

Rex v. Lee Byer

SENTENCING REMARKS

1. On Monday 29th April 2024, you pleaded guilty to manslaughter and to the possession of an offensive weapon. The events took place some 18 months ago, on 16th August 2022, when you stabbed and killed Thomas O’Halloran.
2. You first appeared at this Court on 23rd August 2022, charged with murder. The trial date was fixed for May 2023, and a timetable set leading to that trial. Later in 2022, it became apparent that psychiatric issues would need careful exploration. In due course the trial date in May 2023 was vacated and you were transferred to the Newmarket Ward at Broadmoor Hospital for assessment and treatment under the supervision of Dr. Jonathan Hafferty, a Consultant Forensic Psychiatrist and Research Lead at Broadmoor. You have remained under his care since 1st August 2023.
3. Assessed as fit to plead, further reports have been provided to this Court from both Dr. Hafferty and Dr. Ian Cumming, also a Consultant Forensic Psychiatrist. The most recent reports have been considered by your legal representatives and by the Prosecution. Your plea of guilty to manslaughter on the basis of diminished responsibility has been accepted by the Prosecution and I must now sentence you for that offence along with offence of the possession of a knife.
4. Thomas O’Halloran was aged 87 at the date of his death. To his family and close friends he was known as Tom. An impact statement on behalf of the family written by Dennis Lintern has been read as part of this sentencing hearing. Thomas O’Halloran was clearly a much loved man: the head of an extended family. Born in Ireland, he had lived in England all his adult life. He worked as a maintenance man and was someone described as a gentle, loving man who spent his whole life working and helping everyone he could. In the statement Dennis speaks of the huge impact of the attack on the wider family and on the local community of his grandad. One can only imagine the impact of the violence towards this

gentle man and all those who knew him. No words can cover the grief they feel at his senseless killing nor can any sentence or order from a court ever replace or equate to the loss of life.

The incident.

5. Just after 4pm on 16th August 2022, a ‘999’ call was made. A young man, who happened to be in the area had found Mr. O’Halloran in his motorised mobility scooter clearly injured and in difficulty. Mr. O’Halloran was travelling along a passageway between Runneymede Gardens and Welland Gardens in Greenford, West London. Mr O’Halloran was able to tell the young man that he had been stabbed. Mr O’Halloran moves a short distance on his scooter before he slumps forward and members of the public go to his assistance. Mr O’Halloran’s mobility scooter had a basket on the front that was blue in colour with some yellow tape on it – the colours of the Ukrainian flag. It also had a handwritten message: *‘Support Ukraine Against Russia’*. Also on the scooter was the accordion that Mr O’Halloran was well known in the area for playing. He was known to busk and collect for worthy causes. A box containing money was found in the scooter along with the wallet of Mr O’Halloran.
6. Members of the public quickly acted to give first aid and police officers were soon on the scene. Ambulances and the Helicopter Emergency Medical Services followed, but sadly despite all of the efforts of those who provided care, they could not save Thomas O’Halloran and he died at the scene. He had been stabbed a number of times including to the neck, the jugular vein, through the ribcage to the heart on one side and another stab to the heart as well as to the back and arms. Some of the injuries are consistent with defensive injuries showing Mr O’Halloran tried to defend himself. It was clearly a savage attack.
7. CCTV shows Mr O’Halloran travelling on his mobility scooter along Medway Parade in the direction of Runneymede Gardens. He then meets you in a passageway. You are also seen to exit the passageway holding a knife in your left hand: a knife that looks to be something like a bread knife. You are also wearing gloves. CCTV shows you going into an underpass that leads under the A40 in the direction of your mother’s home address. En-route, you can be seen to stop and deliberately discard the handle of the knife down a drain on Haymill Close having snapped the knife in two. This was recovered and later forensic analysis revealed the presence of blood from Mr O’Halloran.

8. You were arrested at your mother’s home address just after 1:30am on the 18th August 2022. When cautioned you replied: “*murder; I was in prison at the time.*” You were assessed as being fit to be detained and to be interviewed. A search of your mother’s address revealed an ‘Under Armour’ zip up top matching the one you were seen wearing on CCTV immediately after the stabbing, a knife set with handles similar to the one recovered from the drain on Haymill Close, and the remains of a fire in the rear garden. Amongst the ashes were the remains of the sole of a shoe, a shoelace and other pieces of fabric: items believed to be ones worn by you at the time of the stabbing. Also at the address were other gloves similar to those you seen wearing on CCTV and a bottle of bleach you had bought after the attack.
9. When interviewed in the presence of a solicitor and an appropriate adult on two separate occasions on 18 August 2022, ‘no comment’ responses were made to most questions. A prepared statement denying the killing was proffered. When shown some stills from the CCTV you denied it was you.

