



## **REGINA -v- BEN OLIVER**

### **SENTENCING REMARKS**

1. You are here today to be sentenced for the unlawful killing of your 74 year old grandfather, David Oliver. You were 23 when you carried out the killing and are now 25. On 14<sup>th</sup> January of this year you pleaded guilty to Manslaughter on the grounds of diminished responsibility. You were tried and acquitted of murder by a jury on 25<sup>th</sup> May.
2. The facts upon which I am to sentence you are these:
3. Your grandfather, David and grandmother, Susan married in 1966. They had a biological son together and then in 1977 they adopted your mother Stephanie, then aged 10. Stephanie has a history of severe physical and mental ill health and has spent much of her adult life in hospital. However, in 1996, when aged 20, she became pregnant by a man called James and you were born in 1997. You have a congenital hearing impediment. Your biological father left your mother shortly after your birth and your mother formed a relationship with a man called Steve. They had 2 daughters together.
4. Steve was extremely cruel to you. He was physically violent and you were subjected to you to a sexualised environment and introduced to child pornography at the age of 5. You were also sexually assaulted by a neighbour. When you were 13 your mother videoed Steve assaulting you and the police were involved which resulted in your mother and Steve separating.
5. You also had a very difficult time at school due to your deafness and you were the victim of bullying. You were diagnosed with autism at a

young age and went to a school for autistic children but you did not thrive there.

6. Your behaviour deteriorated further when your mother became involved in a same sex relationship. You were in and out of care and irreparably damaged by your early childhood experiences and learning disabilities.
7. Throughout your childhood and adult life you had a very strong and positive relationship with your maternal grandparents. You loved and love your nan very much and she loved and still loves you. Her evidence at your trial was compelling and informative. You clearly displayed many of the recognised features of autistic spectrum disorder and lacked the ability to show empathy to others with the exception of your nan (and to some extent your grandad until shortly before his death).
8. When you were 15/16 you sexually abused a very young female child and in September 2016 you received a 6 year custodial sentence for a number of offences including rape and an offence involving indecent images of children. I pause there to record my firm view, as supported by the psychiatric evidence that the offending in which you were involved was learned from your own childhood experiences and your lack of empathy or understanding was exacerbated by and rooted in your autism. You have no other convictions. However you were on licence from that sentence when you killed your grandfather.
9. Days before you were sent to custody in 2016 your grandfather had a stroke which left him paralysed save for the partial use of his right side. He was largely bed bound and looked after by your grandmother supported by daily carers.
10. While you were serving your sentence, you were the victim of violence at the hands of other prisoners. You were prescribed medication for your autism and depression. You were released on licence in September 2019.
11. While you were still in custody, allegations came to light that your grandfather had himself committed child sex offences. Both your mother and your uncle expressed a serious desire and intent to kill him

and had to be dissuaded by your grandmother from doing so. From that time your nan lost all respect for her husband who had also been cruel and unfaithful to her throughout their marriage.

12. Upon your release you were given a flat about 7 miles from where your grandparents lived. Initially you were very houseproud and you did very well until the pandemic hit.
13. You later found out about the allegations of sexual abuse being made about your grandfather and told your nan that you could not love him anymore and that you hated him. However at that stage you did not exhibit any violence towards him nor express any desire to do so.
14. Covid hit you very hard and you became obsessive about catching the virus and behaved in very extreme ways in order to avoid doing so. You also became paranoid about infecting your grandparents and avoided contact with them. Your mental health deteriorated as a result as you were isolated and separated from your grandmother.
15. On Christmas Eve 2020 you went to your grandmother's house and asked her to help you to commit suicide by taking an overdose of her tablets. You said that you wanted to die in her arms. She comforted you and dissuaded you. You stayed for Christmas with your grandparents but returned to your flat on 27<sup>th</sup> December. Thereafter you would speak to your nan on the phone 3-4 times per hour.
16. On 6<sup>th</sup> January 2021 you rang your nan again intent on killing yourself. She tried to persuade you not to do so but you called the RSPCA and asked them to collect your pet ferret telling the operator that you were going to commit suicide. They noted that you were speaking most bizarrely and making little sense. The jury heard the nature of things which you were saying which were psychotic in nature. Of particular concern is your assertion that you had been looking at child pornography and had exposed yourself.
17. On that occasion you were taken to hospital but, due to your autism, you did not understand that you were expected to stay there. Instead you took a cab to nan's. She wanted you to stay with her but you went back to your flat out of concern for your pet. You were in no fit state to

be unsupervised. Your nan said that by then “ we all knew he wasn’t well and tried to get him an appointment”.

18. \_On 14<sup>th</sup> January you attempted suicide firstly by trying to hang yourself and then by drinking bathwater contaminated with bleach. You were taken to A&E but released to the Home Treatment Team. Nan described you as “absolutely tormented”. You were only relaxed if you could lie next to your nan and hold her arm. Your medication was increased. Your home treatment team was changed from the team near your flat to that near your grandparents.
19. \_From 15<sup>th</sup> January you never left your nan’s address again until your arrest for murder. You spent your days with your nan and continued to speak about demons who were out to get you. At about this time your mother told you that she would not have peace until your grandfather was dead. You also knew by then how unhappy he had made your grandmother.
20. \_On 18<sup>th</sup> you watched a film with your nan about an abused orphan and texted your mother about the effect of that film upon you.
21. On the 19<sup>th</sup> the carers came as usual to see to your grandfather’s needs. When they had gone your nan took him a biscuit and coffee. That was the last time she saw him alive.
22. You were noted to be jittery and couldn’t rest. You asked to lie down with your nan which you did. However, when she got up you went downstairs. It was around 1130-1145. You selected a knife from the kitchen and you went to your grandfather’s room. You cut his throat repeatedly with severe force, you stabbed his mouth so he could not cry out and his eyes so that he couldn’t look at you as you killed him. He tried in vain to protect himself by raising his right arm. He was utterly powerless. There were a total of 21 stab wounds to the face, 7 to the torso and obvious defence injuries. He died very quickly of massive blood loss.
23. Following the killing you told your nan what you had done saying “he can’t hurt you anymore, Nan” . You also texted your mother saying “Mum I’ve killed grandad, I love you.”

