Courts and Tribunals Judiciary

IN THE CROWN COURT SITTING AT LIVERPOOL

Before: THE HONOURABLE MRS JUSTICE EADY DBE

On 4 April 2025

Between:

Rex

-and-

Joanne Sharkey

SENTENCING REMARKS

Introduction

1. The events that bring us to this court are both terrible and tragic. On a date between 8 and 11 March 1998, you, Mrs Sharkey, gave birth to an infant boy; you were alone and gave birth unaided in the bathroom of your family home. It is accepted that, at the time, you were experiencing an abnormality of mental functioning – specifically, you were suffering from moderately severe, to severe, depression - and this substantially impaired your ability to form a rational judgment and exercise self-control. The infant was born alive at full term but died shortly afterwards; you subsequently placed the body into bin bags and into your car, driving for some 35-40 minutes from your home to a wooded area in Warrington, and leaving the bags containing the body a little way beside a public path. We know this was during the early afternoon of Wednesday 11 March 1998, because you were seen by a witness, and the body was then uncovered by another witness on the morning of 14 March 1998. Medical evidence suggests the baby was born a few days earlier, but we cannot be sure exactly when, nor can we know precisely how he died. By your pleas, however, you have accepted your guilt for the manslaughter of your child, by reason of diminished responsibility, and of endeavouring to conceal the birth of that child. It is for these matters that I must now sentence you.

The factual background

2. To understand the tragic nature of these events, it is necessary to go back to the period 1997-1998, when you were 28, living with your husband, who you had been with since your teens, and your son, then a toddler under the age of three. You had returned to full-time work after maternity leave and seemed to be coping, but that was a façade; you were in fact suffering from post-natal depression. This was not a case of the "*baby blues*", but a far more sustained period of depression, which impacted upon you physically and mentally. You experienced profound sleep disturbance, exhaustion, heightened anxiety, and chronic feelings of inadequacy; your relationship with your husband deteriorated, and you suffered a loss of appetite and significant weight loss. Had your depression been diagnosed at the time, I have no doubt your symptoms would have been viewed as requiring urgent clinical attention. Unfortunately, however, those symptoms also included extreme and irrational fears that you would be seen as a bad mother and your son would be taken away, and so you sought to conceal what was happening to you.

3. It is further apparent that your inability to seek help with your depression was informed by what might, at a minimum, be characterised as personality disorder traits: you withhold descriptions of distress or other mental experiences, and struggle to describe your feelings. Whether such characteristics are to be associated with a diagnosis of autism spectrum disorder ("ASD"), or other embedded personality traits (the reports from the psychologists differ in this respect), I am satisfied that this background, coupled with depression and the irrational fears you suffered following the birth of your first child, explains why you told no-one what you were suffering. While your husband and your close friend, Susan Hanley, saw you were not your normal self, you were able to brush off their concerns, distancing yourself from your husband, who was preoccupied with work, and closing yourself off from your friend.

4. It was in this context that, about a year after your son's birth, you became pregnant a second time, something you became aware of at around the four month stage. Although your husband was the father, and you were in a settled and supportive environment, you could not cope with the idea of this second pregnancy. At the time you were underweight – a symptom of your depression – and your pregnancy was not detected by others around you. Your relationship with your husband was under strain and even he did not realise you were pregnant. You sought no medical help and mentioned nothing to your family. This was not simply a matter of you not wanting to be pregnant – after all, had you wanted to end the pregnancy without informing anyone, you would have been able to seek a termination and not risk your condition being discovered, as it might so easily have been – rather, your mental ill health was such that you effectively denied the fact of your pregnancy even to yourself.

