



Neutral Citation Number: [2025] EWCA Crim 835

Case No: 202402140 A1

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CROWN COURT AT LEICESTER
Her Honour Judge de Bertodano
T20107331, T20117100

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 4 July 2025

Before :

LORD JUSTICE EDIS
MRS JUSTICE CUTTS
and
MR JUSTICE DEXTER DIAS

Between :

DAMIEN OSMOND
- and -
THE KING

Appellant

Respondent

Paramjit Ahluwalia (instructed by Julie Ann Boyle, **G.T. Stewart**) for the **Appellant**
Martyn Bowyer (instructed by the **Crown Prosecution Service Appeals Unit**) for the
Respondent

Hearing dates : 18 June 2025

APPROVED JUDGMENT

This judgment was handed down remotely at 11am on 4 July 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Lord Justice Edis :

1. On 27th May 2011 in the Crown Court at Leicester, Mr Osmond (then aged 21) pleaded guilty to burglary contrary to s.9(1)(b) Theft Act 1968 (indictment T20107331). On 16th June 2011 before Her Honour Judge de Bertodano, he pleaded guilty to arson being reckless as to whether life is endangered contrary to s.1(2) and (3) Criminal Damage Act 1971, indictment T20117100. On 14th July 2011 (before the same Court), he was sentenced to imprisonment for public protection pursuant to s.225 Criminal Justice Act 2003; a minimum term of 2 years was specified for the arson offence pursuant to s.82A Powers of Criminal Courts (Sentencing) Act 2000. Concurrent to this was a sentence of 28 months' imprisonment for the burglary offence.
2. He applies for an extension of time of over 12 years within which to apply for leave to appeal against sentence following a referral by Mr Justice Goose who granted a representation order for junior counsel. He seeks leave pursuant to section 23 Criminal Appeal Act 1968 to introduce fresh evidence relating to his mental state including reports by a psychologist and psychiatrists, judgments of the First-tier Mental Health Tribunal and documents related to his Care Programme Approach (CPA) prison review meetings.

The facts

3. In view of the grounds of this appeal, and the circumstances which currently prevail, the facts of the offences are not central to what this court has to decide. On any view, the requirements of punishment have long since been satisfied.
4. On 24th August 2010, Mr Osmond entered a home in Leicester as a trespasser, and stole a laptop, a digital camera, two mobile phones, an MP3 player, an internet dongle and a television remote control. On 25th September, whilst he was remanded at His Majesty's Young Offender's Institution and Remand Centre Glen Parva for the above offending, he was involved in an incident which caused him to become upset with a prison warden. This resulted in him setting fire to his cell whilst he was locked inside it. There was some difficulty in retrieving the relevant keys and getting him out of the cell. One of the prison officers who attempted to rescue him required oxygen and three other officers

had inhaled smoke but did not require medical treatment. It is clear that his aim in setting this fire was to kill himself, and the harm to others was not his purpose.

The Grounds of Appeal

5. Ms. Ahluwalia, who has appeared for Mr. Osmond on this appeal, submits that he ought to have been sentenced to a hospital order pursuant to s.37 Mental Health Act 1983 with a restriction order pursuant to s.41. She submits that this should have been the result on the evidence which was before the judge at the time of sentencing (or at least which would have been before the judge had some issues been further explored), and in the alternative that the fresh evidence now available makes it clear that Mr. Osmond suffers from a severe personality disorder and schizophrenia which was the cause of his offending and which requires treatment under a hospital order with a restriction order (“a s37/41 Order”). In advancing her first submission she makes it clear that the sentencing exercise required of the judge was a difficult one, and that no criticism of the judge is involved.

The law

6. We have been referred to, and have carefully considered, *R v. Vowles* [2015] EWCA Crim 45, especially paras 4, 51 and 54, *R v. Edwards* [2018] EWCA Crim 595 especially paras 12, 33 and 34, and *R v. Surrey* [2022] EWCA Crim 1279, especially para 53.
7. We consider that the law is sufficiently and clearly stated in the decisions we have identified, and that nothing will be gained by attempting any further summary or paraphrase of it. We intend to apply the law, and not in any way to develop it.

