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No: 201803825/A3

**IN THE COURT OF APPEAL**  
**CRIMINAL DIVISION**

Royal Courts of Justice  
Strand  
London, WC2A 2LL

Tuesday, 9 April 2019

**B e f o r e:**

**LORD JUSTICE FULFORD**

**MR JUSTICE SWEENEY**

**MR JUSTICE DINGEMANS**

**R E G I N A**

**v**

**GEOFFREY DOWNS**

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**Mr J Ryder QC** appeared on behalf of the **Applicant**

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

(Approved)

1. MR JUSTICE DINGEMANS: This is the hearing of a renewed application for permission to appeal against sentence.
2. The applicant was convicted in the Crown Court sitting at Inner London, on his own plea of guilty, on 30 July 2018 of the murder of Michael Boyle and of having an offensive weapon, contrary to section 1 of the Prevention of Crime Act 1953. The appellant was sentenced on 24 August 2018 to a mandatory sentence of life imprisonment by Her Honour Judge Karu. The judge specified a minimum term of 25 years less time spent on remand and a concurrent sentence of 12 months' imprisonment for possession of the offensive weapon. Permission to appeal was refused on the papers by the single judge.
3. The applicant is a 37-year-old man. He had three previous convictions, including one for an offence contrary to section 18 of the Offences Against the Person Act which had occurred in 1997 when he, then aged 15 years, had stabbed another person six times in the back, for which he was made subject to a supervision order which was subsequently discharged for compliance and progress. At the time of the offence the applicant was 21 months into a sentence of 39 weeks' imprisonment suspended for 24 months for producing cannabis by cultivation.
4. The deceased, Mr Boyle, rented a room from the applicant's father and the applicant also lived there in a separate room. At about 11.00 pm on 10 March 2018 Mr Boyle entered at the local public house and bought two pints of lager and gave one to the applicant. At about 12.15 am the applicant appears to have become agitated. He walked to his father's flat, collected two knives and then returned some 14 minutes later. He then shouted to Mr Boyle: "Don't fucking speak to me like that" and went and punched or head-butted him in the face. Mr Boyle fell to the ground and the applicant stabbed Mr Boyle in the chest. Mr Boyle was stamped on by the applicant. Onlookers intervened and there was a prolonged struggle. After this the applicant went away and he asked another person to dispose of the knife. He returned to his flat and, when challenged by his father, said he had been to his brother's flat and then admitted that he had earlier in the evening returned to the flat to get the knives.
5. It was common ground that a mandatory life sentence had to be imposed and that the starting point for the minimum term was 25 years. The judge identified as aggravating factors intoxication, premeditation, returning to the flat, with sustained attack, injury to three interveners, asking someone else to dispose of the knife, previous convictions and breach of a suspended sentence. Those aggravating features increased the starting point for the minimum term from 25 to 27 years. The judge then gave a discount of 2 years from the minimum term for the guilty plea leading to the sentence set out above.
6. Mr Ryder QC identified, in his written application for permission to appeal against sentence, that the proposed grounds of appeal were that:
  - (i) the judge wrongly increased the minimum term by reference to the aggravating factors; and

(ii) the judge gave insufficient credit for the plea of guilty.

Aggravating factors

7. So far as the aggravating factors are concerned, the submissions were that there was no sustained attack and there was injury only to one person. In our judgment, the judge was entitled to find that this was a sustained attack. This is because the applicant either headbutted, as reported from the CCTV, or punched Mr Boyle to the ground. He stabbed him with a knife and he stamped on his head and he carried on with the assault until he was knocked off Mr Boyle by others.
8. In our judgment, the judge was entitled to find injury to three persons: Mr Abbot had attempted to disarm the applicant but suffered a minor cut to his knuckle; Mr Green had attempted to punch the applicant to stop him and suffered a broken knuckle and the applicant had punched or pushed a woman to the floor.
9. Further, the judge had also identified other aggravating factors including the disposal of the knife and the relevant previous convictions and, in our judgment, the judge was entitled to increase the starting point from the minimum term of 25 years to 27 years.
10. It was said in oral submissions this afternoon that these matters did not materially add to the gravity so as to increase the minimum term. However the fact of stamping after the event, the planning and the request to hide the knife together with the previous convictions and the intoxication, were permissibly reflected by the judge in the increase in the starting point for the minimum term from 25 years to 27 years.
11. In relation to the second ground of appeal, it is said that insufficient credit for the plea of guilty was given. Although the plea was only made some 3 weeks before trial, it was said that the applicant had lost confidence with his former legal team and it was reasonable to wait for the new legal team before entering the plea so that full credit should be given. Mr Ryder noted the public interest in encouraging pleas of guilty to murder.
12. We agree with Mr Ryder's general proposition that pleas of guilty, where properly made, should be encouraged. Section 144 of the Criminal Justice Act 2003 provides that a court must take into account a plea of guilty and when it was made in determining the sentence. The Sentencing Council has produced a Definitive Guideline: Reduction in Sentence for a Plea of Guilty, which we must follow pursuant to section 125 of the Coroners and Justice Act 2009, unless satisfied that it would be contrary to the interests of justice to do so. At page 6 of that Definitive Guideline it is noted that there can be no reduction for the mandatory life sentence for murder and reductions in the minimum term are restricted. Credit for plea is restricted to one-sixth of the relevant term which is the equivalent of one-third of a determinate term of which half would be served, or 5 years.
13. We should record that the guidelines specifically note that exception F1 will apply. Exception F1 is headed "**Further information, assistance or advice where necessary before indicating plea**" and provides that:

