Sentencing– Murder – Minimum term – Young offenders

R v Jenkinson and Ratcliffe (unreported)

Manchester Crown Court, 2 February 2024

The facts

Brianna Ghey was 16 years' old when she was killed by Jenkinson and Ratcliffe, both aged 15 at the time. Brianna was a vulnerable young person, who suffered from anxiety and was nervous about going out. Jenkinson had befriended Brianna and suggested that they meet at a local park. When she arrived, Brianna was attacked by Jenkinson and Ratcliffe using a knife that Ratcliffe had carried with him. The injuries inflicted were extensive, including numerous deep stab wounds to the head, neck, chest and back, indicating a sustained and violent attack.

Despite attempts made to cover their tracks, Jenkinson and Ratcliffe were arrested shortly after the murder. The knife used to kill Brianna was found in Ratcliffe's bedroom along with his blood-soaked clothes. Jenkinson had developed a deep desire to kill and had co-opted Ratcliffe for his help. Jenkinson kept a list of people she wanted to kill and had previously planned how she would kill Brianna by poisoning, but Brianna's own plans changed meaning she did not attend on the originally planned day. Jenkinson had formed a separate plan to kill a boy by luring him into the local park and stabbing him. When he did not respond to her messages, she used that plan against Brianna instead.

Ratcliffe had not shown the same interest in killing as Jenkinson had. He had initially tried to move her thinking away from killing, but as her fantasies developed into real plans to kill, Ratcliffe supported and encouraged her. The judge rejected any suggestion that Ratcliffe was under Jenkinson's control, but she accepted that he was not the driving force behind the plan to kill. There was insufficient evidence to find that Ratcliffe was personally motivated by any sadistic desire, nevertheless, he was aware of Jenkinson's own desires, which he set out to encourage and support. He was also motivated in part by hostility toward Brianna because she was transgender.

The decision and sentence

Beyond determining that Ratcliffe had inflicted some of the wounds, the sentencing judge could not be sure precisely who did what. Nevertheless, the judge was satisfied that murdering Brianna was a joint plan that the offenders had carried out together. Both were sentenced on the basis that they had each played a full part in killing Brianna, and that they had intended to kill her. Murder carries a mandatory life sentence, but it is for the sentencing court to determine what proportion of the life sentence the offender will spend in custody – the 'minimum term'. Schedule 21 of the Sentencing Act 2020 provides a statutory framework that the court must have regard to when determining the minimum term. The judge concluded that this was a murder of particularly high seriousness which, given the age of the offenders, led to a starting point of 20 years.

Having determined the appropriate starting point, the judge moved to identify the relevant aggravating and mitigating factors that have the effect of increasing or reducing the minimum term set against the starting point. The aggravating factors were considerable. The offence was planned and premeditated, with more general plans made to kill other people. A previous attempt had been made to kill Brianna a few weeks earlier. Brianna was a vulnerable victim and was therefore an easy target. She was befriended by Jenkinson who in turn abused Brianna's trust. Ratcliffe was aware that Jenkinson was preying on Brianna in this way, so his offence was similarly aggravated, albeit to a lesser degree. Both Jenkinson and Ratcliffe had entered not guilty pleas. Jenkinson in particular demonstrated no remorse for the killing.

In terms of mitigation, both were said to have been of good previous character, although this must be viewed in the context of the very serious offending. Both suffer their own vulnerability, and are less mature than others their own age. Jenkinson is diagnosed with conduct-dissocial disorder, one of the features of which is having no empathy toward others. As such, she did not have the 'mental brake' that most people have to stop them from wanting to harm others. That said, this diagnosis offered limited mitigation as while her conduct may not have *felt* wrong, the court was satisfied that Jenkinson *knew* it was wrong to act as she did. Ratcliffe had a little more by way of mitigation. He had been described as 'severely vulnerable', with mental functioning similar to that of a much younger child.

In weighing the aggravating and mitigating factors, the court concluded that Jenkinson's aggravating factors were significant and would have led to a substantial uplift in sentence but for the mitigation, particularly that factor relating to maturity and mental disorder. The uplift would therefore be moderated, leading to a minimum term of 22 years. In Ratcliffe's case, the court concluded that the aggravating factors were not quite as high as in Jenkinson's case, and he benefitted from more compelling mitigation. The effect was that his aggravating and mitigating factors cancelled each other out, resulting in a minimum term of 20 years.

