

Tom Kember born 4 June 1997 = 27 years old.

Katherine Reilly born 13 August 1999 = 25 years old.

Sentencing remarks of His Honour Judge Lambert.

Tom Kember will be dealt with first.

You have two previous court appearances for two offences. The details of these are important.

On 16 April 2019 you were convicted of assault by beating against your then partner. On 10 November 2020 there is an offence of dangerous interference with a motor vehicle. This occurred as you were being transported from custody in a police car. As the vehicle travelled on the motorway, without any warning or provocation, you grabbed the steering wheel of the vehicle whilst it was travelling at around 70 miles per hour. This caused the vehicle to veer across the carriageway, and the driver was forced take evasive action to avoid a collision with either road furniture or other vehicles. You were in the car with Katherine Reilly who had been bailed to her mothers address . You told the probation officer that you felt this was unjust and were upset about this. Prior to this you had written a suicide note. You continue to maintain that the police officers were trying to make you angry to aid their investigation.

Rage and dangerous loss of control is evidenced in your antecedents. It is then evidenced in the index offence and was further evidenced in your behaviour outside court on 23rd October 2024. That incident is accurately recorded at page nine of the pre-sentence report. There was a contested

hearing before me about that behaviour, which you denied. I found against you, you later admitted the behaviour before me.

I must now deal with you for a section 18 grievous bodily harm with intent offence perpetrated against a baby who was in your care. You were convicted by the jury after a long trial. There is obviously no credit for plea. You show no remorse.

This was an extreme explosive rage, exerting forces far beyond rough handling and similar to the force of a car crash, or a fall from a height, according to Dr Calisto the consultant paediatrician called during the trial.

The victim of your crime was extremely vulnerable at only eight weeks old, after a premature birth. The consequences were utterly catastrophic, traumatic brain injury. You have robbed a child of most quality of life. This was an attack of monstrous evil with the worst possible consequences within a section 18 offence.

I have considered carefully your very sad upbringing and the lack of support and guidance. It is not strong mitigation.

You built a wall of silence with your partner and then hid behind this. I cannot punish you for the cowardly conduct of your defence at trial. I cannot now punish you additionally for the constantly disruptive behaviour you indulged in at trial, including threatening the female case officer. All these behaviours help to show you have no moral fibre, however.

One aspect to your behaviour at trial, that I have described already, will contribute to a finding I will now make.

Assessment of dangerousness within the Sentencing Act.

Your previous convictions provide evidence of dangerous, violent and impulsive behaviour in the past. You demonstrated a disturbing lack of control when you flew into a rage outside court, issuing chilling threats of violence. When this is combined with the circumstances of the index offence I assess that there is sound evidence to predict that there is in future a significant risk of serious harm from you, via the commission of further specified offences. This accords with at least one element of risk predicted in the pre-sentence report and probably more. I appreciate that some other risk assessments are at variance with this. My own holistic risk assessment based upon the facts mentioned and having observed your behaviour in the course of a long trial remains adverse. An extended determinate sentence is required in your case. An additional licence period is necessary, just and proportionate in all the circumstances of the case. The custodial term must, of course, be the least term commensurate with the seriousness of the offence.

The definitive guideline for a section 18 offence does not impose a finite limit on sentence. This is clearly a category 1A offence, beyond the contemplated range because of its extreme nature. The maximum sentence is life imprisonment.

Assessment with the guideline.

A – High culpability.

Victim obviously vulnerable due to age.

Category 1– Harm.

Injury that results in physical harm resulting in lifelong dependency on third party care or medical treatment.

Statutory aggravating factors:

Previous convictions.

Other aggravating factors:

Abuse of position of trust.

I consider that the guideline contemplates a sentence outside the category range after consideration of factors increasing seriousness. The combination of the nature of the culpability factors and the extreme nature of the harm suffered by the victim require me to move to the top of the category range and then go beyond it. This is an extreme approach, but this is an extreme case.

There will even be occasions upon which a judge is required **not** to follow a definitive guideline at all. These are recognised by section 59 of the Sentencing Act 2020¹. However, I believe I am following the definitive guideline, reflecting the extreme nature of culpability and harm factors.

¹ Att.-Gen.'s Reference (R. v Fleming) [2022] EWCA Crim 250.

The only proper sentence is significantly outside the category range identified in the guideline. You will be subject to an extended determinate sentence of 25 years with a custodial term of 21 years an extended licence period of 4 years. You will be required to serve two-thirds of that term and your release is then at the discretion of a parole board.

Improbable though it may sound the surcharge applies and must be added to the court record in the appropriate amount. You will be barred by the independent barring authority.

Katherine Reilly

You have no previous convictions. I am not prepared to say that you are of previous good character because you were a rotten mother who failed to nurture her baby as she should have done. There was extensive evidence at trial to show that you preferred to further your relationship with Tom Kember rather than care for your daughter. You neglected your daughter, in the ordinary sense of the word, from the very start. You then built a wall of silence with your partner and hid behind this. Thus you betrayed your helpless injured baby daughter by shielding the wicked monster who had so grievously injured her. And, shield him you did, year after year through three listings for trial until the truth was revealed by the verdict of the jury. You seem to have no conscience and show no regret for failing your daughter. The law is such that I cannot punish you for the cowardly failure to reveal the truth. Many decent folk will think I should be able to do so.

You were convicted of a single count of criminal ill-treatment by neglect. This was failing to secure timely medical attention for your child after she had been brutally injured by your partner. The time frame of neglect was very limited but your conduct in failing to secure medical attention was wicked and spineless.

There was evidence from Dr Calisto that any delay could increase the harm to your baby, but given the catastrophic injury caused, it is not possible to quantify the degree of additional harm caused by that delay. As the offence was committed before 28th June 2022, the maximum sentence is 10 years custody. The definitive guideline for this offence is effective for those sentenced from 1st April 2023 and reflects the increase in the maximum sentence to 12 years custody. I must be careful to strip out any effect of the increased maximum sentence.

Assessment within the definitive guideline.

D – Lesser culpability

- Offender's responsibility substantially reduced by lack of maturity.
- Offender is victim of domestic abuse, including coercion and/or intimidation (where linked to the commission of the offence).
- Steps taken to protect victim but fell just short of what could reasonably be expected.

Harm

This is more difficult to assess. The prosecution contend for Category 1 - serious physical harm. The defence maintain that little or no harm was caused by the delay and thus the correct categorisation is D3. I cannot accept that leaving a badly brain injured baby without medical attention for over an hour did little or no harm. The catastrophic injury had been occasioned by the time of neglect but there was a significant degree of suffering to be inferred in what was probably an 80 minute window. I assess harm to fall within category 2 of the definitive guideline.

An offence falling within category D2 has a starting point of a high level community order and a range of a medium level community order to 1 year's custody. You contested the case and receive no credit for plea.

I consider your offence to be so serious only a custodial sentence can be justified. A community order does not come close to providing adequate punishment. The least sentence commensurate with the seriousness of your offending is one of six months imprisonment. On considering the imposition guideline I cannot, however, say that only an immediate custodial sentence provides appropriate punishment. That sentence will be suspended for two years. The necessary community requirements are a 30 day rehabilitation activity requirement and an unpaid work requirement for 200 hours.