



Judiciary of
England and Wales

[2024] EWCA Crim 490

REFERENCE BY HIS MAJESTY'S SOLICITOR GENERAL
UNDER SECTION 36 OF THE CRIMINAL JUSTICE ACT 1988

Rex
v
Valdo Calocane

SUMMARY OF THE DECISION OF THE COURT OF APPEAL, CRIMINAL
DIVISION, ON 14 May 2024 (The Lady Chief Justice, Edis LJ and Garnham J)

1. This Reference by the Solicitor General concerns the sentence imposed on the offender, Valdo Calocane, on 24 January 2024 at Nottingham Crown Court for three counts of manslaughter by reason of diminished responsibility, and three counts of attempted murder, to which offences the offender had earlier pleaded guilty. The judge, Mr Justice Turner, sentenced the offender to a hospital and restrictions order, pursuant to ss. 37 and 41 of the Mental Health Act 1983, for each offence, to run concurrently. The Solicitor General sought leave to refer these sentences to the Court on the basis that they were unduly lenient.

The Factual Background

2. On the night of 12 June and into the early hours of 13 June 2023, Valdo Calocane went out on the streets of Nottingham, having armed himself with knives. Shortly before 04:00 he attacked and killed Barnaby Webber and Grace O'Malley-Kumar, two young students walking home after a night out. Just over an hour later, he attacked a school caretaker, Ian Coates, who was on his way to work, killed him and stole his van. The offender then drove to the city centre, where he deliberately drove the van, at speed, into another man, Wayne Birkett, causing him serious brain injury. Minutes later he deliberately drove into two other victims, Sharon Miller and Marcin Gawronski, also causing serious injury. These were random attacks: none of his six victims were known to the offender. [1] and [6] – [26] The offences understandably caused shock and concern throughout the country and beyond, and unimaginable grief to the victims' families and friends.
3. The offender is now 32 years old. He does not appear to have had mental health problems until 2019, and had no previous convictions. The psychiatric experts agreed that the offender was suffering from treatment-resistant paranoid schizophrenia. His symptoms included persecutory delusional beliefs, hallucinations, thought alienation and disturbed behaviour. The experts agreed that, had he not been experiencing symptoms of acute psychosis, he would not have perpetrated the acts. [39] He was entirely driven by the psychotic process. [84]
4. All the medical experts agreed that a hospital order with restrictions was appropriate, and that a life sentence of imprisonment with a hospital and limitation order under s.

45A of the Mental Health Act 1983 (“a hybrid order”) would not provide the public with the same level of public protection. **[39] and [40]**

The Issue and the Argument

5. The sole question for the court is whether the sentences imposed are unduly lenient. This is a high hurdle; the court must ask whether the sentences fell outside the range of sentences which the judge, applying his mind to all the relevant factors, could reasonably consider appropriate; whether, in other words, the judge below has fallen into ‘gross error’. **[75]-[77]**
6. The Solicitor General argues that (i) the judge failed to reflect sufficiently the multiple aggravating features of the offending when arriving at an appropriate minimum term of imprisonment under a life sentence; (ii) the judge failed to take sufficient account first of evidence to the effect that the offender’s culpability was not extinguished by his mental illness, and second the extent of the harm caused and (iii) he was wrong not to include a penal element in the sentence. It was submitted that the overall seriousness of the case required the imposition of a hybrid order. **[78]-[82]**

The Analysis

7. It is accepted by the Solicitor General that the judge made no error of principle in his approach and that his choice was stark and binary: either hybrid orders or hospital and restrictions orders. **[76]**
8. The Solicitor General contends that the offender’s criminality was aggravated by multiple features, including planning and the purchase of knives. However, the psychiatric evidence established that these actions were part of one psychotic episode of intense severity. **[81] and [82]**
9. The judge recognised that the offender’s culpability was not extinguished, and that he had to consider whether a penal element was necessary. Because the offender’s level of retained responsibility was low, and in circumstances where the offending would not have taken place but for the offender’s schizophrenia, the judge was entitled to conclude that a penal element was unnecessary. This was so, despite the number of victims and the extent of the harm caused. The schizophrenia was the sole identified cause of the crimes: thus, for example, there was no evidence of substance abuse, no evidence of any culpable failure to take medication or any motive for attacking these victims. **[78] and [84]**
10. The key factor in a case like this, when deciding whether or not a penal element is required, is the strength of the link between the offender’s impairment and the offending in question. Here, at the time of the assaults, the offender was in the grip of a severe psychotic episode. **[78] and [84]**
11. The judge properly took into account the different regimes that would apply, depending on which of the two possible sentences was imposed. His conclusion that hospital orders with restrictions were appropriate was consistent with the principle that: the graver the offence and the greater the risk to the public, the greater the emphasis that should be placed on the protection of the public. He reached the reasonable conclusion,

based on the psychiatric evidence before him, that the aim of public protection would be served better by hospital and restrictions orders. [85]

12. In any event, the extreme violence perpetrated by the offender makes it very likely that, whichever of the two options had been, the offender will spend the rest of his life in a secure hospital. [90]

The Conclusion

13. There was no error in the approach adopted by the judge. The sentences imposed were not arguably unduly lenient. Leave to refer the sentences is refused. [93]
14. It is impossible to read of the circumstances of this offending without the greatest possible sympathy for the victims of these terrible attacks, and their family and friends. The victim impact statements paint a graphic picture of the appalling effects of the offender's conduct. Had the offender not suffered the mental condition that he did, the sentencing judge would doubtless have been considering a whole life term. But neither the judge nor this court can ignore the medical evidence as to the offender's condition which led to these dreadful events or the threat to public safety which the offender continues to pose. [95]

Important note for the press and the public: this summary is provided to assist in understanding the Court of Appeal's decision. It does not form part of the reasons for the decision. The full judgment ([2024] EWCA Crim 490 is the only authoritative document. The judgment is a public document and is available online at Judgments Archive - Courts and Tribunals/Judiciary: <https://caselaw.nationalarchives.gov.uk/>