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JUDICIARY OF ENGLAND AND WALES

In the Crown Court at Leeds

The Queen

-v-

Martin Bell

Sentencing Remarks of HHJ Peter Collier QC

19th December 2014

1. Martin Bell, I have to sentence you on your plea to the manslaughter of Gemma Simpson.

2. That is a plea that has been properly accepted by the prosecution.

3. The reasons for that are first that there is clear evidence that you have suffered for many years from a personality disorder and that on top of that in 1999 you had been admitted as an inpatient in hospital for a period of about 9 months under section 2 of the Mental Health Act 1983. You had been admitted because you were suffering from a psychotic illness and had serious delusional beliefs. Secondly, when you were discharged some 6 weeks before you killed Gemma Simpson the discharging doctor recorded "the fact that you had little insight into your illness and that the delusions have not completely disappeared, are cause for some concern". It was on the 5th May 2000 you killed Gemma Simpson. The third factor is that the prosecution accept that there is no good reason to reject your account of the circumstances of the killing whilst accepting your account of the manner of the killing which has been corroborated by the evidence now discovered as a result of your admissions. For all those reasons and I agree with them they have concluded that there would be no proper basis for a jury to reject your account of the circumstances of the killing and

therefore to reject the basis of your plea to manslaughter on the grounds of Diminished Responsibility.

4. The killing of Gemma Simpson was brutal; your treatment of her body after death was dreadful; but your culpability was considerably diminished by your mental illness.

5. You have described how when younger you took drugs, you got involved in occult practices and began to suffer what were clearly delusions. You had met and befriended Gemma Simpson. In your accounts given to various people since your arrest of how you came to kill her you tell of a conversation taking place at your flat and her deciding to leave. As she left, you had an argument and she asked where your children lived. In your paranoid state you interpreted that as a threat to your children, you picked up a hammer and attacked her, striking her head repeatedly. She was unconscious but you considered she might regain consciousness and you could see she was still alive. You knew you had crossed a line and must finish what you had started, so you then got a knife from the kitchen and stabbed her repeatedly in the back and the back of her head so that there would be no chance of her surviving. She was however clearly still alive and so you dragged her to the bath laid her face down, tied her hands behind her back and filled the bath with water. You left her there for several days and then you decided to bury her body. You cut off her legs so that you could transport the body away. You put her mortal remains into a sleeping bag and wrapping chains around it took the bag in your car to Brimham Rocks and there you buried it in a place where it was unlikely ever to be discovered. Over the next few years you went back from time to time to check that there had been no disturbance of the site.

6. It was only after your mother had died that you were prepared to go to the police, which you did on 8th July 2014. There and then you confessed what you had done; you assisted the police to recover the remains of Gemma Simpson; you were charged with murder and at your first appearance at this court indicated that there would be no issue about the killing and that the only issue would be whether your responsibility for that killing was diminished in law or there was provocation. Either matter was to be dependent on psychiatric evidence. The prosecution and your

advisors instructed psychiatrists who have quickly agreed that this is a case of diminished responsibility.

7. So, how do I approach the determination of the appropriate sentence? I have heard submissions from counsel for the prosecution and the defence. I am enormously grateful to them both for the assistance they have given me.

8. As will become clear from these sentencing remarks it would appear that the position you are in is unique.

9. The starting point is that you must be sentenced in accordance with the law that applied at the time when the offence was committed. There is no issue about that date, it was May 2000. That was before the coming into force of the CJA 2003.

10. At that time sentences for manslaughter by reason of diminished responsibility had the same maximum penalty as now namely a penalty of life imprisonment. In many cases however the sentence was in fact a hospital order, often coupled with a restriction order. In this case although the doctors are agreed that at the time of the killing in 2000 you were suffering from a serious mental disorder, there is no suggestion by either doctor who has examined you that such an order would be necessary and therefore appropriate for you today. Dr Kent who has been instructed on your behalf specifically states that that is not an appropriate disposal of this case.

11. There are no guidelines from the Sentencing Council in relation to sentences for this offence.

12. I therefore in the first instance have to revert to how the court was accustomed to reaching decisions about sentence in these cases in 2000 and I have to follow that decision making pattern.

13. Clearly the first question I have to consider given the nature of your underlying mental disorder and personality disorder is whether a sentence of life imprisonment is appropriate.

14. The Criminal Justice Act 2003 is not retrospective and so the court does not approach this case by looking at the issue of dangerousness within the meaning of that Act.

15. It is agreed by the prosecution and defence that the seminal case for my consideration is *Attorney General's Reference (No. 32 of 1996) (R. v Whittaker)* [1997] 1 Cr.App.R.(S.) 261.

16. In that case the then Lord Chief Justice, Lord Bingham said that there were "two conditions required before a life sentence could be imposed.

