Neutral Citation Number: [2023] EWCA Crim 1250

Case No: 202203841 A4

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE HONOURABLE MRS JUSTICE CHEEMA-GRUBB DBE
SITTING IN THE CENTRAL CRIMINAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Friday 3 November 2023

Before :

LADY CHIEF JUSTICE OF ENGLAND AND WALES
THE RIGHT HONOURABLE DAME SUE CARR
MRS JUSTICE MCGOWAN
and
MRS JUSTICE ELLENBOGEN

- -

Between :

JORDAN McSWEENEY	**Appellant**
- and -	
REX	**Respondent**

- -
- -

Mr George Carter-Stephenson KC and Ms Emma Akuwudike (instructed by **Sternberg Reed**) for the **Appellant**
Mr Oliver Glasgow KC (instructed by **Crown Prosecution Service**) for the **Respondent**

Hearing date : 20 October 2023

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Approved Judgment

This judgment was handed down at 9.35am on Friday 3 November in Court 4, and circulated to the parties or their representatives by e-mail and by release to the National Archives.

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The Rt Hon Dame Sue Carr :

Introduction

1. In the early hours of 26 June 2022 Jordan McSweeney, now 30 years old, subjected Zara Aleena to a brutal and sexually-motivated attack causing her multiple injuries from which she tragically died.

2. On 18 November 2022 he pleaded guilty to her murder contrary to common law and sexual assault contrary to s. 3(1) of the Sexual Offences Act 2003. On 14 December 2022 Cheema-Grubb J ("the Judge") sentenced him to life imprisonment for the murder with a period of 38 years specified as the minimum term under s. 322 of the Sentencing Act 2020, and 4 years' imprisonment for the sexual assault (to run concurrently).

3. He now renews his application for leave to appeal sentence. The gravamen of the application is the submission that the minimum term of 43 years adopted by the Judge before applying the maximum credit available of 5 years for his guilty plea was far too high, resulting in a sentence that was manifestly excessive. We grant leave.

The facts in summary

4. The appellant was released from custody on licence on 17 June 2022. A week later, on 24 June 2022, his licence was revoked on performance grounds.

5. On Saturday 25 June 2022 at 8pm, the appellant visited the Great Spoon public house in Ilford. He attended with his friend Kevin McKenna, with whom he was living in a caravan in Valentines Park, Ilford. Whilst at the pub, he consumed a large amount of alcohol. He was recorded on CCTV speaking to a woman outside. He attempted to put his arms around her and put his hands on her bottom. She pushed him away. He attempted again, this time also to kiss her, but the woman backed away and returned inside. He was ejected from the pub after 11pm for making unwelcome advances to a female member of bar staff.

6. The appellant was then recorded on CCTV walking around Ilford. He was obviously drunk and looking for a woman to attack. On Romford Road, he saw and followed a woman, jogging to keep up with her as she attempted to lose him. She went into a supermarket to evade him, but he still followed her, bumping into her as she went to leave. He then hid round a corner. The woman left the supermarket and waited in the safety of an area covered by lighting. She then walked away down Gloucester Road. The appellant emerged from his hiding-place and pursued her, but she managed to escape.

7. The appellant returned to Romford Road and entered a takeaway restaurant. There he sat down to look at a woman at a table, and put his hand down his trousers while watching her, seemingly masturbating. Apparently unaware of the appellant, she left the restaurant and was followed by him. However, he was distracted by a second woman standing on the pavement near him. The appellant put his arm around this other woman and put his hand between her legs. He then walked away, pointing at her. She followed him down a side street; they had a discussion before she walked away.

8. The appellant was then captured on CCTV near Valentines Park where, rather than going to his caravan, he walked up and down Cranbrook Road for some 50 minutes. Just before 2am he started to pursue another woman on Cranbook Road. He followed her along several roads, despite her quickening pace. He eventually overtook her, pretended to enter a property but in fact hid on a driveway. She safely entered another property.

