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IN THE COURT OF APPEAL
CRIMINAL DIVISION
Case No: 2022/02272/B1
[2023] EWCA Crim 200



Royal Courts of Justice
The Strand
London
WC2A 2LL

Thursday 9th February 2023

B e f o r e:

THE VICE-PRESIDENT OF THE COURT OF APPEAL, CRIMINAL DIVISION
(Lord Justice Holroyde)

MR JUSTICE COTTER

SIR NIGEL DAVIS

R E X

- v -

PHILIP BURDETT

Computer Aided Transcription of Epiq Europe Ltd,
Lower Ground, 18-22 Furnival Street, London EC4A 1JS
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

Mr G Ahmed appeared on behalf of the Appellant

Mr T Cray KC appeared on behalf of the Crown

J U D G M E N T
(Approved)

Thursday 9th February 2023

LORD JUSTICE HOLROYDE:

1. On 29th April 2022, following a trial in the Crown Court at Leicester before Pepperall J and a jury, the appellant was convicted of the manslaughter by gross negligence of his sister Julie Burdett. On 30th June 2022, he was sentenced to three years' imprisonment.
2. He appeals against that sentence by leave of the single judge.
3. Julie Burdett was aged 61 at the time of her death in January 2019. The appellant was then aged 56. They lived with their father, then aged in his late 80s. It appears that they were a family of hoarders, and material conditions in the house were poor.
4. Julie Burdett had the misfortune to suffer from a number of serious medical problems, including in particular a form of multiple sclerosis. She had become increasingly immobile, and for a number of years had rarely left the home. She was cared for by her father and brother. The appellant received carer's allowance. All three had been badly affected by the circumstances in which the appellant's mother had died in hospital some years earlier, and Julie Burdett had made clear that she did not wish to be admitted to hospital.
5. By the beginning of 2019, Julie Burdett was vulnerable and unable to care for herself. On 15th January 2019, an ambulance was called to the house. Julie Burdett's body was found on the floor of her bedroom. The bed itself was covered in clutter. She was lying in her own vomit, urine and faeces, and there was an overpowering smell in the house. Julie Burdett was severely emaciated; she weighed less than five stone. There were a number of ulcers on her body which had developed to such an extent that her flesh had been

stripped away, exposing the spine and hip bone. An expert witness gave evidence that she had never seen such extensive pressure sores in over 40 years of experience. The wounds had become infected with MRSA, and osteomyelitis and sepsis had developed. Twelve Fentanyl patches, each containing a potentially fatal opioid dose, were found on her body.

6. In interview, the appellant said that his sister had fallen about two weeks earlier. He had not been able to put her back on the bed, and had made her comfortable on the floor. He said that he had thought that she was getting better, and that he could not call for help because of her wish not to go to hospital.
7. The indictment particularised the gross negligence as allowing Julie Burdett to become malnourished, failing to move her from the floor, failing to provide adequate cleaning of her bodily excretions, giving her excessive doses of painkillers, and failing to call for medical or other help.
8. At the sentencing hearing the judge was assisted by a pre-sentence report and a psychiatric report. The experienced author of the pre-sentence report assessed the appellant as a man who struggled with the basic range of living skills. There were considerable deficits in his ability to look after himself, left alone to assume responsibility for others.
9. The appellant had no previous convictions.
10. The judge found that Julie Burdett had been on the bedroom floor for at least two weeks by the time of her death. He said that her pressure sores would have been excruciatingly painful, but that the Fentanyl overdose would have provided sedation and pain relief. He referred to the foul smells which must have been noticed, and the obvious deterioration in Julie Burdett as she lost all function.

11. The judge found that as early as the first week when Julie Burdett was lying on the floor, there was an obvious, serious and foreseeable risk of death if she was not provided with proper care. There had been a window of days when her life might have been saved. The offending was accordingly committed over a number of days, rather than weeks. But there had been a failure to seek any help at all, or to provide even basic care. The judge said that it was therefore not a case of a short-term lapse in an otherwise satisfactory standard of care. The judge accepted, however, that it was not a case of callous disregard. The appellant had loved his sister, had promised her that he would not cause her to be admitted to hospital, had buried his head in the sand, and had clung to an unrealistic hope that she would somehow pull through. Further, the judge noted that the appellant had himself been unwell over the New Year period and had been "utterly out of his depth" when his sister was lying on the bedroom floor.

12. The judge considered the Sentencing Council's definitive guideline for offences of gross negligence manslaughter and concluded that the case fell into the category of medium culpability, with a starting point of four years' custody, and a range from three to seven years. He took the starting point of four years. He accepted the submission of defence counsel that the offence was complete once death became inevitable, but held that it was nonetheless an aggravating feature that the appellant had taken no proper steps to provide care or to seek medical assistance as his sister had deteriorated and drifted in and out of consciousness.

