Neutral Citation Number: [2021] EWCA Crim 1786

Case No: 202101390 A4

IN THE COURT OF APPEAL
(CRIMINAL DIVISION)
ON APPEAL FROM OXFORD CROWN COURT

Royal Courts of Justice Strand, London, WC2A 2LL

Date: 25/11/2021

Before :

LORD JUSTICE EDIS
MR JUSTICE JULIAN KNOWLES
HIS HONOUR JUDGE MARSON QC

- -

Between :

REGINA

- and -

ANISAH ARIF AHMED **Appellant**

- -

Balraj Bhatia QC (assigned by **the Registrar**) for the **Appellant**
Ben Lloyd (instructed by **CPS Appeals Unit**) for the **Crown**

Hearing dates: 25 November 2021

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Judgment Approved by the court

Mr Justice Julian Knowles:

Introduction

1. This is an appeal against sentence by leave of the Full Court granted at a hearing on 19 November 2021. On that date we adjourned the appeal to allow the Crown to be represented. Mr Ben Lloyd now appears for the Crown and we are grateful to him for his oral and written submissions. We also adjourned to allow Mr Bhatia QC (to whom we are also grateful) to consult with his client and take instructions whether she wished to pursue the appeal in light of the fact that, if we were to quash her life sentence, it would be open to us to substitute a determinate sentence in its place which might result in her spending longer in prison than would elapse before she could apply for parole under the sentence against which she is now appealing.

2. On 8 October 2019, in the Crown Court at Oxford (His Honour Judge Pringle QC), the Appellant (then 32 years old) pleaded guilty to one count of perverting the course of justice (Count 1).

3. On 30 November 2020, before the same Court (His Honour Judge Gledhill QC), the Appellant (then 33 years old) pleaded guilty to one count of conspiring to pervert the course of justice (Count 3).

4. On 19 April 2021, again before His Honour Judge Gledhill QC, the Appellant was sentenced to life imprisonment with a minimum term of 4 years 6 months and 10 days for both counts. The judge also imposed the victim surcharge.

5. A further count of perverting the course of justice (Count 2) was ordered to lie on the file in the normal terms.

6. A co-accused, Mustafa Hussain, pleaded guilty to conspiring to pervert the course of justice (Count 3) and was sentenced to two years' imprisonment suspended for two years.

The facts

7. In 2014, the Appellant embarked on an affair with a married man, Iqbal Mohammed. Mr Mohammed is a barrister, as was the Appellant at the time (she was later disbarred for unrelated conduct). The Appellant did not know he was married. The affair ended acrimoniously when the Appellant discovered that fact.

8. Following the end of the affair, the Appellant sent emails, text messages and social media messages to Mr Mohammed's wife, family, head of chambers, work colleagues and friends. He reported her to West Midlands Police and she was sent a harassment warning letter in January 2015.

9. Following receipt of the harassment warning letter, the Appellant told Mr Mohammed's chambers that he was harassing her. In support of her allegation, she submitted two fake emails,

purportedly sent to her by Mr Mohammed. This was the start of a long campaign by the Appellant of the harassment of Mr Mohammed of the most serious kind. The emails contained violently obscene comments and threats.

10. In reality, Mr Mohammed had not sent these messages. The Appellant had forged them. In addition to sending the messages to the police and Mr Mohammed's chambers, she relied upon them as evidence in a claim before the civil courts for a non-molestation order against Mr Mohammed, which was granted on 2 March 2015. Count 1 reflected the use of these forged emails to support her false civil claim.

11. On the day that the non-molestation order was granted, the Appellant reported Mr Mohammed to the police for harassment. She claimed to have received another threatening email. In reality, she had set up an email account in Mr Mohammed's name and used it to send fake emails. Fortunately, Mr Mohammed's chambers had carried out an investigation that revealed that the two emails relied upon by the Appellant in civil proceedings were not sent from Mr Mohammed's account. The results of the investigation were reported to the police, who opened an investigation into the Appellant for harassment.

12. Whilst under investigation for harassment, the Appellant approached a different police force and reported that Mr Mohammed had raped her during their relationship. At this stage, the police did not arrest Mr Mohammed. The Appellant also contacted an ex-boyfriend, Mustafa Hussain (the co-defendant) bombarding him with messages alleging that she was being falsely prosecuted and that she needed his assistance in getting the man responsible arrested. He agreed to help her.

13. In April 2015, the Appellant told police that she was receiving threatening calls from Mr Mohammed. In reality, she and Hussain had arranged for a mobile to be purchased in Mr Mohammed's name and Hussain had made the calls on the Appellant's instruction. Not only did Hussain follow the Appellant's instructions and use the phone to send her abusive messages purportedly from Mr Mohammed, but he also sent himself messages that suggested that Mr Mohammed was conspiring with him, Hussain, to frame the Appellant

14. The Appellant was subsequently charged with harassment. Police officers had previously told her that they did not believe that she was at a significant risk of harm from Mr Mohammed because there was no evidence to suggest that he knew her address. So, the Appellant arranged to have envelopes sent to her home with Birmingham post marks, which she used to persuade the police that Mr Mohammed knew her address.

15. By 5 May 2015 the Appellant's behaviour had escalated further. She told Hussain that she needed Mr Mohammed to be arrested before she appeared in court and suggested that 'a stabbing' needed to occur. She instructed Hussain to use email addresses that she had set up in Mr Mohammed's name to send her threatening messages. On 11 May 2015, she reported to the police that she had been followed by a man in a car who had held a knife to his own throat as a threatening gesture towards her. On 27 May 2015, she repeated her instructions to Hussain that he must send her more threatening messages using the email accounts she had created.

