



**MR JUSTICE WALL**

IN THE CROWN COURT AT WORCESTER

R -V- IVAN POTTER

SENTENCING REMARKS

1. Ivan Potter, there is no need to stand.
2. You have pleaded guilty to attempted murder. It was a crime committed in the most exceptional of circumstances. You attempted to kill your son, Gavin Potter, hours after your wife of fifty years, Maureen, died of cancer. She had been ill for a long time, firstly with COPD and then latterly with the cancer itself.
3. At the time you did this, you were 81 years old and of good character. You are now 82.
4. Your son is 45. He has a number of severe health conditions: most significantly, he has cerebral palsy, kidney disease and learning difficulties. He has profound communication difficulties. He almost certainly lacks capacity to take any significant decisions about his care or his future. He has limited mobility and requires assistance to move short

distances across the room. He requires assistance day and night with things as basic as eating, dressing and using a commode.

5. Until this happened, he had been cared for by you and your wife from birth. You took early retirement in your mid-fifties and since then have spent your whole life caring for him and, once she became ill, your wife as well. Their health was inevitably deteriorating throughout this latter period despite your efforts. For much of that time you were coping with these pressures while enduring the restrictions imposed on all of us as a result of COVID, and dealing with your own fears for the future as referred to in Dr Maganty's report. You have not had a holiday from your caring duties in forty years and your attempts to obtain respite care have not proved successful. You told Dr Meganty, the psychiatrist, *"for 45 years there has been no respite ... when Maureen has been unwell there had been no respite, never had respite care"*.
6. Whatever the reality, you and your wife truly believed that, were your son to go into care, he would not be properly looked after and might even be abused.
7. In the period leading up to the death of your wife, you had stopped sleeping in bed but rather spent your nights propped up in a chair next to her in case she or your son woke up and required assistance. You looked after both her and Gavin 24 hours a day. Months before this incident you were noted by others visiting the house as appearing exhausted. You told the psychiatrist why you did it: *"I did everything for them because I loved them"*. He properly described the care that you

provided to your wife and son in the last two years of your wife's life as *"exceptional"*.

8. You and your wife had spoken of how Gavin was to be cared for when you were both no longer around. You had discussed the desirability of the three of you "going together" so that Gavin would not be left to the mercies of others. She had told you that she was worried about what would happen to Gavin if he were left behind alone.
9. Against that background, in the immediate aftermath of your wife dying at home, you took the decision to kill yourself and your son. This was not your decision to make. You had no right to decide for him whether he was to live on or not. You accept that your son was not aware of what you were doing at the time but I accept that you genuinely believed not only that what you did was in Gavin's best interests but also that he would have wanted you to do it had he understood it.
10. You tried to gas yourselves and to take and administer an overdose of paracetamol in the hope that you would both die. Your wife was still dead in a chair in your house when you did this. The attempt to gas you both had no real effect on either of you. The immediate result of the administration of paracetamol to your son was to make him vomit. It was your desire to stop him suffering in that way which led you to dial 999 and alert the emergency services to what you had done.
11. Gavin was then in hospital from 8 December 2023 until 17 March this year. His vital signs were normal from the time he was first admitted. There is no evidence that he has sustained any lasting damage from

what you did to him. His kidney function is deteriorating but that is thought to be due to his chronic health problems and not your actions. Dr France, who treated Gavin, thought that his life was endangered by your actions. Dr Langford, the forensic toxicologist, agreed that this was a possibility but could not say to the criminal standard that it was likely to have done so. His time in hospital was as lengthy as it was because he developed three infections while he was there and because there were difficulties in feeding him through a tube which was medically necessary for a while. These are indirect rather than direct consequences of your actions

12. Why do I say that this case is exceptional?
13. Firstly, because this was an attempted murder committed because you genuinely believed that you were doing the right thing by your son. I have no doubt about your deep and enduring love for him. You honestly thought that you could not look after him properly on your own and that nobody else could or would do it adequately. You believed in acting as you did you were being true to the discussions you had with your wife prior to her death. This was a crime not motivated by malice but by misguided love.
14. Secondly, because it happened in the immediate aftermath of the death of your wife. It is clear from the psychiatric report of Dr Maganty and the Pre-Sentence Report that you were a totally devoted couple. Her death had been slow and agonising and must have been difficult for you to witness. You told Dr Maganty that before her final illnesses you had *“the best life ever together”* but that her last months were *“hell for her”*.

15. Thirdly, that as a result of the loss of your wife against the background of your caring duties for her and your son, you were mentally unwell at the time you committed this offence. Dr Maganty has diagnosed you as suffering from a moderate depressive episode and, more significantly, an adjustment disorder. This, he concluded, amounted to a mental disorder resulting in an abnormality of mental functioning. In particular he said that it would have affected your ability to form rational judgments. He is of the opinion that, had your son died as a result of your actions, this abnormality of functioning would likely have been sufficient to found diminished responsibility as a partial defence to murder, thereby reducing murder to manslaughter. This is clearly a case in which your culpability for what you did is significantly reduced by the mental conditions from which you were then suffering.
16. In addition to the factors which render this case exceptional, I take into account the following features when fixing your sentence:
- a. Your good character.
  - b. You have attracted three impressive character references which have been written by and on behalf of your eight nephews and nieces, your sister in law and a long-term friend of your family. They all praise the quality of care you gave your wife and son. In one of them you are described as a “*committed husband and father*”. Your nuclear family is described by your family friend, Annette Bourne, as having been “*a loving and devoted family*”.

Your actions are described by those who knew you well as having been committed out of “*pure love*” or out of “*love and devotion*”.