13. The judge identified a number of mitigating factors: the appellant had no previous convictions; he suffered from a recurrent depressive disorder and from agoraphobia; he was ill-equipped to deal with his sister's complex care needs; some three and a half years had passed since the death; and prison would be harder for the appellant than for many

others.

14. Balancing the aggravating and mitigating factors, the judge concluded that the appropriate sentence was three years' imprisonment.
15. On behalf of the appellant, Mr Ahmed advances two grounds of appeal, with emphasis on the first. His first ground of appeal is that the judge fell into error in categorising the offence under the guideline. The second ground is that the judge was wrong to treat as an aggravating factor the failure to provide any proper care during the period after death had become inevitable.
16. As to the first of those grounds, the judge accepted that the case did not fall into higher culpability. Mr Ahmed submits, looking at the guideline, that two of the three factors indicating lower culpability were present, namely: a lapse in an otherwise satisfactory standard of care; and a substantial reduction in responsibility, due to mental disorder. From that basis, he argues that the judge was wrong to treat this as a case where the appellant's culpability fell between the factors described as high and lower culpability. He should, argues Mr Ahmed, have found the case to be one of lower culpability, with a starting point of two years' custody and a range from one to four years.
17. As to the second ground, Mr Ahmed submits that the judge had accepted that the offence was complete when death became inevitable, which was in the early stages of the period when Julie Burdett was lying on the bedroom floor. He argues that care or lack of care thereafter could not be relevant to aggravate the offence.
18. Pulling the threads together, Mr Ahmed refers to the mitigating factors found by the judge, and places emphasis also on the consequences of the appellant's imprisonment for his

father, now aged in his 90s and previously reliant to a considerable extent on his son's care. Overall, Mr Ahmed submits that the length of sentence should have been such as to make suspension of the custodial term possible, and that the judge should have found there were valid factors in favour of suspension.

19. Mr Cray KC, who has kindly attended today to assist the court, points out that the judge had had the advantage of hearing all the evidence during the trial and, having considered all the arguments such as have been put before this court by Mr Ahmed, the judge concluded that the failure of care was more than a lapse.

20. We are grateful to both counsel.

21. The judge was faced with a difficult sentencing process. He had the advantage that he had presided over a trial which had lasted several weeks, and was therefore in the best position to assess the appellant's culpability. We cannot accept the submission that the judge was wrong to place the offence into the guideline category of medium culpability. Julie Burdett was lying on the bedroom floor for a number of days before death became inevitable. She was left there in the most appalling circumstances, with the excruciating pain which her ulcers would have caused, alleviated only by the overdose of Fentanyl patches. In those circumstances there can be no criticism of the judge's conclusion that this was not a lapse in an otherwise satisfactory standard of care. As each day went by, and Julie Burdett deteriorated yet further, the appellant had not taken even basic steps to discharge his duty of care towards her. It seems to us that this was not a lapse in what had previously been loving care; it was an abandonment of it. The judge was accordingly entitled to reject a submission that the negligent conduct was a lapse of the kind indicative of lower culpability.

22. Given that the appellant had cared satisfactorily for his sister over a number of years previously, despite his own health problems and inadequacies, the judge was entitled to conclude that there was no substantial reduction in the appellant's responsibility by reason of mental disorder. It is accepted by Mr Ahmed that the third factor listed in the guideline as indicating lower culpability was not present.
23. It follows that, in our view, none of three factors in that lower category was present. The judge was accordingly correct to assess the appellant's culpability as falling between the factors described in high and lower culpability.
24. We are also unable to accept the second ground of appeal. Although the conduct causing death was complete in law in the early stages of the relevant period, it does not follow that nothing which happened in the remaining days of Julie Burdett's life, and before the offence was completed by her death, could constitute an aggravating factor. Basic steps could have been taken to make her more comfortable, to cleanse her, and to lessen the indignity of her position as she lay dying on the bedroom floor. The flaw in Mr Ahmed's submission, with respect, is the assumption that the days which elapsed between death becoming inevitable, and death occurring, are irrelevant either to aggravation or to mitigation of the offence.
25. We are therefore satisfied that the judge did not fall into error. Having taken the appropriate guideline starting point, he balanced the relevant factors, rightly concluded that the mitigation outweighed the aggravating factors, and accordingly made a significant reduction from the starting point to three years' imprisonment.
26. We recognise, of course, that the sentence is a very difficult one for the appellant, and will be difficult also for his father. We are not, however, persuaded that the sentence was

either wrong in principle or manifestly excessive.

27. Accordingly, grateful though we are to Mr Ahmed for his submissions, the appeal fails and is dismissed.

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Lower Ground, 18-22 Furnival Street, London EC4A 1JS

Tel No: 020 7404 1400

Email: rcj@epiqglobal.co.uk