16. By June 2015, the Appellant was drafting the messages that she wanted Hussain to send to her from accounts set up in Mr Mohammed's name. She told him that 'you need to create enough evidence that he's planning to have me stabbed, raped etcetera and that he sends you detailed plans'. She also instructed him to buy another phone and SIM card and have it registered in Mr Mohammed's name. On 3 June 2015, she sent Hussain intimate photographs and instructed him to send the images to himself using a phone purchased in Mr Mohammed's name. This was to give the false appearance that Mr Mohammed was sending Hussain a picture of his 'intended victim'. She also told Hussain to send himself messages that suggested Mr Mohammed wanted Hussain to slash her legs. After giving those instructions to Hussain, she reported to the police that Mr Mohammed had threatened that he would publish intimate images of her on the internet and had made demands with menaces.

17. On 5 June 2015, Mr Mohammed was arrested for rape. He was interviewed on two occasions and detained in custody whilst his property was searched and his digital devices were seized. On 24 June 2015, the Appellant reported to the police that Mr Mohammed had sent her messages threatening to stab her if she did not withdraw her complaint and made references to the knife that had purportedly been used to threaten her in May. She sent screenshots of these messages to the police.

18. The indictment included particulars in Counts 2 and 3 that the allegation of rape by the Appellant was false. Mr Bhatia raised an issue that it would appear at one stage in November 2020 that the prosecution had agreed not to allege this particular. However, by the time of sentencing in June 2021 the case was opened to the judge that the allegation of rape was indeed false; no objection was taken by the defence, who mitigated on that basis; and the judge, whose job it was to ascertain the proper basis for sentence, sentenced expressly on the basis that Count 3 included a particular of false allegation of rape (he having refused an application to amend the indictment to remove it, in November 2020).

19. As the date of the planned assault approached, the Appellant reassured Hussain that whilst the evidence they had falsely created suggested that he had conspired with Mr Mohammed to assault her, he would not be prosecuted. On 11 July 2015, she told Hussain of her planned movements the following day and that he should attack her. She said the attack should be serious enough to require her to spend a few days in hospital. She also instructed him to leave his mobile phone at home so that any cell site evidence would not incriminate him.

20. On 12 July 2015, Hussain messaged the Appellant, expressing his reluctance to participate in the assault. The Appellant responded that, 'I will fuck up alone and end up killing myself for real. Just come and give me the knife, I'll do it myself and take it back…I will say I was stabbed stomach during struggle and leg and arm [sic].'

21. Later that day, she telephoned the police to report that she had been stabbed in the street. Police officers and an ambulance attended, and she was taken to hospital with a stab wound to her thigh. This was a serious injury which could easily have proved fatal had an artery been severed. Whilst being loaded into the ambulance she texted Hussain, telling him, 'I can't get over what you made me do. You seriously have fucked up the plan'. She reported to the police that she had been stabbed outside her car and had been able to escape in her car. However, the blood

staining was not consistent with her account and CCTV evidence showed that Hussain was at the scene. As a result, Mr Mohammed was not arrested. It was unclear who had inflicted the actual wound; the Appellant and Hussain blamed each other.

22. After the alleged attack, the Appellant continued to instruct Hussain to send her threatening messages. She claimed to the police that she had been threatened and told to withdraw her statement and claimed to have received a letter containing a confession from Mr Mohammed. She also attempted to persuade Hussain to confess to the police that he had been asked by Mr Mohammed to attack her, but Hussain refused.

23. In October 2015, the Appellant made one final attempt to have Mr Mohammed arrested. She told Hussain to deliver a threatening letter to her home. When he delivered the letter, she telephoned the police. As a result, Hussain was arrested and interviewed. Whilst the Appellant had told Hussain to tell officers that he was acting under the direction of Mr Mohammed, he provided an unconvincing and incomplete account. This, combined with the telephones recovered from his car, led to the police uncovering the conspiracy against Mr Mohammed. Over the course of four interviews, Hussain admitted to his involvement in the conspiracy.

24. The Appellant was arrested and interviewed under caution on three occasions. In her first interview she provided a prepared statement in which she claimed to be a victim before remaining silent. She remained silent in the two subsequent interviews.

25. The Appellant's campaign against Mr Mohammed had very serious consequences for him, as outlined in his victim personal statement. He said the nightmare had to endure for six months felt like a lifetime. At one stage he contemplated taking his own life, as he felt his personal and professional life was disintegrating in front of him.

Sentence

26. The Appellant was 33 years old at sentence. She had no previous convictions, however she had one caution from 2009 for harassment arising out of her previous employment in the Probation Service. That had some similar features to the present offending. She targeted a colleague and set up fake social media and email accounts which she used to send confidential information to the press in an attempt to present the colleague in a negative manner and impact how her integrity was viewed within her employment.

27. The judge accepted that there was a dispute over who inflicted the stab injury but concluded that it made no difference to the sentence. He noted that proceedings had been delayed in part due to the Appellant's ill-health, albeit he also found that she had used her condition as an excuse to prolong proceedings.

28. As well as a pre-sentence report (PSR), there was a quantity of psychological and psychiatric evidence before the sentencing judge.

29. *Pre-sentence report*: the probation officer concluded that the offences were motivated by the Appellant's poor emotional management, inability to separate previous and current trauma, 'ruminations' on revenge and feelings of powerlessness and shame arising from childhood

trauma Whilst the Appellant appeared to be 'extremely manipulative', this was likely to be a coping mechanism that arose as a result of her Emotionally Unstable Personality Disorder.

