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COURT DISMISSES APPLICATION FOR LEAVE TO APPEAL AGAINST SENTENCE BY HAZEL STEWART

Summary of Judgment

The Court of Appeal[1] today dismissed an application by Hazel Stewart for leave to appeal a life sentence with a minimum tariff of 18 years for the murders of Trevor Buchanan and Lesley Howell. As part of the application, the court was asked to admit new evidence in the form of reports from a consultant child and adolescent forensic psychiatrist, Dr Duncan Harding.

Background

Trevor Buchanan and Lesley Howell were murdered in May 1991 by Colin Howell and Hazel Stewart ("the applicant") who were in a relationship at that time. The deceased were the spouses of those convicted. Mr Buchanan and Ms Howell were murdered by carbon monoxide poisoning in a way so as to make the deaths appear to look like a double suicide. In 2009, Howell admitted the murders to church elders and then police and pleaded guilty 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. She did not give evidence.

The applicant sought leave to appeal against her conviction for the murder of Ms Howell in 2013 and this was dismissed by order of the Court of Appeal dated 21 January 2013. The appeal against her conviction for the murder of Mr Buchanan was abandoned. In 2015, a second appeal was mounted by the applicant on the basis that the abandonment was a nullity. The Court of Appeal found no plausible grounds for holding that the abandonment should be set aside and that, in any event, the fresh grounds of appeal were without foundation. That appeal was also dismissed.

The applicant 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 included that there was an absence of expert psychiatric evidence at trial and on appeal which was required to show that the applicant was controlled by Howell at the time of the murders. 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 two consultant psychiatrists, Dr Kennedy and Dr Mezey, and Professor Davidson, a consultant clinical psychologist. The CCRC recorded that the applicant had decided not to call expert evidence either at the original trial or again on appeal. Dr Mezey's report was not used at trial. No new psychiatric evidence was submitted to the CCRC.

This appeal

[1] The panel was Keegan LCJ, Treacy LJ and O'Hara J. Keegan LCJ delivered the judgment of the court.

The application for leave to appeal sentence was mounted on the basis that new evidence from Dr Harding meant the assessment of the applicant's culpability should have been lower due to a mental impairment (depression and post-traumatic stress disorder ("PTSD") due to the coercive control of Howell.

The jurisdictional issue

The court said there was an obvious foundational problem for the applicant in this case, given the very clear need for finality in criminal proceedings as there had already been a dismissal of the sentence appeal in 2013. It cited *R v Challen*[2] where the court stated that "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. 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."

The court recorded that there was no criticism of previous counsel in this case. Rather, the appeal was now framed on a more discrete basis, namely that the new psychiatric evidence was material and was not evidence that was before the trial court and, indeed, was evidence that has been part of an evolution and understanding of coercive control. Given this context, the court asked the applicant's solicitors why a further application to the CCRC had not been made once the reports from Dr Harding became available. The solicitor told the court that a renewed CCRC application had not been made as it was understood the Court of Appeal had jurisdiction to engage on the application in circumstances where there was access to potentially new evidence which could ground an out of time application to appeal against sentence and that there had previously not been a formal substantive appeal against sentence only. The solicitor also told the court that the CCRC had not previously been 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 and was considered by her husband, David Stewart, not to be fit for purpose as it was "replete with mistakes and errors."

The court remarked this confirmed the fact that there were numerous reports on the issue of 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." The court said there was considerable strength in the argument that having appealed once, the applicant should not be permitted to appeal her sentence again. However, it accepted that it had a residual inherent jurisdiction to reopen an appeal in exceptional circumstances to avoid an injustice. This will only apply in a rare case given the fact that there is a high threshold for such a claim to succeed. However, to determine whether an injustice arises in this case the court had to consider the wider procedural history and the substantive merits.

Extension of time

Where there is considerable delay, substantial grounds to explain the entire period must be provided. In this case, new solicitors were instructed in relation to these appeals. The court said no adequate explanation was 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 and no

[2] *R v Challen* [2019] EWCA Crim 916

adequate explanation for why it did not figure in any meaningful form in the reference to the CCRC. An affidavit by the applicant's solicitor made extensive reference to a drama series regarding the murders broadcast in 2016 which resulted in complaints being lodged about the content with the Office of Communications (Ofcom). The court noted that 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 and assault against Howell. Allegations were first made during police interviews in 2009, when the applicant was being questioned as a suspect in the murders. The applicant declined to make a criminal complaint against Howell at that time and a decision was made not to prosecute him in November 2020 and affirmed following review in May 2021. A judicial review challenge ensued and difficulties in obtaining legal aid led to the withdrawal of the judicial review in May 2023.

