence of the additional offence, I think it likely that LJ would have served longer than 19 years in Ireland before being considered for release.

Conclusion

26. On the information before me, applying Schedule 21 and seeking to achieve the parity required by the Convention, I conclude that the appropriate minimum term without taking account of time spent on remand is one of 22 years. The precise determination of the minimum term is a judicial function (see *R v Cookson* [2023] EWCA Crim 10 at [9]); a sentencing judge here is required to reduce the length of the minimum term by the number of days on remand. I am told that LJ spent 903 days, or 2 years and 173 days on remand before his trial and sentence. On the facts of this case therefore, there will be an order under section 321 of the Sentencing Act 2020 for a minimum term of **19 years and 192 days** imprisonment from the date of sentence, namely 21 December 2019, before the early release provisions in England and Wales can apply.