- c. The fact that you have been remanded in custody awaiting sentence. This is the first period you have ever spent in prison. It has been made more difficult because of your age and the fact that you have been grieving for your wife and, doubtless, worrying about Gavin.
- d. The fact that, understandably, the police thought that you might have killed your wife and therefore investigated you for that offence. You have therefore spent much of the last few months since her death thinking that you might face a charge of murder when you knew that she had died of natural causes – which the prosecution now accept. It was only made clear to you a few weeks ago that you would not face such a charge.
- e. Your plea of guilty for which I will give you full credit. It was not indicated at the first opportunity but given your age, the nature of the charge, and your good character I accept that you were entitled to take advice from counsel before entering that plea. You had never sought to deny what you did. You were open and honest with the emergency workers from the start.

17. I turn now to sentence. My primary duty is to pass on you a just sentence. That involves my weighing up the crime you have committed, the facts behind it and your personal mitigation. I also have statutory

duties to follow. I must consider the purposes of sentencing as listed in s57 Sentencing Act 2020; I must apply the relevant sentencing guidelines unless it would be contrary to the interests of justice to do so (s59 SA 2020); and to impose a sentence which, before applying credit for guilty plea, is within the offence range (rather than the appropriate category range) within the guideline for attempted murder (s60 SA 2020).

18. I am driven initially to place your offending into category D2 of the guideline for attempted murder. It is culpability D both because you held a genuine belief that it would have been an act of mercy to kill your son and because your responsibility for your actions is reduced by the mental condition from which you were suffering at the time; it is harm category 2 because you caused him serious harm falling short of the most serious and lasting harm which would have placed your offending into harm category 1.
19. The starting point for your sentence is 8 years imprisonment with a category range of 5 to 12 years.
20. The only potential aggravating features are that this was an offence committed in a domestic setting and one carried out in breach of trust against a vulnerable person. Of those, I do not consider that the fact that this offence was carried out in a domestic setting should have an impact on your sentence. That is a factor which is of particular relevance when sentencing an abusive partner or parent. That is not you. The other factors are of relevance. They are the reverse of the coin from your belief that you were acting in Gavin's best interests.

21. There are a number of mitigating features. You have no previous convictions, you are a man in your 80s with your own health difficulties, you are remorseful, you have a positive good character and in the past have behaved in exemplary fashion, you had just suffered a very significant bereavement, you had mental health difficulties and your personal circumstances were very difficult in the period leading up to your crime.
22. In my judgement, the mitigating factors far outweigh the aggravating features of the case. They justify a significant downwards movement from the starting point to the bottom of the category range, that is, to 5 years, before applying any discount for guilty plea. This strict application of the guideline would therefore result in a custodial term of 3 years and 4 months.
23. It is at this point that I must stand back and consider whether such a formulaic adoption of the guideline produces a just sentence in your case or whether this is one of the very few cases in which it would be contrary to the interests of justice not to make a further reduction beyond that envisaged as appropriate in the category range set by the guideline. I have decided that further downwards adjustment is required to achieve a just sentence given the factors in your case which I have already referred to be as being exceptional. In particular it is appropriate to reflect the fact that there were two independent factors which served to place this offence into the lowest category of culpability: your belief that yours was an act of mercy and your culpability being lowered by your mental health conditions. I intend therefore to reduce the custodial term before applying credit for guilty plea to one of three years



imprisonment, that being the bottom of the offence range for offences of attempted murder. This results in a sentence of 2 years after credit for guilty plea, which I regard as a just and appropriate sentence for your crime. It is difficult to imagine a crime of attempted murder which called out for a lesser term of imprisonment. I stress that the crime of attempted murder is always serious: it is the particular circumstances in which this offence was committed which obviates the need for the usual lengthy custodial sentence in your case.

24. Having decided that two years imprisonment is the appropriate custodial term, I am now duty bound to consider whether that sentence can be suspended. In reaching my conclusion I have had regard to the Sentencing Council definitive guideline on imposition. There are two potent factors listed in that Guideline which indicate that it might be appropriate to suspend the sentence: there is, in my judgement, a realistic prospect of your rehabilitation, and you have strong personal mitigation. Two of the factors indicating that it would not be appropriate to suspend the sentence are lacking: you do not pose a risk to the public, and you do not have a history of poor compliance with court orders.

25. The final question for me to decide is whether appropriate punishment can only be achieved by immediate custody. I have considered the aims of sentencing as set out in s57 Sentencing Act 2020. Of those aims, punishment is the most important consideration in cases of this sort. There is no need for an immediate prison term to rehabilitate you, or to protect the public, or allow you to make reparation. Immediate imprisonment will not help to reduce crime given the inherent

unlikelihood of anyone who in the future might find themselves in your tormented position thinking clearly before deciding whether to act as you did. I have decided that further punishment by way of continued incarceration is not necessary. I am mindful of your age, the fact that you have now spent approximately six months in prison, your health and the fact that you are still grieving for your wife.

26. Therefore, I will suspend the period of imprisonment for 2 years. That means you will be released. You will not have to serve what remains of the sentence unless you offend again within the next two years, which I am sure you will not. I am going to order that you keep in contact with the Probation Service by imposing a Rehabilitation Activity Requirement for up to 40 days. That means that you will be required to attend on the Probation Service for up to 40 days in order to rehabilitate you within the community. You must go when you are told to do so or you risk being in breach of your order and can be brought back to court.

27. Ivan Potter, please stand. The sentence I impose on you is one of two years' imprisonment suspended for two years.

28. The surcharge applies and the order should be drawn up in the appropriate amount.