30. The probation officer concluded that the Appellant did not take genuine responsibility for the harm she had caused. She showed a lack of empathy to Mr Mohammed and spoke of him as dangerous and abusive. For that reason, she appeared to present a high risk of serious harm to him, even five years after the commission of the index offence. She showed little remorse and and significant amounts of hostility to him. She continued to be manipulative. That combined with her inability to take responsibility and attempts to blame others for her offending, suggested she presented a high risk of serious harm to the public. The judge concluded his summary of the PSR as follows:

> "Miss Wensley [the probation officer] states that she presents herself as the victim, she does not take genuine responsibility for the harm that she's caused to Mohammed or the level of destruction and waste of time which has been caused within the criminal justice system. She lacks victim empathy and her level of victim-blaming and hostility is great. Miss Wensley is aware of the diagnosis of emotionally unstable personality disorder. The pre-sentence report deals in some detail with the risk of Miss Ahmed committing further serious offences. Miss Wensley assesses her as currently being of high risk of serious harm to the public and to Mr Mohammed, and a medium risk of serious harm to the codefendant and members of staff in the prison where she's held. She's also self-harming and threatening suicide and therefore, currently, she is a risk to herself."

31. *Psychiatric and psychological evidence before the sentencing judge* there were several reports prepared by Dr Halsey (neuropsychologist) and several by Dr Zaman.

32. These were to the effect that the Appellant had an impaired ability to understand and manage fundamental aspects of adult relationships and that she has Emotionally Unstable Personality Disorder; the breakdown of her relationship with Mr Mohammed had resulted in maladaptive coping mechanisms, with an increase in her impulsivity and her acting without due measure and control; her Emotionally Unstable Personality Disorder brought with it a significant risk of comorbid illnesses such as recurrent depressive disorders and anxiety disorders; the stress of incarceration was likely to lead to a relapse in depressive symptoms; the course of an Emotionally Unstable Personality Disorder can be variable, with noted improvement in symptoms for up to 50% of individuals over a 10 year period; and she did not need to be detained for treatment.

33. Having reviewed the material, the judge concluded that the Appellant posed a high risk of committing further serious offences and it was not possible to know when that risk would diminish. He could not be satisfied that she would be safe on release if a determinate sentence was imposed. He therefore considered that the risk that she posed could only be managed by the imposition of a discretionary life sentence. He noted that he was unable to impose an extended sentence because the offences to which she had pleaded guilty were not specified offences.

34. The judge recognised that life sentences were sentences of last resort and considered the two stage test set out in *R v Ali* [2019] EWCA Crim 856, which stated that when deciding whether to impose a life sentence, the offender must have been convicted of a serious offence and there must be grounds for believing that they may remain a serious danger to the public for a period that cannot be reliably estimated at the date of sentence.

35. It was not disputed that the first limb of the test was met. The judge rejected the suggestion that the Appellant's risk could be managed by a restraining order or a criminal behaviour order and concluded that the second limb was satisfied.

36. Having concluded that a life sentence was necessary, he considered the appropriate length of the custodial term. He concluded that any case of perverting the course of justice that creates a risk that a person will be exposed to wrongful conviction and imprisonment must be regarded as particularly serious. Moreover, if the case involves a significant degree of careful planning and a breach of trust, the appropriate sentence was between 10 and 12 years.

37. In this case, the judge said that the offending involved very careful planning over a prolonged period and was done with the intention of destroying Mr Mohammed's personal and professional life. The false allegation of rape not only had a dreadful impact on him but also had the insidious effect of undermining public confidence in genuine complaints of rape.

38. The judge accepted that the offending was mitigated by the Appellant's lack of previous convictions, albeit she had a caution for harassment from 2009. She was not in good physical health and suffered from asthma that had been aggravated by the criminal proceedings and required hospitalisation, but she had received treatment that had brought it under control. He further concluded that the offending was aggravated by her legal knowledge. She had been called to the Bar and therefore knew that her actions were both morally and legally wrong.

39. The Appellant had pleaded guilty to Count 1 at an early stage and had pleaded guilty to Count 3 on the day of trial. The judge recognised that her delay in pleading to Count 3 was partly caused by her illness and the COVID pandemic, and he would therefore award more than a 10% reduction. He concluded that the appropriate notional determinate sentence for Count 3 was 12 years' imprisonment after trial, which he reduced to 10 years' imprisonment to reflect her guilty plea. He therefore concluded that the appropriate minimum term was 5 years' imprisonment, which he reduced by a further 5 months and 20 days to reflect time spent on remand. In relation to Count 1, he concluded that the appropriate notional determinate sentence was four years' imprisonment after trial, which he reduced to three years to reflect her guilty plea.

40. The judge then went to sentence the Appellant to discretionary term of life imprisonment on both counts, with a minimum term of four years six months and 10 days.

41. The judge then went on to sentence the co-defendant Hussain. The judge concluded his previous conviction for battery and using threatening words and behaviour aggravated his offending as they arose from his relationship with the Appellant. During their relationship, the Appellant told Hussain that she had been propositioned by another man and he responded by sending the man abusive messages and punching him.

42. The judge concluded that at the time of this offending, Hussain was under considerable personal pressure due to the breakdown of his marriage, albeit he knew his actions were criminally and morally wrong. The judge adopted a starting point of eight years' imprisonment, which he reduced to six years' imprisonment to reflect his guilty plea and further reduced it to four years' imprisonment to reflect his willingness to give evidence for the prosecution if required. The judge recognised that the offence was further mitigated by the significant delay in proceedings and his personal mitigation. He had led an 'honest and industrious life' for five years, which allowed the judge to further reduce the sentence to two years' imprisonment. Having arrived at a sentence capable of being suspended, the judge concluded that there were exceptional circumstances that allowed for the sentence to be suspended. He imposed other requirements including unpaid work.

