



**THE COURT OF APPEAL**

**Record Number: 192/2023**

**The President.  
McCarthy J.  
Kennedy J.**

**BETWEEN/**

**THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS**

**RESPONDENT**

**- AND -**

**CHRISTINA ANDERSON**

**APPELLANT**

**JUDGMENT of the Court delivered on the 13<sup>th</sup> day of February 2024 by Ms. Justice Isobel Kennedy.**

- 1.** This is an appeal against severity of sentence in a profoundly sad and tragic case. The appellant's trial for the murder of Gareth Kelly commenced on the 1<sup>st</sup> December 2022 and on the 13<sup>th</sup> January 2023, the appellant pleaded guilty to manslaughter on the ground of diminished responsibility. On the 20<sup>th</sup> June 2023, she was sentenced to 11 years' imprisonment with the final three years suspended.
- 2.** The judge nominated a headline sentence of 20 years' imprisonment and then reduced this to 13 years to take account of the appellant's mental disorder. This adjusted 13-year headline sentence was reduced to 11 years' imprisonment to reflect mitigation.
- 3.** The plea to manslaughter on the grounds of diminished responsibility was accepted by the Director on the basis that the appellant was, at the time of the killing, having a psychotic episode resulting from a mental disorder.
- 4.** Whilst the appellant appeals her sentence on four grounds; grounds 3 and 4 are substantially encompassed in grounds 1 and 2 where it is said that the judge erred in her nomination of the adjusted headline sentence and that she gave insufficient reduction for mitigation.

**Background**

- 5.** On the 25<sup>th</sup> February 2020, the appellant stabbed and killed the unfortunate Mr Kelly outside her home in Co. Dublin. Two parking spaces were assigned to the appellant's house. The family

had one car and so sometimes other persons used the second space without permission. The evidence adduced indicated that this was a source of aggravation to the appellant.

**6.** In the early hours of the 25<sup>th</sup> February 2020, on his return from work, Mr Kelly parked his car in one of the two parking spaces as he was staying the night with his partner and their children in a neighbouring estate. Due to difficulties in finding a parking space in the neighbouring housing estate, Mr Kelly had parked there on previous occasions. The appellant and Mr Kelly did not know each other.

**7.** On this occasion, he returned to his vehicle shortly before 7:00am having had only a few hours sleep. He had difficulty starting his vehicle and attached a power pack to the engine and sat back into the driver's seat.

**8.** CCTV captured the appellant coming out of her house in a dressing gown and appearing to speak to Mr Kelly briefly before stabbing him in the chest. She thereafter ran back into her house. Mr Kelly is seen getting out of his car, clutching his chest and falling slowly to the ground towards the rear of the car. The appellant then returned, crouched down and stabbed Mr Kelly a number of times as he lay on the ground. She went back into her house where she ripped a security alarm from the wall.

**9.** The incident was captured on CCTV and neighbours of the appellant also recorded what had occurred on their mobile phones.

**10.** Gardaí conducted enquiries in the immediate aftermath, calling to the appellant's house, where after caution, she stated *"I did it for us. I did it for love. One of us is insane, Mark. I'm protecting you by not saying anything."* She was arrested at 8:07am on the 25<sup>th</sup> February 2020, detained and interviewed. Her behaviour in the garda station was described variously in evidence at the sentence hearing as *"very unusual"*, *"distinctly odd and quite bizarre at times."* She was seen on several occasions by Dr McMonagle, her treating psychiatrist.

**11.** The evidence disclosed that the appellant was becoming increasingly obsessive about certain matters at the time of the killing, including matters such as parking spaces, ongoing litigation regarding a dispute with a neighbour and perceived harassment by some young gardaí who were renting a house nearby.

### **The Trial**

**12.** On dates between the 1<sup>st</sup> December 2022 and 21<sup>st</sup> December 2022, the appellant was tried for the murder of Mr Kelly, having pleaded not guilty by reason of insanity.