8. Our conclusions in this case are in line with those of the Court of Appeal in *Vowles* in the cases of *Coleman* (see [133]), *Odiowei* (see [157-160]), and *Macdougall*, (see [213]-[215]).
9. This appeal is predicated on the medical evidence which is to the effect that the conditions from which Mr Osmond suffers are enduring ones. Their presentation may change from time to time, and, in particular, they may respond to treatment. If they are present now, they will have been present at the time of sentence, whether recognised then or not. The new evidence does not therefore describe a case where a person was well at the time of sentence but has developed serious psychiatric symptoms while serving the sentence. Nothing in this decision is of any relevance to that kind of case.
10. It follows from the summary at [9] above that, in our judgment, the merits of the application for an extension of time in this case, of however long, are dictated by the merits of the appeal itself. It cannot be said that Mr Osmond has been guilty of any delay in bringing his condition to light. He is dependent on the doctors who have cared for him and on his access to lawyers. In the absence of any culpable delay we grant the necessary extension to bring this appeal. The appeal is plainly arguable and we give leave.

The medical evidence before the judge

11. In a report dated 4th March 2011, a consultant forensic psychiatrist, Dr Thirumalai, said that the appellant most likely suffered with paranoid schizophrenia against a background of significant difficulties in his personality. Dr Thirumalai suggested a transfer to a hospital setting for further treatment. He also stated that the appellant might have been considered unfit to plead given

his elaborate delusional thinking and he suggested a second medical opinion be sought.

12. A second consultant forensic psychiatrist, Dr Taylor, in a report dated 13th May 2011, said that there was a general consensus that the appellant suffered from personality difficulties, including emotionally unstable personality disorder, which he agreed with. The appellant's account in respect of visions of the Queen and hearing voices was not typical of schizophrenia and Dr Taylor did not believe that the appellant suffered from that illness. Therefore, there was no benefit in transferring the appellant to a hospital setting. He was also fit to plead.
13. Dr van Woerkom was the second psychiatrist instructed by the defence. It has not been possible to trace a copy of his first report, but it is quoted quite extensively by Dr. Taylor who said this:-

“13.0 Dr van Woerkom's report

13.1 Dr van Woerkom interviewed Mr Osmond at HMP Leicester on 23 March 2011.

13.2 Mr Osmond told Dr van Woerkom that he had suffered with paranoid schizophrenia for some time and that he had been given Olanzapine (an antipsychotic tablet used for the treatment of schizophrenia) by John Barnes, Community Psychiatric Nurse, in Leicester in the recent past.

13.3 Mr Osmond presented broadly similarly to Dr van Woerkom and to myself. He told Dr van Woerkom about the Queen and about concern that his food was being tampered with.

13.4 Dr van Woerkom expressed the belief that Mr Osmond suffered from "a personality disorder combined with a chronic paranoid schizophreniform delusional psychotic illness".

13.5 Dr van Woerkom recommends that Mr Osmond be transferred to hospital under Section 48 of the Mental Health Act and that he be treated for “apparently refractory and chronic” problems with Clozapine. Clozapine is a powerful antipsychotic tablet used in the treatment of treatment resistant schizophrenia.

13.6 Dr van Woerkom states that Mr Osmond is already known to Dr Stocking Korzen "who is apparently aware of the issue", and expresses the hope that Dr. Stocking Korzen might be able to arrange his transfer to hospital.

14. In an addendum report dated 11 July 2011, the appellant reported to Dr van Woerkom that he started the fire due to an unhelpful change in his medication, he had a sudden urge to die, he was annoyed with the prison staff and he had recently received a letter containing bad news (he used the letter to start the fire). He had planned the fire throughout the week prior to it happening. He explained that if the staff annoyed him again, he might repeat the incident. There was evidence of childhood bedwetting and animal cruelty which were associated with risks of fire setting. He enjoyed playing with small fires but it did not appear that he was morbidly obsessed with fire. However, he sometimes said things for effect. The burglary appeared to have been borne out of a desire to be imprisoned as he had nowhere to live. He had no convincing depressive symptoms. Besides his visions of the Queen and hearing voices, there were no other first rank features of schizophrenia. There were notes that he had harmed himself whilst in custody which included swallowing batteries, a cut to his leg, cutting his face with a razor blade and placing a ligature around his neck. He found life outside of a prison setting difficult to cope with. It appeared that prison was no great deterrent for him. Although he did not present as psychopathic as others, he was perhaps more inept and pitiable. There was a high probability of low grade re-offending. He was near the edge of meeting the criteria of dangerousness. Dr van Woerkom was not convinced that a lengthy sentence in custody would make him safer upon release. He may also harm himself within the setting. It was suggested that he would benefit from a therapeutic prison.

