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IN HIS MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE KING

v

HAZEL STEWART

Mr Brendan Kelly KC with Mr E McKenna (instructed by KRW Law) for the Applicant
Mr Philip Henry KC with Mr M O'Hara (instructed by the PPS) for the Crown

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Before: Keegan LCJ, Treacy LJ and O'Hara J

KEEGAN LCJ (*delivering the judgment of the court*)

Introduction

[1] This is an application for leave to appeal a sentence for double murder imposed on the applicant by Mr Justice Hart ("the judge") on 16 March 2011. On that date the judge sentenced Hazel Stewart to life imprisonment for the murders of Trevor Buchanan and Lesley Howell and imposed a minimum tariff of 18 years. The Single Judge Kinney J refused leave.

[2] This appeal is substantially out of time and so we must decide whether to extend time. As part of the application, we were also asked to admit new evidence under section 25 of the Criminal Appeal (Northern Ireland) Act 1980, namely three reports from a Consultant Child and Adolescent Forensic Psychiatrist, Dr Duncan Harding dated 5 June 2024, 6 August 2024 and 18 May 2025. The prosecution opposed both applications but accepted that we could receive the three reports from Dr Harding *de bene esse*, in order to determine whether there is any merit in the application to admit fresh evidence.

[3] We have received a comprehensive bundle of historical papers and skeleton arguments from both the prosecution and defence which we have considered along with the oral submissions that were made at hearing.

Background

[4] The facts of this case are well-rehearsed and so we will not repeat them in detail. Trevor Buchanan and Lesley Howell were murdered by Colin Howell and Hazel Stewart in May 1991 who were in a relationship at that time. The deceased were the spouses of those convicted. The way in which Mr Buchanan and Ms Howell were murdered by carbon monoxide poisoning was to make the deaths appear to look like a double suicide. This cruel lie unravelled when in 2009, Howell admitted the murders to church elders and then police and pleaded guilty to the two murders in November 2010. He implicated the applicant and gave evidence at her trial against her. The applicant, however, contested the trial, and was convicted by a jury of her peers. She did not give evidence.

[5] The convictions are not under any further consideration by this court however we must set out a brief history of the failed appeals which precede this application as follows.

[6] The applicant sought leave to appeal against her conviction for the murder of Ms Howell in 2013. This application was dismissed by order of the Court of Appeal dated 21 January 2013. The appeal against the murder conviction of Mr Buchanan was abandoned and is recorded as such in an order of the Court of Appeal dated 8 February 2013. The judgment is reported at [2013] NICA 82.

[7] However, in 2015 a second appeal was mounted by the applicant on the basis that the abandonment was a nullity. The Court of Appeal at that time found no plausible grounds for holding that the abandonment should be set aside and that in any event any fresh grounds of appeal were without foundation. That appeal was also dismissed by order of the Court of Appeal dated 20 October 2015. The judgment is reported at [2015] NICA 62.

[8] It is regrettable that the applicant's solicitors were apparently not aware of all previous court orders before lodging this appeal. We are grateful to the prosecution for adding them to the trial bundle as these are the foundational records of court proceedings in this case. If the applicant's solicitors had been aware, as they should have been, of these orders (notwithstanding the fact that they are the third set of solicitors for the applicant), they would have seen that a sentence appeal was also definitively dismissed in the order made by the Court of Appeal on 21 January 2013. What all of this means is that the applicant is effectively asking us to re-open a sentence appeal dismissed by the Court of Appeal some 11 years ago.