5. On the evidence available, I am satisfied that you have little recollection of this time – you have blanked it out. That, I am clear, is also true of the subsequent labour and your experience of giving birth. There is no suggestion that you have tried to avoid telling the truth, but your account has been characterised by problems of recollection. You have been unable to recall the day or time ("*it could have been 3 am or 3pm*"), and while you thought you were by yourself, in the bathroom, and that you had a feeling of shock and panic, you could not recall the actual length of the labour or how it progressed, and have no recollection of tearing the umbilical cord. At times you have described the baby coming out when you were standing – which might provide an explanation for some of the bruising to the baby's head – but you have also said how, as a result of your frequent re-visiting of the incident, you have felt increasingly uncertain of your memories.

6. The psychiatrist, Dr Plunkett (who has spent some eight hours in his various examinations with you) has described your account of this event as an experience of derealisation – something often associated with an intense dissociative experience arising during a period of severe stress, distress or trauma, and where the sufferer can perceive the world, or their immediate context, as unreal, distant, or distorted, and which may give rise to a numbing of pain sensation (which would be consistent with the fact that you cannot recall suffering labour pains during the birth, although, given that this was an unassisted vaginal delivery, that would be unlikely). You have said you did not look at the baby, and can only recall what might have been a groaning or gurgling noise, not the cry of a newborn child. Although you told the police that you think you put your hand down to the baby's nose and mouth, you were later unsure whether that was an accurate recollection or whether you were trying to make sense of things you were being told. Your sense of confusion is apparent in your comment that "*even afterwards … I felt it wasn't me … at times I thought it wasn't real … or was it?*"

7. Although we know that you must have put tissue into the baby's mouth and throat, you have no recollection of this. Equally, although you can remember the basic action of wrapping the baby, you cannot recall fetching the bags in which his body was found, still less of your perceptions or feelings at the time. You have a memory of placing the bag carrying the baby in the footwell of the car but not of any awareness of when this was, or whether the baby was then alive or dead. You had no memory of where you went – "*I could have been in Scotland*" – or of events until you returned home and later heard about the finding of the baby's body on the news.

8. It has never been possible for the medical cause of death to be ascertained. The autopsy findings did not establish that the infant died of asphyxia caused by another party but did not exclude that possibility. Although I cannot be sure of the precise means by which this child died, the bruising and injuries apparent post-mortem do enable me to be sure that you caused injuries

to your baby after he had been born alive, most likely depriving him of oxygen by covering his nose and mouth and/or placing tissues into his mouth and throat.

9. It is, however, agreed by the experts that your mental ill health substantially impaired your ability to form a rational judgment and exercise self-control. There is no evidence of premeditation, and nothing else can explain your actions other than this abnormality in your mental functioning. In considering your psychiatric state in the period following the death, Dr Kennedy (instructed by the prosecution) has observed that there is evidence that you did then possess executive functioning skills and consequential thinking: you cleaned the bathroom, and must have disposed of the placenta, and you transported the body in two bags, presumably to prevent it being seen or blood being deposited in the car. That said, Dr Kennedy also acknowledges that the trauma of the birth would be expected to have caused a further deterioration in your mental health. Certainly, there is evidence of a continued sense of dislocation: driving away from your home, you had no sense of where you were, or whether this was immediately following the birth or some hours or even days afterwards; you have never been able to describe your actions and have no recollection of what you did with the placenta. There is no reason why you would now lie about any of this, and I find that your mental disorder continued in the aftermath of the birth, accepting the view expressed by Dr Plunkett (instructed by the defence), that your depressive state would then have been complicated and exacerbated by the highly exceptional and traumatic nature of the birth.

10. There was, of course, a lot of publicity about the discovery of the body at the time, particularly locally. You tried to avoid watching the news, but suffered severe nightmares and would wake up sweating and shaking. You continued to say nothing to your husband, although, in your despair, you often thought about walking away, of leaving your house and family. In the months and years that followed, you developed symptoms of anxiety and panic, remaining in low mood and avoiding family or socialising and becoming increasingly withdrawn. You eventually saw your doctor about your panic attacks in July 2002, and were prescribed antidepressants. You have explained, however, that you always felt able to pretend to others that things were normal, which was easy as you isolated yourself in your home. As your husband obtained higher paid work, you resigned from your own job, and later on you went with him when he worked abroad.