Antecedents and reports

10. You are now 45. [dob 4.8.1978]. There are 15 previous convictions recorded against you for 30 offences. The offending history dates back to when you were aged just 13. There are eight convictions for offences of theft and robbery from 1992 through to 1998 when you would have been 19. In 1998 for offences of robbery, you were sentenced to a total of 4 years in a young offender institution. In 2002, aged 23, for drugs offences, the possession with intent to supply class A drugs, crack cocaine and the possession of a prohibited firearm, you were sentenced to a total of 8 years imprisonment. In 2008 and 2010 more minor drugs offences met with fines and then in 2011, aged 32, for more offences of robbery you were sentenced to 12 years’ imprisonment. In January 2018 for harassment, offences of battery and breaching a non-molestation order in December 2017 you were made subject to a suspended sentence order with various requirements. You were in breach of a restraining order in October 2020 and imprisoned for 12 weeks.
11. You were recalled to prison in relation to the sentence passed in 2011. It would appear that the recall took effect following the sentence in October 2020. You were released from custody at Wormwood Scrubs on 11th August 2022, having served in full the sentence passed in 2011.
12. S.283 of the Sentencing Act 2020 makes provision for a life sentence in circumstances where a court is dealing with an offender for an offence listed in part 1 of schedule 15 of the same Act, where that offence was committed on or after the relevant date [3rd December 2012], the

offender is over 21 when convicted and both the ‘sentence condition’ and the ‘previous offence condition’ are met. Manslaughter is listed in the schedule referred to, the offence was clearly committed on or after the relevant date and you are over 21.

13. The ‘sentence condition’ is that, but for s.283, the court would impose a sentence of imprisonment for 10 years or more. In terms of the relevant guideline here, I will need to have that in mind.
14. Secondly, in terms of the ‘previous offence condition’ your conviction for robbery from 2011 is one where a sentence in excess of 10 years was passed. To come within the ‘previous offence condition’ the robbery has to be one in the terms of the schedule: *“where, at some point during the commission of the offence, the offender had in his or her possession a firearm or an imitation firearm within the meaning of the Firearms Act 1968”* In *R. v. Gore* [2010] EWCA Crim 309, the Court of Appeal decided that joint possession in the course of a joint enterprise robbery would be included, even if the offender being sentenced had not had actual possession of the firearm in the course of the robbery. Paragraph 42 of the judgement states: *“However, it must be established or admitted that the offender was a party to the robbery which to his knowledge involved the possession of a firearm or an imitation firearm by one or more of those involved in the robbery.”*
15. If the ‘sentence’ and ‘previous offence condition’ requirements are met, as s.283 (3) makes clear I must impose a sentence of imprisonment for life unless I am of the opinion that there are particular circumstances which relate to the index offence, the previous offence, or you that would make it unjust in all the circumstances.
16. In relation to the previous conviction for robbery I am told there is no finding of possession of a firearm on the record and that issue is very much in doubt. Mr Patterson very fairly says that due to the uncertainty about the previous matters I could and should not find the ‘previous offence condition’ to be met.
17. I note from the psychiatric reports the detailed analysis of your time in custody. There do not appear to be any concerns or matters raised in relation to any mental health matters until September 2020. There is a reference of you trying to take your own life on a number of occasions and that your mother had concerns about you suffering from some form of delusional disorder. In the autumn of 2020 there were reports of you hearing voices and the possibility of you having paranoid schizophrenia. In October 2020 you moved prison to HMP Wormwood Scrubs and then the following month to HMP Olney. At the time you were prescribed an oral antipsychotic medication. You were taking risperidone between October

2020 and early 2021 when you asked to stop the medication. At that time you said you no longer heard voices or had intrusive thoughts. Reviews continued in 2021. In February 2022 there was an altercation with another prisoner and you were put into segregation and commented that you were being monitored due to your unpredictable behaviour. Then in March 2022, you were moved back to Wormwood Scrubs. An entry in the prison records comments that you'd had an enduring mental illness and were not on medication. You said on 7th March 2022, that you had been previously diagnosed with paranoid schizophrenia and had been on medication. Dr Cumming notes in his report (where much of the history above is set out), that in the notes leading up to your release on 11th August 2022, there are no entries relating to mental health.