[9] Additionally, of relevance is the fact that the applicant also applied to the Criminal Cases Review Commission ("CCRC") in March 2016 for a review of her conviction and sentence for the murder of Ms Howell. The CCRC found that there were no grounds on which to refer the conviction or sentence to the Court of Appeal. The CCRC's reasons are material and were summarised by the Single Judge at paras [12]-[14] of his ruling in the following terms:

"[12] … The CCRC decided there were no grounds on which to refer the conviction or sentence to the Court of Appeal. The CCRC provided its analysis and reasons for its determination. One of the reasons provided for the application was that there was an absence of expert psychiatric evidence at trial and on appeal. Such evidence was required to show that the applicant was controlled by Howell at the time of the murders. At para [23] of its analysis the CCRC recorded that it had sought to establish whether any further psychiatric reports had been obtained, and it requested copies relied upon at trial or appeal. No reports were forthcoming from the applicant's legal advisers. However, the CCRC did have sight of reports from Dr Kennedy, consultant psychiatrist, Dr Mezey, consultant psychiatrist and Prof Davidson, consultant clinical psychologist. At para [42] of the CCRC Statement of Reasons it is recorded that there was a decision by the applicant not to call expert evidence either at the original trial or again on appeal. Dr Mezey's report was not used at trial:

> 'as counsel advised that it would be contradicted by the Fred Browne report. This report was also not used at the first appeal. A report was prepared for this appeal but was not considered "good enough." The CCRC has not been provided with this report.'

[13] At para [44] the CCRC concluded that the advice not to use Dr Mezey's report at trial appeared to be reasonable. The CCRC then went on to consider the lack of expert evidence at trial and appeal. It was argued that if expert psychiatric evidence had been submitted at trial and on appeal it would have shown that the applicant was controlled by Colin Howell at the time of the murders and that she was suggestible during the police interviews. At para [46] the CCRC noted:

> 'However, no new psychiatric evidence has been submitted to the CCRC. The CCRC has also not had sight of a report prepared for the 2013 appeal by Professor Fahey which the CCRC assumes was not helpful.'

> [14] The CCRC also noted the comments of the Court of Appeal in 2015 at para [45] as set out above and concluded that there was no real possibility that this issue would lead to the convictions being found to be unsafe. The Commission also found that there was no basis on which the tariff of 18 years would be considered excessive in the circumstances of the case."

This appeal

[10] The application for leave to appeal sentence is mounted on the basis that new evidence from Dr Harding means the assessment of the applicant's culpability should have been lower due to a mental impairment, ie depression and Post-Traumatic Stress Disorder ("PTSD") due to the coercive control of Howell.

[11] There are a number of questions arising which we distil as follows:

(i) Do we have jurisdiction to hear this appeal given the appeal in relation to sentence was dismissed previously by the Court of Appeal?

(ii) In any event, as it is now 14 years since the sentence was imposed, should we extend time in this case applying *R v Brownlee* principles reported at [2015] NICA 39?

(iii) Has the test for fresh evidence been met applying the requirements of section 25 of the Criminal Appeal Act?

(iv) Even if the time bar and test for fresh evidence is met is there any substance in any of the arguments now raised on appeal?

[12] There is an obvious overlap between the issues which underline the four questions above and so we have approached our evaluation in a holistic manner.

Our analysis

(i) The jurisdictional issue

[13] In his skeleton argument, Mr Henry KC rightly raised a jurisdictional point given the appeal history. In reply, Mr Kelly KC frankly accepted, that there was a dismissal of the sentence appeal by virtue of the order of the Court of Appeal of 21 January 2013.

[14] This fact presents an obvious foundational problem for the applicant in this case, given the very clear need for finality in criminal proceedings. The principle is firmly stated in *R v Patrick Anthony Guinness* [2017] NICA 47 at para [3] as follows:

> "[3] …There are many aspects to the principle of finality including the notice of an application for leave to appeal against conviction is required to be given within 28 days from the date of conviction, see section 16(1) of the Criminal Appeal (Northern Ireland) Act 1980 and *R v Brownlee* [2015] NICA 39. In *R v Smith* [2013] EWCA Crim 2388, Jackson LJ delivering the judgment of the court stated that:
>
> > 'Criminal litigation is a process in which the defendant is required to make a series of irrevocable (or usually irrevocable) decisions: for example, whether to plead guilty, whether to give evidence and so forth. If things go badly for the defendant, he cannot simply go back to square one and try a different tack. Criminal litigation is not a tactical exercise.'

