



JUDICIARY OF
ENGLAND AND WALES

Sentencing remarks of Mr Justice Kerr

The Queen

v

Aaron Jenkins and Emma Butterworth

Preston Crown Court

3 March 2016

1. You may both remain seated for the moment. I will deal first with your case, Mr Jenkins. Last July, you brutally bludgeoned Mr Stephen Whitehead to death with a sledgehammer, while he slept.
2. You did this because you had a score to settle with him. You had fought with him a few weeks earlier and received an injury. As you admitted, you decided it was “payback” time. You struck him several times on the head. He did not stand a chance.
3. It was a horrific attack on a defenceless man. Your cruelty has taken from his 24 year old daughter the father she loved. His five brothers and sisters have lost their beloved brother. Their appalling suffering continues and will continue.
4. For this offence of murder, the sentence I am required by law to pass is one of custody for life.
5. I have to determine the minimum term of imprisonment which you must serve before being eligible to apply to the Parole Board to be considered for release.
6. To do so, I have to consider the provisions of Schedule 21 to the Criminal Justice Act 2003 regarding the seriousness of the offence, to determine the minimum term of that life sentence that you must serve as the punishment and deterrent term of the sentence, before consideration can be given to your release.
7. A minimum term is not the same as an ordinary sentence of imprisonment where a defendant will normally serve only half of that sentence before being released on licence. A minimum term

is the term that must be served before your case may be referred to the Parole Board for a consideration of your release upon licence. It means the actual length of time that you will spend in custody before that process can take place.

8. Whether or not you will be released after the minimum term has been served will be for the Parole Board to consider at the end of the minimum term. The Parole Board will not decide that you can be released at that stage, unless it is satisfied that you are not a risk to the public, and are ready for release into society.
9. If you are released at that time, or any later time, you will be released on licence with specific conditions attached, and may be recalled to continue serving your life sentence if you breach any licence conditions that are imposed upon you.
10. I have carefully considered whether you took the sledgehammer to the scene of the murder in order to have it available as a weapon and to use it to commit an offence. I have considered the cases which deal with that issue (see *R. v. Dillon (Paul)* [2015] EWCA Crim 3 per Bean LJ at paras 27-29) and also *R. v. Clare (Richard Anthony)* [2015] EWCA Crim 491, CA, per Beatson LJ at paras 39-40).
11. The case is borderline but I accept that here the murder “scene” is broad enough to include both the upstairs room in which you bludgeoned Whitehead to death, and the downstairs room where you picked up the sledgehammer before taking it upstairs and using it on Mr Whitehead.
12. The starting point for this murder is therefore a minimum term of 15 years. But it is only a starting point. I must go on to consider the facts in this case which aggravate, and those which mitigate, the seriousness of the offence.
13. There is no doubt that there are serious aggravating features:
 - (1) The murder was committed in the course of a burglary, or attempted burglary. Sadly, it is because you decided to break into the premises and steal a motor-bike that you chanced on Mr Whitehead asleep. If you had not decided to burgle the premises, he might well be alive now.
 - (2) Secondly, the use of the sledgehammer as a weapon is a serious aggravating factor in the case. Although you did not bring it to the scene in the statutory sense, you used it to inflict those terrible injuries which broke Mr Whitehead’s skull. And you struck repeated blows to his head, not just one.
 - (3) Third, you were heavily under the influence of drink and drugs at the time of the killing.

- (4) Fourth, your victim was defenceless because he was asleep and did not know you were there.
 - (5) Fifth, you took care to construct a deceitful story afterwards, constructing a false alibi which you rehearsed with Emma Butterworth, your girlfriend, on the day after the murder.
 - (6) Sixth, you intimidated Ms Butterworth into committing the serious offence for which she now faces a sentence of custody. It is your fault, as well as her fault, that she is no longer a person of good character. You abused your power over her to procure a false alibi.
14. On the other hand, there are also mitigating features in this case:
- (1) I am not sure you intended to kill Mr Whitehead. If you had been a cool-headed and mature man, I would have had no doubt about the intention to kill just because of the nature of the blows struck and the weapon used. But you were a very young man of low intelligence and with a significant learning disability. So I cannot be sure you intended to kill him.
 - (2) Secondly, you eventually admitted the killing, a week after it happened, and apologised for having lied up to that point. You would have pleaded guilty to manslaughter, as indicated in your defence statement in October 2015, which included an admission of unlawfully killing Mr Whitehead. In the light of Dr Bacon's evidence, it would be wrong to hold against you the fact that you did not plead guilty to murder.
 - (3) Thirdly, you were very young at the time you committed this murder. You were born on 23 June 1995 and had just turned 20. I take careful account of your age, adopting the approach stated in the judgment of Judge LJ in *R. v. Peters* [2005] EWCA Crim 605 (especially at paragraph 12, which recommends checking that a discount on account of age is proportionate by considering it in the context of the overall statutory framework, as if Schedule 21 envisaged a flexible starting point for offenders aged from 18 to 21).
 - (4) Fourthly, and even more importantly, I bear in mind that this is a case where your culpability - that is, the blame you bear for this crime - though not such as to reduce your crime to manslaughter, is reduced because you suffer from a mental disability. I remind myself of Dr Bacon's evidence, which I accept, that you suffer from a moderate mental retardation or moderate learning disability, that your intelligence is at a level in the bottom 0.1% of the population, and that in some ways (though not in physical strength, unfortunately), you function at the level of a child aged about 8 or 9.

