Neutral Citation Number: [2022] EWCA Crim 1630

Case No: 202201238 A1

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CROWN COURT AT WORCESTER
MR JUSTICE PEPPERALL
T20217020

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 09/12/2022

Before :

LADY JUSTICE MACUR

MR JUSTICE HOLGATE
and
SIR NICHOLAS BLAKE

- -

Between :

REX — **Respondent**

- v -

CHARLES BYRNE — **Appellant**

- -
- -

Gurdeep Singh Garcha KC (instructed by **Allen Hoole Solicitors**) for the **Appellant**
Michael Burrows KC (instructed by **the Crown Prosecution Service**) for the **Respondent**

Hearing date : Thursday 01 December 2022

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Approved Judgment

This judgment was handed down in court at 10.00am on Friday 9th December 2022 and by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lady Justice Macur :

Please see Order under the provisions of section 45A Youth Justice and Criminal Evidence Act 1999 with respect to reporting restrictions which has already been made and which this court continues.

1. On 01 June 2021 the appellant pleaded not guilty to the murder of Christina Rowe (count 1) but guilty to manslaughter by reason of diminished responsibility.

2. On 06 December 2021 the appellant pleaded guilty to one count of attempted murder of T (count 2) on the basis of plea that:

    i. He was seriously mentally unwell at the time of the incident, as reflected in the medical evidence.
    ii. The intent to kill T was fleeting and formed when she walked into the room.

3. On 25 March 2022 the appellant was sentenced to imprisonment for life under section 285 of the Sentencing Act 2020 with a hospital and limitation direction under section 45A of the Mental Health Act 1983, to be detained at Ashworth Hospital subject to an order under section 41 of the Mental Health Act 1983 without limit of time. The period of 16 years was specified as the minimum term under section 321 of the Sentencing Act 2020, less 406 days spent on remand in custody. A concurrent term of 13 years and 6 months' imprisonment was imposed in respect of the offence of attempted murder.

4. In brief, the appellant met Christina Rowe in December 2019 on a dating 'app' and subsequently they lived together for approximately six months in Christina's house in Worcester, together with her daughter T who was then between 8 and 9 years old. The relationship came to an end and in February 2021 the appellant was living at his family home.

5. In the early hours of Wednesday 10 February 2021, the appellant visited Christina. He strangled and stabbed her.

6. In interview, the appellant explained that he thought Christina was a transgender male paedophile harbouring a child inside the house. He did not think T was her daughter. He had gone to the house to rescue T and had taken a suitcase with him to put her things in and then transport her to her grandparent's house. However, he ended up scuffling with the deceased, he lost his temper and strangled her. He said, "Her lips turned blue and then I just kept holding on. I thought I'd try and make it quick, so I put a knife in her chest." He put the deceased into the suitcase that he had taken with him.

7. T heard her mother and the appellant screaming at each other. She went downstairs and saw her mother's corpse in the suitcase. The appellant then grabbed T around the

neck and strangled her while muttering that he was sorry. In interview he said he held his hands to her neck for 20 to 30 seconds, then after she passed out, he knocked her head on the floor multiple times. He said he was trying to put T to sleep so that she would not stare at her mum who was dead on the floor. The appellant thought she was dead and carried her body and placed her into the bath. T regained consciousness but pretended to be dead until he departed. The appellant went downstairs, and T described sounds of him clearing up.

8. A neighbour saw the appellant leave the house carrying what she thought was a guitar case. It appeared there was something heavy in it. The appellant dragged the suitcase containing Christina's body to his mother's car. He drove to his mother's address to find bricks with which to weigh down the case, and then on to the local river where he threw the case containing Christina's body.

9. Later that morning, a dog walker alerted the police that there was a trail of blood and 'drag marks' at the bridge from which the appellant had thrown the case into the river. Christina's body was discovered later that evening. The subsequent post-mortem examination revealed extensive bruising to the neck of the deceased consistent with strangulation and evidence of a stamp injury to her upper chest with a shod foot. She suffered a single stab wound that passed through her heart and into her lung.

10. In the meantime, the appellant returned to her house with a shovel in order to bury T. By that point T had climbed into her bed and feigned sleep. When the appellant found T was still breathing and was in her bed, he assumed that she had somehow got medical assistance. In interview he said, "I stood there for a second and I just said out loud, 'I'd rather go to jail." He then left the property.