18. For the purpose of this sentencing hearing I have reports from both the psychiatrists I have mentioned. They are highly experienced and respected experts. They are both approved under the relevant section of the mental health legislation. The relevant reports from Dr. Cumming are dated 4th May 2023 [M2: M21-39] and 10th April 2024 [M7: M112-126]. Those from Dr. Hafferty are dated: 10th December 2023 [M3: M40-56]; 27th February 2024 [M4: M57-70]; 25th March 2024 [M5: M71-79]; 2nd April [M6: M80-111], and 30th April 2024 [M8: M127-146]. There is also a note of consultation between leading counsel for the prosecution and Dr Cumming dated 12th April 2024.

Approach to sentence - sentencing guidelines.

19. The maximum sentence for manslaughter is one of imprisonment for life. For offences of manslaughter by reason of diminished responsibility there are specific guidelines issued by the Sentencing Council. The first issue is to assess the degree of responsibility retained.
20. Considering the features of the case and what is set out in the reports, I am satisfied that this case falls in to the lower category of responsibility retained. I note in particular what is set out by Dr. Hafferty at paragraphs 59-60 of his report. If a custodial sentence is to be imposed, the guidelines give a start point for lower level of responsibility retained of 7 years' custody with a range of sentence between 3 and 12 years' custody.
21. I also need to have regard to the guidelines on 'Sentencing Offenders with Mental Disorders, Developmental Disorders, Or Neurological Impairments' as well as the guidelines on bladed articles and offensive weapons, discount for plea, and totality.

22. In this case there are a number of significant aggravating factors set out in the manslaughter guidelines. I have already set out your previous offending, including offences of robbery. I note that at the time of this offence you were on police bail, although you were in prison having been recalled until just before the incident, the proceedings you were on bail for were not proceeded with. Here the victim of your attack was particularly vulnerable, the offence involved the use of a knife and your acts after the offence were designed to conceal or hide your involvement. The carrying of a knife by you when you leave home suggests a level of planning or premeditation as why else would you do so. That does not mean that there is anything to suggest a plan to attack Mr O’Halloran specifically. The factors I have listed would increase the start point for any sentence by some margin up the range for lower responsibility retained to one of 10 years’ imprisonment before any allowance for plea.
23. On factors reducing seriousness or reflecting personal mitigation, I note that some remorse has been expressed by you through the interviews with Dr. Hafferty whilst he has been treating you. I have already referred to your plea.
24. If passing a sentence of imprisonment, the sentence after plea would be reduced by some 25%.
25. Next, I need to consider dangerousness. The test for dangerousness is this: *is there a significant risk to members of the public of serious harm occasioned by the commission by you of further specified offences?* On the material here, the test is clearly met: both expert psychiatrists agree. I note in particular on this issue what is set out by Dr. Hafferty at paragraph 61 of his report:

I do consider Mr Byer to be a very dangerous man. The nature of the offence and the nature of the death of the victim was grave and extremely violent. While Mr Byer does not have a previous history of highly serious violence, in his forensic history or psychiatric history of his mental disorder, he has clearly shown the ability to discharge lethal aggression against a vulnerable victim, with no provocation, with no rational motive, and with little in the way of warning signs that could identify his risks by those (non-medical) individuals who were supervising him in prison before his release or those who encountered him immediately prior to the offence, which occurred days after his release. Below I will consider how these risks can be managed from a psychiatric perspective.

26. The real issue on sentence in this case is that between a hospital order with restrictions as provided for in s.37 and s.41 of the Mental Health Act 1983 (the 1983 Act) or an order under s.45A of the 1983 Act, what is known as a ‘hybrid’ order.

Mental health issues.

27. Both forensic psychiatrists are clear that in their professional opinions that you are someone suffering with paranoid schizophrenia and that a hospital order under s. 37 of the 1983 Act with a restriction order under s.41 of the 1983 Act is the most appropriate and best way to balance between treatment and the wider interests of protection to the public.

28. In his report dated 10th April 2024, Dr. Cumming states:

..... If sentenced under Section 37 of the Mental Health Act 1983 Mr. Byer would remain in a secure inpatient unit for the foreseeable future in order to receive the necessary treatment and rehabilitation. Mr Byer's diagnosis of paranoid schizophrenia makes this disposal a possibility. I am aware that a bed remains available at Broadmoor Hospital.