> "First, that the offender should have been convicted of a very serious offence" (obviously that is so here – you have pleaded guilty to an unlawful killing) "and,
>
> Second, that there should be good grounds for believing that the offender may remain a serious danger to the public for a period which cannot be reliably estimated at the date of sentence."

17. That second principle was well established by the time it was stated by Lord Bingham. He referred back to two cases

18. He referred first to *Wilkinson & Others* (1983) 5 Cr App R (S) 105 in which Lord Lane CJ had said:

> "It seems to us that the sentence of life imprisonment, other than for an offence where the sentence is obligatory, is really appropriate and must only be passed in the most exceptional circumstances. With a few exceptions, of which this case is not one, it is reserved, broadly speaking, as Lawton L.J. pointed out, for offenders who for one reason or another cannot be dealt with under the provisions of the Mental Health Act, yet who are in a mental state which makes them dangerous to the life or limb of members of the public. It is sometimes impossible to say when that danger will subside, and therefore an indeterminate sentence is required, so that the prisoner's progress may be

monitored by those who have him under their supervision in prison, and so that he will be kept in custody only so long as public safety may be jeopardised by his being let loose at large."

19. Earlier in that case Lord Lane CJ had quoted what Lawton LJ said in *Pither* (1979) 1 Cr App R (S) 209 at 213, when Lawton LJ said

> "… this court has laid it down as a matter of principle that life sentences for offences other than homicide should not be imposed unless there are exceptional circumstances in the case. One of the most usual types of exceptional circumstances is that there is a marked degree of mental instability, which may or may not amount to a mental disorder within the Mental Health Act 1959. There is no evidence in this case of a marked degree of mental instability."

20. Of course none of those cases to which I have just referred were cases of homicide and there was no suggestion of mental instability in any of those cases.

21. The matter for me to decide in applying those principles is whether in this case where you have been affected by a mental disorder to such an extent that you have killed, you pose a danger to the "life or limb of members of the public" in the future.

22. Mr Greaney QC argues that firstly prior to killing Gemma Simpson although you had for some years been affected by delusional beliefs you had not harmed anyone and secondly that since the killing of Gemma Simpson you have not only not killed again, but with one minor exception you have committed no further offences of violence.

23. Both those propositions are true and I must weigh those facts. I must also however weigh in the balance the judgment of Dr Kent an extremely experienced forensic psychiatrist and one for whom this court has the highest regard.

24. In his report he deals with the issues of your illness and your personality disorder. He says:

"12.1 Mr Bell has a psychotic mental illness. The course of his illness has been fluctuated with relapse and remission, and for large parts of his life he has been able to lead an independent life managing to greater or lesser degree all the opportunities available to him without the need for treatment. The more florid manifestations of his illness has been precipitated or worsened most probably by drug misuse. As he has an inherent illness he is also vulnerable to spontaneous relapse as well as deterioration in the face of stressful life events.

12.2 He has a highly unusual personality structure amounting to a personality disorder. He has antisocial traits, as well as schizotypal abnormalities which mark him out as somewhat of a loner and eccentric.

12.3 His mental illness is not currently active and for this he does not require treatment in hospital, however the situation may change in the future. He will require monitoring by prison mental health services and in the event of relapse there are mechanisms to transfer to secure hospital care via section 47 Mental Health Act. His personality disorder is lifelong and probably not amenable to treatment nor does it require in patient management."

25. His judgment is set out in the final paragraph of his report:

"12.4 Risks. This is difficult to judge. He has committed a homicide in unusual circumstances but over a decade ago without evidence of reoffending. However given that in my view mental illness and personality disorder were significant factors he must still be regarded as presenting substantial risk of serious harm to the public. This relates to the view that he has a lifelong personality disorder and he has a relapsing mental illness which has been an important contributory factor in this offence. In addition his illness has had as one characteristic homicidal ideas."

26. In my judgment adding to Dr Kent's clinical assessment, the evidence that I have which indicates that, although you have not been prosecuted for any offences of violence, your relationship with your partner of recent years was controlling and was one in which you to some extent acted out your disorders.

27. Taking all these matters together and weighing them against the matters Mr Greaney QC urges to the contrary, I am satisfied that in this case of homicide there are exceptional circumstances which are that you have a history of mental disorder namely a psychotic illness which has had as one of its characteristics homicidal ideas and which is not predictable as to its future outworking.

28. Further I am satisfied, to use the more modern language, which in fact poses a higher test than that used in 1997, that you pose a significant risk of serious harm to members of the public and that therefore for this very serious offence there is no alternative for me but to pass a sentence of life imprisonment.

29. That of course is only the first of the decisions I have to reach about sentence. I now have to move to decide what is the minimum term you must serve before you will be entitled to be considered for release on life licence for the rest of your life. This is a much more difficult exercise.

