APPROVED

IN THE COURT OF APPEAL

CRIMINAL DIVISION

NCN: [2021] EWCA
Crim 1922
No. 202100407 A1

Royal Courts of Justice

Thursday, 4 November 2021

Before:

LORD JUSTICE POPPLEWELL
MR JUSTICE SPENCER
HIS HONOUR JUDGE KEARL QC RECORDER OF LEEDS

REGINA
V
JOHN JAMES LUNDY

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MR L. R. O'BRIEN appeared on behalf of the Appellant.
MR P. ROONEY appeared on behalf of the Respondent.

J U D G M E N T

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LORD JUSTICE POPPLEWELL:

1 On 7 January 2021, in the Crown Court at Newcastle upon Tyne, the appellant was sentenced by Mr Recorder Sandiford QC for two offences to which he had pleaded guilty on 23 September 2020. For an offence of wounding with intent, contrary to s.18 of the Offences Against the Person Act 1861, he was sentenced to life imprisonment, with a minimum term of six years, less 200 days spent on remand and to a Hospital and Limitation Direction under s.45A of the Mental Health Act 1983. An order in this form is sometimes referred to as a hybrid order. For the other offence of assault on an emergency worker, contrary to s.1 of the Assaults on Emergency Workers (Offences) Act 2018, he was sentenced to a concurrent term of six months' imprisonment. He appeals against sentence with leave of the single judge limited to the question of whether a determinate or extended sentence should have been imposed rather than a life sentence. He was refused leave on the additional ground advanced that a s.37 Hospital Order, coupled with a s.41 direction, should have been imposed, rather than a hybrid s.45A order, and that ground is not renewed.

2 The circumstances of the offences were these. On the 26 October 2019 the appellant was an in-patient at St George's Hospital, having been detained under the Mental Health Act 1983. His detention was as a result of his diagnosis of paranoid schizophrenia. The victim, Mr Tonkin, was on duty as a nursing assistant and was in the kitchen when the appellant entered carrying a metal walking stick and said to him "I've come to get you". The appellant then turned to another member of staff and said "Sarah, don't get involved. What I'm going to do to him I will go down for at least six years." The appellant then lunged at Mr Tonkin, raising the metal walking stick and hit Mr Tonkin hard with it to his upper left arm. A scuffle ensued and both men fell to the floor. The appellant bit Mr Tonkin's back. That ripped his clothing but did not make contact with his skin. Other staff members pulled the appellant away and took him to a seclusion room where he remained until the police

arrived. As a result of the assault, Mr Tonkin suffered bruising to his left upper arm and a pulled a muscle in his neck.

3 On 16 June 2020, at approximately 6.45 in the evening, Mark Robinson and his partner, Deborah Morton, were walking their dogs in Alnwick Pastures next to Alnwick Castle. The appellant, who was unknown to them, walked towards them and stepped into Mr Robinson's path. The appellant pulled a military-style knife with a three inch blade from his pocket and said words to the effect of "This will teach you" or "I'm going to have you". Mr Robinson shouted to his partner to run, and himself retreated from the appellant who followed him. The appellant then started to turn his attention to Ms Morton. With conspicuous bravery, Mr Robinson placed himself between the appellant and Ms Morton in order to protect her. The appellant lunged at Mr Robinson with a knife, as a result of which he fell backwards. The appellant jumped on him and stabbed him in the chest. The appellant tried to stab him again three or four times to the body, but Mr Robinson overpowered him and the appellant backed off and, ultimately, walked away. Mr Robinson sustained a stab wound to the left-hand side of his chest which punctured his lung. Blood was spurting from this wound in his chest. Others in the area came to assist him and Ms Morton in their attempts to stem the flow. So serious was the injury that an air ambulance was called, but because of a change in weather conditions Mr Robinson had to be taken to hospital by road.

4 Meanwhile, the appellant threw the knife into the river and then telephoned his mother and told her that he had stabbed someone. He resisted arrest, charging at one police officer and taking him to the floor before being overwhelmed. He refused to be interviewed, becoming aggressive with the appropriate adult and refusing to believe that the legal representative who attended was in fact a legal representative.