He added that:

> "The need for finality in litigation is a basic principle, which applies in all areas including criminal justice."

He also observed that:

> "In the criminal context, the principle of finality has less drastic consequences because there exists a safety net outside the courts.
>
> That safety net is the Criminal Cases Review Commission, ("the CCRC") which can refer a case to the Court of Appeal (see *R v Mulholland* [2006] NICA 32) and which can be requested by the Court of Appeal to make a reference in circumstances where an appeal has been abandoned and the abandonment was not a nullity so depriving the Court of Appeal of jurisdiction but where the conviction is unsafe, see *R v Burt* [2004] EWCA Crim 2826."

[15] The case of *R v Smith* [2013] EWCA Crim 2388 referred to above is also of utility as the court stated as follows:

> "[90] This application is illustrative of a growing and unwelcome tendency of convicted defendants to dismiss their original counsel and then to bring in new counsel to criticise their predecessors. In the present case, the

> applicant criticises two sets of previous counsel. This strategy by appellants is an attempt to circumvent the restriction on calling fresh evidence contained in section 23(2)(d) of the Criminal Appeal Act 1968. If a defendant has two alternative and inconsistent defences available, this strategy enables him to get the best of both worlds. He tries one defence before jury. If that fails, he tries the alternative defence before the Court of Appeal and possibly before a new jury at his retrial. We deplore this strategy. Members of the Bar should not lend their support to this strategy unless there really is a proper basis for impugning the conduct of previous counsel. In this case there is none."

[16] In addition, we note that senior criminal courts in England & Wales have expressly deprecated "expert shopping" in cases such as *R v Challen* [2019] EWCA Crim 916 at para [63], referred as follows:

> "As this court has observed frequently, any available defences should be advanced at trial, and if evidence, including medical evidence, is available to support a defence it should be deployed at trial. As a general rule, it is not open to a defendant to run one defence at trial and when unsuccessful, to try to run an alternative defence on appeal, relying on evidence that could have been available at trial. This court has set its face against what has been called expert shopping. Nor is it open to an appellant to develop and sometimes embellish their account to provide material upon which a fresh expert can base a new report and diagnosis."

[17] Applying the above principles to the case history there is plainly no regular route for appeal, the appeal against sentence having been dismissed. However, Mr Kelly submitted that a residual discretion is invested in the court, to avoid an injustice relying on the case of *R v Walsh* [2007] NICA 4.

[18] In *Walsh*, Kerr LCJ refers to a number of well-known cases of *R v Cross* [1973] All ER 920, *R v Daniel* [1977] 1 All ER 620 and *R v Pinfold* [1988] 2 All ER 217. At para [28], Kerr LCJ points out that the cases of *Pegg*, *Daniel* and *Pinfold* were all decided before the Criminal Appeal Act 1995 which established the CCRC. At para [29] he states that the CCRC may refer a case more than once. He goes on to say:

> "It may reasonably be postulated, therefore, that Parliament's intention in creating the Commission was to use it as the primary body to prevent miscarriages of justice."

[19] At para [30], Kerr LCJ discusses the remaining issue as follows:

> "[30] The question then arises whether the inherent power of the court to re-list a case where it is perceived that an injustice might otherwise occur has survived the passing of the 1995 Act. A first, albeit prosaic, indication that it has may be deduced from the fact that the Act did not state otherwise. The legislature is to be presumed to have been aware of the decisions in such cases as *Pinfold* when passing the 1995 Act and the absence of any express provision confining reconsideration of convictions exclusively to CCRC references may perhaps signify that Parliament intended that the power of the court to re-list a case should be preserved. As against that the Commission was established precisely for the purpose of ensuring that miscarriages of justice were corrected and one can recognise the force in the argument that it should be the only body to decide whether a case warrants further consideration."