9. Drawing the above together, the chronology of the appellant's activities during the evening up to this point in time was as follows:

    i) Attempts to put his arms round and kiss a woman outside the Great Spoon;

    ii) Is ejected from the Great Spoon for making unwanted advances to a female member of bar staff;

    iii) Follows a woman on Romford Road and into a supermarket, then waits and hides before following her again;

    iv) Apparently masturbates in a chicken shop while looking at another woman whom he then also follows;

    v) Puts his arm around and hand between the legs of another woman on Romford Road;

    vi) Follows a woman near Valentine Park before overtaking her and hiding in a driveway.

10. Ms Aleena had also visited the Great Spoon public house that evening, leaving at approximately midnight. She and a female friend went on to Champs Bar on Chapel Road where they stayed until 2am. She then walked home while her friend took a taxi.

11. The appellant spotted her walking along Cranbrook Road and followed her for some distance. He caught up with her so that he was only a couple of metres behind her, until she reached a residential property with a wide, paved front driveway. At that point, there were no other people on the street. The attack that followed was captured on domestic security cameras.

12. At the driveway, the appellant grabbed Ms Aleena from behind and dragged her to the ground, into the darkness and out of sight from any passers-by. He had one arm around her neck and one arm over her mouth. She struggled and tried to fight him off, but without success. He kept control of her and pulled her back down onto the ground. He parted her legs while she was on the ground, but again she fought back. Again he attacked her and pulled her back on to the ground, dragging her across the driveway. By this stage, she had been rendered unconscious, as indicated by her motionless body and lack of resistance.

13. The appellant removed some of her clothing, parted her legs and sexually assaulted her. He then stamped on her body with immense force, and at least five times. He left the driveway but, after walking a few metres, returned to stamp on Ms Aleena again, repeatedly, and with such force that he had to steady himself by holding onto a balustrade. He searched her body and took some of her possessions before leaving

again. He returned a third time. He bent down as if to look for something and then stamped violently on her one final time.

14. The incident lasted nine minutes. The appellant returned to his caravan and went to bed.

15. Ms Aleena's body was found by two couples walking past. She was unconscious, breathing heavily with blood all over her face and with her legs at an odd angle. Some of those members of the public suffered significant trauma from what they saw. A 999 call was placed at 2.39am.

16. Ms Aleena was transferred to the Royal London Hospital with severe blunt force head trauma, bruising to her neck and all four limbs, injuries to her genitalia and signs of asphyxia. She had a total of 46 separate injuries including lacerations to her scalp, bruising to her face, fracture to her nose, and a severe traumatic brain injury. She had lost so much blood that a transfusion was of no assistance. Death was pronounced at 9.58am. She died from brain injury, prolonged compression to her neck and blood loss. In short, she had been strangled, received one or more severe blows to her head, and stamped on, to death.

17. Ms Aleena's keys and underwear were found discarded a few doors down from the attack; her purse had been thrown into a bush and her leggings onto a tree. Her telephone was found in the driveway of a nearby house.

18. The appellant's fingerprints and blood were located at the scene, and he was also identified from CCTV footage. His bloodstained trainers and jeans were found hidden at the caravan site. He made no comment in three police interviews and failed to attend two appointments with a psychologist. He refused to attend the PTPH and missed the next hearing due to having Covid. He refused to attend court for the rearranged hearing. The PTPH was adjourned to 18th November where he pleaded guilty. He refused to attend court for sentence.

Ms Aleena's family and personal circumstances

19. There were victim personal statements from Ms Aleena's grandmother and aunt, as well as from a member of the public. The family speaks in moving and dignified terms of the loss and trauma that they continue to suffer. Ms Aleena was a smart and successful 35 year old with a strong moral compass and big plans. She was confident, active and well loved, working and volunteering so as to use her many talents to the full. She was, in her own words, a "good person". She was an only child and her family will campaign for a better world in her name.