Submissions

43. On behalf of the Appellant Mr Bhatia submitted that:

(1) The judge erred in imposing a life sentence. A determinate sentence was available and any determinate sentence could have been reinforced by ancillary orders such as a restraining order or criminal behaviour order to provide protection to the public.

(2) The judge erred in concluding that in the absence of being able to impose an extended sentence, he was required to impose a sentence of life imprisonment. Even where an offender has been convicted of a specified offence and is dangerous, the court merely has a power to impose an extended sentence rather than a duty. Instead, the judge adopted a binary view and in doing so, failed to recognise that a discretionary life sentence was a sentence of last resort.

(3) In calculating the minimum term, the judge arrived at a notional determinate sentence that was manifestly excessive. Having regard to cases such as *R v Vine* [2011] EWCA Crim 1860, *Attorney General's Reference (Costin)* [2018] EWCA Crim 1381 and *R v Beale* [2019] EWCA Crim 665, the offending was more serious as it involved false allegations being made against several victims. In those cases, the court arrived at sentences of between four years six months and ten years after trial. Given the approaches adopted in those cases, the appropriate pre-credit tariff should have been between six to eight years' imprisonment.

(4) In adopting a starting point of 12 years' imprisonment after trial, the judge failed to take proper account of the Appellant's personal mitigation, including her medical conditions. She has a number of conditions including eosinophilic asthma and her conditions would be exacerbated by a custodial sentence.

(5) There was an 'inexplicable' disparity between the sentence imposed on the Appellant and the sentence imposed on her co-accused who received a suspended sentence.

44. On behalf of the Crown, Mr Lloyd submitted that:

(1) The judge had an inherent power to impose a discretionary life sentence notwithstanding that the case did not fall within the provisions of the Criminal Justice Act 2003. *Attorney General's Reference (No 32 of 1996) (Whittaker)* [1997] 1 Cr App R S 261 established a two-stage test for the imposition of a discretionary, common law life sentence: (a) the offender must be convicted of a very serious offence; and (b) there must be good grounds for believing that the offender may remain a serious danger to the public for a period that cannot be reliably estimated at the date of sentence.

(2) The judge was entitled to impose a life sentence in the present case. The judge had careful regard to the psychological reports, the psychiatric reports, the PSR, and all of the other material before him (sentencing remarks, p7D-G). The PSR was 'extremely disturbing'. It dealt with the risk of the commission of further serious offences and the author assessed the Appellant as being of high risk of causing serious harm to the public and the victim. (sentencing remarks, p7F-8D). The judge rightly noted the impact the offending had had upon the victim

(3) Secondly, the judge essentially identified and applied the correct test and had regard to relevant cases.

(4) Although the sentence might be characterised as 'stern', the judge was entitled to impose it in the light of all of the material before him. The Appellant had been convicted of a very serious offence and the judge was entitled to conclude that there were good grounds for believing that the Appellant may remain a serious danger to the public for a period which could not be reliably estimated at the date of sentence.

(5) A notional starting point of 12 years' imprisonment cannot be described as manifestly excessive. The index offending was as serious an example of perverting the course of justice as could be conceived. The Crown would submit that a notional starting point of 12 years' imprisonment could be considered as too low, when considering the nature of the offending and the aggravating features.

(6) There was no undue disparity between the Appellant and her co-defendant. There were good and obvious reasons for the different sentences.

Discussion

Ground 1: was the sentence of life imprisonment manifestly excessive or wrong in principle ?

General principles

45. The sentence for the common law offence of perverting the course of justice is at large and so, in theory at least, the sentence of life imprisonment was open to the judge However, as far as we can tell, the imposition of a life sentence for an offence of perverting the course of justice is a novel outcome. Our researches, and those of counsel, have not identified any previous case where such a sentence has been imposed. A review of authority was undertaken in the application for leave to appeal in *R v Beech (Carl)* [2020] EWCA Crim 1580, and the Court said (at [36]) that counsel had been unable to find any reported case where a sentence in excess of

12 years had been imposed for this offence. The court dismissed as unarguable Beech's application for leave to appeal against sentence of 15 years imprisonment following a trial for a number of offences of perverting the course of justice. This was the well-known case where, as the Court said at [11], Beech (known at the time of his offending pseudonymously as 'Nick') had been convicted of 'maliciously making lurid and the most serious false allegations against distinguished former public servants no longer alive' and of accusing 'living persons of the highest integrity and decency of committing vile acts, including rape, torture and child murder.'

46. In fact, there is one reported case where a longer sentence was passed. On 19 November 2008 John Haase and Paul Bennett were sentenced to 22 and 20 years' imprisonment respectively for perverting the course of justice at Southwark Crown Court by Cooke J. The appeal of Haase and an application by Bennett were dismissed, see *R v Haase and Bennett* [2011] EWCA Crim 3111. That was a striking case in which it was a necessary part of the prosecution case that the appellants had had at their disposal substantial quantities of firearms and ammunition for use in furthering serious organised crime. Further, their conspiracy to pervert the course of justice had been successful. Twenty-two years imprisonment is, to the best of our knowledge, the longest sentence ever passed for this offence.

47. There are, in essence, four categories of life sentence (for those aged over 21): (a) mandatory sentence of life imprisonment for murder (s 1, Murder (Abolition of Death Penalty) Act 1965); (b) life sentence for a second listed offence (s 283, Sentencing Act 2020; previously s 224A, Criminal Justice Act 2003; (c) life sentence for dangerous offenders (s 285 Sentencing Act 2020, previously s 225, Criminal Justice Act 2003); (d) discretionary life sentence at common law (now codified in s 272(2)(a), Sentencing Act 2020, for offenders aged at least 18 but under 21).