The judge's decision

15. The sentencing judge considered the appellant a significant risk of harm due to his fascination with fire in combination with his psychiatric history. She found that he was dangerous within the meaning of the relevant provisions, because of the offence of arson, the appellant's history and what the appellant had said to Dr van Woerkom.

16. The Judge said:

“I am also very concerned that you were reprimanded for arson many years ago and what that shows to me is that your fascination with fires and starting fires is a long standing one. Arson is a very particular type of offence. It is a particularly dangerous offence due to the high possibility of devastating consequences. This, linked with your psychiatric history, makes you in my judgement, a very dangerous young man not only to yourself but to others with whom you may come into contact because if you start another fire it may well be that you kill yourself but the nature of fire is such that you may well harm others as well.

I have to determine whether the risk that I am satisfied exists can be answered by the imposition of an extended sentence. I am satisfied in all the circumstances that it would not be appropriate for me to pass an extended sentence because the inevitable consequence of that would be that the time would come when you were at liberty and unsupervised and nothing I have read about you indicates that there would likely be a lessening of this risk over time. Indeed, the report by Dr van Woerkom says precisely the opposite when he says that even keeping you in prison for an extended period of 7 years would not make you safer, in his view, when you came out. The only appropriate sentence therefore, is one of imprisonment for public protection.

I have to consider what the appropriate determinate sentence would be; in doing so I have considered the totality of the offending. I have considered this offence of arson in a situation where there was serious risk of harm to others in a prison environment. After trial the appropriate sentence would be one of 6 years imprisonment. On your guilty pleas at the first opportunity I can reduce it to a sentence of 4 years imprisonment.

As far as the burglary is concerned, it was a third time domestic burglary. There is a statutory minimum. Despite the fact that your guilty plea was a late one, in view of the fact that I am sentencing you to imprisonment for public protection, I am going to pass a sentence at the statutory minimum, that is 28 months. In view of your age and all the circumstances, I am making it concurrent with the sentence for arson. That is a total sentence of 4 years.

I pass a sentence of imprisonment for public protection in respect of the arson, a 4 year term with a notional minimum term of 2 years. This does not mean that you will be released after 2 years but that is the first time at which release can be considered. You will in fact only be released once a determination has been made that you are no longer dangerous. Once you are released you will be on a licence for life.”

17. We have quoted extensively from the judge’s sentencing remarks, and it will be noted that she gave no express consideration to making a section 37/41 Order. It does not appear that the statutory conditions for such a course were met by the material before her, and we make no criticism of the judge in this respect. In hindsight it has become clear that the real question in the case was whether such an order should have been made, or whether an IPP was the proper sentence (if the case were to be dealt with now, this second course would involve a discretionary life sentence, on the analysis of the judge).

Subsequent events: the fresh evidence

18. On 15 December 2020 the First Tier Tribunal, Mental Health Chamber, summarised the position to date in this way:-

“Since being first imprisoned 16 years ago, Mr Osmond has spent only 18 months outside of either prison or a psychiatric hospital, and then only for a maximum of 9 months at one time. He has 27 convictions for 40 separate offences: these include two sexual offences, one offence against property, 18 theft or similar offences, and 15 offences relating to police/prison/courts. Mr Osmond’s sexual offences relate to his sexual assault of a girl a

year younger to him when he was aged 15. It is also of note that he was reprimanded for having set a fire when he was aged 12.”

“Mr Osmond remained in prison, with frequent episodes of self-harm (often swallowing foreign objects including razor blades but also tying ligatures around his neck), repeated damage to his cells, reports that he was experiencing auditory hallucinations, and repeated threats to take someone hostage or kill them (including an incident on 2 June 2013 when he did barricade another prisoner inside his cell). He was smoking large amounts of cannabis at this time. On 4 June 2014, Mr Osmond was transferred to Rampton Hospital from prison by the Secretary of State for Justice under sections 47/49 for treatment of his mental disorder. He has remained in Rampton Hospital since that time, with a clear view now having been reached by his treating team that Mr Osmond suffers from both severe personality disorder and paranoid schizophrenia, and that he should follow a hospital-based and treatment pathway to the community, rather than being returned to prison.

“Mr Osmond suffers from mental disorder. He has both a severe personality disorder and a serious psychotic illness, paranoid schizophrenia. These diagnoses have been reached by skilled, experienced and knowledgeable clinicians who have worked with Mr Osmond at Rampton for over six years.”