15. I have to consider your previous character, in particular your criminal record. During the trial, you did not, through counsel, effectively contradict the evidence of Ms Butterworth that you had been violent towards her in the past. I accept the evidence that Mr Curran gave at trial about your fascination with violence and enthusiasm for engaging in it. I also note that you had previously picked a fight with Mr Whitehead.
16. That evidence is consistent with your record of previous convictions and a reprimand, including for offences of battery, arson and criminal damage, as well as burglary. This is an aggravating feature, but it is tempered by your age and learning disability, which I have already mentioned. I do not treat your past record of violence, such as it is, as a factor that should lead me to increase the minimum term significantly.
17. I have to balance all those factors. To do so is not an easy task. In the end, weighing them all in the scales and measuring their impact on the starting point of 15 years, I have come to the conclusion that the minimum term in this case should be 17 years.
18. Stand up please, Mr Jenkins. The sentence of the court for the murder of Stephen Whitehead is custody for life, with a minimum term to be served of 17 years, less 212 days spent on remand in custody awaiting trial.
19. I will deal next with your case, Ms Butterworth. You were born in September 1998 and have no previous convictions. Last July you were just 16. You are still 17 and will not be 18 for another six months or so. Your baby by Mr Jenkins is due at the end of this month. You were pregnant at time of your offence but did not know it.
20. I accept the points eloquently made in the report of Mr Entwistle, the probation officer who prepared the pre-sentence report in your case. I also accept what Ms Hellin, the psychologist, has said about you, and what is said by your counsel, Mr Elias. You are very young. You have had a very difficult childhood. Your life so far has included exposure to neglect and drug use by your parents. You have been exposed to violence at the hands of Mr Jenkins.
21. You are not a drinker or drug user yourself. You are unlikely to reoffend, in the view of the probation officer. You wish to lead a responsible life when you become a mother in the very near future. You have no convictions. You are said to be of low intelligence, though you well know the difference between right and wrong, and between truth and lies. You do not have any psychiatric illness. You were vulnerable to intimidation from Mr Jenkins, both because you feared him and because you loved him.
22. You lied to the police about what had happened, for several days.

You rehearsed with Mr Jenkins an elaborate story about being together all weekend, going shopping at Tesco's and watching films on television. Your lies could have derailed the police investigation and prevented the crime from being solved. If that had happened, the family of Mr Whitehead would have had to endure even worse suffering.

23. I accept that you now understand that and are sorry for it. But you continued to lie to the police even after you knew Mr Jenkins was in custody and unable to harm you. That is an aggravating feature. So is the seriousness of the offence you lied about; there is no crime more serious than murder. I am sure you knew on the Sunday morning after the killing that Mr Jenkins really had killed someone, and that you spent the Sunday rehearsing your story with him.
24. I have to take into account, in accordance with the guidance from the Court of Appeal in *R v Tunney* [2006] EWCA Crim 2066, first, the seriousness of the substantive offence, second, the degree of persistence in the conduct, and third, the effect of the attempt to pervert the course of justice. I have already dealt with the first two. As to the third factor, fortunately the police investigation was only delayed and there was no miscarriage of justice. But there could have been.
25. The Court of Appeal has said clearly that perverting the course of justice is so serious that it is almost always necessary to impose immediate custody unless there are exceptional circumstances. The offence undermines the very system of criminal justice. I am in a difficult position because in this case, if I do not send you into custody, the message may go out that putting police off the scent by lying is not serious. I cannot allow that to happen.
26. I accept that there are unusual features in your case: your vulnerability, your extreme youth, the pressure you were under from Mr Jenkins, your low intelligence, your very difficult past life and now, your pregnancy. But in the end, I have to protect the public and victims of crime against the suffering caused by those who seek to deceive the police and prevent justice from prevailing.
27. I have also considered that when sentencing an offender aged under 18, a court must have regard to the principal aim of the youth justice system, which is to prevent offending by children and young persons; and that I must have regard to your own welfare which, obviously, includes that of your unborn baby.
28. But after much thought, and with a heavy heart, I have come to the conclusion that your personal mitigation cannot prevail over the need for a sentence of custody to mark the seriousness of your crime.
29. Stand up please, Ms Butterworth. The sentence of the court for

your offence is that there will be a detention and training order for a period of eight months.

30. In both cases, the statutory charges apply and will be included in the court's order.