48. A life sentence for a second listed offence can be imposed where the court is dealing with an offender for an offence that is listed Part 1, Sch 15 to the Sentencing Act 2020 and there is a previous conviction for such an offence. Part 1 of Sch 15 includes offences such as manslaughter; s 18, Offences Against the Person Act 1861 (wounding/causing grievous bodily harm with intent); and various sexual and terrorism offences. Perverting the course of justice is not listed. Prior to the enactment of the Sentencing Act 2020, such a sentence was available pursuant to s.224A of the Criminal Justice Act 2003.

49. A life sentence for a dangerous offender pursuant to s 285 Sentencing Act 2020 can be imposed where the offence is listed within Sch 19 to the Act and the court is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences (namely those in Sch 18: see s 306). Thereafter, if the court considers that the seriousness of (a) the offence, or (b) the offence and one or more offences associated with it, is such as to justify the imposition of a sentence of imprisonment for life, the court must impose a sentence of imprisonment for life. Schedule 19 includes offences such as manslaughter; s 18 Offences Against the Person Act 1861; various sexual and terrorism offences. Again, perverting the course of justice is not listed. Schedule 18 lists specified violent and sexual offences. Prior to the enactment of the Sentencing Act 2020, such a sentence was available pursuant to s 225, Criminal Justice Act 2003.

50. In *R v Saunders* [2014] 1 Cr App R (S) 45. [11], the then Lord Chief Justice said this:

> "11. This leaves open the further question (addressed in the Criminal Law Review at (2013) Crim. L.R. 508 in commentary on *R. v Cardwell* [2012] EWCA Crim. 3030) whether a sentence of life imprisonment may be imposed when the case does not fall within either the statutory life sentence or the discretionary life sentence analysed in the previous paragraphs. The jurisdiction to impose a life sentence in an appropriate case has survived the enactment of the 2003 Act and the changes to the sentencing regime affected by LASPO. If it had been intended to abolish it, the appropriate legislative change could readily have been made by provisions restricting the life sentence (other than the mandatory sentence) to the statutory sentence or the discretionary sentence under s.225(1) and (2) . As it is, neither the 2003 Act, nor LASPO, imposed any limit on the power of the court to impose a sentence of life imprisonment in such cases. Some of these offences may involve a significant risk of serious harm to the public, but are not included within the list of "specified" offences in the dangerousness provisions in the 2003 Act. One obvious example is the offender who commits repeated offences of very serious drug supplying which justifies the imposition of the life sentence. In circumstances like these the court is not obliged to impose the sentence in accordance with s.225(2), but its discretion to do so is unaffected.
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> 12. In reality, the occasions when this second form of discretionary life sentence is likely to be imposed will be rare, and no inconvenience has yet resulted from applying the description "discretionary" to both forms of sentence. We have reflected whether any advantages might accrue to sentencing courts if we were able to offer alternative descriptions which would identify the distinction between these two forms of discretionary life sentence. In reality, none is needed."

51. In *Attorney General's Reference (No 27 of 2013) (R v Burinskas)* [2014] 2 Cr App R (S) 45, the then Lord Chief Justice said:

> "6. We are solely concerned in this judgment with life sentences passed under ss.224A and 225 of the CJA 2003 (as amended by LASPO) and extended sentences. We do not deal with:
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> i) mandatory life sentences which are governed by a different statutory regime recently considered by this court in *R. v McLoughlin* and *R. v Newell* [2014] EWCA Crim 188 ; or

ii) discretionary life sentences passed other than under s.224A or 225 of the CJA 2003. In *R. v Saunders* [2013] EWCA Crim 1027, Lord Judge C.J. expressed the view of the court that discretionary life sentences could still be passed other than under ss.224A and 225 of the CJA 2003 (see [11]). Some commentators have questioned that view in the light of the provisions of s.153 of the CJA 2003. We would simply observe that this questioning runs contrary to the guideline of the Sentencing Guidelines Council at p.24, para.1(b) of the sexual offences guideline:

> 'Life imprisonment is the maximum for the offence [of rape]. Such a sentence may be imposed either as a result of the offence itself where a number of aggravating factors are present, or because the offender meets the dangerousness criterion.'

Since there is no case before us upon which this issue arises, even tangentially, there is nothing to be gained from considering the question further, still less endeavouring to come to conclusions in the absence of a specific case."

52. As we have said, ss 273 and 283, Sentencing Act 2020 (the Code), and ss 274 and 285 of the Code require sentences of life imprisonment or custody for life in specified circumstances. They deal with cases where the new conviction is for a second listed offence and cases where the offender is found to be dangerous. The present case concerns a common law power to impose a life sentence which was not abolished when that regime was first enacted in the Criminal Justice Act 2003. Similar considerations apply to an offence which is not a specified offence but which carries a maximum term of life imprisonment by a virtue of the statute which is the offence creating provision. We will refer to this type of sentence as a 'discretionary life sentence'.

53. Because there has not been a sentence of life imprisonment for perverting the course of justice before, it is necessary to consider with care what the principles are which govern the imposition of that sentence in this case. The Criminal Justice Act 2003, now replaced by the Code, laid down statutory preconditions which the court is required to apply before passing such a sentence in the case of dangerous offenders. What is the test for a discretionary life sentence ?