**13.** The jury heard evidence from the appellant's neighbours, friends, family and solicitor in relation to her unusual behaviour in the lead up to the index offence. There was also evidence that she had purchased knives in the days before the offence which were not used in the attack on Mr Kelly. She informed her husband that she had one of the knives on a shelf near the front door for protection. It appears she had grown paranoid about criminal activity in her area and her neighbours' involvement in same. She expressed fear for her and her children's lives.

**14.** For example, Mr Boyle, the appellant's solicitor gave evidence that on the 23<sup>rd</sup> February 2020, he received an urgent email sent by Ms Anderson in which she said the police are *"in on it."* The email sent to him caused him to be concerned. It stated:-

*"Just in case if anything happens to me I want justice and for the story to come out, for those crooks to be exposed, sorry, for these crooks to be exposed. A friend of mine works*

*for the Daily Mail. I contacted her and she said I will get a call. Can you arrange private body guard protection for all my family? I can't trust the police because they are in on it. I'm exhausted but I can't go to sleep in case our house seriously burns down and we all die in a tragic fire accident. I'm locked upstairs with the kids and cats and one of the new knives I bought earlier today yesterday. The other is downstairs. I had to stock up on supplies. I'm afraid to let the cats out in case they don't come back or I find them dead. The dog is on patrol."*

- 15.** Mr Boyle replied at 6.58 am, "*Christina, I'm very worried about your health*" to which she replied saying, "*OMG you're in on it.*"
- 16.** The appellant's husband gave evidence that he had left Ireland on a business trip on the 16<sup>th</sup> February and returned on the 23<sup>rd</sup> February. He described finding the house in disarray upon his return, that the appellant came down the stairs screaming about it being too dangerous to go out and that he found a knife concealed on a high shelf beside the front door. His concern for the appellant was such that he scheduled the earliest appointment he could for the appellant with her treating psychiatrist, Dr McMonagle for Tuesday morning at 9am.
- 17.** Further evidence was tendered from gardaí, prison officers and medical personnel as to the conduct of the appellant in the aftermath of the offence during her time in custody in Clondalkin Garda Station and the Dóchas Centre.
- 18.** Dr Brenda Wright, Clinical Director of the Central Mental Hospital gave evidence that at the time of the index offence, the appellant was suffering from a mental disorder as defined within the Criminal Law (Insanity) Act 2006, specifically, that she was suffering from a psychotic relapse of bipolar affective disorder.

### **Personal Circumstances of the Appellant**

- 19.** The appellant has a long history of mental health issues. She was diagnosed with bipolar affective disorder and had been on and off medication for a number of years. Psychiatric reports were before the court together with a Probation Report, testimonials, a letter of apology and certificates of awards and qualifications. She is a married woman and is the mother of three young children.
- 20.** Dr Wright opined that the appellant was suffering from a psychotic relapse of bipolar affective disorder at the time and delusionally believed that her life and her family's lives were in danger. In the days prior to the killing of Mr Kelly, the appellant reported that she experienced "*a sense of impending doom*", an increase in the intensity of frequency of auditory hallucinations, overt persecutory delusions and grandiose delusions. She harboured a psychotic moral justification for her actions. Dr Wright stated in her report:-

*"In my opinion, Ms. Anderson's mental disorder at the time of the offence was such as to substantially diminish her mental capacities. It is my view that the severe impairment in thinking, perception, emotion and judgment brought about by Ms. Anderson's mental disorder contributed significantly to her actions at the time of the offence."*

**21.** The submission is made by the appellant that although she was legally culpable for the unlawful killing, her mental condition either extinguished or, at the very least, substantially diminished her moral culpability and responsibility. It is said on appeal that the sentencing judge failed to engage with this argument.

**22.** The appellant sets out a precis of the evidence regarding communications and interactions with her in January and February 2020 and her presentation in the immediate aftermath of the offence and her behaviour in custody serving to underline her mental condition. It is submitted that the appellant was acutely unwell which manifested itself in persecutory delusions and hallucinations leading up to the killing.

### **Sentencing Remarks**

**23.** The sentencing judge placed the case into its legal context; s. 6 of the Criminal Law (Insanity) Act, 2006 and had regard to the decision of this Court in *People (DPP) v MR* [2022] IECA 192.