11. In the morning T used her mother's phone to raise the alarm. She was, understandably terrified. Police attended. T had injuries consistent with attempted strangulation.

12. The applicant was arrested at his home address that morning, he informed officers that he was on anti-psychotic medication, (although this was subsequently doubted by forensic psychiatrists) but had not taken it the previous day. At the police station he was found fit to be interviewed.

13. There were blood stains on the rear seat and door handles of the car used by the appellant. The appellant said in interview that when his mother asked him about the blood in the car, he just "made some bullshit up".

14. He said he did not know why he attacked T. He said that Christina was on the floor and he was trying to put her in the suitcase when T came into the room. He described himself as having panicked and strangled her and knocked her head against the floor. "I thought she was some fucking dwarf or something".

15. He said that he tried to suffocate her so she would go to sleep or "something" but when she started choking, he realised she was actually a child and when she urinated

"I sort of realised, stopped, but she had already passed out". He denies he was trying to kill her. He had collected the spade found in his guitar case after disposing of Christina's body. He was going to bury T's body.

16. Unsurprisingly, T has been diagnosed as having post-traumatic stress disorder and was very likely to suffer from mental illness and depression in later life. Victim personal statements prepared by her foster parents reveal something of the impact of the events upon her day-to-day life.

17. The appellant was examined by consultant forensic psychiatrists on behalf of the prosecution and defence for the purpose of assessing fitness to plead and possible defences to the charges laid of murder and attempted murder. It was common ground that the appellant was suffering from paranoid schizophrenia at the time of committing the offences, which resulted in him experiencing delusions, hallucinations and disordered thoughts. His condition had not been previously diagnosed nor medicated, although there were indications from family history and behavioural symptoms in his adolescence that this had been longstanding. All psychiatrists agreed that his mental health had improved since his arrest and remand into custody.

18. To Dr Maganty, the appellant described his mental health as deteriorating by October. He thought Christina was a man and that she had a sex change operation to look like a woman. Later in October 2020 they got back together but he continued to be very paranoid. He said he used cannabis and drank increasing amounts of alcohol. The relationship ended but, by January 2021, he became increasingly worried about Christina being a man and a paedophile and holding T. "I wanted to take T from her".

19. He described T walking in after he had stabbed and strangled Christina and "I panicked and I strangled her, I should have just picked her up and left but I strangled her" and that "it does not make any sense I know". On 30 April 2021, he said that "part of me thought she was a tiny adult abusing people, I can't explain it really, … I was in a weird way, it all felt so real at the time and now sounds crazy, none of it makes sense anymore, but at the time it did". He went on to state "I felt that I had to do it as I felt compelled to do it". When he later found T was alive, "I thought someone had a key to the house, the house was bugged and we were all being watched and I thought that if I left, they would get her help, it does not make sense now, but it did then."

20. In Dr Maganty's view the appellant would have known that he was attacking a human being, even though he was unable to identify the gender of the human being accurately and failed to recognise that she was his partner rather than a member of the illuminati…. Therefore, he would have understood the nature and quality of his actions to the limited extent of recognising that he was killing a human being."

21. In his report on 20 February 2022, Dr Maganty gave his opinion that "A combination of his delusional beliefs together with impaired thought process through which he was processing these delusions led him to kill. … The killing is directly attributable to his mental illness and was causative in the killing. The issue of culpability is for the court

but attributing significant culpability to such a disordered and severely ill mind and brain is difficult." The treatment required would be multi factorial and prolonged. He considered that "a prison custodial environment" was not conducive to the treatment for those with 'treatment resistant schizophrenia'; the risk to the public would be better managed by a hospital order with restriction, rather than a hybrid order. The hybrid order had an inferior follow up.

22. To Dr Kennedy, the appellant gave him a similar explanation for the reason he had killed Christina. He said that when he strangled T, "… part of me thought she was a midget paedophile…". He said he "just couldn't kill T".

23. In Dr Kennedy's opinion: "From his description of the homicide there is no evidence to suggest that he either did not know what he was doing or did not know it was legally wrong. I do not therefore, believe that a defence of insanity is available to him for either charge. He carried out the homicide and removed the body from the scene in an attempt to conceal what he had done. There is also a suggestion from T that she heard him scrubbing. He denies this …

24. There is a suggestion that he partially believed that T was an adult of restricted growth disguised as a child. I note however that he clearly, by his own account, believed she was a child victim of the conspiracy … There is nothing in his history or from my examination of records to suggest he was unable to form intent to kill at the time he strangled the deceased's daughter. Whether he did so is a question of fact ..."