11. In 2023, during a periodic review of the national DNA database, a match was found which identified you and your husband as the parents of the deceased child. On 28 July 2023, you were both arrested and taken to the police station for interview. A covert recording was made of your conversation while you were in the back of the police car. There are three points that stand out from that exchange: (1) you were clear that this was entirely on you; (2) you were not going to try

to deny what you had done; and (3) you had carried this with you the whole time, thinking about it every day. Your police interviews were characterised by your admissions, albeit you were unable to recall many details, and you spoke of your relief that this had finally come out, of how you had been haunted by what you had done, describing this as "*Horrendous*. *The worst thing ever*."

The proceedings

12. On 15 April 2024, you were charged with the murder of your child (count 1) and with endeavouring to conceal the birth of a child (count 2). You initially entered not guilty pleas, and in your defence statement there was no acceptance that the infant had been born alive, or that you had caused his death, and it was indicated you would rely on your mental state at the time, which was said to have been affected by the birth of your first child, and during your second pregnancy and after that birth; it was further stated that you were "*unable to recall or reliably account for [your] behaviour in any detail during and in the immediate aftermath of the birth*".

13. As Ms Grahame KC has observed, two legal issues arose: (1) (in summary form), whether the infant had been born alive, a point on which you were unable to give reliable instructions; (2) as to your mental state at the relevant time. The need for expert evidence on these points was clearly identified by the defence at the various case management stages. The final pathology report for the defence was, however, only available on 10 February 2025. As for your mental state, on 18 December 2024, Dr Plunkett produced a psychiatric report that addressed the question of diminished responsibility, and there was an exchange of psychologist reports in mid-February and early March 2025; on 4 March 2025, Dr Kennedy produced his psychiatric report for the prosecution, also addressing the issue of diminished responsibility. I am told that it was during the afternoon of 5 March 2025 that you first indicated that you would admit your baby had been born alive and were willing to plead guilty to manslaughter by reason of diminished responsibility, and to endeavouring to conceal the birth. You were re-arraigned on the morning of 6 March 2025 and entered those pleas, on what otherwise would have been the first day of your trial.

The sentencing guidelines and my approach

14. I have had regard to the relevant Sentencing Council guidelines, most particularly that for the offence of manslaughter (diminished responsibility), but also the overarching guidelines addressing mental disorders (together with the Equal Treatment Bench Book), the imposition of community and custodial sentences, reduction in sentence for plea, the general guideline: overarching principles, and the guideline on totality.

15. I have also taken full account of all the medical and other evidence that has been put before me, to the pre-sentence report and to the statements that have been obtained. I have

considered the authorities to which counsel have referred, and the research available relating to sentencing in cases of infanticide, albeit I have at all times kept in mind the fact-sensitive nature of my task.

16. Although I will separately address the second charge, of concealment of the birth, the focus of my sentencing remarks will be on the offence of manslaughter. The approach I have adopted follows the steps laid down in the relevant offence guideline.

Step 1: assessing the degree of retained responsibility

17. Manslaughter by reason of diminished responsibility involves the loss of a life and the harm caused will thus always be of the utmost seriousness. The question of your culpability requires, however, an assessment of your retained responsibility at the time of the offence: your legal responsibility is diminished, not extinguished, and it is my task to determine whether that retained responsibility is to be assessed as high, medium or low.

18. In answering this question, I have had regard to the circumstances of the killing and to all the medical evidence and other relevant information available. I recognise that you were an educated woman in your late 20s, able to hold down a job, and with the benefit of family support; mental ill-health can, however, impact anyone, and I am clear that you suffered a lengthy post-natal depression that, as the psychiatrists agree, substantially reduced your ability to think rationally, and substantially weakened your ability to exercise self-control. The prosecution has pointed to elements of your conduct that could nevertheless suggest a degree of competence, control, or determination - in how the killing might have been carried out, and in how you disposed of the body. I have reflected carefully on this point but think there is a need to distinguish between basic reactions to circumstances and evidence of rational and controlled behaviour. Ultimately I accept as compelling Dr Plunkett's assessment (assisted by the time he has been able to give to this task), and I find that the combination of your depression and the trauma of the birth substantially impaired your ability to understand the nature and consequence of your actions.