20. Ms Aleena's aunt has provided another very recent statement, describing the family's profound distress caused by the appeal, and their continuing sense of loss and grief. She says that the impact of Ms Aleena's murder on them is immeasurable.

The appellant's personal circumstances

21. The appellant was 29 years old at the time of sentence. He had 28 convictions between 2006 and 2022 for 69 offences, the majority of which were offences of dishonesty. He had served a number of custodial sentences. The appellant's record included the following: in 2009 he was convicted of assaulting a police constable and in 2010 he

pleaded guilty to offences of assault occasioning actual bodily harm and battery, the latter in a domestic context. In 2018 he pleaded guilty to possessing a bladed article in a public place and in 2022 he pleaded guilty to five offences of possession of a knife/weapon in prison. He had a lengthy record of adjudications in custody, including for assault and threatening, abusive or insulting words or behaviour.

22. No pre-sentence report was before the Judge. We agree that none was necessary.

23. The appellant relied on a report of a psychologist, Dr Fanny Black, dated 26 October 2022. In certain important respects, Dr Black relied on the findings and conclusions of a psychiatrist from whom a report was never served. Dr Black recorded and/or opined, amongst other things, that:

    i) The appellant had had a traumatic childhood;

    ii) The appellant had a complex psychiatric presentation of ADHD, substance misuse disorder, personality disorder, mixed anxiety and depressive disorder;

    iii) The appellant met two of the three criteria for post-traumatic stress disorder.

24. In response, the prosecution relied on a report of Dr Blackwood, psychiatrist, dated 12 December 2022, to which we will return later.

The sentence

25. The Judge observed that the appellant began his criminal career as a teenager. He had endured a dysfunctional family experience but nothing in his childhood could begin to justify his actions and attitudes as an independent adult.

26. She set out the history and the facts. At the time of the attack the appellant was wholly aware of what he was doing. After satisfying his lust, he proceeded to destroy the woman he had just degraded and with sickening deliberation stamped on her again before searching her body and taking some of her belongings.

27. Both parties agreed that, whilst the appellant was planning to commit a sexual offence, there was no sign of significant planning or premeditation for murder. The Judge stated that, whilst this was not a premeditated murder, she was satisfied that the appellant was quite prepared to kill, if necessary.

28. Referring to previous incidents of aggressive behaviour, namely four incidents since 2009, and his record of adjudications in custody, the Judge was sure, to the criminal standard of proof, that the appellant was a pugnacious and deeply violent man with a propensity to violence. His behaviour on 26 June 2022 was not an aberration but a steep and sudden escalation of violence that had simmered in his life for many years.

29. The Judge was satisfied that Ms Aleena had suffered inordinately and that this was an aggravating feature. She noted that the suggestion that she had remained unconscious was speculation; there was evidence to the contrary, including the need, as the appellant saw it, for him to return twice after initially leaving her. The Judge commented that Ms Aleena had survived for eight hours after the attack.

30. The Judge had no doubt that the appellant intended to kill Ms Aleena from both the nature of the attack and the fact that he had returned twice to stamp on her again.

31. She stated that she had considered the psychological report of Dr Black very carefully. She had borne in mind the mental ill-health as identified, but did not consider that there was any cogent material upon which she could conclude that the appellant's mental health issues were capable of reducing his culpability to any material extent. The appellant would be sentenced on the basis that his mental faculties were such that he bore full responsibility for his actions.

32. The Judge stated that the taking of Ms Aleena's mobile telephone was a deliberate attempt to prevent her calling for help and that, following the revocation of his licence, the appellant had committed the offence in the expectation that he was likely to be returned to custody soon in any event.

33. Apart from the appellant's guilty pleas, the Judge found no mitigation, but said that she had taken care to avoid double counting. The sexual assault was a category 1A offence; the appellant had used violence and threats; there was a significant degree of premeditation; it was a violent sexual assault committed at night on a lone woman; and the appellant had removed Ms Aleena's underwear and caused injuries to her genitalia. Had the court been dealing with that offence alone and had the appellant not pleaded guilty, the sentence for sexual assault would have been six years' imprisonment.