25. Dr Kennedy described the index offences as particularly brutal. He still did not understand why the appellant committed the second offence against T on the basis that he had gone to the house intending to 'save' her. "There remains the strong possibility that he did so to prevent her from telling the police. I note he disposed of Christina's body in a suitcase in the river..."

26. In Dr Kennedy's opinion, the complex delusional system from which the appellant suffered "substantially impaired his ability to exercise self-control and form a rational judgement. This is because his paranoid and persecutory delusions were clearly of prime importance to him and were impervious to reasoning. I do note however, that he was able to set these ideas aside at times both in speaking to people and in his communications with the deceased. …it would be my opinion that [the appellant's] psychosis provides a credible explanation for the offence." There was strong evidence that the offences were clearly and directly linked to his severe and enduring mental illness. The mental illness was "independent of substance misuse".

27. In his second report dated 12 March 2022 he expressed the opinion that the appellant's paranoid schizophrenia is severe and treatment resistant although his positive symptoms (hallucinations, delusions) are controlled by Clozapine. The prognosis "is guarded… any recovery is likely to remain fragile. Were he to cease medication, it is likely that his positive symptoms would return within a short space of time. The medication he is given is only available on a long-term basis in tablet form

… and is a medication which prompts a rapid deterioration in mental state if the patient discontinues it."

28. Dr Kennedy did not see how at this time the appellant would be able "to cope" in a custodial setting. He suggested that a Hospital order with Restrictions was more appropriate than a hybrid section 45A order as "the best means of keeping [the appellant] well and thereby addressing issues of future risk is for him to have a smooth transition from hospital to the community if a point is reached where he is fit to leave hospital. … a Section 45 A would put him at considerable risk of self-harm or suicide were he to be returned to a custodial setting and would put other prisoners and prison staff at risk were his mental state to deteriorate. …the framework provided by an order under S41 is more appropriate in this case in terms of protecting the public and managing [the appellant's] illness. Before leaving hospital [he] would need to demonstrate the ability to survive in a less secure environment within Ashworth Hospital and then successfully manage transfer to a medium secure hospital."

29. Dr Higgins is the appellant's treating clinician. In her clinical opinion, his offending was "highly and directly attributable to his illness…" The appellant's mental disorder provided the "only possible explanation" for the offences. The risk posed in the future is solely dependent on the mental disorder and there are no additional risks that would need to be assessed by the Parole Board in order to direct an eventual release into the community. In her view, the ultimate decision on any discharge would be best placed with the First Tier Tribunal (Mental Health) and mental health professionals with experience of managing the appellant in secure hospital settings.

30. When giving evidence on 25 March 2022, she said that at the time of the police interviews the appellant was "floridly psychotic. He remained completely and utterly disconnected from reality." She thought his actions surrounding the events, including cleaning up, disposing of the body and "his conduct towards T" were "entirely coloured by his illness". His offending was highly and directly attributable to his illness, namely paranoid schizophrenia. The safest way "for all concerned" was to manage the appellant by a hospital with restriction order in order to enforce compliance with medication.

31. When questioned concerning the appellant's explanation for the attempted murder of T, and Dr Kennedy's view that there is a strong possibility that strangling T was to prevent her talking to the police, she said: "That is Dr Kennedy's view. I respect that. Certainly, in the subsequent multiple, multiple times I've spoken to Mr Byrne, he hasn't particularly used that. It doesn't make sense to me as well just as a stand-alone reason …"

32. Sentencing the appellant, Pepperall J analysed the appellant's guilty pleas to necessarily establish three matters of significance to the sentencing exercise: Firstly, although the appellant was undoubtedly suffering from a mental illness, the defence of insanity was not open to him. Secondly, the appellant accepted by his plea of guilty to attempted murder that, notwithstanding his illness, he was both capable of forming, and did in fact form, an intention to kill T. The Judge had no doubt that the

appellant attacked Christina with the same murderous intent. Thirdly, the acceptance of the appellant's plea of diminished responsibility was plainly relevant to the entirety of his offending.