**24.** In terms of the aggravating factors, the judge referred to the unlawful taking of human life, as an extremely grave and serious matter. Regard was had to the victim impact evidence before the court by Mr Kelly's family. The judge thereafter considered the level of violence inflicted on the defenceless deceased, the fact that the appellant attacked him with a weapon, ceased the attack and then returned to resume the attack. The judge expressed the view that in the absence of diminished responsibility this offending would be at the very top end of the offence of manslaughter. No issue is taken with the nominated headline sentence of 20 years.

**25.** The judge identified the mitigating factors as the previous good character of the appellant, that she had never come to any adverse garda attention and had no previous convictions, that she suffered from a mental disorder at the time of the offence, that she entered an early plea to the charge of manslaughter, that her rehabilitation was ongoing and her prior engagement with same, that she is the mother of young children whom she had been home schooling, and her good work history.

**26.** The nominated headline sentence of 20 years was adjusted to 13 years to take account of the appellant's mental disorder. This adjusted 13-year headline sentence was then reduced to a sentence of 11 years' imprisonment to give effect to mitigation. The final three years of the sentence were suspended for a period of four years on conditions.

### **Grounds of Appeal**

**27.** The appellant relies on the following four grounds of appeal:-

*"1. The sentencing court erred in fixing the headline sentence at 13 years. Without prejudice to the generality of the foregoing, the sentencing court erred in failing to properly adjust the headline sentence to take account of:*

*(a) The appellant's diminished responsibility;*

*(b) The extent and impact of the mental disorder from which the appellant was suffering at the time of the offence; and/or*

*(c) The extent of the appellant's moral responsibility given the mental disorder she was suffering from at the time of the offence.*

2. *The sentencing court erred in calculating the applicable discount for the mitigating factors in the case. Without prejudice to the generality of the foregoing, the sentencing court erred in:*

*(a) Failing to provide an adequate discount for all of the mitigating factors in the case, including the guilty plea, the appellant's personal circumstances, and the appellant's previous good character;*

*(b) Failing to take account of all relevant mitigating factors in the case; and/or*

*(c) Failing to suspend a greater portion of the sentence imposed on the appellant in light of the exceptional circumstances of the case.*

3. *The trial judge failed to give any weight, or adequate weight to the points canvassed during the hearing and in mitigation by the defence.*

4. *the sentencing court erred in all of the circumstances in imposing a sentence that was excessive."*

## **Submissions**

### **Failure to Properly Adjust the Headline Sentence**

#### ***The Appellant***

**28.** The appellant relies on the decision of this Court in *MR* and the methodology referred to therein. It is argued that the judge did not engage to any real degree with the methodology, or the detailed analysis set out in *MR*.

**29.** Her position is that this is a case where the appellant's moral responsibility was extinguished by virtue of her mental disorder and that the sentencing judge erred in reducing the headline sentence of 20 years by 7 years without engaging in a reasoned analysis as to the extent to which the offending was attributable to the appellant's mental disorder or consideration as to the extent to which moral responsibility was diminished, or in the alternative, that this headline sentence failed to take into account the extent of the appellant's illness and the impact it had on her at the time of the offence.

**30.** It is argued that the judge erred in her application of the methodology as stated by Edwards J in *MR* at para. 97 as follows:-

*"A. In the first instance a sentencing court should determine upon the headline sentence that would otherwise apply but for the existence of the mental condition in question. This should be done in the normal way by considering in the context of the range of penalties provided for by the legislature (i) the intrinsic culpability associated with the type of offending that was committed, (ii) the extent to which that intrinsic culpability may have been aggravated, or mitigated, by factors bearing on culpability (excluding the mental condition in question), and (iii) the harm done.*

*[...]*

*B. In this second stage, the sentencing judge must now take account of the offender's cognitive issue or mental health disorder; and consider to what extent, in light of that factor, there may need to be an adjustment to his/her culpability as provisionally assessed*

*in stage A in order to arrive at the headline sentence in the particular case before him or her.*

[...]