[20] The conclusion reached is found at para [31]:

> "[31] We have concluded that the power of the Court of Appeal to re-list a case has not been removed by the 1995 Act. The occasion for the exercise of such a power will arise only in the most exceptional circumstances, however. In virtually every conceivable case it is to be expected that where the possibility of an injustice is reasonably apprehended, CCRC will refer the case. If it decides not to refer, however, the circumstances in which a challenge to that decision can be made are necessarily limited – *R v CCRC ex parte Pearson* [1999] 3 All ER 498. Where CCRC has been invited to refer a conviction to the Court of Appeal for a second time and has declined, if this court considers that because the rules or well-established practice have not been followed or the earlier court was misinformed about some relevant matter and, in consequence, if the appeal is not re-listed, an injustice is likely to occur, it may have recourse to its inherent power to re-list (or, effectively, re-open) the appeal."

[21] We pause at this point to record that there is no criticism of previous counsel in this case. Rather, Mr Kelly has framed this appeal on a more discrete basis, namely that the new psychiatric evidence is material, was not evidence that was

before the trial court and, is evidence that has been part of an evolution and understanding of coercive control.

[22] Given the context, we did enquire from the applicant's solicitor why there was not a further application to the CCRC once the reports from Dr Harding were made available. Mr Winters, the instructing solicitor, has filed an affidavit in answer to the court's queries. At para [6] of his affidavit of 30 May 2025, he states:

> "I did not make a renewed CCRC application in this case. I understood the Court of Appeal had jurisdiction to engage on the application in circumstances where:
>
> (a) I had access to potentially new evidence which could ground an out of time application to the Court of Appeal to appeal against sentence.
>
> (b) In circumstances where I understood there previously had been no formal substantive appeal against sentence only;
>
> (c) In taking the decision to revert to the court rather than the CCRC, I was mindful of a number of factors including the significant length of time it takes for CCRC applications to be processed. I am aware of cases taking anything up to five to seven years. Although this instruction presented as a prospective appeal against sentence only, nevertheless, it was unlikely the application would take proportionately less time that one challenging a conviction. My most recent experience of the CCRC points to a seriously long time in processing such applications. Given that the applicant was due to complete her sentence in circa four years' time, I considered that any such application to the CCRC would not conclude until after she had long since been released from prison."

[23] At para [13] of the same affidavit, Mr Winters addressed the issue of why the CCRC were not provided with all the medical reports when first asked to refer this case including a report from Professor Tom Fahy which was unfavourable to the applicant. Rather surprisingly, at para [12] of this affidavit, Mr Winters avers that throughout his instruction in the case, he never had sight of Professor Fahy's report. He also states:

> "On the instruction of the applicant's husband, David Stewart, it was not deemed fit for purpose as it was replete with mistakes and errors…
>
> A discrete issue arose as to why this report was not made available to CCRC whenever they were considering the case. As advised, we did not have the report for the reasons stated herein. Secondly, I cannot recall whether or not I engaged with the applicant's husband on the provision of same at the time CCRC referenced same in their communication. I cannot recall specifically if I was instructed about the deficiencies within the Fahy report which determined it was not fit for purpose. This may have informed my thinking in not taking proactive steps to have the Fahy report made available to the CCRC. In any event, given the very clear instruction from the applicant's husband about the deficiencies of a report which was never used, I can confirm that I would not have served the Fahy report on the CCRC for that reason.
>
> Whenever the Crown sought access to same, I took immediate steps to enquire about its availability and eventually the applicant's husband was able to extract it. As soon as I received it, I sent it to the PPS and forwarded a copy to Duncan Harding who, in turn, reflected the content of same in his second addendum report."

[24] The above explanation confirms the fact that there were numerous reports on the applicant's mental health obtained throughout the trial and appeal process. Clearly, the purpose of these reports was to attack the admission made by the applicant at interview given that she did not give evidence at her trial or mount a defence of diminished responsibility. This is made plain by a statement of the applicant's previous legal representatives (Mr Gallagher QC and Mr Reel of counsel) contained in a note dated 19 January 2015 which has been put before us.