33. Pepperall J made the following findings of fact:

    1. The appellant had a long history of mental health and suffered from paranoid schizophrenia.
    2. The appellant's mental health deteriorated markedly from October 2020. The appellant was seriously unwell at the time of the offences. He was psychotic and suffered delusions, including his belief that the deceased was a transgender paedophile and that her daughter was at risk. However, and significantly, when T disturbed the appellant, his instinct was not that he had saved her but that he should kill her.
    3. The offending was highly and directly attributable to such mental illness.
    4. The appellant's actions of disposing of the body of Christina; attempting to murder T, who was the eye-witness to the first crime; returning with a shovel to bury T's body; on finding her alive deciding that he would rather go to prison than continue with his murderous attack, and lying to his mother as to the blood stain in her car, amply demonstrated that the appellant understood the nature and quality of his actions and what he was doing was wrong. The Judge was satisfied that the appellant attempted to kill T, not for the reasons the appellant gave as to her persona as a dwarf paedophile but because she was a witness to the killing of her mother.
    5. The appellant was capable of and did form the specific intent to kill both of his victims.
    6. The appellant knew that his own particular condition was adversely affected by the abuse of alcohol and illicit drugs, notwithstanding such knowledge, the appellant smoked strong skunk cannabis and drank spirits in the 48 hours before the offences. That said, the Judge accepted Dr Higgins' evidence that the appellant abused alcohol and drugs in order to self-medicate.
    7. This was not a case where the appellant failed to engage with mental health services.
    8. The appellant only had partial insight into his mental health condition and had no insight into his symptoms.

34. Consequently, Pepperall J determined that the appellant's level of retained responsibility fell towards the "higher end of the medium range". The starting point was 17 years' imprisonment for the offence of manslaughter before considering the aggravating and mitigating features. It was accepted that the offending was a spontaneous explosion of violence. It was aggravated by the extreme violence, use of a knife, commission of the offence in Christina's home at night, by the presence of T and by the disposal of the body in the river.

35. The appellant's mental illness had already been taken into account in determining his culpability and would not be taken into account again as a mitigating feature. However, in mitigation there was a lack of premeditation, no previous convictions, positive evidence of the appellant's previous good character, his age and his genuine remorse for his actions. After full credit for the appellant's guilty plea, the appropriate

sentence for the offence of manslaughter taken in isolation would have been 14 years' imprisonment.

36. The attempted murder of T had caused her serious and long-term psychological damage, not merely from the assault upon her but by witnessing her own mother's murder. The harm was placed in Category 2. Attempted murder in order to prevent detection of another homicide would ordinarily indicate very high culpability with a starting point of 25 years' imprisonment. However, the offender's responsibility was reduced by his mental disorder; the starting point was one of 15 years' imprisonment.

37. The offence was aggravated by the fact that it was committed in T's home at night. Similar mitigation applied to that in the case of the offence of manslaughter. Discount for the appellant's guilty plea on the day of trial resulted in a sentence of 13.5 years' imprisonment.

38. Bearing in mind totality, the proper approach was to sentence the appellant to 24 years for the offence of manslaughter and a shorter concurrent sentence of 13.5 years for the attempted murder.

39. There was no doubt the appellant was a very dangerous man and posed a significant risk to members of the public of serious harm occasioned by the commission of further specified offences. The seriousness of the offences demanded the passing of a sentence of life imprisonment.

40. The Judge was satisfied upon the medical evidence that the appellant was suffering from a mental disorder, that such illness is of a nature and degree to warrant his detention in hospital under the Mental Health Act 1983, that he required treatment in conditions of high security and that such treatment was available to him.

41. Pepperall J noted the psychiatrists' unanimous opinion regarding disposal by way of a Hospital Order under section 37 of the Mental Health Act 1983 with restrictions pursuant to section 41, nevertheless, he considered that there were no sound reasons why a penal element should not be imposed. In all the circumstances the appropriate sentence was one of life imprisonment with a section 45A direction.

42. Since he imposed a life sentence, the notional determinate sentence was reduced by one-third and the minimum term was set at 16 years, less 406 days spent on remand in custody. The appellant was to be subject to the special restrictions set out under section 41 of the Mental Health Act 1983 without limit of time.

43. Mr Garcha KC appears on behalf of the appellant, as he did in the court below. He argues that Pepperall J's finding that the appellant retained a high-end medium range of responsibility is inconsistent with his finding that the offending was "highly and directly attributable to [the appellant's] mental illness". Further, the finding that the applicant knew his condition was exacerbated by the use of alcohol and illicit drugs,

did not accord with the psychiatric evidence that it would not have had any impact upon his paranoid schizophrenia, nor his actions on the night in question.