19. I have also considered the degree to which your own actions or omissions might be said to have contributed to the seriousness of your mental disorder at the time of the offence. In particular, whether it might be said that, as the months passed after the birth of your first child, your failure to seek help increases your retained responsibility. I am clear, however, that any such failure on your part was due to the mental disorder from which you were suffering, which exacerbated your underlying personality disorder traits.

20. On all the information and evidence available to me, I am satisfied that your retained responsibility is properly to be assessed as low (an assessment with which both the prosecution and defence agree).

Step 2: determining the starting point and category range

21. Where retained responsibility has been assessed as low, the guideline provides a starting point for *all* offenders of 7 years, with a range of 3-12 years.

22. In determining where your offending falls within this range, I have first considered whether there are aggravating factors increasing seriousness in this case. Plainly a newborn child is particularly vulnerable, and, accepting that you were suffering post-natal depression, exacerbated by the trauma of this birth, this is an aggravating factor, even if, very sadly, it will tend to be a tragic feature of cases of this kind. The injuries you caused the child can also be seen as aggravating features, as was the apparent attempt to conceal the body, although I have accepted that, as part of the aftermath of the trauma of the birth, your actions in these respects are substantially explained by your abnormality of mental functioning. It is also an aggravating feature that suspicion fell on others: young women in the area, some of whom were arrested as potential suspects; and, at least initially, on your husband in 2023 (although I accept you always made clear he had no knowledge of what had happened).

23. As for mitigation, although pregnancy and childbirth are expressly referenced in the guideline, I have already taken these into account: they, and the depressive episodes you suffered in consequence, explain the abnormality of mental functioning you experienced. Equally, while I accept there was nothing premeditated about the offence, there is a degree of overlap in this regard with my earlier assessment of retained responsibility.

24. On the other hand, it is relevant that you were not only of entirely good character before this offending but you have continued to be so in the 26 years that have followed. I also accept that you are genuinely remorseful. This is not something you have found easy to articulate – that would not be consistent with your personality – but the evidence is clear: not a day has passed when you have not dwelt on these matters, appreciating the horrendous nature of your crime. For the prosecution it is said the weight to be given to this factor is reduced by your failure to accept – in your defence statement - that the baby was born alive or that you had deliberately caused his death. I return below to how your case has been advanced in these proceedings, but I do not agree this demonstrates a lack of genuine remorse. In my judgement, your unguarded (covertly recorded) early exchanges with your husband, along with your responses in interview, make clear how you have carried the weight of this guilt all these years.

25. The weighing of aggravating and mitigating factors is not a matter of precise mathematical calculation; balancing all relevant considerations in this case, I am of the view that your offending falls towards the lower end of the category range.

Step 3: consideration of dangerousness and Step 4: consideration of mental health disposals (Mental Health Act 1983)

26. This is not a case where there is any suggestion of dangerousness, nor are you currently suffering from a mental disorder warranting consideration of a mental health disposal.

Step 5: factors that may warrant an adjustment to the sentence

27. The prosecution invites me to consider at this stage whether the sentence for manslaughter should be aggravated by reference to count 2, and I agree it is helpful to consider the appropriate sentence for that offence, and how it is to be taken into account, at this point. The maximum penalty for the offence of endeavouring to conceal the birth of a child is two years' imprisonment; there is no offence-specific guideline but the general guideline: overarching principles applies. This is a serious offence, which recognises the respect to be afforded to the birth of any child, whether still-born or dying after its birth. Given, however, what I have found to be your mental state at the time, I am satisfied your offending was not planned or premeditated and I place your culpability at the lower level. Although the seriousness of the offence means that it crosses the custody threshold, if taken alone, I would judge the appropriate sentence to be one of six months' imprisonment. As has been recognised, however, on the facts of this case, the two offences are interrelated and, having regard to the totality principle, any sentence passed on count 2 would appropriately be served concurrently with that imposed on count 1, albeit further aggravating that offence.