5 The Victim Personal Statements from both Mr Robinson and Ms Morton set out in detail the devastating effect which the attack had upon both of them. So far as Mr Robinson was

concerned, it had a truly life changing effect, causing him severe psychological harm, as well as continuing physical symptoms. In Ms Morton's case, the adverse psychological effect was significant.

6 At the time the appellant entered his guilty pleas, a report addressing his mental health had been prepared by Dr Turner, a forensic consultant psychiatrist. The report stated that the appellant was suffering from a mental disorder in the form of schizophrenia, which carried a significant risk to others, and which was of a nature and degree as to make it appropriate for him to be detained in hospital for treatment. The report concluded with Dr Turner recommending that consideration be given to the imposition of a hospital order under s.37 of the Mental Health Act with a restriction set out in s.41 of the Act.

7 In order to provide the court with the option to impose such an order, the proceedings were adjourned for a further report to be prepared by a second psychiatrist, Dr Moore. Like Dr Turner, Dr Moore was of the view that the appellant was suffering from schizophrenia and that this was of such a nature and degree that he should be detained in hospital for treatment. He too recommended the imposition of a hospital order with restrictions pursuant to s.37 and s.41 of the Act. Dr Moore gave oral evidence to the same effect at the sentencing hearing.

8 The Recorder's sentencing remarks were detailed, well-structured and clearly reasoned. He first recited the circumstances of the two offences, observing that there were features of each which showed that despite the appellant's mental disorder he was aware of his actions and able to exercise choice and control over them, and which demonstrated that he was aware at that time of the criminal nature of his wrongdoing. In relation to the attack on Mr Robinson in particular, the Recorder observed that the appellant had later told Dr Moore that he, the appellant, had thought that Mr Robinson was his father whom the appellant had wanted to attack, but that when he realised that he had misidentified him after stabbing him, he desisted and it was for that reason that he ran away. The Recorder identified that disposing

of the knife in the river and confessing to his parents showed an awareness of his wrongdoing.

9 The Recorder then set out the history of mental illness and aggressive and violent behaviour which was demonstrated by the appellant's previous convictions and by his extensive medical records. In the light of the issue in this appeal, we think it right to set out in full the Recorder's accurate summary of the evidence which was before him:

> "I turn then to your antecedent history which in your case consists both of your previous convictions and also the history of violence disclosed by your medical records. In summary those two documents provide evidence of a number of occasions when you have used or armed yourself ready to use or threaten violence against others, and those in my judgment are relevant both to the question of culpability and of risk.
>
> In terms of previous convictions, on 30 August 2014, you were involved in an incident whereby you took a garden spade and used it to hit a neighbour twice in the head causing a wound. Somewhat surprisingly, given that description of events, you were convicted or charged with, and pleaded guilty to, only an offence of s.20 wounding, in other words unlawful wounding without intent, and an offence of having an offensive weapon, for which you were dealt with by the court on 9 December 2014.
>
> On 23 January 2018, at the Northumbria Specialist Emergency Care Hospital A&E Department, you had been admitted or had attended, and you attempted to punch a nurse and threatened to stab her, and then you assaulted a security guard when you were asked to leave and you were dealt with for those offences by the court on 8 February 2018.
>
> Turning to the incidents recorded in your medical records. First of all, in June 2005, the medical records record an incident involving some builders and a van. You formed, no doubt because of your mental disorder, the view that they had made some derogatory comments towards you. Your response to that was to tear the leg off a table and return with the intention of attacking them. When they retreated you contented yourself with smashing up their van and then chased one of them, but you were intercepted and restrained by the police before fortunately you could catch him.