54. The search for a test starts with *R v Hodgson* (1968) 52 Cr App R 113. This was an unsuccessful application for leave to appeal against a sentence of life imprisonment for offences of rape of two women, one of whom was also the victim of an offence of buggery. The applicant had relevant previous convictions at the age of 23. The court said this, in its very brief judgment:

> "When the following conditions are satisfied, a sentence of life imprisonment is in our opinion justified: (1) where the offence or offences are in themselves grave enough to require a very long sentence; (2) where it appears from the nature of the offences or from the defendant's history that he is a person of unstable character likely to commit such offences in the future;

> and (3) where if the offences are committed the consequences to others may be specially injurious, as in the case of sexual offences or crimes of violence. We think that these conditions are satisfied in the present case and that they justify an indeterminate life sentence. The Home Secretary has of course the power to release the appellant on licence when it is thought safe to release him, if that time comes."

55. If this case were to be decided today, this would not be the court's reasoning. Hodgson was dangerous, in the sense that there was a significant risk to members of the public of serious harm occasioned by the commission by him of further specified offences. Having made that finding the court would sentence him under s 285(3) of the Code, which provides:

> "(3) If the court considers that the seriousness of -
>
> (a) the offence, or
>
> (b) the offence and one or more offences associated with it,
>
> is such as to justify the imposition of a sentence of imprisonment for life, the court must impose a sentence of imprisonment for life."

56. The test in *Hodgson* requires findings as to the 'gravity' of the offence, the likelihood of the offender committing further such offences in the future, and whether the consequences of those further offences would be 'specially injurious, as in the case of sexual offences or crimes of violence'. The modern test which would be applied in his case today is much more precise, but directed at the same considerations. There must be a Sch19 offence on the Indictment. The risk must be of the commission in the future of specified offences, which are listed in Sch 18 to the Code. The offence on the Indictment must not only be listed in Sch 19 but also of a seriousness which justifies the imposition of a sentence of imprisonment for life. Section 63 of the Code says this:

> "63. Where a court is considering the seriousness of any offence, it must consider:-
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> (a) the offender's culpability in committing the offence, and
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> (b) any harm which the offence –
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> (i) caused,
>
> (ii) was intended to cause, or
>
> (iii) might foreseeably have caused."

57. *Attorney General's Reference (No 32 of 1996) (R v Whittaker)* [1997] 1 Cr App R (S) 261 was another case where the court would now proceed under s 285 of the Code. Then, the use of a life sentences for the protection of the public from dangerous offenders was still a matter governed by a test developed by the courts rather than Parliament, and the court did modify the *Hodgson* test. The sentencing judge had declined to impose a life sentence relying on the second part of that test, holding that in the absence of medical evidence that part of the test could not be met. The Court of Appeal disagreed, and Lord Bingham CJ explained the decision in *Hodgson* as follows (p265):

> "In our judgment the learned judge was taking an unnecessarily narrow view of the circumstances in which a discretionary life sentence can be imposed. It appears to this Court that the conditions may be put under two heads. The first is that the offender should have been convicted of a very serious offence. If he (or she) has not, then there can be no question of imposing a life sentence. But the second condition is 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. By 'serious danger' the Court has in mind particularly serious offences of violence and serious offences of a sexual nature. The grounds which may found such a belief will often relate to the mental condition of the offender."

58. That passage, including its definition of 'serious danger' as involving serious offences of violence and serious offences of a sexual nature, was based on an observation by Lawton LJ in *Pither* (1979) 1 Cr App R (S) 209, which had been cited with approval by Lord Lane CJ in *Wilkinson* (1983) 5 Cr App R (S) 105. Lord Lane had said (p108):

> "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 LJ 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 mentioned 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."

59. It was in this context that Lord Bingham in *Attorney General's Reference (No 32 of 1996)* identified that the crucial question on the second condition in the test he proposed (at p265):

> "It is therefore plain that evidence of an offender's mental state is often highly relevant, but the crucial question is whether on all the facts it appears that an offender is likely to represent a serious danger to the public for an indeterminate time."

60. It appears clear, therefore, that prior to the enactment of the new regime in the Criminal Justice Act 2003, the life sentence for cases other than murder was reserved for offences which were 'very serious' and where the offender posed a "serious danger to the public for an indeterminate time". In using the term 'serious danger' the court had particularly in mind 'serious offences of violence and serious offences of a sexual nature'. In our judgment, the two-stage test established by Lord Bingham requires the a meaning to be given to the expression 'very serious offence' which is determined having regard to the language used by him, and by the other judges in the cases he cited. This becomes clear when analysing the test.

    a. Stage 1 requires the defendant to have been convicted of a 'very serious offence';

    b. Stage 2 requires a determination that the defendant 'may *remain* a serious danger to the public*'*. The fact that she ***is*** such a danger at the time of sentence is assumed to have been shown by the answer to the first question. The "very serious offence" must therefore have been conduct which posed a serious danger to the public, having in mind particularly serious offences of violence and serious offences of a sexual nature. This is not a statute and some extension beyond violent and sexual offences is no doubt permitted, but the thrust of the test is clear.

61. In *R v Chapman* [2000] Cr App R (S) 377, 385, Lord Bingham said:

> "It is in our judgment plain, as the court has on occasion acknowledged, that there is an inter-relationship between the gravity of the offence before the court, the likelihood of further offending, and the gravity of further offending should such occur. The more likely it is that an offender will offend again, and the more grave such offending is likely to be if it does occur, the less emphasis the court may lay on the gravity of the original offence. There is, however, in our judgment no ground for doubting the indispensability of the first condition laid down for imposition of an indeterminate life sentence in *Hodgson* , reaffirmed, as we say, in the more recent *Attorney-General's Reference No. 32 of 1996 (Whittaker)* . It moreover seems to this court to be wrong in principle to water down that condition since a sentence of life imprisonment is now the most severe sentence that the court can impose, and it is not in our judgment one which should ever be imposed unless the circumstances are such as to call for a severe sentence based on the offence which the offender has committed."