[25] Some parts of the aforementioned note which were highlighted by Mr Henry are highly material and so we set them out as follows:

> "5. We noted that the applicant had already been examined by two psychiatrists, namely Dr Gillian Mezey and Dr Christine Kennedy for the purpose of her trial in the Crown Court. For the purposes of the appeal Hasson & Company retained Professor Gudjonsson, Professor of Forensic Psychology. He considered the trial papers and listened to the applicant's police interview. He then contacted Hasson & Company and indicated that he

would be unable to assist the applicant in her appeal. Hasson & Company also retained the services of Professor Tom Fahy, Consultant Psychiatrist. As part of his preparation of a report he requested a report from Dr Rauch, Consultant Psychologist, and that was duly obtained and forwarded to him. Professor Fahy examined the applicant and subsequently prepared a report. In short, none of the reports which we were able to obtain assisted the applicant in her appeal in seeking to challenge the admissibility and/or the reliability of the admissions attributed to her in respect of the murder of her husband, Trevor Buchanan. It would be noted that in total we had three psychiatric reports and one psychologist report and an indication from Professor Gudjonsson and that he could not assist.

6. We explained the position to the applicant and her husband. The applicant's husband was unhappy with the position and suggested that he might be able to find some other expert to support a case that his wife was under the control and influence of her co-accused, Colin Howell, at the time of the murders. It was suggested that we should apply to the Court of Appeal for some additional time. On the 9th of November 2012, we duly made an application to the Court of Appeal for more time although at that stage all of the reports had been obtained and we were not awaiting any further expert reports. The Court of Appeal refused our application and ruled that the appeal must proceed on 21st of January 2013."

[26] An email from the applicant's husband to the solicitor is also included in the note and reads as follows:

"Hi Michael,

Thanks for your advice and time yesterday, I have had a restless night and haven't been able to speak to Hazel – hopefully can do about 9. I just want to set out where we are to help focus me probably more than you! In challenging the convictions we hoped that the various psy reports would show sufficient doubt on the 'false admissions.' That has failed. <u>It seems that psychiatrists want evidence of mental illness and we know they won't find it is in this case</u>.'" [our emphasis]

[27] Drawing all of the above together, we find considerable strength in the argument that, in fact, having appealed once, the applicant should not be permitted to appeal her sentence again. However, we accept what Mr Kelly has said that notwithstanding the fact that the sentence appeal was previously dismissed this court has a residual inherent jurisdiction to reopen an appeal in exceptional circumstances to avoid an injustice applying the dicta in *R v Walsh*. This will only apply in a rare case given the fact that there is a high threshold for such a claim to succeed. Thus, to determine whether an injustice arises in this case we have had to consider the wider procedural history and the substantive merits.

(ii) Extension of time

[28] The onus is on the applicant to explain the reasons for the lengthy delay in this case. The time for appeal under the Criminal Appeal (Northern Ireland) Act 1980 is 28 days. By virtue of section 16(2) a court can extend time. The basis upon which a court can extend time to grant leave to appeal is set out in a well-known case in this jurisdiction of *R v Brownlee* [2015] NICA 39. Para [8] of that decision provides guidance as follows:

> "[8] From this examination of the authorities we consider that the following principles governing the exercise of the discretion to extend time to apply for leave to appeal can be derived:
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> (i) Where the defendant misses the deadline by a narrow margin and there appears to be merit in the grounds of appeal an extension will usually be granted. This occurs most frequently when the application to extend time for a conviction appeal is lodged immediately after sentencing.
>
> (ii) Where there has been considerable delay substantial grounds must be provided to explain the entire period. Where such an explanation is provided an extension will usually be granted if there appears to be merit in the grounds of appeal.
>
> (iii) The fact that a person involved in the crime subsequently receives a more lenient sentence will generally not be a satisfactory explanation for any delay in an appeal against sentence. A defendant should take a view about his attitude to the sentence at the time that it is imposed.
>
> (iv) A convicted defendant will usually get advice on any grounds for appeal from his legal

representatives at the end of the trial. It will normally not be an adequate explanation for considerable delay that the defendant has sought further advice from alternative legal representatives.