*C. The third stage involves, as in all cases (whether there is a mental impairment or disorder or not), taking into account mitigating factors not bearing on culpability, and relevant personal circumstances of the offender, not already taken into account..."*

- 31.** It is submitted that the judge failed to consider the separate question, to be addressed as part of the second stage, as to the extent of the appellant's moral culpability or responsibility for the killing and to fix a headline sentence commensurate with same.
- 32.** On the interpretation advanced by the appellant, the fact that the appellant's responsibility was substantially diminished by reason of a mental disorder would properly form part of this assessment of moral culpability despite already reducing her legal liability. It is said that support for this interpretation is to be found in the Supreme Court judgment of *DPP v Mahon* [2019] IESC 3 IR 151 as follows: "*diminished responsibility or extreme provocation cases may also come within [the] category of low culpability manslaughter.*"
- 33.** It is further submitted that the sentencing judge failed to consider whether the moral responsibility was extinguished or merely diminished by the condition in question. This failure is relevant, it is said, because a submission that moral responsibility was extinguished was made by counsel for the appellant but was not addressed by the judge.
- 34.** It is complained that despite finding that the appellant's "*behaviour was highly dominated by her mental condition*" the judge did not make an adjustment commensurate with this finding, it is said that one would expect a far greater deduction in light of such a finding.
- 35.** It is submitted that it is clear that the reduction was not adequate when consideration is given to all of the evidence which was before the sentencing judge, demonstrating the extent to which the appellant was labouring under a mental disorder at the time of the offence.
- 36.** Particular reliance is placed on the evidence given by Dr Wright to the effect that the appellant was suffering from a psychotic relapse of bipolar affective disorder, which led her to delusionally believe that in killing Mr Kelly she was protecting her family.
- 37.** It is submitted that the findings of Dr Wright should have led to a conclusion that the appellant's moral culpability was extinguished or, at the least, very substantially diminished and it is highlighted that the respondent did not challenge the evidence of Dr Wright as to the extent of the appellant's impairment.
- 38.** Reliance is placed on the evidence heard during the course of the trial from the appellant's husband, neighbours and friends to the effect that in the weeks and days leading up to the index offence, the appellant held many beliefs which were not grounded in reality pertaining to criminal activity in her area and she conveyed these beliefs through in person visits, emails, WhatsApp and Facebook messages.
- 39.** The evidence of the appellant's solicitor is referenced. Mr Boyle gave evidence that he was dealing with a defamation claim instituted by the appellant and that her early communications with him were normal but that they then "*deteriorated significantly.*"
- 40.** This Court's attention is drawn to a series of very lengthy emails sent by the appellant to Mr Boyle in the early hours of the 23<sup>rd</sup> February 2020, concerning her conspiracy theories regarding

her neighbours and the criminal activity in which they were involved. In one email, the appellant attached a photograph of Mr Kelly's car parked in her parking spot and wrote "*I believe they are involved as they park their cars in my spot to harass me...I've been taking photos the reg should be visible.*"

**41.** In terms of the aftermath of the offence, it is outlined that gardaí came upon the appellant's house during the course of door-to-door enquiries and that the appellant was cutting fruit for her child. After the caution was administered, her husband asked the appellant whether she had hurt somebody, and she said "*I did it for us, I did it for love, one of us is insane, Mark. I'm protecting you by not saying anything.*"

**42.** Numerous gardaí gave evidence of the appellant's time in custody in Clondalkin Garda Station. Aspects of their evidence include that the appellant repeatedly stripped naked, made an escape attempt, barked like a dog and assaulted her solicitor are recounted in submissions.

**43.** It is submitted that the totality of the evidence before the sentencing judge provides a stark image of the extent of the appellant's condition, a condition which impacts significantly on her moral culpability, and which is not adequately reflected in a downwards adjustment of 7 years to the headline sentence.

**44.** Counsel for the appellant argued that this was a case in which the moral responsibility of the appellant should "*go to zero*" given the acute mental illness under which the appellant was operating at the time. However, it is submitted that this argument was not engaged with or ruled on by the sentencing judge. It is said that this is an error in principle.

#### ***The Respondent***

**45.** The respondent denies that the sentencing judge erred in fixing the headline sentence, either in the methodology employed or by failing to adjust the headline sentence sufficiently. It is submitted that the sentencing judge rigidly and correctly followed the sentencing guidance laid down by Edwards J in *MR*.