19. A psychiatric assessment report for referral to Low Secure Services was provided by Dr Lara Cleland, a consultant Forensic Psychiatrist on 14 November 2022. She outlined her opinion on Mr Osmond as being the following:

“Mr Osmond has a diagnosis Paranoid Schizophrenia and Specific Personality Disorders. Mr Osmond has historically experienced auditory hallucinations, bizarre and paranoid ideations, low mood, DSH and suicide attempts. His symptoms appear to have responded well to antipsychotic medication, namely Clozapine.

With regards to Mr Osmond’s risks, he has an extensive history of offending, including acquisitive offending, sexual offending and fire setting from a young age. Whilst in prison, he was involved in assaults towards staff and other prisoners, destruction of property as well as fire setting. He has made threats to kill or take prisoners or staff hostage, accusing staff of not taking him seriously. Mr Osmond has also presented to serious risk of self-harm and suicide attempts. He has set fire to his cell, taken overdoses, inflicted lacerations on his body, tied ligature and had swallowed potentially toxic and harmful objects such as razorblades and batteries. There is history of use of illegal substances. It is likely that if he reverted back to

substances or became non-compliant with medication, his risk of violent reoffending would be high.

In my opinion, Mr Osmond is suitable for a transfer to Low Secure services, for the continued treatment of his mental illness, rehabilitation and a comprehensive care package on discharge to avoid further admissions and reoffending. Mr Osmond's current level of risk can be managed within the LSU environment of Spencer House. Appropriate treatment is available at Spencer House, on either Spencer North or South, in the form of a safe and controlled environment, specialised nursing care, supervision of leave, medication and specialised occupational and psychological therapy."

20. Dr. Cleland gave evidence orally before this court in line with her written opinion.

21. Dr Bisht, a Consultant Forensic Psychiatrist, approved for the purposes of section 12(2) Mental Health Act 2003 set out his opinion in his report of the 20 September 2023 and said this:-

"As regards mental disorder, I am aware there had been some unclarity about his diagnosis from the period between 2009 until his transfer to Rampton High Secure Hospital in 2014. Multiple diagnoses were made by different clinicians including psychotic illness, depressive illness and personality disorder. Even malingering was suggested at some point. He had described multiple symptoms, namely, thought interference, persecutory delusions, marked psychomotor agitation, thought block and second and third person auditory hallucinations – a man's voice telling him to do silly things to himself. He had also demonstrated marked psychomotor agitation with aggression to both self and others. These symptoms would indicate presence of a serious and enduring mental illness, like Schizophrenia.

Furthermore, he had engaged in multiple self-harming behaviours in prison by swallowing razor blades and batteries, ligatures, overdoses and self-lacerations. The clinical picture initially appeared to be a mixture of both depressive and psychotic symptoms and he was commenced on an antipsychotic, Olanzapine 5mg and an antidepressant, Venlafaxine 150mg, in August 2009. Furthermore, in October 2009, Dr Kosky noted a clear picture of emerging Schizophrenia with both first person and third person auditory hallucinations with thought blocking and Olanzapine was increased to 7.5mg. The diagnosis of Schizophrenia was confirmed after he had

undergone a robust and longitudinal assessment within hospital setting at Rampton High Secure hospital. He is now treated with Clozapine, which is a well-recognised medication for treatment resistant Schizophrenia.”

22. Based on the available evidence and findings in his examination, Dr Bisht was of the view that this is a case of dual diagnosis as Mr Osmond suffers from both Schizophrenia and Severe Personality Disorder, with features of both borderline and dissocial type. In Dr Bisht’s view, Mr Osmond had exhibited these disorders at least since 2009. Dr Bisht considered that: ‘Mr Osmond’s mental disorder is currently of a nature to warrant ongoing detention in hospital. This detention is necessary in the interest of his own health, safety and protection of others. The appropriate treatment continues to remain available at St Andrews Hospital.’
23. Dr. Bisht confirmed his opinion in his oral evidence before this court. He said in terms, both orally and in writing, that:-

“In my view, there appears to be clinical evidence to suggest that Mr Osmond had indeed developed a psychotic illness, namely Schizophrenia at the [time of the offence]. In addition to psychotic illness, Mr Osmond had also demonstrated symptoms of severe personality disorder. In my view, his fire setting behaviour was unlikely to be psychotically driven and was more related to emotional dysregulation, intrinsically linked to his severe personality disorder, which is a recognised mental disorder under the Mental Health Act. Mr Osmond also described feeling depressed at the time and reported that he had set fire in order to end his life. He had also admitted to hearing voices at the time, which can be a feature of both Schizophrenia and at times Personality disorder, albeit with the latter they tend to be transient.