The consultant at the time observed that it was of great concern that you had engaged in a premeditated attack, albeit that it appeared to be driven by paranoid delusions and possibly auditory hallucinations, and he opined that if you had not been restrained by the police you would have seriously assaulted one or more of the men. For your part you described yourself as being a shy person at that stage who was capable of committing a serious crime under the influence of alcohol. There is also reference, around the same period of time, to you being intoxicated and threatening to blow people up by making homemade bombs and also an incident in which you had held a knife to your next door neighbour. In any event, by that time at the latest, it was recognised that you were suffering from schizophrenia and that you needed to take regular antipsychotic medication, and indeed that depot administration of that medication should be considered at that time.

The next incident of note is in 2008. In May you were admitted as an inpatient into hospital following an incident in which you had armed yourself with a knife to go out looking for a man who you thought had been spiking your drinks. Again, that appears to have been a delusional belief emanating from your mental disorder, but nevertheless one which you chose to act on in a criminal fashion.

[...]

However, what is significant in my judgment is that the records record that you said that you approached the man but then desisted when you saw what you thought was a plain clothes police officer and an ambulance in the vicinity. Again, those are significant matters in my judgment, because the fact that you desisted when you thought a policeman was nearby provides further support for the conclusion that notwithstanding your mental disorder you know what you are doing is wrong and you are able to exercise choice and control over your actions, and so when you realised a policeman was nearby you chose not to continue because you realised of course that that might result in your arrest and no doubt punishment. So that was May/June of 2008.

There is then a period so far as your medical records are concerned of relatively stability where you had a series of reviews from about the end of November, at the end of 2009 through to about 2013 where no incidents are recorded. However, to as it were keep the chronology, I remind myself that there was of course the incident in August of 2014 which led to your appearance before the Crown Court in December

of 2014. But we move forward to January of 2018, another occasion when you had stopped receiving your depot medication and the medical notes record, it was noted that, 'Last week he lost his temper, pulled a knife on his', and it is redacted in the records or in Doctor Turner's report, but I am satisfied from other material I have read that would appear to be your father. You kicked a hole in the door and police came out, and it was noted that your psychosis and depressive symptoms had relaxed and that you were not very well at that stage.

In February, the next month, you reported having taken a box of paracetamol and then pulling a knife on a doctor and there having been a fight with three security guards. That appears to be a reference to the incident that led to your conviction in February of 2018 for offences in January 2018.

[...]

A few days later, 9 February, there was noted to have been a rapid improvement in your condition, Mr Lundy, when you had started to take antipsychotic medication, and the medical records noted that your mood had improved, there were no clear signs of psychosis, no suicidal ideations and no aggressive thoughts towards others, and in my judgment this is a feature of your medical records, that when you start to take the antipsychotic medication you recover relatively quickly. However, what is equally clear is that when you stop to take it there are an equally rapid deterioration, which is what happened, because that was 9 February. By 9 March 2018, so only four weeks later, you had deteriorated to the point that you were detained at St George's Hospital and remained there for a number of weeks until 25 April. At the point of admission you were describing paranoid delusions, getting messages from the TV about things that were said to have happened to you, your father and also your drinks being spiked, and it was noted again that you improved rapidly when antipsychotic medication was increased.

So that was the admission to 25 April 2018, but you were released from, or discharged from hospital on 25 April. By 9 July of 2018 you were detained again, this time under s.136 of the Mental Health Act. This followed an incident where you went to a property with a sledgehammer and a retractable knife with a view to killing the occupant. You said that you had received a message from your television set to do this because the person was a heroin dealer and responsible for causing brain damage to you. That was clearly a severe psychotic episode with you hearing voices

ordering you to kill. I observe that that is not a feature of either of the attacks for which I have to sentence you, and in particular it is not a feature of the attack on Mr Robinson in June 2020, and so that appears to have been a more severe psychotic episode on that occasion.

In any event you were admitted to St George's Hospital between 9 July and 7 August. It was noted of course that there had been a clear deterioration in your mental state and you were at risk of self-harm, harm to others driven by this relapse, and it was noted that you had a history of violence and aggression, weapon carrying and a history of violence and aggression towards others.