**46.** The first stage of the sentencing regime as provided for in *MR* involves the identification of a headline sentence which would apply but for the presence of the mental illness. It is submitted that this stage was addressed by the judge's consideration of the aggravating factors in the case, thus satisfying the "*intrinsic culpability associated with the type of offending that was committed*" and the "*harm done*" elements of the first stage. It is further submitted that the judge's consideration of the appellant's medical history, letter of apology, various certificates and the Probation Report satisfies "*the extent to which that intrinsic culpability may have been aggravated or mitigated by factors bearing on culpability*", the final element of the first stage of the regime.

**47.** It is submitted that the provisional headline sentence was correct and appropriate in all the circumstances. It is noted that the fixing of the initial 20-year headline sentence was in keeping with the sentencing principles enshrined in *Mahon*.

**48.** The second stage of the sentencing regime as provided for in *MR* involves adjusting the provisional headline sentence to take account of the mental health issue. Again, it is submitted that this was done, with the sentencing judge considering the extent of the appellant's mental disorder and adjusting the provisional headline down from 20 to one of 13 years. It is submitted that the judge gave careful and thorough consideration to this adjustment, examining in significant

detail the evidence of the appellant's mental condition adduced both at the trial and the sentence hearing.

**49.** It is contended that this was a generous downward adjustment which perfectly reflected the evidence in the case and the effect of the appellant's mental condition on her moral responsibility and culpability.

**50.** It is wholly refuted that this was a case in which the appellant's moral responsibility was wholly extinguished or very close to being extinguished as a result of her mental condition. It is submitted that the attack perpetrated on Mr Kelly was violent and aggressive involving the appellant returning after the initial attack to attack him a second time. It is noted that the appellant armed herself with a weapon, which it is submitted indicates a certain level of premeditation and purpose and that in the immediate aftermath of the attack, she admitted that she "did it" and told her husband "one of us is insane" which it is said, demonstrates awareness of and insight into her actions.

**51.** While it is noted that the appellant relies on the report of Dr Wright and that the sentencing judge placed reliance on the said report in the course of delivering sentence, it is submitted that the assessment of culpability is strictly within the province of the judge. The following statement of Edwards J is relied upon:-

*"To enable a sentencing court to conduct this vital secondary assessment it is very important that all relevant information, including expert opinions (either in the form of expert testimony given in court, or reports in writing) as is necessary to enable the court to do justice in the case is placed in evidence before it. That having been said, it is for the sentencing judge to make the assessment of culpability. We endorse and adopt the views of the Sentencing Council for England and Wales to the effect that where relevant expert evidence is put forward, while it must be considered and will often be valuable, it will be for the sentencing court to make its own decision as to the degree of the offender's culpability, and that court is not bound to follow an expert's opinion if there are cogent and compelling reasons not to do so."*

**52.** While not explicitly referenced in the course of sentencing the appellant in this case, it is noted that Edwards J in addressing the second step of the regime laid down in *MR* referred to the fact that incarceration, by its very nature will have an incidental incapacitatory effect which may tip the scales in favour of recourse to more rather than less custody in cases involving individuals who represent a potential danger.

### **Discussion**

**53.** The partial defence of diminished responsibility, if successful, will reduce murder to manslaughter. The practical effect of this leaves a judge at large on the issue of penalty, which ranges from that of a suspended sentence to one of life imprisonment. In general terms, the offender must be sentenced on the basis that his/her responsibility is substantially impaired and so may not be punished as if he/she bore full responsibility for the killing. However, it must immediately be said that there may be cases where the offending is so egregious that a life sentence may be appropriate. Stating the obvious, sentences for manslaughter on the grounds of diminished responsibility may vary considerably depending on the particular circumstances.

**54.** Edwards J sets out the method to analyse and determine the appropriate sentence in a case of manslaughter on grounds of diminished responsibility through engaging in a three-stage process:-

- Nominate a headline sentence without regard to the mental condition;
- Adjust the headline sentence taking account of the mental condition;
- Reduce the adjusted sentence for mitigation.