In light of above, Mr Osmond, would have benefited from a Hospital Order that is Section 37 of the Mental Health Act 1983.”

24. Both Dr. Cleland and Dr. Bisht explained how the regime under a section 31/41 Order controls the release of the patient when appropriate and manages recall when necessary. In this case, the prime risk posed by the appellant arises when

he fails to take his medication. Under this regime, the medication can be administered whether or not the patient agrees and, in the event of any concern about that he can be recalled to hospital within 24 or 48 hours. The monitoring of the appellant in the community is able to ensure public safety given the risk which he presents.

25. Finally, Dr. Iain Grant has written a letter dated 17 June 2025. He is a Consultant Psychiatrist and Clinical Director of St Andrews Healthcare Rehabilitation Service. He says:-

“To whom it may concern

This is to confirm that Damien Osmond has been receiving treatment in hospital since 29/05/2014 for a serious mental health condition.

As the current responsible clinician, I can confirm that there is a bed space available for Mr Osmond, should the decision be to substitute the IPP for a hospital order.”

Discussion and decision

26. We consider that it is appropriate to receive the fresh evidence from the documentary materials containing the appellant’s medical records since sentence, and the opinions of Dr. Cleland, Dr. Bisht and the evidence of Dr. Grant in his letter.

27. The evidence makes it clear that the appellant was in fact suffering from schizophrenia and a severe personality disorder when he committed the offence of arson and was sentenced to IPP. These conditions were causally connected with his offending, and were susceptible to treatment in a hospital. None of these things were clearly demonstrable at the time of the sentence, and the diagnosis made by Dr. Thirumalai was disputed. It is not altogether clear why

his opinion was not followed, but it was not. A hospital order might have been made then if the judge had heard psychiatric evidence and made findings about it, but that did not happen.

28. What may have been more imperceptible in 2011 has become very plain since.

This is a clear case for a hospital order. The words of the then Lord Chief Justice in the case of *Coleman* (decided in *Vowles* at paragraph 133), with changes of names and dates as required, encompass this case:-

“It is clear on the evidence that Coleman was suffering from schizophrenia as well as a personality disorder at the time of the offence in 2005 and that the offending behaviour was attributable to her schizophrenia. On the evidence we are satisfied that it is entirely understandable why the schizophrenia was not diagnosed in 2005; this diagnosis only became clear some years later. Taking into account the nature of her mental illness, its causal connection with the offence, its treatability and the clear evidence that her condition will be better managed on release under the MHA regime and the public better protected, we quash the sentence of IPP and substitute for it a hospital order under s.37 with a restriction under s.41 of the MHA.”

29. It was not submitted on behalf of the Crown, correctly for the reason we have given, that the approach of this court explained in *R v. Layden* [2025] EWCA Crim 659 prevents this court from following *Vowles* in this case.

30. The evidence about the different release and post-release regimes is of particular importance in this case. This is always a key issue when deciding whether to make a section 31/41 Order or a hybrid order under section 45A of the 1983 Act, which ensures that any release is under the control of the Parole Board. There is no general rule about which regime is preferable. It all depends on the individual case, and public safety is a principal concern. The outcome is not dictated by the opinion of the medical experts but is informed by their evidence, and by the risk posed by the defendant.

Conclusion

31. This appeal is allowed. The two sentences of imprisonment imposed by the judge are quashed and in their place we impose hospital orders under section 37 of the Mental Health Act 1983 with a restriction under section 41. In making these orders we have decided, on the basis of the evidence referred to above, that:-

- a. The mental disorders cannot be appropriately dealt with by a hospital and limitation direction. The appellant may now be approaching a time when he can be released from hospital and such an order would then involve his removal to prison where there is a danger of relapse so that his release would no longer be appropriate.
- b. The medical evidence fulfils the requirements for a hospital order under section 37(2)(a) of the 1983 Act and the restriction under section 41. Such an order is the most suitable method of disposing of the case because the level of risk posed by this appellant is such that it can safely be managed under the regime for monitoring and recall of those subject to these orders described in evidence.
- c. In reaching this conclusion we have had regard to other available methods of dealing with the appellant.

32. The Order will specify the hospital where the appellant is presently detained and that the appellant is suffering from Schizophrenia and Severe Personality Disorder.