I would also recommend the use of a Restriction Order (Section 41). It is clear that in terms of this offence, the use of such is indicated. The offence was grave, high profile and of an elderly man in a motorised chair occurring without provocation. Mr Byer has a history of violence, and the use of a restriction order is needed to protect the public.

Mr Byer is likely to be in a secure hospital for the foreseeable future, or indefinitely if there is no response to treatment approaches and no reduction in the risk he poses to others. Periods of leave and progress through the secure hospital system will be effected by his responsible clinician in close communication with the Secretary of State.

If ... Mr Byer does make a good recovery and there is a prolonged period of stability, tested with gradually increasing periods of escorted and unescorted community leave, including to a supported hostel setting which is the likely discharge destination, with a settled weekly structure of activities, he would then be subject to a discharge hearing before the First tier Tribunal. The Tribunal would determine whether to release him on condition that, for example, he met his supervising community forensic team regularly, was compliant with his medication, and lived at a particular address. Any deterioration in his mental condition (the sole driver of his risk to others) would lead to a prompt recall to psychiatric hospital. It would be possible for him to apply for an unconditional discharge when in the community but given his condition and the chronic need for medication and other treatment approaches, it is unlikely in my view that Mr Byer would ever be given an absolute discharge which would allow him to end contact with mental health services.

Such an order will ensure that any release and aftercare is properly focused on the mental health condition of Mr Byer, supervised by the responsible clinician. The extant scientific evidence (see for example, Fazel et al, British Journal of Psychiatry, 2016) suggests that a hospital disposal is associated with a reduced reoffending rates on ultimate release into the community in comparison to imprisonment and subsequent release from prison. This finding holds when comparison is made with individuals with violent index offences, with prisoners with longer sentences as comparators, and when rates of violent reoffending are specifically examined. Rates of repeat offending are consistently lower in patients released from hospital in comparison to those released from prison.

29. Dr Cumming goes on to deal with a hybrid order. He states:

In terms of a hybrid order (Section 45 A), this disposal has a penal element, and the release regime is different. If Mr Byer was made subject to Section 45A of the Mental Health Act 1983, he would remain in a secure unit for the foreseeable future so that he would receive the necessary treatment. If his mental health were to improve to the extent that no further treatment as necessary, then Mr Byer would be remitted to prison to serve the rest of his sentence. On arrival in prison the Section 45A Order would cease to have effect and he would be referred to the mental health in-reach team in prison for ongoing mental health input, but he could not be forced to comply if he did not wish to do so.

It is too early to say how well Mr Byer will respond to treatment; at the current time, his improvement is partial. He has shown an antipathy to mental health services and when he had been more unwell in 2023 and at the time of the offence, he lacked insight into his illness and was affected by ongoing command hallucinations, though still able to function reasonably.

I am concerned that though there is a risk structure through the Hybrid Order and in consideration of the above issues of no enforcement of The Mental Health Act 1983 in prison and his lack of insight and command hallucinations, means that he may pose a significant risk to others.

Though ultimately this is a matter for the Judiciary, I conclude that the use of a hospital order with a restriction order is the more appropriate recommendation to reduce risk.

30. This is further amplified in the note of consultation where Dr Cumming adds:

This is a man who has still not recovered. I do not know whether he ever will. He is likely to remain on medication for the rest of his life to manage his illness. When unwell, the illness is difficult to see or penetrate. They do not want a person with command hallucinations in prison. The command hallucinations present a risk. The MHA does not apply in prison and they cannot compel treatment. They could send him back to hospital, but BYER's risk of violence is linked to his illness.

The way BYER got to hospital – he can be reassuring and plausible and say he doesn't have any of the illness any more. So in prison the confidence that he would still be well would not be there. He is able to mask and be guarded. Yes there is a reason to consider a Hybrid Order and it is a matter for the Judge. But, in my view, the best way to protect the public is to impose s37/41 orders. With s.45A the mental health side is bolted on and not part and parcel of monitoring. On licence Probation would do the monitoring, it is more arms' length. Whether BYER would engage with MH services, would have to be asked for.

A Hybrid Order is not like a life licence and it is not a Restriction Order. The response can be sluggish and we know that offenders do better on 37/41 orders in that there is a lower percentage who reoffend.