30. I would also add at this point that not only is there no guarantee that you will be released at that point which I am about to determine, but there is an assurance that you will not be released then or at any point unless and until the Parole Board is satisfied that you no longer pose such a risk to the public.

31. I have heard submissions from the prosecution and the defence as to how I should approach that issue of determining the minimum term. They are diametrically opposed in relation to the fundamental question which is whether I am required to arrive at precisely the same figure I would have arrived at if passing this sentence in the year 2000 or whether that term should be significantly higher because I should take into account developments in the law in relation to sentences for manslaughter since 2003. Mr Greaney QC says I must follow the '2000 and no more' approach; Mr Myerson QC says I should apply the post 2003 regime and in particular I should have regard to the cases of *R v Appleby and Others* [2009] EWCA Crim 2693 for sentence in cases of manslaughter generally and *R v Clive Wood* [2009] EWCA Crim 651 for cases of manslaughter by reason of diminished responsibility.

32. Mr Greaney QC developed his argument as follows – Art 7.1 of the ECHR – provides that a penalty "should not be heavier than the one applicable at the time the offence was committed".

33. That , he says, is recognised in cases of murder not only by not applying Schedule 21 of the 2003 Act but by applying the tariffs that would have been applied prior to that and in accordance with the letter from the LCJ Lord Bingham in 1997. That principle was established in the case of *Sullivan* [2004] EWCA Crim 1762 and has been applied consistently since then in relation to cases of murder that predate the coming onto operation of the Criminal Justice Act 2003.

34. Mr Greaney QC argues that that must apply also to discretionary sentences of life imprisonment as otherwise a situation could arise where someone might receive a lesser minimum sentence if he admitted murder than if he admitted manslaughter. He says that cannot be a right result.

35. On the other hand he accepts, following the case of *Masefield* [2013] 1 Cr.App.R.(S.) 77, that if a determinate sentence is imposed then the court is required to have regard to the increased severity of sentences now compared with 14 years ago and to impose a determinate sentence in accordance with current practice.

36. He accepts that these two approaches are difficult to reconcile.

37. On the other hand Mr Myerson QC argues that as there is no clear authority to the effect that the *Sullivan* principle applies to manslaughter, he says it would be wrong to extend it to do so.

38. He says that the rationale of *Sullivan* is based fairly and squarely on the specific starting points which although not statutory, had legal force and were to be followed. He says that the determination of minimum tariffs in cases of murder went through a series of incremental increases beginning with the letter from Lord Bingham dated 19th February 1997, the Practice Direction issued by Lord Wolff CJ on 27th July 2000, the Practice Statement handed down by Lord Wolff CJ on 31st May 2002, Schedule 21 of the Criminal Justice Act 2003 and the Practice Direction on the transitional provisions

dated 18th May 2004. He says that each of these directions dealt with specific starting points for murders with differing degrees of seriousness.

39. In those circumstances Mr Myerson QC argues that Art 7.1 clearly bites as an offence which is classified as having a particular level of seriousness would be more severely dealt with in 2005 than in 1997; so if the offence was committed in 1997 but sentence was passed in 2005 it would be contrary to Art 7.1 to impose a sentence based on the higher starting point.

40. The position in murder however he says is to be contrasted with manslaughter where there are no classifications of offences into different levels of seriousness, but the sentencer approaches the case like any other offence judging the seriousness by an assessment of the harm caused by the offence and the culpability of the offender and passes a sentence appropriate to that degree of seriousness. That is the approach adopted in sexual cases, as was decided in *R. v H* [2011] EWCA Crim 2753. He points out that that that is now codified in the Sentencing Council's guidelines for sexual offences, and although it will lead to higher sentences than would have been passed 10 or 20 years ago, it has been decided that that is not contrary to Art 7.1

41. He accepts that that may lead to a more severe sentence for manslaughter than for murder, but says that that is simply a consequence of different approaches required by the law for the different offences.

42. In 2000 there were different approaches adopted in relation to mandatory and discretionary life sentences. The earlier history of those differences and the their development is of course rehearsed by Lord Mustill in *R v Secretary of State for the Home Department ex parte Doody* (1994) 1 AC 531. There were then further developments in the different regimes between 1993 and 2003 when the Criminal Justice Act 2003 "judicialised" the setting of the tariff period for mandatory life sentences. By 2000 the setting of that tariff in a discretionary life case was already firmly in the hands of the judge who passed sentence. However, the release of an offender convicted of murder and subject to a mandatory life sentence was dealt with differently. It was not until 2002, following *R v Secretary of State for the Home Department ex part Anderson* (2003) 1 AC 837 that the ultimate decision making about the tariff in a mandatory life case

moved from the Home Secretary to the sentencing judge. Prior to that there had been a very different view about what was taking place in the fixing of the tariff period. There was then no relationship, as there is now, between the tariff that might have been fixed if the partial defence of diminished responsibility did not apply and the case had been a murder, and the tariff to be fixed by making a reduction on that figure according to the degree of diminishment allowed for in a case of diminished responsibility manslaughter. The discretionary life tariff was assessed by the judge in relation to other similar cases. It bore no direct relationship to the murder tariff, if it can rightly be called a tariff, and it did not have any fixed starting points.

