



JUDICIARY OF
ENGLAND AND WALES

R V COLIN CAPP

**SENTENCING REMARKS
OF THE HONOURABLE MRS JUSTICE CARR DBE**

Colin Capp, you are aged 23 years old. You now stand convicted by a unanimous jury of the murder of Darren Thomas on 6th March 2014.

On 10th July 2012 you were convicted of arson being reckless as to whether life would be endangered on 4th July 2012, contrary to s. 1 of the Criminal Damage Act 1971. After mental health assessment, you were sentenced to 32 months' detention in a Young Offenders' Institution. The circumstances of that offence were that you set light to 7 Wyfan Place, Cardiff, where you were staying at the time. After an argument with your then girlfriend you sprayed lighter fluid around your first floor room which you then set alight. You were released on licence but recalled to HMP Cardiff on 7th February 2014.

It was in those circumstances that you came to be sharing a cell with Darren Thomas on the night of 5th and 6th March 2014. Darren Thomas was a vulnerable 45 year old, essentially a vagrant not coping with life on the outside, and who was serving a 12 week custodial sentence for breach of an anti-social behaviour order as a result of begging in Cardiff City Centre.

You had been assessed as at risk of self-harm and were on an Assessment Care in Custody Teamwork plan and to be the subject of hourly checks as a result. You were both locked up in your cell at about 7pm, with you on the top and Mr Thomas on the bottom bunk. In the early hours of 6th March 2014, including at 0230 hours, you were noted to be sitting on your bed.

At 0325 am you rang the internal alarm requesting assistance. Prison staff attended. Mr Thomas was found lying face down on the floor with a blanket partly over him with fatal injuries. Over his head was a plastic bag which had been pulled tight and screwed up at the back of the head. A bed sheet was also around his neck. Mr Thomas also had some 100 puncture marks on the left hand side of his neck which you had caused with a plastic biro through the plastic bag. The cause of Mr Thomas' death was strangulation or suffocation or a combination of both.

You had waited for Mr Thomas to fall asleep, and then, for whatever reason, chose to kill him. I have no doubt that you intended to kill him. This was a concerted, sustained and vicious attack. You have shown no remorse.

The court has heard a victim impact statement from Ms Susan Davies, the mother of Mr Thomas. She describes how he was a much loved son, stepson and brother whose death has caused deep anguish to his family and friends. Mr Thomas was intelligent and articulate, and not violent in any way. Your lack of remorse has prevented the family from achieving closure, despite extensive counselling.

You have a complicated background. You were born in Inverness. You suffered considerable adversity during your childhood due to disruption of family life, rejection by your parents, reception into care and the suicide of your elder half-brother when you were aged 14 years. You say that you were the victim of physical and sexual abuse when you were a young boy. You were in and out of care. You left school with no qualifications but managed to achieve short periods of work before coming to Cardiff.

You have a history of alcohol and drug abuse and a history of previous offending : apart from a caution in 2006, you were convicted in 2011 of sending offensive messages (and sentenced to detention in a Young Offenders' Institution) and for possession of a class B controlled drug; in 2012 you were convicted of criminal damage and given a conditional discharge. None of those matters are of any real significance in the present context, but your conviction for arson is of course material.

The court has also heard medical evidence about you from two consultant forensic psychiatrists, Dr Melanie Croy and Dr Philip Joseph. It is clear in my judgment that you suffer from a mental disorder, namely a long standing personality disorder with antisocial, psychopathic and borderline features. A personality disorder is a longstanding developmental condition in which, due to adverse life experiences, personality development is disordered. You suffer from emotional instability, leading to difficulty in controlling your emotions, resulting in self-harm and aggressive acts towards others.

By way of aggravation, there was here a significant degree of premeditation. You sat on your bed for a couple of hours contemplating your actions. Mr Thomas was a vulnerable man whom you attacked in a confined environment when he was defenceless in his sleep. The fact that you committed this offence whilst already serving a custodial sentence for a serious offence is an aggravating factor.

By way of mitigation, you are a young man with a troubled and difficult past, as already indicated. Whilst your criminal responsibility was not substantially diminished as a result of mental health problems, you do have a longstanding personality disorder. This lowers your degree of culpability, but I assess your culpability as nevertheless substantial. You knew what you were doing and that it was very wrong and you could have prevented or stopped your actions.

I am obliged by law to sentence you to imprisonment for life on the count of murder of which you now stand convicted. I then have regard to Schedule 21 of the Criminal Justice Act 2003.

The appropriate starting point in determining the minimum term under Schedule 21 of the Criminal Justice Act 2003, not to be applied mechanistically, is 15 years.

Having regard to all the aggravating features and all the mitigating features in your case, I consider an appropriate minimum term to be 16 years. I therefore fix the minimum term which you will serve in custody, before the Parole Board may consider your possible release, at 16 years.

In my judgment this minimum term accurately reflects the seriousness of the offence taking account of the statutory starting point, all relevant aggravating and mitigating factors.

It is important that you – and everyone concerned with this case – should understand what this in fact means. The minimum term is not a fixed term after which you will automatically be released but the minimum time that you will spend in custody before your case can be considered by the Parole Board. It will be for the Parole Board to say at that time whether or not you will be released. If it remains necessary for public protection, you will continue to be detained after that date. If and when you are released you will be subject to licence and this will remain the case for the rest of your life. If for any reason your licence were to be revoked, you would be recalled to prison to continue to serve your life sentence in custody.

The victim surcharge order applies.