28. On a more general level, however, this step within the guideline requires me to stand back and - taking into account the need to meet the objectives of punishment, rehabilitation, and protection of the public in a fair and proportionate way - to consider what, in the circumstances of this case, is the appropriate sentence. Recognising the particularly fact-sensitive nature of cases of manslaughter by reason of diminished responsibility, the guideline expressly cautions that such cases will "*vary considerably on the facts of the offence and on the circumstances of the offender"*, advising that an adjustment may require a departure from the sentence range identified at step 2; the guideline does not dictate the sentence: it provides guidance as to the relevant starting point and range.

29. The seriousness of the offending – the loss of the life of a vulnerable, newborn baby – makes plain that this is a case that crosses the custody threshold, although I am clear that your offending falls at the lower end of the guideline range. For the prosecution, Mr Hankin KC submits that the interests of society - specifically, the need to acknowledge and protect the sanctity of human life - ought to prevail. Reflecting on that submission, I have carefully considered your

offending behaviour taken as a whole, with reference to your retained responsibility and the harm caused, and to all the aggravating and mitigating factors. Nothing I can do or say can turn the clock back to avoid the tragedy of this case, still less restore the life of your child. I must, however, seek to impose a sentence that is just and proportionate in all the circumstances.

30. Having regard to the imposition guideline, I ask myself whether it is unavoidable that a sentence of imprisonment be imposed and, if so, what is the shortest term commensurate with the offence. This is a difficult case, where I accept that your offending is very largely explained by the mental disorder you suffered following the birth of your first child and by the further trauma of the second birth. As your counsel have observed, there are many similarities in this case to those in which the charge is one of infanticide, which tend to attract non-custodial sentences, ranging from hospital detention orders to various forms of community order. Such cases are, however, inevitably fact and context specific. I must sentence on the particular facts of this case, and, so doing, I cannot avoid the conclusion that a custodial term is the appropriate disposal.

31. Asking myself, however, what is the shortest term commensurate with the seriousness of the offence, I return to the particular tragedy of this case and the fact that you have lived with the knowledge of what you did for over 25 years. Of course, it could be said that it was open to you to confess your crime earlier, but I note what you told the police: you had thought about this "*a million times*" but "*couldn't actually say the words*". That can be seen as consistent with what has been described as your personality disorder traits (or with Dr Van-Leeson's diagnosis of ASD). Certainly, I am clear that this is not a case where you had a sense of having gotten away with it; rather, regardless of how you presented to others, you lived isolated with this terrible and tragic knowledge for quarter of a century. You have, furthermore, then had these proceedings hanging over you; although I make no formal deductions for the time you have spent on remand and qualifying bail (about 20 days short of a year in total), it is not irrelevant for me to have regard to the effect that this has had on you. In the exceptional and particular circumstances of this case, notwithstanding all the aggravating features that I have earlier referred to, I consider that the appropriate term is one of three years.

Step 6: not applicable

Step 7: reduction for guilty plea

32. From that term you are to be afforded credit for your plea. Although your pleas were not entered until the morning of the trial, your counsel have pointed out that you could not be properly advised until expert evidence was available relevant to the legal issues that had been identified. First, there was a real issue as to whether the child had been born alive; as to which, your

recollection was genuinely unreliable and the pathology evidence was not clear-cut. Second, the question arose as to whether there was evidence to support a partial defence of diminished responsibility, on which the burden would be on the defence, and which could only properly be advanced on the basis of psychiatric evidence (something made all the more complex by the historic nature of the case). Having regard to the guideline for reduction in sentence for a guilty plea, I am satisfied this is a case that properly falls within exception F1: it was necessary for you to receive advice and have sight of expert evidence in order to understand whether you were in fact and law guilty of the offences charged. The timing of your plea was not the result of a tactical decision, but a consequence of a genuine and reasonable need for clarification of the medical and legal position.