By 7 August, so less than a month later, your depot medication had been accepted by you again and your condition had improved, and you were discharged, and it was observed that you had demonstrated good insight into your pre-admission state and your current mental state, 'And he said the relapse was due to no efficacy of his prescribed antipsychotic medication', in other words you were saying that you had recognised that your medication had not been working, and so you appeared at that point at least to have insight into your condition. However, by 28 November of the same year, so about three and a half months later, you had deteriorated again. You were describing relatives being in the television set and you had purchased petrol and had thoughts of harming people using that petrol, and it was noted at that stage that you had delusional beliefs and you were hearing voices from the television telling you to kill yourself.

Well, that was 28 November. A short time later in December you were reviewed again by the consultant psychiatrist who noted that your delusional ideas were still held but with less intensity, and this was said to be concordant with medication, so in other words you were cooperating with taking your medication, and you had good insight into your mental state such that the risks to others were reduced, and so again another example in my judgment of you making a fairly rapid recovery. But by 29 January, so the next month, you had stopped taking your medication again, you were suffering from delusional persecutory beliefs and as a result you were carrying a knife and a crowbar for protection.

On 1 February 2019 you were again an inpatient in hospital until 25 March. It was noted that you had been refusing your medication and that when you relapsed in this way you had delusional thoughts such as thoughts to kill your parents. A crowbar

was recovered from your house and you suggested to the doctors that you had it because you wanted to use it on the community psychiatric nurse. Well, by 25 March your antipsychotic medication had started, you presented as much better, and you were discharged from hospital.

We then move forward to October of 2019. The mental health team attended to administer your depot medication, in other words an injection of your antipsychotic medication, but you were found to be acutely psychotic, you were making threats to harm your father, you had no insight into your condition and displayed a number of persecutory delusions, and as a result of that you were detained in St George's Hospital from 3 October until 14 January 2020. It was during that period that you committed the first offence for which I have to sentence you the assault on an emergency worker. During that period it was noted that you said that you did not need your medication as you were not mentally ill. You disagreed with your diagnosis and you said that if you had to kill someone to go to jail to prove that you were not schizophrenic then that is what you would do, which again in my judgment shows notwithstanding your mental disorder and the way it affects your thinking, you understand that attacking and killing other people is wrong and would result in you being sent to prison."

10 The Recorder next referred to the conclusions in the reports of Dr Turner and Dr Moore. Both agreed that the appellant had for some years been suffering from schizophrenia. Dr Turner concluded that he had suffered from schizophrenia since 2005. Dr Moore also offered the opinion that there was evidence of a second mental disorder, namely a recurrent depressive disorder. The Recorder observed that the history was characterised by periods of recovery, interspersed with periods of deterioration, often when the appellant failed to take his medication and, in those circumstances, the deterioration into violent and dangerous behaviour was very rapid. The failure to take his medication was only in part due to his mental health condition, but was also because he did not like the side effects and because he did not think he was unwell. The Recorder said that he therefore had some responsibility for his failure to take his medication and failure to manage his condition.

11 The Recorder next identified that he should adopt the structured approach identified at para.34 of *R v Edwards* [2018] EWCA Crim 595; [2018] Cr App R(S) 17, referring also to the decision of this court in *R v Fisher* [2019] EWCA Crim 1066. He concluded that this was a case in which a s.37 hospital order with a s.41 direction might be imposed, and that that conclusion meant that he must go on next to determine whether a s.45A hybrid order should be imposed. He said that in determining whether a s.45A order might be more appropriate than a s.37/s.41 hospital order, he needed to address the appropriate custodial sentence for the offences. Applying the Sentencing Council Guidelines, he determined that if a determinate sentence were to be imposed, the total term of imprisonment would be nine years, comprising eight years and eight months for the s.18 offence and a consecutive four months for the emergency worker assault. That reflected the diminished culpability arising from the appellant's mental illness, and a full one-third discount credit for plea, but for which, he said, the s.18 offence would itself have warranted a sentence after trial of 15 years.