**55.** The issue raised by this ground of appeal is that the judge failed to engage meaningfully when nominating the adjusted headline sentence with three factors; firstly, the extent to which the offending may have been attributable to or influenced by the mental condition, secondly, whether moral responsibility was wholly extinguished and thirdly, if not, the degree to which culpability was diminished.

**56.** There is somewhat of a dearth of jurisprudence in this jurisdiction on sentencing for manslaughter on the basis of diminished responsibility, aside from *People (DPP) v Crowe* [2010] 1 IR 129 and the more recent decision of *MR*.

**57.** Prof. O' Malley in his text on *Sentencing Law and Practice*, 3<sup>rd</sup> ed. refers to the English Court of Appeal decision in *R v Slater* [2006] 1 Cr App R (S) 3 at p. 8 which clearly points to the complexities which may arise in sentencing for manslaughter on the basis of diminished responsibility. A 4 ½ year detention period was imposed:-

*"Assessing the form and severity of sentence in manslaughter cases by reason of diminished responsibility is notoriously difficult. So many factors often contribute to the death: the relationship of the parties to one another, the strains, if any, imposed on that relationship, the degree of diminution of the defendant's responsibility or blameworthiness for the death by reason of his or her abnormality of mind, the deliberation or otherwise of the fatal attack and the brutality with which it was conducted, and the defendant's attitude to and/or appreciation of the enormity of what he or she has done."*

**58.** No issue, as said is taken with the nomination of 20 years for this offence which was of a grievous order. It is clear and without doubt that the sentencing judge devoted considerable care in her approach to sentence. In nominating the above headline, absent consideration of the mental condition, she considered the nature of the offence, the ferocity of the attack, the victim impact evidence, the level of violence engaged in by the appellant on a defenceless man, the bringing of and the use of a weapon, specifically the knife, and returning to inflict further injuries as Mr Kelly lay injured from the first attack.

**59.** The second case to which Prof. O'Malley refers is *R v Wood* [2009] EWCA Crim 651 which case demonstrates how the differing circumstances of an unlawful killing impact on the sentence in cases based on diminished responsibility. A life sentence was imposed with a minimum term fixed at 13 years. Prof. O'Malley refers to the Court of Appeal's comments at para. 19:-

*"We accept, of course, that the appellant's culpability was diminished, but it was very far from extinguished, and his level of responsibility for his actions merits examination in light of his immediate activities both before the attack began and after it was concluded, and his insight into the need to do what could be done to cover up the fact of the killing and his*

*involvement in it. In our judgment the level of his responsibility was just, but only just sufficiently diminished.....”*

**60.** The above cases show the variation in sentences for manslaughter in these kinds of circumstance. In the present case, the judge was entitled to take account of those aggravating factors to assess culpability and the harm done, which of course was at the highest level. She properly highlighted factors such as the brutality of the attack on an innocent man which placed her culpability at a high level absent her mental condition. Other factors such as attempts to cover up the killing were clearly not present.

**61.** Having nominated that sentence, she then went on to consider the effect of the appellant’s mental condition on that notional headline sentence to reach the adjusted headline sentence of 13 years, thus discounting from 7 years from the original notional headline sentence. The appellant argues that the judge offered no explanation as to how she arrived at the figure of 7 years and nor did she properly consider the extent to which the offending may have been attributable to the mental condition. These contentions, however, are not borne out by an examination of the transcript of the sentence hearing.

**62.** In the first instance, the judge traced the appellant’s mental condition; she considered the evidence given by Dr Wright at trial, the updated psychiatric report and the addendum report. She highlighted the opinion offered by Dr Wright regarding the appellant’s condition at the time of the offence and then went on to consider the evidence of Dr McMonagle, the neighbours, her mother, her husband, her solicitor, various friends and others. She was clearly alert to the appellant’s mental condition and conduct leading up to the offence.