I think BYER has quite a bad illness. The person we saw years ago is not there anymore. His illness has such a grip on him, it was so dominating. He does think about it but he comes across as not very empathetic, as detached. His emotions are

not there. His flat affect is a consequence of the illness and not that he is callous. You see that flat affect over time. The illness makes him detached. The bereaved family have to understand the illness and that it was not personal, it was unfortunately him who BYER came across.

31. In his report Dr. Hafferty makes many similar observations. I note in particular:

When considering the protection of the public:

The Defendant has shown a good response to pharmacological therapy. His psychological assessment and treatment has only begun and is likely to be difficult for the reasons stated. In my opinion, Mr Byer requires the supervised care of specialised forensic services and I consider this need to be long-term and possibly life-long. If he should become noncompliant with his medication again, I believe the risks the Defendant poses of violence are potentially grave.

I do not believe this supervision and managed treatment can be effected by prison healthcare services, the Parole Board, or probation services. In the event of Mr Byer returning to prison after hospital treatment to complete the determinate part of his custodial sentence, as part of a Section 45A 'Hybrid' order, in my opinion the Parole Board can offer little in the material assistance of public safety in this case than to follow the advice of clinicians, since Mr Byer's risk is extant from his mental disorder (schizophrenia, personality disorder and substance misuse). Such effective interface between prison clinicians and the Parole Board is far less likely to be as effective and comprehensive as the interface between forensic psychiatrists and the Ministry of Justice/First Tier Tribunal offered by a Hospital Order route, in my opinion.

Summary:

I have considered carefully the applicability of a Section 45A 'Hybrid' order in this case and also considered the opinion of Dr Ian Cumming, who has also provided psychiatric evidence to the Court.

It is my view that a Section 45A would not be the most appropriate disposal in the Defendant's case. I agree with Dr Cumming that it is not the preferred recommendation from a psychiatric point of view, for the reasons stated above.

32. Dr. Hafferty gave evidence during the course of the sentencing hearing. He adopted his reports and agreed with the summary conclusions in the latest report. He set out the way in which treatment can be given and issues around management in the prison estate. He expanded on the reasons why the preferred course here is that you stay within the secure hospital environment as opposed to the prison estate as well as the extensive treatment that is required. The treatment is going to long-term and probably lifelong. He confirmed that he is clear that the best way of protecting the public is through a hospital order with a restriction order. He cannot be definitive as to the timing. He confirmed the findings in his report that the treatment is at the early stage and he will be in high security for a number of years and then go a lesser level of security. There is a possibility that he may remain in hospital for the rest of his life – long-term and possibly life-long treatment.

33. The leading case in this area of sentencing is the decision of the Court of Appeal of R. v. Vowles and others [2015] 2 Cr. App. R. (S.) 6. I have considered paragraphs 51 to 55 of the judgment in particular. There are a number of other authorities that have considered the approach including that of R. v. Paul Surrey [2022] EWCA Crim 1379. and R. v. Walker [2023] 2 Cr. App. R. (S) 39.

Sentence.

34. In my view the conditions in s.37(2) (a) are met in this case. You are someone clearly suffering from paranoid schizophrenia – a chronic mental illness. Taking into account the factors set out in the case of Vowles, namely: (1) the extent to which you need treatment for the mental disorder from which you suffer, (2) the extent to which the offending is attributable to the mental disorder, (3) the extent to which punishment is required and (4) the protection of the public including the regime for deciding release and the regime after release, I am entirely satisfied that the appropriate way to deal with you is by the making of a hospital order with restrictions. I know there is a place available to you within the Newmarket Ward at Broadmoor Hospital under the continuing care of Dr. Hafferty. In all the circumstances, but in particular as to what is said about the regime on release, whilst I have given consideration to a hybrid order, I have come to the view that the passing of a penal element is not likely to assist in the management of the obvious risks here.
35. I am also satisfied that this is a case where, having regard to the nature of the offences here, the offence of manslaughter in particular, and the risk of you committing further offences if at large, that it is necessary for the protection of the public from serious harm, that I should further order that you be subject of the provisions of s.41 of the 1983 Act, and so I will make in addition a restriction order. The hospital order with restriction order is the sentence on both counts.
36. If the statutory surcharge applies in this case, the appropriate order can be drawn up.

Recorder of London
His Honour Judge Mark Lucraft KC
Central Criminal Court,
Old Bailey,
London EC4M 7EH
May 10th 2024.