12 The Recorder next addressed the question of dangerousness, so as to consider whether if he were to impose a custodial sentence as part of a s.45A order, he would have to consider an extended sentence under s.226A of the Criminal Justice Act 2003 or a discretionary life sentence under s.225 of that Act. He concluded that the appellant was dangerous within the statutory definition of that term in s.280(1)(c) of the Act. In reaching that conclusion, he relied not only on the nature of these offences, but also on the history of aggression and violence revealed by the medical records and previous convictions, and additionally on the views of both Dr Turner and Dr Moore that he posed a high risk of serious harm to the public. Dr Turner's risk assessment was that if he offended again it was likely to be in the context of persecutory delusions involving an assault with a weapon either against professionals involved in his care or against his father or against a member of the public resulting in serious harm. That conclusion was in our view inevitable and it had been

conceded in the sentencing hearing before the Recorder that the appellant satisfied the definition of dangerousness. We would ourselves emphasise that the risk to members of the public which was disclosed by all this material was a very grave risk of very grave harm.

13 The Recorder turned next to the guidance in *Attorney General's Reference (No.27 of 2013) R v Burinskas* [2014] EWCA Crim 334; [2014] Crim App R (S) 45 in relation to discretionary life sentences for dangerous offenders and, in particular, para.22 of the judgment in that case in which Lord Thomas CJ said:

> "In our judgment, taking into account the law prior to the coming into force of the CJA 2003 and the whole of the new statutory provisions, the question in s.225(2)(b) as to whether the seriousness of the offence (or of the offence and one or more offences associated with it) is such as to justify a life sentence requires consideration of:-
>
> i) The seriousness of the offence itself, on its own or with other offences associated with it in accordance with the provisions of s.143(1). This is always a matter for the judgment of the court.
>
> ii) The defendant's previous convictions (in accordance with s.143(2)).
>
> iii) The level of danger to the public posed by the defendant and whether there is a reliable estimate of the length of time he will remain a danger.
>
> iv) The available alternative sentences."

14 As to (i) the Recorder said that the s.18 offence involved the infliction of a serious and dangerous wound with devastating effect and was a most serious offence of its type and kind. As to (ii) he took into account the s.20 conviction involving the dangerous act of hitting a person in the head with a spade twice, and the assault on medical staff in January 2018 with a threat to stab. As to (iii) the Recorder said this:

> "In my judgment you pose a grave danger to the public and you have done so over a number of years when your schizophrenia has gone unmedicated. That has now happened on a number of occasions spread over a period of fifteen years. In my

judgement there can be no reliable estimate of the length of time for which you will remain a danger since it depends not only on you complying with your treatment but also keeping up with your medication and you have now demonstrated over a period of time that that is something that you are unable to do, and that even if there comes a point when you can be safely released into the community there will remain the risk that you will stop taking your medication or stop cooperating with it and you will commit further offences. Your medical records and your behaviour shows, in my judgement, that your condition can change rapidly and can relapse even after a relatively long period of apparent stability and insight on the one hand, and on the other can deteriorate very quickly and result in you becoming dangerously prone to offences of violence.

I also have to look and consider the other available alternative sentences and consider whether they would meet the risks that you pose. In my judgment an extended sentence under s.226A would not meet the risk that you pose because of the psychiatric history and the history of recovery and relapse which I have just outlined. There is no guarantee that at the end of a period of an extended sentence that the position would not remain the same as it remains today. For the same reasons a determinate sentence of imprisonment would not be adequate to protect the public and in the end I am driven to the conclusion that if a custodial sentence is to be imposed in your case, only an indeterminate sentence, a life sentence, would protect the public against the risk that you would pose and that you will continue to pose into the foreseeable future, even if treatment in the short or medium term is successful. In my judgment a life sentence, an indeterminate sentence under s.225 would enable the Parole Board to ensure that the risk posed by you is sufficiently reduced to enable your release and could thereafter be monitored to ensure public safety."

