



Judiciary of England and Wales

[2024] EWCA Crim 1498

APPLICATION FOR LEAVE TO APPEAL AGAINST SENTENCE

Rex
v
Eddie Ratcliffe

SUMMARY OF THE DECISION OF THE COURT OF APPEAL, CRIMINAL DIVISION, ON 5 December 2024 (The Lady Chief Justice, Mr Justice Lavender and Mr Murray)

1. This application for leave to appeal against sentence concerns the sentence imposed on the applicant, Eddie Ratcliffe, on 2 February 2024 at Manchester Crown Court after he was convicted on 20 December 2023 following a trial, together with his co-defendant, Scarlett Jenkinson, of the brutal murder of Brianna Ghey.
2. Brianna was only 16 years old when she was killed. She had her whole life ahead of her. She had some struggles that made her vulnerable, but she was supported by a loving family who wanted nothing but the best for her. She made an impact in her short life and her family remember her for her laughter, for being full of life and as a good listener [3].
3. Yip J sentenced the applicant to be detained at His Majesty's pleasure with a minimum term of 20 years less time spent on remand in custody. Scarlett was sentenced to be detained at His Majesty's pleasure with a minimum term of 22 years less time spent on remand in custody [4].
4. On 2 February 2024, the judge lifted the order made under s45 of the Youth Justice and Criminal Evidence Act 1999 so as to allow report of the applicant's identity and that of his co-defendant. Her order under s45 of the 1999 Act made on 27 November 2023 remains in force. It prohibits the publishing or broadcasting of the names, photographs or images of any of the other children, other than Brianna, referred to in the trial (save that they might be referred to by first initial, other than Scarlett's boyfriend, who may be referred to as "O") or any other particular that might lead to the identification of any of the children, other than Brianna [6].

The Factual Background

5. On 11 February 2023, Brianna Ghey was 16 years and three months old. Scarlett Jenkinson was 15 years and eight months old. The applicant was 15 years and seven months old. Brianna and Scarlett knew each other from school. Brianna thought that Scarlett was her friend. They had arranged to meet that afternoon in Linear Park. Scarlett and the applicant had been friends since they were 11 years old. They had made a plan to kill Brianna that afternoon at Linear Park. The applicant arrived there, bringing a hunting knife with him. He and Scarlett used that knife to stab Brianna 28 times to the head, neck, chest and back, killing her. The judge found that it was a brutal and shocking murder, resulting from a sustained and very violent assault. The case was unusual, not

only for the fact that the murderers and the victim were all children, but also for the graphic and sinister messages that Scarlett and the applicant had exchanged in the build-up to the attack, and their cold and callous behaviour in the aftermath [1], [3].

6. For purposes of sentence, the judge considered a large number of reports about the applicant prepared by consultant psychologists, consultant psychiatrists, an intermediary, a consultant speech and language therapy expert, as well as a pre-sentence report. Following his detention, the applicant was diagnosed with mild autistic spectrum disorder (ASD). Following his conviction, he has developed severe anxiety and (involuntary) selective mutism [9-10].

The Sentence

7. The mandatory sentence for murder for an offender aged under 18 when the offence was committed is detention at His Majesty's pleasure, with a minimum term to be served determined by the judge in accordance with Schedule 21 to the Sentencing Act 2020. The judge identified that the appropriate starting point was 20 years (i) because the murder involved sadistic conduct by Scarlett and the applicant had actively participated in it knowing the sadistic motives and (ii) because the murder was motivated in part by the applicant's hostility towards Brianna due to her being transgender [14], [16-18].
8. The judge identified the following aggravating factors: there was a significant degree of planning and premeditation, started by Scarlett but with the applicant joining in; Scarlett tried on an earlier occasion to poison Brianna, with the applicant encouraging her to make further attempts; there was an unsuccessful attempt to lure Brianna to Linear Park on 28 January 2023 with a view to killing her; Brianna was vulnerable and was picked as a victim because Scarlett and the applicant thought she would be an easy target; Scarlett abused Brianna's trust in her as a friend in order to lure her to Linear Park, and the applicant was aware of this; and the murder was committed in broad daylight in a public park where other people were around. The brutality of the murder, use of a knife, sadistic motive and transphobic motive were all taken into account in identifying the starting point and so not double-counted, but together illustrated how serious this offence was even in the context of murders of particularly high seriousness [21].
9. The judge identified as mitigating factors, the applicant's age and level of maturity (less than many others of his age), his previous good character, and his progress in detention (good behaviour, passing GCSEs, starting study for A levels, and starting speech and language therapy). Having considered the many reports about him, the judge concluded that his thinking skills were less developed than normal in several areas, but his diagnosis of ASD and associated limitations did not significantly lower his culpability for Brianna's murder. She took into account, however, that his experience of custody would be made more difficult by his ASD, his severe anxiety, and his selective mutism [22-23].
10. The judge found that the applicant's culpability was not quite as high as Scarlett's and that the aggravating and mitigating factors were evenly balanced. It was therefore not necessary to make any adjustment to the starting point of 20 years for the minimum term, other than to deduct the 352 days spent by the applicant on remand in custody [24].