34. The Judge stated that, after trial, the minimum term would have been 43 years. The appellant was entitled to the maximum permissible five years' credit for guilty plea. Therefore, the sentence for the brutal, sexually motivated murder of Ms Aleena was life imprisonment with a minimum term of 38 years.

Grounds of appeal

35. The appellant's overarching complaint is that the term of 43 years before credit for guilty plea was unjustified. A number of individual submissions are made under that broad heading. As advanced orally by Mr Carter-Stephenson KC, they can be summarised as follows:

    i) The Judge erred in concluding that there was significant planning/premeditation. It is submitted that, in respect of the murder, any intention was formed on the spur of the moment out of panic, frustration or even anger. The appellant's intention was to have a sexual encounter and not to kill;

    ii) The period of mental and physical suffering of Ms Aleena was limited, on the prosecution's own case, to the early stages of the attack;

    iii) The Judge was wrong to conclude that the appellant's removal of Ms Aleena's mobile telephone was a deliberate attempt to prevent her from calling for help or describing what had happened to her before she died — the appellant had removed, and discarded nearby, a number of items belonging to Ms Aleena;

    iv) Equally, the Judge was wrong to find that he had committed the offending "in the expectation that he was likely to be returned to custody soon in any event". There was no evidence that he was aware that he had been recalled at the time,

albeit that he had known that he had not complied with the conditions of his licence;

v) Although the appellant had numerous previous convictions, he had none for serious violence or sexual offending. The incidents in prison should not have been seen as relevant. He was a target in prison, prone to making false boasts of criminal activity in order to boost his character and status;

vi) The Judge gave no weight to any mitigating factors, including the appellant's personal mitigation, such as his lack of relevant previous convictions, family upbringing and background, and ADHD. His condition of ADHD was relevant both to culpability and remorse. His difficulties inhibited his ability to empathise and so properly to express regret and remorse. In that context, he had made a number of comments which ought to have been viewed as indicative of his remorse;

vii) The Judge should have awarded one-sixth, not one-eighth, credit for his guilty plea.

36. It was conceded that a sentence significantly above a 30 year minimum term would have been justified, but it was submitted that a final term of 38 years, after credit, was manifestly too high.

37. Mr Glasgow KC for the respondent seeks to support the minimum term of 38 years. Given the repeated nature of the assault and the violence used, the appellant clearly intended to kill. The appellant was determined to find and attack a vulnerable female and to sexually assault her. It was inevitable, once he had embarked on that attack, that he would kill his victim. Any mental health issues in no way excused the appellant's actions. There was no relevant mitigation. Mr Glasgow's submission is that the Judge made no error in approach on the facts and that the sentence imposed is unimpeachable.

Discussion and analysis

38. The sentence required by law for the offence of murder is life imprisonment. The court then, after careful consideration, specifies the minimum term under s. 322 of the Sentencing Act 2020 that it considers appropriate, taking into account the seriousness of the offence (or combination of the offences and any one or more offences associated with it). In assessing seriousness, the court must have regard to the general principles set out in Schedule 21 of the Sentencing Act 2020 ("Schedule 21"). Schedule 21 retains the range of appropriate starting points for the determination of minimum terms in relation to mandatory life sentences provided for in the earlier Schedule 21 of the Criminal Justice Act 2003, which had come into force some 17 years earlier.

39. Under Schedule 21, where the seriousness of the offence is "exceptionally high", such as the murder of two or more persons where each murder involves the abduction of the victim, and the offender is aged 21 or over at the time of the offence, the appropriate starting point is a whole life order. Below this, the appropriate starting point for the minimum term for an offence that is "particularly high", and the offender is aged 18 or over, is 30 years. For an offence that is "sufficiently serious", and the offender is aged 18 or over at the time of the offence, the minimum term is 25 years. At the bottom of

the range, the appropriate starting point for the minimum term, where the offender is aged 18 or over at the time of the offence, is 15 years.