44. The prosecution had placed heavy emphasis upon comments the applicant made in interview and his post offence behaviour and Pepperall J adopted the view that they were a reliable indicator of the appellant's mind-set, but this ignored his mental state at the time. As was clear from the psychiatric evidence, the appellant's mental illness was profound, and this provided a sound reason to conclude that his retained responsibility was reduced to the point that a penal element was not required.

45. In R v Edwards [2018] EWCA Crim 595 at [12] it was recognised that "sound reasons" not to impose a penal element to the sentence may include "the nature of the offence and the limited nature of any penal element (if imposed) and the fact that the offending was very substantially (albeit not wholly) attributable to the offender's illness." There was adequate safeguarding in a restricted hospital order to satisfy the other sentencing aims, and to ensure the protection of the public. Pepperall J placed undue weight and over reliance on a necessity for punishment and insufficient weight on the achievement of other sentencing aims. (See R v Westwood [2020] EWCA Crim 598.)

46. In the alternative, a discretionary life sentence was wrong in principle, and /or the 16-year minimum term is manifestly excessive and disproportionate to the criminality in this case.

47. Mr Burrows KC appears before us on behalf of the prosecution, as he did in the court below. He submits that, Pepperall J properly: (i) assessed the degree of responsibility retained at the time of the offences with reference not only to the medical evidence but to all the relevant information available to the court and (ii) assessed the dangerousness of the appellant before properly determining that a penal element was appropriate, and that the appellant's mental disorder should be dealt with under section 45A of the Mental Health Act 1983.

48. The Judge's findings were based on the evidence as a whole and which included: (a) the Appellant told Dr Kennedy that he had smoked strong skunk cannabis and drunk spirits over the two days before the offences and himself linked drink and illicit drugs with adverse effects on his mental state; (b) the Appellant had not given any explanation (delusional or otherwise) as to why he hid Christina's body in a suitcase, disposed of her body in a river, cleaned the scene, attacked the girl, returned to the house with a shovel in order to bury T, and lied to his own mother about there being blood in her car; and (c) Dr Kennedy's opinion that "there remains a strong possibility" that the Appellant strangled the girl to prevent her talking to the police. The Judge's finding that the offending was "highly and directly attributable to [the appellant's] mental illness" was not inconsistent with these findings and should not be read in isolation.

49. The psychiatric evidence did not explain why the appellant attempted to murder the 'victim' he had determined to rescue, and which led to the unlawful killing of

Christina. The appellant had said that he would "rather go to jail" than resume his attack upon T when he found her asleep. Dr Kennedy could not discount the possibility that the reason was to eliminate a witness to the first offence. Dr Higgins' oral evidence on the point was of limited assistance.

50. The assessment of dangerousness was based on psychiatric evidence which included that of Dr Higgins' opinion that the risk the appellant may pose to others is by reason of his mental disorder and that when unmedicated he poses a serious risk towards others. This together with the seriousness of the offences, and the degree of responsibility which Pepperall J found the appellant to retain was such as to justify the imposition of a sentence of imprisonment for life.

51. Similarly, the 16-year term is not manifestly excessive in view of the Judge's findings.

Discussion:

52. We commence by expressing our gratitude for the great assistance afforded by Mr Garcha KC and Mr Burrows KC for both their written and oral advocacy. Certainly, this was a complex sentencing exercise.

53. The nature of the conviction for manslaughter by reason of diminished responsibility necessarily means that the offender's ability to understand the nature of the conduct, form a rational judgment and/or exercise self-control was substantially impaired but, it is not the equivalent of a finding of insanity where his culpability is extinguished. As Mr Garcha KC recognises, the key issue which grounds the appropriate sentence in a case of manslaughter by reason of diminished responsibility, and therefore the success or otherwise of this appeal, is the sentencing judge's assessment of the degree of the defendant's "retained responsibility" for the unlawful killing. In determining the extent to which the offender's responsibility was diminished by the mental disorder at the time of the offence the judge must have regard to the medical evidence and all the relevant information available to the court.

54. We find Pepperall J's findings, as indicated in [33] above to be consistent with, and available to him upon, the evidence. Whilst, at first sight, there appears to be some merit in Mr Garcha KC's argument that Pepperall J's reference to the appellant's alcohol and illicit substance abuse suggested a causal link in the context of the offending, we note that the judge observed that it was as a means of self-medication which is in line with the psychiatric evidence. Further, Pepperall J found that this was not a case where the appellant failed to engage with mental health services and that he had only partial insight into his mental health condition and no insight into his symptoms.