The Issue and the Arguments

11. The question for the court is whether it is arguable that the sentence passed on the applicant is manifestly excessive.

12. The applicant argues that: the judge erred in concluding that the starting point should be 20 years; she failed to reflect his age and level of maturity when determining it; she gave disproportionate weight to the aggravating features she identified; she gave insufficient weight to his personal mitigation based on his ASD diagnosis and significant impairments in functioning; she failed to distinguish sufficiently between the applicant's role and culpability and Scarlett's greater role and higher culpability; and she failed to give reasons that were sufficiently clear as to how she arrived at the sentences of Scarlett and the applicant. The respondent argues that: the judge had heard the trial and seen Scarlett and the applicant give evidence; she was in the best position to assess their differing roles; and the sentence she imposed was correct for the reasons that she gave [26].

The Analysis

13. It is necessary in a case such as this to bear in mind that the principal aim of the youth justice system is to prevent offending by children and young persons: s37 of the Crime and Disorder Act 1998. The Sentencing Act 2020 must be construed consistently with that aim: s58 of the Sentencing Act 2020. In a case such as this, the Sentencing Council guidelines on *Sentencing children and young persons* and on *Sentencing applicants with mental disorders, developmental disorders, or neurological impairments* are applicable, subject to Schedule 21 to the Sentencing Act 2020 [46-47], [49].
14. The applicant's arguments include that the judge (i) erred in determining the same starting point for the applicant and for Scarlett and (ii) erred by failing to reflect his age and level of maturity when determining the starting point. Each is based on a false premise [57].
15. When determining the starting point, the judge was obliged to, and did, have regard to the relevant matters set out in paragraphs 3 to 5A of Schedule 21. The respective roles of Scarlett and the applicant were matters to be taken into account when considering aggravating and mitigating factors. The judge was entitled to conclude, having regard to the messages exchanged between Scarlett and the applicant before the murder, that the applicant was fully aware of Scarlett's sadistic motive for killing Brianna and that therefore he was an active participant in a murder involving sadistic conduct. This was a joint enterprise [57], [60].
16. The judge was also entitled to conclude, based on messages sent by the applicant to Scarlett, that the applicant's participation in the murder was at least partly motivated by hostility towards transgender persons. The judge's choice of a starting point of 20 years was correct for the reasons she gave [58].
17. The judge was entitled to take into account the aggravating factors that she identified. The judge did not refer to Brianna's being a child as an additional aggravating factor, but she could have done. She was entitled to take into account that the applicant knew that, to further their plan, Scarlett abused the trust placed in her by Brianna as a friend [64].
18. As to mitigating factors, the judge was entitled to observe that the previous good character of the applicant and of Scarlett had to be seen in the context of this very serious offending and the contents of the messages exchanged between them prior to the murder. The judge took into account the applicant's good behaviour in detention and the prospect that he might one day be rehabilitated. The court is pleased to see from up-to-date reports that this positive behaviour has continued. The applicant is to be commended for his

attitude and constructive involvement in education, therapy and engagement with intervention programmes [66].

19. The judge rightly identified three potential mitigating factors from the various medical reports (including those relating to the applicant's ASD): immaturity, reduced culpability, and increased hardship in detention. She took into account that the applicant was nearly midway through the 15 to 16 age range, and his thinking skills in certain areas were less developed than the norm for that age range. None of the reports expressly addressed the question of the applicant's level of maturity at the time of the murder, and several of the reports recognised significant change in the applicant's condition following his arrest and detention [67], [69], [70], [76].
20. The judge was entitled to have made her assessment of the degree of the applicant's relative immaturity and the weight to be given to that as a mitigating factor, having regard to all of the evidence in the case, including evidence from various reports that the applicant was intelligent, functioned well academically, and knew that killing was wrong. The judge was also entitled to have regard to the messages that the applicant sent to Scarlett before the murder. Similar considerations apply to her assessment of the limited degree to which the applicant's culpability was reduced by his ASD and associated impairments. The judge had properly borne in mind that the applicant's experience in custody would be made more difficult by his ASD, severe anxiety and selective mutism [76], [78], [79].
21. As to the judge's reasons, she was required to identify the appropriate starting point for the minimum term, the aggravating and mitigating factors, and the appropriate minimum term reflecting the balance of aggravating and mitigating factors, all of which she did. She was not required to do more. She was entitled to conclude that in relation to the applicant, the aggravating and mitigating factors were evenly balanced [82], [83].
22. The sentence imposed by the judge on the applicant was neither manifestly excessive nor wrong in principle. The proposed grounds are not arguable. The applicant's application for leave to appeal against sentence is refused [84].

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: [2024] EWCA Crim 1498. The full written judgment will be the only authoritative document. The judgment will be a public document and available online at Judgments Archive - Courts and Tribunals/Judiciary: <https://caselaw.nationalarchives.gov.uk/>