**63.** The judge at a later stage in her sentence ruling prior to nominating the adjusted headline sentence said:-

*“Ms Anderson’s behaviour was highly dominated by her mental condition, which, as I’ve said already, is the most significant mitigating factor in relation to this matter in relation to her offending.”*

**64.** Clearly, the judge was considering as to how the notional headline sentence of 20 years ought to be ameliorated by virtue of the appellant’s mental condition. She then went on to say:-

*“Allowing for the mental disorder, which is the most significant mitigation, and in keeping with DPP v MR, allowing for the diminished responsibility and the basis on which the plea was acceptable to the DPP, and the extent of the mental disorder at the time of offending, which, according to Dr. Wright, was substantial, this court will impose a headline sentence of 13 years....”*

## **Conclusion**

**65.** In our view, the judge did not err in her methodology. She adopted the procedure stated in *MR* in order to arrive at the adjusted headline sentence. She had assessed the evidence regarding the appellant’s mental condition and summarised it in some detail. She properly did not confine this assessment to the evidence of the psychiatrist but looked to the evidence of various persons who spoke of the appellant’s conduct around the time of the offence. She specifically acknowledged the basis of the acceptance of the plea to manslaughter, being a psychotic episode

resulting from a mental disorder. She clearly considered the extent to which the offending may have been attributable to the mental disorder, which is apparent from the quotation above, which must be viewed in the context of her assessment of the evidence. Whilst she did not refer to the contention that the appellant's responsibility was diminished or wholly extinguished, she clearly was of the view that the appellant's responsibility was not wholly extinguished on foot of her assessment of the evidence, but that it was diminished in light of her mental condition, thus arriving at the figure of 13 years.

**66.** If guilty of manslaughter on the ground of diminished responsibility, an offender is legally culpable and responsible for the crime. However, their moral culpability may arguably fall anywhere on the spectrum. It is difficult to see how moral culpability could be entirely extinguished in most cases. As Prof. O'Malley observes at para. 11-31:-

*"What Crowe demonstrates is that a person who kills while in a state of diminished responsibility can seldom, if ever, be said to have acted without any responsibility, as English courts have repeatedly said."*

**67.** As stated by Edwards J in *MR* at para. 97 B:-

*"....The fact that an offender would not have committed the offence but for his/her mental condition will not necessarily relieve them of all moral responsibility for their actions."*

***However, it may do so."***

**68.** Edwards J then goes on to address diminished responsibility in that:-

*"moral responsibility may be diminished, **but not wholly extinguished**. The sentencing court will therefore be concerned here with determining the extent to which the offending may have been attributable to the condition in question; or whether the offender's responsibility for his/her offending conduct was 'diminished' by the condition in question, but not wholly extinguished."*

**69.** It is necessary for a judge to consider the degree of diminution of the blameworthiness of an offender by virtue of the mental condition. It is clear to us that the sentencing judge did so and in so doing arrived at the figure of 13 years.

**70.** The next issue raised is that the adjusted headline is not commensurate with the judge's finding that the appellant's "*behaviour was highly dominated by her mental condition.*" Again, we do not agree. The judge was of the view on the evidence that the appellant's conduct was "*highly dominated*" by her condition, this does not mean entirely dominated, as if so, one may be looking at the defence of insanity. Thus, she reduced the sentence accordingly. While the appellant argues that there ought to have been a greater discount, we are not so persuaded.

**71.** The offending in this case, on any rational view was at the absolute upper end of manslaughter. The reduction of the headline sentence of 20 years by 7 years amounted to a reduction of over 1/3 and constituted a substantial reduction and properly reflected the appellant's mental condition. It must be recalled that Dr Wright indicated that the appellant's mental disorder "*contributed significantly to her actions...*", meaning just that, that her mental condition contributed significantly, but did not entirely explain her actions, thus leaving her with a degree of blameworthiness assessed as meriting a reduction in excess of 1/3 from the notional sentence.

**72.** Accordingly, ground 1 and ground 3 fail.

### **Discount Afforded for Mitigation**

### **The Appellant**

**73.** In light of the mitigation, the judge imposed a sentence of 11 years' imprisonment with the final three years suspended for four years. Viewed in this way, it is said that the sentencing judge afforded a discount of a little over 35% from the adjusted headline sentence for the mitigating factors in the case. It is submitted that this was insufficient in the circumstances.