40. Schedule 21 marked a significant increase in minimum terms for mandatory life sentences. It is important to emphasise that our task is to assess whether or not the sentence was manifestly excessive, not by reference to historic sentencing practices, or by reference to possible future sentencing regimes, but by reference to Schedule 21 as it stands.

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

The appropriate starting point for the minimum term

42. It is common ground that the appropriate starting point for determining the minimum term under Schedule 21 for the appellant's offending was 30 years (under paragraph 3). The seriousness of the offending was "particularly high", being "a murder involving sexual conduct".

Aggravating factors

43. Having correctly chosen this starting point, it was for the Judge to take into account any aggravating or mitigating factors, to the extent that she had not allowed for them in the choice of starting point. This proviso is important. In the instant case, the sexual conduct had already led to the starting point being doubled from 15 years (in paragraph 5 of Schedule 21) to 30 years.

44. Paragraph 9 of Schedule 21 identifies that additional aggravating factors may include, amongst others,:

    i) A significant degree of planning or premeditation;

    ii) Mental or physical suffering inflicted on the victim before death.

45. There can be no doubt that there was a significant degree of planning and premeditation of sexual assault. The history of the appellant's activities speaks for itself. The CCTV footage of the appellant prowling the streets of Ilford looking for a woman to sexually assault makes for chilling viewing. Any extent of planning or premeditation of murder is less clear. However, there can be no challenge to the Judge's finding that the appellant was at all times prepared to kill, if necessary.

46. The weight to be attached to planning for a sexual assault that ultimately results in a murder was addressed in *R v Minto* [2014] EWCA Crim 297 at [23], where the court stated that the relevant planning or premeditation is not necessarily confined to the

offence of murder. It is important in this context to bear in mind that the list of aggravating factors in Schedule 21 is non-exhaustive. The court has a broad discretion.

47. The degree of planning and premeditation for the appellant's serious sexual offending in this case was a most striking feature, and the appellant was being sentenced for the sexual offending as part and parcel of the murder. Whilst the murder itself may not have been premeditated, the violent sexual assault of a woman was planned by the appellant for many hours. When he embarked on the violent, sexual assault of Ms Aleena, he was prepared to kill in order to complete it and to escape (as he had planned), without facing the consequences of what he had done to her. Accordingly, the Judge was fully entitled to take account of the planning and premeditation as a materially (and significantly) aggravating factor.

48. As for mental or physical suffering, care must be taken to avoid double-counting, given that the sexual nature of the assault has already elevated the statutory starting point for the minimum term from 15 to 30 years. For mental or physical suffering to be an aggravating statutory feature, there must be suffering over and above that which is already inherent in a murder involving sexual conduct.

49. The Judge found (correctly) that Ms Aleena "must have been rendered unconscious" early on in the attack, because the appellant then "dragged her around without independent movement from her". Mr Glasgow stated that it was apparent that Ms Aleena had been conscious for some 30 seconds or so in the initial stages of the violent assault, and thereafter was rendered unconscious and unable to fight back.

50. However, the Judge went on to conclude that Ms Aleena "suffered inordinately and this is an aggravating feature". She stated that it was speculation that Ms Aleena remained unconscious, and that there was evidence contrary to that suggestion, including the need, as he saw it, for the appellant to return to the victim twice after initially leaving her. As we have said, the Judge stated that Ms Aleena survived for eight hours after the attack.

51. We do not consider that a finding of inordinate suffering such as to amount to an aggravating feature was properly open to the Judge. As set out above, it is clear that, mercifully, Ms Aleena was rendered unconscious early on in the attack. No doubt, she suffered terror and pain during the assault in its early stages, fighting back bravely as she did. But in order to find that Ms Aleena suffered beyond that, the Judge needed to be sure that Ms Aleena regained consciousness (and for a sufficient period of time to suffer inordinately).