15 The Recorder then addressed the question of whether a s.37/s.41 order should be made or a hybrid s.45A order, and concluded that the latter was appropriate. The Recorder did not regard the differences between the release provisions as sufficient reason to deflect him from passing a sentence that contained a penal element to reflect the appellant's significant responsibility and culpability in this case. He accordingly passed the custodial sentences which we have already described and directed that in respect of both offences under

the provisions of s.45A the criteria for a hospital order were met and that the appellant would be subject to the special restrictions set out in s.41 of the Act without limit of time.

16 On behalf of the appellant Mr O'Brien argued in his written grounds, and orally before us, that the imposition of a life sentence exposed the appellant to the risk of being recalled to prison upon committing a minor offence at a time when his mental health conditions were being properly managed and under control, and was manifestly excessive.

17 We are unable to accept this submission. The provisions of the Criminal Justice Act 2003 were applicable in this case because the conviction occurred prior to 1 December 2020, after which the Sentencing Act 2020 would have applied. The available alternatives for a custodial sentence under s.45A were (1) a simple determinate sentence; (2) an extended sentence under s.226A of the Act, in which the extended period of licence could have been for a maximum period of five years or (3) a discretionary life sentence pursuant to s.225 of the 2003 Act.

18 Section 225 provides as follows:

> "Restriction on consecutive sentences for released prisoners
>
> (1) A court sentencing a person to a relevant custodial term may not order or direct that the term is to commence on the expiry of any current custodial sentence from which the offender has been released under—
>
> (a) Chapter 6 of Part 12 of the Criminal Justice Act 2003 (release, licences, supervision and recall), or
>
> (b) Part 2 of the Criminal Justice Act 1991 (early release of prisoners).
>
> (2) In this section 'relevant custodial term' means a term of—
>
> (a) detention under Chapter 2 of this Part,
>
> (b) detention in a young offender institution (under this Code), or
>
> (c) imprisonment.

(3) In this section, 'current custodial sentence' means a sentence that has not yet expired which is—

(a) a sentence of imprisonment,

(b) a sentence of detention in a young offender institution, or

(c) a sentence of detention imposed under any of the following—

(i) section 250,

(ii) section 254 (including one passed as a result of section 221A of the Armed Forces Act 2006),

(iii) section 226B or 228 of the Criminal Justice Act 2003 (including one passed as a result of section 221A or 222 of the Armed Forces Act 2006),

(iv) section 91 of the Powers of Criminal Courts (Sentencing) Act 2000,

(v) section 53(3) of the Children and Young Persons Act 1933,

(vi) section 209 of the Armed Forces Act 2006, or

(vii) section 71A(4) of the Army Act 1955 or the Air Force Act 1955 or section 43A(4) of the Naval Discipline Act 1957."

19 We would make two observations. First, as this court said in *Edwards* at para.10, where the sentencing judge is satisfied that an offender is dangerous and that the two conditions in s.225(2)(a) and (b) are met, he *must* impose a life sentence. There is no discretion.

20 Secondly, although the court must have regard to rehabilitation of the offender, and to the culpability of the offender, it is inherent in the terms of s.225 itself, and its application to dangerous offenders, that it is the protection of the public which should be at the forefront of the consideration of whether to impose a life sentence rather than a determinate or extended sentence. As this court said at para.12 in *Edwards*:

"... the graver the offence and the greater the risk to the public on release of the offender, the greater emphasis the judge must place upon the protection of the public and the release regime."

21 In that case the court also explained the effect of a s.45A order on a determinate and indeterminate sentence at paras. 7 to 10 (which is also reflected in the Sentencing Council Guideline for sentencing offenders with mental health disorders, developmental disorders or neurological impairments):

"Determinate sentences

7. If a s.45A patient's health improves so that his responsible clinician or the Tribunal notifies the Secretary of State ('SoS') that he no longer requires treatment in hospital under the MHA, the SoS will generally remit the patient to prison under section 50(1) of the MHA to serve the rest of his sentence. On arrival in prison, the s.45A order would cease to have effect and the offender would be released from prison in the usual way.