**74.** The appellant relies on the plea of guilty which it is submitted is an early plea of guilty, entered on foot of the amended indictment. It is submitted that this plea was of considerable value to the prosecution and the family of Mr Kelly. Reliance is placed on a judgment of this Court, *People (DPP) v O'Callaghan* (Unreported, Court of Appeal, 26<sup>th</sup> June 2020) where Ní Raifeartaigh J noted at para. 20 that for a signed plea "*in general, a one-third discount should be given no matter what the strength of the evidence in the case.*" It is argued that the appellant was entitled to receive credit of an equivalent level to that of a signed plea.

**75.** The other mitigating factors in the case including the appellant's previous good character, her expression of remorse, her role as a mother in her family and the impact of a sentence in separating her from her family, her previous work history, her difficult mental health history and the Probation Report which places her in the low category of risk of generic offending are relied upon.

**76.** The following statement of Edwards J in *MR* is also relied upon:-

*"[i]n the case of a person with a mental impairment or disorder, on whom a custodial sentence may possibly be imposed, consideration must be given to the fact that it may be more onerous for such a person to have to spend time in custody because of their mental impairment or disorder and some allowance may need to be made for this."*

It is submitted that this was an important factor in deciding what level of discount to provide.

**77.** It is submitted that a discount of just over 35% did not adequately reflect the range of mitigating factors that existed in the case and the appellant's personal circumstances and that a further discount or suspension was warranted.

### **The Respondent**

**78.** It is denied that the sentencing judge failed to give the appellant an adequate discount based on the mitigation in the case.

**79.** It is submitted that the sentencing judge adhered to the sentencing guidance laid down in *MR* and having fixed a headline sentence of 13 years, applied the mitigating factors in the case thereby reducing the 13-year sentence to one of 11 years thus giving effect to the third stage of the *MR* procedure.

**80.** It is said that this reduction took account of all mitigating factors in the case and that same were all expressly referenced and considered by the sentencing judge. It is pointed out that the judge gave credit to the appellant for an early guilty plea despite the fact that the plea was offered on her behalf following a number of weeks of a trial.

**81.** Reliance is placed on Prof. O'Malley's *Sentencing Law and Practice* wherein the learned author states *inter alia* that the reduction for a guilty plea; "*... seldom exceeds one third, although it might do so in an exceptional case where, for example, the offence would never have come to light or been possible to prosecute if the offender had not voluntarily confessed to it and cooperated with the police in their investigation.*"

**Discussion**

**82.** The judge addressed the mitigation present in some considerable detail. She accepted that the plea was an early plea in legal terms. However, the appellant contends that the plea ought to have been treated as bearing equivalence to a signed plea of guilty. This cannot be so. The plea was entered on foot of an amended indictment following extensive evidence at trial. While accepted as being an early plea, it does not bear the attributes of a signed plea of guilty.

**83.** The judge then proceeded to expressly acknowledge the mitigation present and to consider the issue of rehabilitation in which the appellant was engaged, and which was ongoing. The judge reduced the 13-year adjusted headline sentence to one of 11 years in light of the mitigation. The discount to be afforded for mitigation is entirely within the remit of the sentencing judge. The judge discounted 2 years for mitigation and as she then proceeded to suspend 3 years of that 11 years on the basis of seeking to ensure the appellant's continued rehabilitation, the reality is that the reduction from the 13 year sentence is greater than a 1/3, resulting in 8 years' incarceration.

**Conclusion**

**84.** Whilst it was open to the judge to structure the sentence in a different way and to give a greater reduction for mitigation and to suspend for a lesser period, this is a matter entirely within her discretion. She clearly was concerned to ensure the continued rehabilitation of the appellant and was conscious of the recommendations of the Probation Service and Dr Wright that it was necessary for the appellant to follow a strict regime.

**85.** We are not persuaded that she erred in this regard and accordingly this ground fails.

**Excessive Sentence**

**86.** The appellant says that the sentence was excessive in all the circumstances. As is clear from the foregoing, we are not of that view. The sentence imposed was one which was imposed with conspicuous care by a judge who had heard evidence over a period of some three weeks and was one which was proportionate and well within the discretion of the sentencing judge.

**Decision**

**87.** The appeal is dismissed.