43. It is against that historical background, which shows that there were two quite different approaches to tariff setting, that I have concluded that the principles which led to the decision in *Sullivan* do not apply in discretionary life cases and that I must follow the reasoning expressed in *R v H*.

44. I must therefore have regard to the harm caused by your actions and to your culpability and I must have regard to the fact that Parliament has in recent years determined that sentences for offences where a death has resulted should be treated more seriously and punished more severely than before.

45. The harm was the greatest possible – the loss of a human life. The impact of that harm on the family of the victim is very high as for 14 years they endured the agony of not knowing what had happened to Gemma. Throughout that time they have retained a glimmer of hope that she was alive but it was a false hope kept alive by your silence over those 14 years. I have read the Victim Personal Statements provided by her father and her sister which describe the 14 years agony of unknowing. Her father even puts it in days – "4980 days of pain, worrying and fear for Gemma and her wellbeing. It isn't something that a person thinks about once or twice a day, it becomes an integral part of their whole life, it is a constant shadow and a chill in the heart that never leaves and is with them from waking in the morning to closing the eyes at night". Her sister speaks about the effect on her mother. She describes how her mother couldn't cope with not knowing what had happened, but adds "Now knowing is a lot worse".

46. Further you not only killed her but you dismembered her body and you buried it where it would never have been discovered apart from your recent confession. Your decisions about what you did with her body and your continuing resolve not to reveal what you had done were deliberate acts which are also aggravating features for which you must bear some responsibility.

47. Your culpability is however obviously lessened by reason of the court's acceptance that your responsibility was diminished at the time both of the killing itself and also in the aftermath when you disposed of her body. In regard to that latter matter, there is evidence that you clearly believed there was a possibility that she might come back from the dead.

48. That diminution of responsibility goes to the act of killing and has avoided a conviction for murder. I am satisfied that it continued for some time. However there came a stage at some point, and I am satisfied that it has been the case for a significant part of the 14 years that have passed since the killing, when you were not so affected but during which time you have consciously, deliberately and knowing that you were continuing to cause harm to her family, held back from disclosing what you had done and where Gemma Simpson's remains could be found.

49. I have to consider what mitigating factors there are. Your mental condition has reduced the offence to manslaughter and I should not double count that factor. Although you have some convictions and have previously served a prison sentence I accept that you had no previous convictions for violence at the time of this killing. Your assistance to the police has to be counterbalanced with the years of silence to which I have already referred, and any remorse has come very late in the day. However I do take those matters into account when arriving at my starting point.

50. I have in mind that the expressed minimum term in 2000 would have been arrived at in a different way from the way it is done today. That way is stated in the Practice Direction (Crime Life Sentences) [1993] 1 WLR 223 and it would then have been necessary to decide on the notional determinate sentence and then to specify a period of between ½ and 2/3 which should be made plain. However my objective is today to fix a minimum term consistent with the approach to seriousness and severity

that is applied today. Today if this had been a murder then the minimum term would have been in the upper 20s; that must be reduced because of your mental disorder to the mid teens but is raised again by your callous silence to a starting point of 18 years (equivalent today to a starting point of 27 years to serve in 2000).

51. I then have to determine the credit you should be given to reflect not only your guilty plea but the fact that after 14 years silence you eventually decided to confess what you had done. Furthermore you assisted the police by directing them to the site where you had buried the body parts of Gemma Simpson.

52. It is the habitual practice of this court to allow the maximum credit for such guilty pleas and assistance. The cases of *Oakley* [2010] EWCA Crim 2419 and *Imtiaz Ahmed* [2012] EWCA Crim 708 make it clear that the court is not limited to a 1/6 maximum discount for a guilty plea but that full credit up to 1/3 where appropriate may be allowed. Again this in my judgment reflects the longstanding differences in approach between mandatory and discretionary life sentences. It is also a significantly higher figure than I consider you would have been likely to receive in any such calculation in 2000.

53. That reduces the minimum term to 12 years.

54. I also have to allow for the time you have spent on remand and deduct that from the total; that is agreed at 160 days.

55. In the result the period you must serve before you will be able to be considered for release on licence is 11 years 205 days.

56. The statutory surcharge does not apply in this case.

HHJ Peter Collier QC
The Recorder of Leeds 19th December 2014