(v) Where the application is based upon an application to introduce fresh evidence the court may extend time even where a considerable period has elapsed as long as the evidence has first emerged after the conviction, the circumstances in which the evidence emerged are satisfactorily explained, the applicant has moved expeditiously thereafter to pursue the appeal and the evidence is relevant and cogent.

(vi) Even where there has been considerable delay or a defendant had initially taken the decision not to appeal, an extension of time could well be granted where the merits of the appeal were such that it would probably succeed."

[29] The applicant did not miss the deadline by a narrow margin. Where there is considerable delay, substantial grounds to explain the entire period must be provided. This application for an extension is grounded on the affidavit evidence of the applicant's solicitor Mr Winters. In that he acknowledges that he was not the original solicitor on record for the proceedings which resulted in the conviction and sentencing of the applicant but was instructed in relation to the appeals. There is no adequate explanation given for why fresh medical evidence relating to the applicant's medical disorder or mental state was not produced in either of the earlier appeals culminating in the second appeal of 2015. There is no adequate explanation for why it did not figure in any meaningful form in the reference to the CCRC.

[30] The affidavit evidence makes extensive reference to a four-part drama series regarding the murders broadcast in 2016 and has attached to the leave application extensive documentation relating to complaints lodged about the content of that drama with The Office of Communications ("Ofcom"). What appears to result from that is an instruction from the applicant to her solicitor to contact the authorities with a view to commencing a criminal investigation into the applicant's allegations of drugging, sexual assault and rape against Colin Howell.

[31] However, this was not new territory. We note that allegations were first made during police interviews in 2009, when the applicant was being questioned as a suspect in the murders and so it is not new. The applicant declined to make a criminal complaint against Howell at that time. A decision not to prosecute was made in November 2020 and affirmed following review in May 2021. A judicial

review challenge ensued and, again, details are provided in the affidavit by Mr Winters of the difficulties in obtaining legal aid, which led to the withdrawal of the judicial review in May 2023.

[32] Mr Winters avers that in the interim he consulted with counsel, third parties and the applicant on the merits of revisiting the sentencing on the basis that the applicant was a victim of coercive control. He states that he received instructions to engage an expert to deal with the issue of coercive control. This is where Dr Harding's involvement in the case comes in.

[33] We have a timeline as follows in relation to that instruction. Dr Harding, it appears was initially instructed in June 2023 by way of email. A report was not produced until 5 June 2024 with an addendum report on 6 August 2024 and a second addendum just a number of days before the appeal hearing in May 2025 dealing with the previously undisclosed report of Professor Fahy. We now have an explanation as to why it took a year to produce the report, namely that Dr Harding had self-referred himself to the General Medical Council ("GMC"), following criticisms of him by a Crown Court judge in a case of *R v Mayo* (Worcester Crown Court, unreported, 20 June 2023). Dr Harding also had some medical issues of his own which may have impacted on his professional practice. These are material issues although we acknowledge that the GMC took no action and the personal medical issues did not prevent Dr Harding practising.

[34] In any event, the application for a further appeal was not filed until 19 December 2024. This is obviously an extremely lengthy period of time which, on the face of it, is not well explained given that there were a variety of experts engaged in this case. The context is also important in that the applicant was challenging her admissions at interview and not suggesting a defence to murder based on diminished responsibility. Overall, we are not convinced that any of the extension of time requirements are satisfied. However, we will not dismiss the case solely on that basis without consideration of the merits which we will discuss later in this judgment.