52. We can identify no, or no sufficiently compelling, evidence to support a conclusion that Ms Aleena regained consciousness. The fact that the appellant returned twice to the body, a matter relied upon by the Judge, is at best neutral on the issue: it is as (if not more) consistent with an intent to kill as with a belief that Ms Aleena was still conscious (as opposed to alive). The Judge did not identify on what other evidence she was relying, and Mr Glasgow could not point to any. (He suggested orally that Ms Aleena might have suffered pain whilst unconscious but, again, there was no basis for the Judge to be sure that she did so, either at all or for any significant period of time.) The members of the public who found Ms Aleena stated that she was unconscious when they arrived at the scene, as did the emergency services. She could not breathe unaided. A neurosurgery review after a CT scan described the brain injury as "unsurvivable and

devastating". The forensic pathologist, Dr Cieka, described, amongst other things, how brain examination showed features of severe traumatic injury, including axonal injury. There was a significant and severe degree of traumatic brain injury commonly caused by violent and angular acceleration and deceleration of the head and commonly associated with loss of consciousness, in keeping with Ms Aleena's Glasgow Coma Scale reading (3/15 (meaning coma or death)) at the time of hospital admission.

53. There were then the following additional aggravating factors: the appellant was on licence at the time; he was in drink; the offence took place in public in the early hours of the morning and was witnessed partly by members of the public; the appellant attempted to dispose of or conceal evidence, such as the bloodstained clothing, shoes, and Ms Aleena's telephone.

54. There is force in the appellant's criticism that there was an insufficient evidential basis for the Judge's finding that the appellant took the telephone in a deliberate attempt to avoid apprehension. As we have said, the telephone was one of a number of other items taken from Ms Aleena and then discarded, including her purse. Equally, it may have been an overstatement to suggest that the appellant committed these offences in the expectation that he was likely to be returned to custody soon in any event. Whilst he would have been aware of his failures to comply with his licence conditions, he was unaware at the time of the attack that he had been recalled.

Potential mitigating factors

55. There was no mitigation based on the absence of an intention to kill, given the nature, force and repeated acts of violence comprising the attack. There was the following potential mitigation:

    i) Lack of relevant previous convictions;

    ii) Mental health problems and personal background;

    iii) Remorse.

    We deal with each in turn.

56. The Judge concluded that there was a wealth of evidence demonstrating that the appellant was a violent man and the index criminality was not out of character. She recognised that she had to be sure of the matters in question. She relied on his record for domestic violence and his threats to kill prison officers, including female police officers. She was fully entitled to be sure that the appellant was a pugnacious and deeply violent man with propensity to violence. Thus the appellant's lack of previous convictions for sexual and serious violent offending was balanced out: it was essentially a neutral factor.

57. Paragraph 10(c) of Schedule 21 provides that relevant mitigating factors may include:

> "the fact that the offender suffered from any mental disorder or mental disability which…lowered the offender's degree of culpability".

58. For a mental health difficulty to warrant a material reduction in culpability, there must be a sufficient connection between the offender's impairment or disorder and the offending behaviour. Dr Black painted a bleak picture of the appellant's childhood and educational difficulties. His mother was an illicit drug user and he reported having suffered sexual abuse. However, nothing in Dr Black's assessments demonstrated any connection between the appellant's mental health difficulties and background and the fact that, on the night in question, he stalked several women before attacking, sexually assaulting and murdering Ms Aleena.

59. The respondent served Dr Blackwood's report late in the day, in response to that of Dr Black. There was no formal objection to his report being placed before the Judge, nor did the defence apply for an adjournment in order to be able to address it. Dr Blackwood confirmed that the appellant's untreated ADHD would have exacerbated his trait of impulsivity that would predispose him to hot-headed acts of reactive aggression. But the index offence "was a considered act of instrumental aggression which obtained after more than two hours of following at least three separate women for prolonged periods when they were walking alone at night in Ilford".