55. We agree with Mr Burrows KC that the finding that the offending was "highly and directly attributable to such mental illness" should not be seen in isolation from the Judge's other findings. We do not accept that the judge is demonstrated to have erred in the consequent balancing exercise.

56. Most significantly in this case, and as Mr Garcha KC realistically concedes, it is impossible to divorce the implications arising from the attempted murder of T, committed so shortly in time after the manslaughter, when making the assessment of retained responsibility for the unlawful killing. There is no issue that the appellant was unable to form the intention to kill T and stated that he attempted to do so because she had seen her mother's corpse. Pepperall J was entitled to view the appellant's retained responsibility for the first offence in time through this perspective. We are not persuaded that Pepperall J wrongly concluded that the appellant's retained responsibility fell within the high end of medium range.

57. Considering this finding, the nature and degree of the appellant's illness does not arguably provide a 'sound reason' for the Judge not to impose a penal element.

58. The Sentencing Council's Guideline on the sentencing of offenders convicted of manslaughter by reason of diminished responsibility, reflects the principles promulgated in R v Vowles [2015] EWCA Crim 45 and R v Edwards [2018] EWCA Crim 595. The starting point for a medium level of responsibility is 15 years' custody with a range of 10 – 25 years' custody.

59. We see no error in the Judge's identification of aggravating factors or undue regard to mitigation in arriving at the figure of 17 years, after trial for the offence of manslaughter if it stood in isolation from the second offence.

60. The Sentencing Council's Guideline on sentencing offenders convicted of attempt murder requires an assessment of the offender's level of culpability. In this case the Judge's assessment rightly took into account that the victim of the offence was a child, and the killing was intended to obstruct or interfere with the course of justice in relation to the first offence in time. There was, however, a lack of premeditation and it was a spontaneous attempt to kill. The appellant's responsibility was reduced by his mental disorder.

61. If we find any error in Pepperall J's assessment of harm to T, it was that it arguably underplayed it. It appears to us that it is at least arguable that Dr Fordham's psychiatric report regarding T, read in the context of the victim personal statements dealing with the daily impact of the offending upon T indicates psychological harm of lifelong duration and a substantial and long-term effect on her ability to carry out what should be normal day to day activities. Further, we note that the Judge substantially discounted the starting point of 25 years for what was at least an aggravated category 2B case of attempted murder by reason of the impact of the appellant's mental disorder. We consider the nominal sentence of 15 years after trial for the offence of attempt murder to be lenient in the circumstances, albeit not unduly so.

62. It was necessary for the Judge to consider the issue of dangerousness and inevitable, in our view, that he would form the opinion that it was appropriate to impose a life

sentence having regard to the criteria contained in section 285 of the Sentencing Code. There was ample evidence that the appellant would continue to pose a significant risk to others of serious harm.

63. Thereafter it was equally inevitable that Pepperall J would consider a mental health disposal. There was clear evidence that the appellant is currently suffering from a mental disorder and treatment is available. However, it was first necessary to consider the importance of a penal element in the sentence taking into account the appellant's retained level of responsibility and whether the mental disorder can appropriately be dealt with by custody with a hospital and limitation direction under section 45A. If so, then the Judge is required to make such a direction.

64. In this case the psychiatric opinion unanimously favoured a hospital and restriction order as opposed to a hybrid order. However, it appears to us that these opinions were predicated upon the Judge finding a low level of retained responsibility for the manslaughter and low culpability for the attempted murder, and furthermore centred upon the ability of the appellant to cope with a custodial setting now, prior to his treating clinicians notifying the Secretary of State that he was fit to be transferred to the prison estate. However, this would require his treating clinician to be assured of an effective and consistent medication programme. In these circumstances, we were not satisfied that the differences in the release regime between a section 37/41 order and a section 45A order made under the Mental Health Act highlighted in the psychiatric reports should have compelled the judge to impose the former rather than the latter order.

65. Although this Court in R v Westwood [2020] Crim EWCA 598 considered circumstances that had some similarities to the present case, there are significant differences and accordingly we do not find the reasoning to be of assistance.

66. In conclusion, we are satisfied that the sentence meets the objectives of punishment, rehabilitation and protection of the public in a fair and proportionate way. The sentence is neither wrong in principle nor manifestly excessive. The appeal is dismissed.