62. The Criminal Justice Act 2003 did not abolish what we have called discretionary life sentences, but neither did it do anything to extend the circumstances in which they could be imposed.

63. In *R v Ali* [2019] 2 Cr App R (S) 43, the court held that the correct test for the imposition of discretionary life sentences was the two stage test in *Attorney General's Reference (No. 32 of 1996)* and not the three stage test in *Hodgson*: see [56]. In that case an appeal against a life sentence imposed for conspiracy to import firearms and ammunition was dismissed. There had been professional importations by a gang of criminals of machine pistols and ammunition on two occasions and in significant quantities. The maximum penalty was life imprisonment, but the Indictment did not contain an offence listed in what is now Sch 19 to the Code, and therefore the dangerousness provisions did not apply. If they had done, it was clear from *Attorney General's Reference (No 43 of 2009) (R v Bennett; R v Wilkinson)* [2010] 1 Cr App R (S) 100 that an indeterminate sentence would have been required. The offences in *Ali* were every bit as serious as those in *Wilkinson* and the offenders every bit as dangerous. The weapons were intended by the defendants for use by others in the commission of very serious crimes and a clear risk of offences of lethal violence existed in the event that they were to offend again in the same way in the future. It was a short step to use the discretionary life sentence to fill a gap which was created by the absence of the indicted offences from what is now Sch 19 to the Code. The offences of transferring firearms which appeared on the Indictment as counts 3 and 4 in *Ali* were added as s 5(2A) of the Firearms Act 1968 by the Anti-social Behaviour, Crime and Policing Act 2014, with a maximum sentence of life imprisonment, but they were not added to what is now Sch 19 to the Code or to the list of specified offences in s 306 and Sch 18. The multiple offences created by ss 1 and 1A of the 1968 Act carry maximum terms of 10 years and the new offence created by s 5(2A) is the only offence created by s 5 which does carry life. That is no doubt for all the reasons explained in *Wilkinson* and *Ali.* If that is right, the failure to add it to what is now Sch 19 to the Code or to the list of specified offences in s 306/Sch 18 is difficult to explain, but the imposition of a life sentence is supported by *Attorney General's Reference (No 43 of 2009).* The offending behaviour, if repeated after release, would involve the commission by others of criminal offences endangering the 'life and limb' of members of the public, in the phrase of Lawton LJ in *Pither*.

64. Simon LJ giving the judgment of the court in *Ali* said:

> "20. Looking at the totality of the evidence, including that of a co-defendant Majid, which was not challenged on the appellant's behalf at trial, the judge found that the appellant was head of an organised crime group that imported substantial and commercial quantities (in multi-kilograms) of Class A drugs for dealing within the UK and grew cannabis within the UK in commercial quantities. The appellant had expanded his range of criminal activities through established contacts abroad into the importation of firearms and ammunition, which he was willing to sell on to any willing buyer.
>
> "21. The appellant sought the highest profit for himself that he could achieve from the sale of the weapons. He did so with utter disregard for the fact that these lethal military grade weapons were designed and intended for nothing other than the disruption of life. It was clear from his lifestyle that he was financially successful in his criminality, including ownership

> of multiple properties, cars and significant quantities of cash. He was clearly able to bankroll the costs of the enterprise. This was against a background of having no discernible legitimate means of earning.
>
> "22. The appellant had continued to exert control over his criminal group when in custody, including the use of threats and violence in an attempt to force others to run a defence that he approved of. He was a dominating, bullying and highly manipulative man and a very serious and determined, dangerous high-level criminal."

65. At [42] the court applied the passage cited above from *Saunders* and held that the discretionary life sentence was available. The passage in *Saunders* may have been unnecessary to the decision in that case, but that was not so in *Ali*, which is therefore an authoritative confirmation of the continuing availability of the discretionary life sentence outside the dangerous offenders' regime.

66. The change from the three-stage test to the two-stage test came about because in *Attorney General's Reference (No 32 of 1996)* the court decided that it was not necessary that the offender was likely to commit further offences because he had an unstable personality. It did not matter why he was likely to commit further offences. The fact that he was, was what mattered. There is no indication that the court intended to water down the two surviving elements of the *Hodgson* test; rather the reverse. The purpose of what became the second stage of the new test was to require the court to be satisfied that the public was in need of protection from serious sexual or violent offences. Nothing in *Ali* suggests any watering down of this requirement. Indeed, the court went to some trouble to explain why the offences which it feared would be committed in the future would involve serious offences of violence involving military grade firearms. The court actually used the formulation from the third part of the *Hodgson* test about this, admittedly because it had formed part of the submissions of counsel for the appellant, saying at [55]:

> "The argument that since he was an importer of guns which were handed over to others the offences were not 'specially injurious to members of the public' is completely unsustainable."

The present appeal: analysis

67. In the present case, the judge's justification for imposing a life sentence was the fear that on release the Appellant would repeat her previous harmful behaviour. It is not necessary therefore for this appeal to consider the question of the availability of a life sentence in other cases where the danger the public of serious violent or sexual offences may be absent, but there are other strong reasons for imposing a life sentence. This might include cases where a person serving a very long determinate sentence for very major offences of importation of cocaine continued to manage that business from the prison cell by the use of contraband communication devices. We express no view on that type of case at all, and mention it only to make that clear.

68. The sentencing judge approached the test on the basis that it was satisfied if he found that: (a) the offences in Counts 1 and 3 were 'very serious' (and that was common ground, although it is not before us, where we have identified a particular meaning of what phrase in this context above); and (b) that there was a clear risk that the Appellant would commit similar ('serious') offences in the future because of her remarkably manipulative and obsessive personality. He did not address in terms the separate question of whether those offences were sufficient to justify a finding that they represented a 'serious danger' to the public in the particular sense which Lord Bingham had in mind in *Attorney General's Reference (No 32 of 1996)* and which is found in the earlier cases cited by him.