24. Nan called 999 as you sat with her. At one point you went upstairs and sat on the windowsill. I am satisfied that you had it in mind to jump to your death but your nan persuaded you to come in and you calmly sat with her until the police arrived.
25. You were entirely cooperative. Your nan told police “we all wanted to kill him”.
26. While you were in custody before your trial there were numerous mental health assessments which resulted in a divergence of opinion as to the true nature and extent of your mental illness. The psychiatrists instructed for your trial had access to all your records and had greater expertise in determining the true position. In the light of the jury’s verdict I propose to proceed on the basis that the defence experts Dr Cumming and Dr Ko were correct in their diagnosis of Autistic Spectrum Disorder, Depression and Adjustment Disorder (the latter as a result of finding out about the allegations of sexual abuse by the deceased). Their view was that your diagnosed medical conditions substantially impaired your ability to form a rational judgment – you did not think there was an alternative to killing your grandad; you did not think about the consequences and did not have the skills to manage conflict or to see the bigger picture due to your obsessional and tunnel vision. On the other hand you did understand that you were killing your grandad and had decided to do so.

### **Sentence**

27. \_This is a complex sentencing exercise. Firstly I have to apply the SC guideline for this type of manslaughter.
28. \_I begin by assessing the level of responsibility which you retained for the killing. There are 3 levels: High, Medium and Lower I have decided that level of responsibility retained by you was towards the very top of the medium level range, noting that there is an overlap between that range and the range for a high level of retained responsibility.
29. I take that view because, unlike some cases of this kind, you were not psychotic; your autism was defined as significant but not severe; you made the determined decision to kill your grandad and carried out the killing in a ferocious but controlled way making the conscious

decision to attack his eyes and mouth knowing that you were killing him and why you were doing so. The relevance of your mental abnormality is that which was articulated by the psychiatrists called on your behalf as I have set out above. As the author of the PSR states: "...because of [your] past experiences, [you] did not have the resilience or skills to cope with the[se] disclosures [concerning your granddad] and [your] emotional well-being plummeted".

30. I take a SP for sentence of 24 years imprisonment.

31. I then have to consider the aggravating factors. They are:

- (i) The vulnerability of your bed bound elderly grandfather
- (ii) The physical suffering inflicted upon him
- (iii) Your previous offending and
- (iv) The fact that you were on licence

32. In relation to mitigation I firstly point out that your abnormality of mental functioning has already been accounted for in the reduction of the offence from murder to manslaughter.

33. However there is considerable additional mitigation in relation to your upbringing, your experiences as a child and the fact that other members of your family to your knowledge wanted and on two occasions set out to kill your grandfather due to the unproven allegations made against him. Of further significance is your recent discovery that he had hurt your beloved grandmother.

34. In addition it is to your credit that you have always accepted your guilt and told the truth about what you did and why. You have also expressed remorse telling the Probation Officer: "I've just made it worse, made the pain greater".

35. There was ample evidence that you had tried to seek help for your mental health problems and had done well whilst on licence. It is unfortunate that the professionals did not identify the risk posed by you remaining in the community and, particularly, by placing you with your grandparents. Dr Cumming has provided an addendum report which confirms that a hospital order is not an option in your case. He

describes you as “a very damaged man who will require psychological work in the longer term”.

36. In my view the mitigating factors matters balance out the aggravating factors so that I do not add to the notional term of 24 years.

37. I then have to consider dangerousness. The probation officer has accurately set out the relevant considerations and I agree with her assessment and the reasons for it. In my judgment, you do present a significant risk to the public occasioned by the commission of further specified offences due to (a) your previous serious offending, (b) the fact that there is evidence that you have a continuing interest in illegal pornography (c) the suddenness of your deterioration and (d) the seriousness and ferocity of the attack upon your grandfather. You therefore fit the criteria for a dangerous offender.

38. Section 285 of the Sentencing Act 2020 provides that as I have determined that you meet the dangerousness criteria, I then have to decide whether the seriousness of the offence of manslaughter is **such as to justify the imposition of imprisonment for life**. If I do so conclude I **must** impose such a sentence. In your case I do consider that the seriousness of the offence justifies a life sentence and that is the sentence I must therefore impose upon you.

39. I have already determined that the Notional Determinate Term (NDT) would be 24 years before credit for your plea of guilty. In my view you deserve full credit for your plea of guilty which was entered at the first reasonable opportunity after you were deemed fit to plead. That plea reduces the NDT to one of 16 years.

40. In setting the minimum term which you must serve before you can be considered for release by the parole board I must adopt a term which is 2/3 of the NDT which in this case is 10 years and 8 months.

**PLEASE STAND UP**

41. The sentence I pass upon you **LIFE IMPRISONMENT** with a minimum term of 10 years and 8 months. From that term will be

deducted the time you have spent on remand which is 553 days. That deduction results in a term of 9 years and 63 days.

42. Once you have served that term you will be entitled to apply for parole. However, you will not be released by the parole board unless they conclude that you no longer pose a risk to the public. If you are released you will remain on licence for the rest of your life.

43. Surcharge and forfeiture and destruction of the weapon