(iii) The fresh evidence

[35] The statutory test is contained in section 25 of the Criminal Appeal Act as follows:

> "(2) The Court of Appeal shall, in considering whether to receive any evidence, have regard in particular to—
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> (a) whether the evidence appears to the Court to be capable of belief;
>
> (b) whether it appears to the Court that the evidence may afford any ground for allowing the appeal;

(c) whether the evidence would have been admissible in the proceedings from which the appeal lies on an issue which is the subject of the appeal;

(d) and whether there is a reasonable explanation for the failure to adduce the evidence in those proceedings

[36] Applying the above tests to the facts of this case, the evidence from Dr Harding is capable of belief. In principle it is admissible. We can accept that the reasonable explanation for failing to produce it at trial was that it was not evidence that was available at least in some part, given that Dr Harding's report relied on prison records relating to the applicant's mental health which were subsequently obtained to sustain a case of coercive control and depression.

[37] However, the real issue is whether this new evidence affords a ground of appeal and that leads us to consider the merits of the appeal.

(iv) The substantive merits

[38] In his original report Dr Harding concluded that the applicant was suffering from depression and PTSD at the time of her offending and the applicant's condition contributed to her being more vulnerable to coercive control by her co-accused, which continued up to and beyond the murders. Dr Harding referred to the medical reports by Dr Browne and Dr Mezey in which they noted the applicant's avoidant nature as well as other personality traits which according to Dr Harding made the applicant more vulnerable to the control of her co-accused. The applicant contended that the concept of coercive control was not properly explored at the time of her trial and in her previous appeals. Therefore, the applicant argued the issue of coercive control was relevant to the issue of sentencing and time should be extended to submit new evidence.

[39] We observe that the applicant had the benefit of reports from Dr Mezey at the time of her trial and subsequent reports were also obtained, which were not used before the Court of Appeal. Also, a distinguished expert in the field Professor Gudjonsson declined to prepare a report presumably because he could not support the case being made.

[40] Moreover, when considering the merits of this application, we note that although not expressly labelled as 'coercive control' the controlling behaviour of the co-accused was part of the factual matrix at the time of the trial and at the time of the previous appeals. For instance, the trial judge referred to the strong influence by the co-accused on the applicant during the time leading up to the offending, in the reports produced by Dr Browne and Dr Mezey.

[41] Further, we note that although coercive control was not very well known in the criminal justice system in 2011 at the time of the applicant's sentencing, it became an offence in England and Wales pursuant to section 76 of the Serious Crime Act 2015. In light of this, we query why the applicant failed to provide an explanation as to why the psychiatric opinion on 'coercive control' was first provided in 2024, after more than a decade.

[42] Furthermore, as Mr Henry pointed out Dr Harding's conclusion about the applicant's mental disorder leading up to and during the crime was contrary to the psychiatric opinion on the applicant at the time. The conclusions of Dr Mezey and Dr Browne were that the applicant was not suffering from a mental illness at the time of the offence. These were contemporaneous reports which hold weight against an expert who has come to the case at some remove and pieced together prison records to strengthen a case long after the events. This new opinion also arises in circumstances where the applicant's husband specifically stated that the psychiatrists "would not find a mental illness" presumably based on personal experience of the applicant and her reaction to life events.

[43] It is also of critical importance that the trial judge assessed the particular factors that were pertaining to the applicant whenever he sentenced her as set out in the original sentencing. Specifically, the judge said:

> "[9] When considering the appropriate minimum term to be imposed in the case of Hazel Stewart, I must emphasise two further matters. The first is that throughout these proceedings, and again during his evidence at the trial, Howell accepted that he was the person who conceived and developed the plan to murder his wife and Trevor Buchanan. As he put it at the trial 'I was the mastermind behind the plot and the plan, I was the one who had the intelligence to put the plan together.' He bears the prime responsibility for these crimes, and his sentence had to reflect that. As Mr Murphy QC for the prosecution, rightly conceded in his submissions, Stewart was a secondary party and the perpetrator was Colin Howell, and so she is entitled to some reduction in sentence compared to his because it was he who planned and carried out both murders and persuaded her to take part. Nevertheless, her responsibility for what happened was very substantial, and the minimum term must reflect that."