33. That said, you did not then indicate your preparedness to plead until the afternoon before your trial. Your counsel point out that it was only on 4 March 2025 that the prosecution's psychiatric report was available, but that would not have prevented you making your position clear once your own evidence was available. That said, I acknowledge that some time will have been required for your advisers to consider the reports in full (the final pathology report only being available on 10 February 2025), and to form an assessment as to the potential interplay between the psychiatric report from Dr Plunkett (dated 18 December 2024) and the psychological report from Dr Van-Leeson (dated 11 February 2025). Having reflected on this point, I have reached the conclusion that, in the highly unusual circumstances of this case, it would have been unreasonable to expect you to indicate your guilty pleas sooner than was in fact done and, therefore, that you are entitled to a reduction of one-third on both counts, resulting in a sentence of two years.

Can the sentence be suspended?

34. Having arrived at a sentence that, allowing credit for your pleas, is of two years' imprisonment, it is open to me to suspend that sentence, having regard to the factors identified in the imposition guideline.

35. You present no risk or danger to the public, and it cannot be said that you have a history of poor compliance with court orders. On the other hand (and without minimising the effect this would have on your family), your immediate imprisonment would not result in significant harmful impact on others, albeit you have strong personal mitigation and there is a realistic prospect of rehabilitation. The real question is whether appropriate punishment can only be achieved by a term of immediate custody. Having carefully considered this issue, I am satisfied that this very sad case calls for compassion; no useful purpose would be achieved by immediate imprisonment, and I consider that appropriate punishment can be achieved by a custodial term

that is suspended. I am persuaded by the pre-sentence report, that it would be appropriate to make this sentence subject to 30 rehabilitation activity requirement days, and to a primary care mental health treatment requirement for a period of 12 months. The latter condition is one to which you have expressed your willingness to comply and arrangements made, to be overseen by Dr Mark Walton, Clinical Psychologist, NHS Merseycare. Having regard to the medical reports, I am satisfied that while your current mental condition does not warrant the making of a hospital or guardianship order, it requires, and may be susceptible to, treatment, which would be difficult for you to access in a custodial environment. I am further satisfied that these requirements will assist you to address your offending as part of your longer-term rehabilitation. You, and anyone listening to, or reading, these sentencing remarks, should, however, be clear: a suspended sentence is still a sentence of imprisonment and amounts to a punishment for your crimes.

Sentence

Joanne Sharkey, please stand

36. I formally record a verdict of not guilty to murder.

37. As regards the offences to which you have pleaded guilty, the seriousness of these offences is such that neither a fine alone nor a community order can be justified. On count 1, for the offence of manslaughter by reason of diminished responsibility, I sentence you to two years' imprisonment, suspended for two years. On count 2, for the offence of endeavouring to conceal the birth of a child, I sentence you to six months' imprisonment, concurrent to the term imposed on count 1, also suspended for two years. If in the next two years you commit any offence, whether or not it is of the same type for which I am sentencing you today, you will be brought back to court and it is likely that this sentence will be brought into operation, either in full or in part.

38. Also, for the next 12 months you will be subject to a 30 day rehabilitation activity requirement. That means that you must meet the officer supervising this requirement as and when required and must attend and co-operate fully with any activities that are arranged. You will also be subject to a primary care mental health treatment requirement for a period of 12 months to be overseen by Dr Mark Walton, Clinical Psychologist, NHS Merseycare. If you do not comply with these requirements, you will be in breach of this order, which means you will be brought back to court and you will be liable to serve the sentence, either in whole or in part.

39. In passing this sentence, I make clear that I have made no deductions for the time you have spent on remand or on qualifying bail; that time should, however, be deducted if the sentence is activated.

40. The statutory surcharge will apply.