The solicitor averred that he received instructions to engage an expert to deal with the issue of coercive control. Dr Harding was initially instructed in June 2023, but 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. The court was told the delay arose as Dr Harding had self-referred himself to the General Medical Council ("GMC"), following criticisms of him by a judge in a case in England and that he had also had some medical issues of his own which may have impacted on his professional practice. The court said these were material issues although it acknowledged that the GMC took no action and the personal medical issues did not prevent Dr Harding practising:

> "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."

The fresh evidence

The statutory test on whether the court should admit fresh evidence is contained in section 25 of the Criminal Appeal Act 1980. Applying the tests to the facts of this case, the court said the evidence from Dr Harding was capable of belief and therefore in principle it was admissible. The court accepted 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. Thus, the court explained that the real issue was whether this new evidence affords a ground of appeal and that leads the court to consider the merits of the appeal.

The substantive merits

In his original report Dr Harding concluded that the applicant was suffering from depression and PTSD at the time of her offending and that her condition contributed to her being more vulnerable to coercive control by her co-accused, which continued up to and beyond the murders. He 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. She argued the issue of coercive control was relevant to the issue of sentencing and time should be extended to submit new evidence. The court noted that the applicant had the benefit of defence reports from Dr Browne and Dr Mezey at the time of her trial and subsequent reports were also obtained from them, which were not used before the Court of Appeal. Also, a distinguished expert in the field, Professor Gudjonsson, declined to prepare a report which the court said was presumably because he could not support the case being made. Moreover, when considering the merits of this application, the court noted 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.

The court further noted 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, the court questioned why the applicant failed to provide an explanation as to why the psychiatric opinion on 'coercive control' was first provided in 2024. Furthermore, 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 (Dr Mezey and Dr Browne both concluded that the applicant was not suffering from a mental illness at the time of the offence). The court said these were contemporaneous reports which hold some 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 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.

The trial judge had assessed factors that were pertaining to the applicant when he sentenced her and specifically emphasised:

- Howell accepted that he was the person who conceived and developed the plan to murder his wife and Mr Buchanan. The trial judge found that Stewart was a secondary party and so was entitled to some reduction in sentence compared to Howell because he had planned and carried out both murders and persuaded her to take part;
- Howell had confessed to his crimes and Stewart therefore could not claim any such reduction 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."

The trial judge went on to consider the applicant's absence of any plea of guilty, attitude at interview and her lack of remorse. He effectively reduced her sentence from what Howell received as a starting point by 10 years to 18 years. The controlling behaviour of Howell was also referenced in this judgment. In addition, the part that the applicant played in the murders was clearly set out.

Referring to the cases of *R v Challen* and *R v Martin*[3] where defences of coercive control were potentially available to women at their trial, the court said they concerned a very different factual scenario from this case where it was argued that features of the applicant's personality and control by Howell should reduce culpability to reduce sentence. The court was not convinced that this was a sustainable argument as the issue in this case raised by the applicant for the following reasons:

- The applicant's defence to murder was the reliability of her confessions. She had 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.
- The trial judge made allowance for Howell's control in the sentence he passed.

The court concluded: "No injustice arises in refusing to reopen this long-concluded appeal on these facts."

Overall conclusion

The court concluded that the applicant's sentence was neither wrong in principle nor manifestly excessive. It refused leave to admit the new evidence or to extend time, as it was not convinced that the new evidence established a valid ground of appeal. Similarly, it was not convinced that a fulsome enough explanation for why this evidence was not produced earlier had been provided. In reaching its conclusion, the court reiterated the need for finality in criminal proceedings. It said it must deduce from this appeal that the applicant does not fully appreciate this and that what must be self-evident is the stress and upset that this latest third appeal attempt will have caused to the families of the deceased.

This was not a case where the convictions are challenged. The court was 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:

> "Accordingly, we find no merit in any of the points raised on appeal and so 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."

NOTES TO EDITORS

1. This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available shortly on the Judiciary NI website (https://www.judiciaryni.uk/).

[3] *R v Martin* [2020] EWCA Crim 1798

ENDS

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