[44] In addition, the judge went on to record that Howell had confessed to his crimes. In analysing this point, he also said:

> "When fixing the minimum term for Howell I reduced it from 28 years to 21 years to reflect his confession, his plea of guilty and his willingness to give evidence. Hazel Stewart cannot claim any such reduction in the minimum term to be imposed in her case because she pleaded not guilty. That does not mean that she is to be treated more severely than she otherwise deserves for having pleaded not guilty, but it does mean that she cannot receive the credit which the law gives to those who admit their guilt."

[45] The judge then went on to consider the plea of not guilty, the applicant's attitude at interview and her lack of remorse. Given that no credit could be allowed for a plea, the judge reduced her sentence from what Howell received by 10 years to 18 years. This is a significant reduction.

[46] The controlling behaviour of Howell is also referenced in the trial judgment. In addition, the part that the applicant played in the murders was clearly set out. Para [4] of the judgment sets this out as follows:

> "(i) Before the murders were carried out she knew for some time of the nature of the plan that Howell proposed, but she did nothing beforehand to prevent the murders from being carried out.
>
> (ii) She knew that she had to ensure that her husband was sedated, and she admitted that because of that she encouraged him to take a tablet that night when he said that he had difficulty in sleeping.
>
> (iii) She knew that she had to open the garage door to let Howell in and she did so.
>
> (iv) She then let him into her house and did virtually nothing to dissuade him from carrying out the murder of her husband, other than to say that she said not to do it to him at that time.
>
> (v) She knew as he went to the room where her husband was sleeping that he had already murdered his wife and was now going to murder her husband, yet she did nothing whatever to prevent him from doing so.

(vi) Afterwards she provided Howell with clothes so that he could dress the body of her now lifeless husband.

(vii) She cut up and burnt the hose which he had used to kill her husband, and washed the covers from the bed, and did so in order to destroy evidence of these crimes.

(vii) Afterwards she concealed from the police what had happened and participated in providing them with a false account given to her by Howell, designed to mislead the police and cover up their crimes."

[47] Finally, as was accepted, the cases of *R v Challen* and *R v Martin* [2020] EWCA Crim 1798 where defences of coercive control were potentially available to women at their trial concern a very different factual scenario from this case. In this case it is argued that features of applicant's personality and control by Howell should reduce culpability to reduce sentence. We are not convinced that this is a sustainable argument for the reasons we have given.

[48] Summarising, the issue in this case raised by the applicant as her defence to murder was the reliability of her confessions. She did not run a defence of diminished responsibility. She did not utilise any of the expert evidence she had available to her. She has had two unsuccessful appeals already. The CCRC did not refer her case. Dr Harding's evidence is well after the event and places reliance on prison records to contradict a case made by all other experts. Even if there were any traction in the points now made (which we do not find), the trial judge made allowance for Howell's control in the sentence he passed. No injustice arises in refusing to reopen this long-concluded appeal on these facts.

Overall conclusion

[49] This was a double murder of spouses in the cruellest of circumstances. Our overall view is that the sentence was neither wrong in principle nor manifestly excessive. We refuse leave to admit the new evidence or to extend time, as we are not convinced that the new evidence establishes a valid ground of appeal. We are similarly not convinced that a fulsome enough explanation for why this evidence was not produced earlier has been provided.

[50] In reaching our conclusion, we reiterate the need for finality in criminal proceedings. We must deduce from this appeal that the applicant does not fully appreciate that. What must be self-evident is the stress and upset this latest third appeal attempt will have caused to the families of the deceased.

[51] This is not a case where the convictions are challenged. We are entirely satisfied that the trial judge was sighted on the issue of Howell's control and that he altered the sentence substantially for the applicant on that basis to 18 years. That is against a starting point for Howell of 28 years reduced to 21 on the basis of his guilty plea and remorse.

[52] Accordingly, we find no merit in any of the points raised in this appeal. We refuse the two applications which are to extend time for appeal and for leave to appeal against sentence. The sentence imposed by the trial judge remains unaltered.