8. If there has been no improvement at the automatic release date, the limitation direction aspect of s.45A falls away. At that point, the patient remains in hospital but is treated as though they are subject to an unrestricted hospital order so that the point at which he is discharged from hospital is a matter for the clinicians, with no input from the SoS.

Indeterminate sentences

9. If a s.45A patient's health improves such that his responsible clinician or the Tribunal notifies the SoS that he no longer requires treatment in hospital under the MHA, the SoS will generally remit the patient to prison under section 50(1) MHA. On arrival in prison, the s.45A order would cease to have any effect whatsoever. Release would be considered by the Parole Board in the usual way.

10. If a s.45A patient has passed their tariff date and the Tribunal then notified the SoS that he is ready for conditional discharge, the SoS could notify the Tribunal that he should be so discharged (section 74(2)). In that case, the offender would be subject to mental health supervision and recall in the usual way. However, the SoS would, in practice, refer the offender to the Parole Board."

22 For this appellant, the relevant difference between the three alternatives of a determinate, extended or life sentence, is the length of time for which he will be on licence following release from custody, assuming that the responsible clinician or Mental Health Tribunal has taken the view before the expiry of the minimum custodial term of six years in each case that the appellant no longer requires hospitalisation to treat his mental disorder. Additionally in the case of a life sentence it also affects whether his release is automatic or subject to the control of the Parole Board:

(1) A determinate sentence of nine years would involve automatic release after six years and a licence period of three years thereafter.

(2) An extended licence would involve automatic release after six years and a licence period thereafter of up to a maximum of eight years.

(3) A life sentence would involve eligibility for release after six years but release would be subject to a Parole Board assessment as to the dangers which the appellant would pose if released into the community, and it would further involve a lifetime on licence.

23 In each of those alternatives the licence conditions for the period during which the appellant would remain subject to licence would be such as would seek to ensure the supervision and management of the appellant in the community and, in particular, supervision and management of his mental health condition and medication and treatment to keep that under control, so as to prevent or minimise his risk of serious harm to the public. The difference lies in the periods for which that supervision and management would last, as well as in the initial decision as to whether any release into the community would, in the view of Parole Board, constitute an unacceptable risk to the public.

24 For the reasons explained by the Recorder, the important sentencing purpose of protection of the public reflected in s.142(d) of the 2003 Act dictates that there should be an ability to exercise supervision and management over the appellant and his medical treatment in

the community for the remainder of his life, even if it were the case that after six years the view could properly be taken that the protection of the public could adequately be achieved by his management in the community. The appellant's schizophrenic history has lasted for some 15 years and without medication, which he has sporadically but regularly failed to take, and without properly submitting to the medical treatment to which he needs to commit himself, there has resulted a high risk of serious harm to the public. There is no reason to believe that that is a risk which will have disappeared in 14 years' time, which would be when he would be free from licence conditions if the maximum available extended sentence under s.226A were imposed.

25 Balanced against this, his risk of recall for a minor offence lasting for his whole life carries little if any weight for at least three reasons. First, if the s.225(2) conditions are satisfied, a life sentence is mandatory; there is no discretion. Secondly, the paramount consideration in a case of this sort is the protection of the public from harm. Thirdly, whilst recall on licence for a minor offence is theoretically possible, it is by no means inevitable; the decision whether or not to recall an offender to prison on licence involves a discretionary assessment of whether the offending is sufficiently serious to justify recall; and even if recalled, the Parole Board can ensure release if there were no risk to the public or none which could not adequately be managed in the community with the benefit of the powers which go with his being on licence. In addition, a life sentence provides this important additional protection for the public. If at the end of six years the appellant's condition were such that he remained a danger to the public which could not adequately be managed in the community, a life sentence would ensure the protection of the public, because the Parole Board would not release him at that stage. In the event of a determinate or extended sentence being passed, there would not be that protection; release would be automatic.

26 For all those reasons the appeal will be dismissed. In conclusion we wish specifically to commend the exemplary sentencing remarks of the Recorder, which we regard as faultless.

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