"Where the sentencing court is satisfied that there were particular circumstances which significantly reduced the defendant's ability to understand what was alleged or otherwise made it unreasonable

to expect the defendant to indicate a guilty plea **sooner than was done**, a reduction of one-third should still be made.

In considering whether this exception applies, sentencers should distinguish between cases in which it is necessary to receive advice and/or have sight of evidence in order to understand whether the defendant is in fact and law guilty of the offence(s) charged, and cases in which a defendant merely delays guilty plea(s) in order to assess the strength of the prosecution evidence and the prospects of conviction or acquittal."

14. It was said in this case that the applicant should be given full credit because he needed the advice of leading counsel because he wanted to explore the defence of automatism because he was drunk at the time and did not have a recollection of the incident. He had not seen leading counsel at all until 29 June and therefore time should only count against him from there, if at all. Although he had had the benefit of previous legal advice, he had lost confidence in them and so was entitled to be treated as pleading guilty at the first opportunity when he had instructed new leading counsel. It was then noted that he had pleaded guilty as soon as he had received the advice from new leading counsel and as to the loss of confidence in the former legal advisers it was said that various documents had not been supplied by the applicant in his written applications to change legal advisers. The applicant said he wanted to see more of the CCTV to give instructions and he had said he had no idea at the stage at which his case had reached. In a later letter requesting a change of legal representatives he said he wanted new representations and said he had been shocked to be pre-condemned by his solicitors.
15. The response from the former solicitors showed that the documents had been provided to the applicant and that the applicant was reluctant to enter a plea of guilty to murder or manslaughter. A response from former counsel showed that when leading counsel had first met the applicant he had refused to speak to him although after the first hearing, he had watched the CCTV together with leading counsel and had been given advice. The leading counsel had reported what the applicant had said as at 29 June, that he was not a murderer, which shows a reluctance to accept the advice and plead guilty. He did plead guilty shortly after being given advice on 27 July on the first available date.
16. The applicant said he did not have witness statements when he did have them as apparently recorded by the judge on the DCS in what must have been a widely shared remark because it was referred to in the respondent's notice. It said that he had not seen the CCTV but it is apparent that he had refused to watch that at court when with his counsel. Mr Ryder had said he had wanted to explore automatism because the applicant said he had no recollection of events but on the evening the applicant had been able to tell a friend to hide the knife and he had also told a lie to his father about where he had been earlier on in the evening. The judge gave the applicant credit of

7.5% which equates to 15% under determinate sentence (just under half of the full discount available).

17. In our judgment, it is not apparent that the applicant should have been given any further credit. He appears to have been given relevant advice beforehand which he did not like considering himself not to have been a murderer and considering himself to have been, as he put it, “pre-condemned”. When advice was given again by excellent new legal representatives he appears to have accepted it.
18. The judge was best placed to make the assessment of what discount should be given. In this case the discount of 2 years was given even though the plea was entered only 3 weeks before trial. This was still a substantial discount and showed that the judge must have had regard to the need for the applicant to obtain legal advice but a discount which also reflected the specific circumstances leading to the plea of guilty.
19. This is a case involving the senseless death of Mr Boyle, caused by the applicant for no apparent reason apart from apparent irritation about the way he had been spoken to. The applicant has taken the life of Mr Boyle and devastated the lives of Mr Boyle's son and family. The applicant has destroyed his own life and hurt his own family. Those who carry and use knives will receive, as the previous decided cases have established, very severe punishment. Notwithstanding the skillful submissions made by Mr Ryder, to whom we are grateful for his pro bono appearance, we can discern no arguable grounds of appeal against sentence. We refuse permission to appeal.

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