60. In short, the Judge took account of the evidence, including as to the appellant's childhood, background and ADHD. She was fully entitled to conclude that none of it offered an excuse or explanation for the sexual assault and murder such as to justify a material reduction in his culpability. In terms of mitigation more generally, it is difficult to see how the appellant's unhappy childhood and personal circumstances could provide any meaningful mitigation in the context of offending of this order and magnitude.

61. As for remorse, the appellant's disengagement with the court process, including his refusal to attend the sentencing hearing, was inconsistent with a willingness to accept and recognise the impact of his offending, and with the existence of genuine remorse. The Judge rightly did not consider any lack of remorse to be an aggravating feature; equally, there is no basis for appellate interference with the Judge's conclusion that genuine remorse was not available as a mitigating factor.

Standing back: 43 year minimum term before credit for guilty plea

62. Standing back then, was the term of 43 years before credit for guilty plea, based on a starting point of 30 years, so high as to be manifestly excessive? We are no less able than the Judge to assess the appropriate sentence, in circumstances where sentence followed guilty pleas, not trial, and where we have been able to view the relevant CCTV footage.

63. As set out above, the Judge was not entitled to find inordinate suffering as a statutory aggravating factor, and her comments relating to the motivation behind the appellant's removal of Ms Aleena's telephone and mindset relating to his recall to prison were not justified. Otherwise, we have identified no error in the Judge's approach to either aggravating or mitigating factors.

64. It is clear, given the multiple aggravating factors and lack of mitigating factors, that a minimum sentence well in excess of 30 years was merited. But we find ourselves unable to support an uplift of 13 years from the starting point of 30 years. 30 years is a term itself based on the premise that the seriousness of the offending was particularly high.

As was stated in *R v Stewart* [2022] EWCA Crim 1063 ("*Stewart*") at [19iii)], "to be imprisoned for a finite period of 30 years or more is a very severe penalty". An uplift of 13 years was almost a 50% uplift from 30 years.

65. In our judgment, a minimum term of no more than 38 years before credit for guilty plea was justified. This is the minimum term which accurately reflects the seriousness of the offending, taking account of the statutory starting point and all relevant aggravating and mitigating factors identified above. A minimum term of 43 years before credit for guilty plea was far too high, resulting in a minimum term of 38 years after credit for guilty plea that was manifestly excessive.

Credit for guilty plea

66. Under the Sentencing Council Guideline on Reduction for Sentence for a Guilty Plea, credit for a guilty plea to murder can never exceed one-sixth or five years. The Judge paid due regard to the "responsible" steps taken to ensure fitness to plead, but also to the appellant's unreasonable failure to attend appointments and refusals to attend court hearings. The Judge concluded that the appellant was entitled to one-eighth credit for his guilty pleas. Although we are reducing the minimum term, we consider it in the interests of the justice of the appeal as a whole to maintain the maximum five-year credit afforded by the Judge.

67. Based on a minimum term of 38 years, the application of such credit produces a minimum term of 33 years.

Conclusion

68. These were abhorrent crimes. They involved a planned, determined sexual assault, followed by a sustained and repeated attack which culminated in the death of a young, wonderful woman, full of promise and talent, and who was loved by so many. She was spirited, intelligent and kind. As was stated in *Stewart* (at [19ix)]), the period that a murderer must serve does not reflect the value of the life taken away, and does not attempt to do so.

69. This was a difficult sentencing exercise, which the Judge carried out with care and sensitivity. Nevertheless, applying the relevant statutory sentencing regime, we have reached the conclusion that the minimum term of 38 years, after credit for guilty plea, is not sustainable. It was manifestly excessive.

70. We therefore allow the appeal. We quash the minimum term of 38 years on the count of murder and substitute in its place a minimum term of 33 years. We also correct the amount of the victim surcharge imposed, by increasing it from £187 to £228. All other elements of the sentence remain unchanged.