69. We consider that it is important to continue to use life sentences as a sentence of last resort and to pay heed to the observation in *Saunders* that discretionary life sentences are appropriate in rare cases. We note that the sentencing judge rightly observed that a life sentence is one of last resort (sentencing remarks, p8F).

70. We therefore turn to the issue of whether the present case was one of the rare cases where a life sentence was appropriate notwithstanding the fact that perverting the course of justice is not an offence which generally indicates a propensity to commit offences which cause a serious danger to the public in the sense that term is used in the authorities we have identified.

71. The Appellant's offending involved calculated, sophisticated, sustained, and repeated attempts to falsify evidence in order that the victim would be arrested and prosecuted for various offences. She used forged emails in support of a civil case. Her conduct increased in scale and intensity over a sustained period of time until she was driven to be stabbed (either by herself or by her co-defendant) in a way which, as the judge remarked, could quite easily have been fatal, so desperate was she to frame Mr Mohammed. She succeeded in having him arrested for rape. It is quite clear that the Appellant was intent on destroying her victim's life, and she came close to doing so. This pattern of offending was very serious and justified a long sentence. There is, however, no offence in this case which involved very serious violent or sexual offending and, although the offending is certainly very serious indeed, it was not of the kind which Lord Bingham appears to have in mind in *Attorney General's Reference (No 32 of 1996).*

72. We turn to the second limb of Lord Bingham's test. In our judgment there was insufficient material before the sentencing judge which could properly support the conclusion that the Appellant represents a 'serious danger' to the public for an indeterminate time, in the sense in which Lord Bingham used that term, namely, as referring particularly to serious offences of violence and serious sexual offences. There was no evidence before the judge that the

Appellant was at risk of committing such offences in the future. The author of the PSR said that the Appellant was not 'traditionally aggressive' (although she had been psychologically aggressive towards her victim). The report also noted (at p15) that the Appellant had not been aggressive in custody but that she had continued to be manipulative and had sought to gain sympathy. Although the author concluded that the Appellant was at high risk of reoffending, and there was high risk of serious harm, it is necessary to note that the harms being referred to were (p16) 'psychological aggression, manipulation, harassment, destruction of personal credibility, being framed for serious offences, pro-longed emotional distress and harm'. Serious though these matters are, they do not, in our judgment, on the facts of this case, qualify as posing the sort of serious danger to members of the public as understood in *Attorney General's Reference (No 32 of 1996)* to justify a sentence of life imprisonment. There is also the point

that the author made clear (p17) that the risk posed by the Appellant could be reduced by psychological intervention, offence focused programmes and compliance with controls placed upon her in custody and when she is released on licence.

73. We do not underestimate the stress that this victim was subjected to, and we have acknowledged the very serious impact the Appellant's offending had upon him. We accept that psychological harm is a form of bodily harm. However, on the facts of this case, we do not regard as falling within the conceptualisation of serious danger which Lord Bingham articulated in *Whittaker.*

74. For these reasons, we have concluded that this was not one of those rare cases outside of the statutory scheme where a sentence of life imprisonment was justified. We are not saying that an offence of perverting the course of justice could never attract such a sentence. *Haase* is an example where such a sentence might have been justified. But the facts of this case did not warrant a life sentence. We therefore regard it as manifestly excessive and wrong in principle. In reaching that conclusion, we acknowledge the difficult task facing the sentencing judge in this very unusual case.

75. We turn to the question of what determinate sentence should be imposed in place of the life sentence. In *Beech,* [41], this Court remarked that cases involving perverting of the course of public justice are intensely fact-sensitive. As we have already observed, on any view the Appellant's offences called for a long sentence. We have already identified all of the aggravating features which were present in this case. The review of the case-law which the Court carried out in *Beech* shows that very serious offences of perverting the course of justice can properly attract sentences in double figures. Bad though the Appellant's offending was, in our judgment it was not quite as serious as Beech's offending, which was marked by the aggravating factors listed by the Court at [42] of its judgment, including that there had been multiple false allegations by Beech of homicide, rape and torture; the number and profile of his victims (for example, high-ranking politicians and former military leaders); the global publicity which Beech courted; the waste of police time and resources investigating his false claims, which ran into the millions of pounds; and that Beech was motivated by greed and a desire for celebrity. As we have said, in that case the Court refused a renewed application for leave to appeal against a sentence of 15 years. This does not mean that 15 years was the right sentence, only that it was not arguably manifestly excessive or wrong in principle. As we said at the start of this judgment, in the case of *Haase* substantially longer sentences were imposed for this offence, and upheld in another extraordinary case.

76. Having regard to all relevant matters, including the matters of mitigation referred to by the sentencing judge, in our judgment the appropriate sentence is one of 10 years imprisonment. We therefore quash the sentence of life imprisonment and impose in its place a sentence of 10 years imprisonment.

77. The Appellant will serve half her sentence in prison and then be released on licence and be subject to supervision by the Probation Service in the community on such conditions as they will determine. The Appellant will be given credit for the time she has spent on remand. If she commits any further offences during her time on licence she will be liable to be recalled to prison to serve the balance of her sentence as well as any sentence for the new offences.

78. The Appellant will also be made subject to an indefinite restraining order for her lifetime. This will protect the victim and his wife (and their family) from any interference by the Appellant in their lives. This will be subject to the further decision of the Court as to the order's terms.

79. To that extent, the appeal succeeds.