Commentary

Schedule 21 of the Sentencing Act 2020 provides a general framework for sentencing offenders convicted of murder. First, the court should identify the most appropriate starting point from those provided within the Schedule, having regard for the seriousness of the offence and the age of the offender. The court must then consider any relevant aggravating and mitigating factors that have not been taken into account in determining the starting point, to determine the minimum term of imprisonment. The Court of Appeal has repeatedly made clear that, notwithstanding this statutory framework, the sentencing decision remains one for the judge (see, for example, *R v Peters* [2005] EWCA Crim 605).

A significant amendment to Schedule 21 was made by s.127 of the Police, Crime, Sentencing and Courts Act 2022 relating specifically to young offenders. A single 12-year starting point, which had previously applied to all offenders aged under 18 at the time of the murder, was replaced with nine new starting points ranging from eight to 27 years, which provide greater differentiation of the starting point depending on the offender's age and the relative seriousness of the offence.

In terms of determining the starting point, the judge had two realistic options available to her. If the seriousness of the offence was deemed to be particularly high, the appropriate starting point under Para 3 of Sch. 21 for a 15 or 16-year-old offender is 20 years (this compares with a starting point of 30 years for the offences of the same seriousness committed by adult offenders). If the court did not believe that the features of the offence fell within this category, the judge would have applied a 17-year starting point under Para 4 of the Schedule (compares with a starting point of 25 years for adults) as the offence involved use of a knife. Paragraph 3 of the Schedule establishes that a case will fall within the higher category if the seriousness of the offence is 'particularly high'. It gives examples of cases that will normally fall within this category, of which two are relevant here: 'a murder involving sadistic conduct', and 'a murder that is aggravated by hostility related to transgender identity'. These descriptors do not compel the judge to impose the higher starting point, but they nevertheless provide useful guidance to judges as to what constitutes a murder of 'particularly high seriousness'. There is some conflation within the judgment of 'sadistic motives' (which are not themselves sufficient to bring a case within Para 3) and 'sadistic conduct' (which could bring a case within Para 3). The judge appears to rely on Jenkinson's deep desire to kill as evidence of a sadistic motive. Her later admission that she enjoyed the killing was also used as evidence of sadistic conduct, despite previous cases finding that deriving pleasure from an attack is not enough to constitute sadistic conduct for the purposes of Para 3 (*R v Bonellie and Others* [2008] EWCA Crim 1417). The challenge here is that the conflation of sadistic motive with sadistic conduct does not assist the court in applying the higher starting point to Ratcliffe, who did not have the same motive. Rather, the court concluded that the higher starting point should apply to Ratcliffe on two grounds. First, while he did not share Jenkinson's motive, he knew what she wanted to do and why; he understood her desire to see Brianna suffer. This has the effect of transposing

Jenkinson's motive onto Ratcliffe. Second, the court found that Ratcliffe was motivated *in part* by hostility toward Brianna because she was transgender.

Inclusion of the word 'normally' within Para 3 does not preclude the possibility that other cases may reach the necessary level of seriousness required for the higher starting point. This equally also works in reverse: a case that would 'normally' attract a particular starting point may not reach the required level of seriousness because of its own particular facts. The brutality of the murder in this case, along with the extent of the injuries sustained, are likely of themselves to justify the higher starting point. Had the judge not reached the conclusion that the higher starting point applies, she could have treated Jenkinson's sadistic motives and Ratcliffe's transphobic comments as aggravating factors, which could then have resulted in the same minimum term, albeit derived from a lower starting point.

Having identified the appropriate starting point, the court proceeded to consider the aggravating and mitigating factors. In doing so, the court is under a duty to avoid double counting any factors that were considered in setting the starting point (Sch.21, Para 7 Sentencing Act 2020). Consideration of the aggravating and mitigating factors may result in a minimum term of any length, regardless of the starting point used (Sch. 21, Para 8), and the Court of Appeal has in the past imposed minimum terms which bear little correlation with the relevant starting point. For example, in *R v Inglis* [2010] EWCA Crim 2637, where the Court of Appeal imposed a five-year minimum term compared with a 15-year starting point to give sufficient weighting to the mitigating factors present. The context of each aggravating and mitigating factor will vary. It is not a case of listing the aggravating and mitigating factors and deciding which is longer. A short list of mitigating factors may outweigh a long list of aggravating factors, as was the case here with Ratcliffe whose maturity level was significantly lower than would ordinarily be the case in a person of his age.

Conclusion

The judgment provides little insight into how the court assessed and weighed the various aggravating and mitigating factors. However, the imposition of a 20-year minimum term for Ratcliffe, which was two years less than that for Jenkinson, was said to reflect the fact that Ratcliffe's aggravating factors were not 'quite as high' as in Jenkinson's case, while at the same time Ratcliffe benefitted from slightly more compelling mitigation in the form of his reduced maturity. However, it appears that reduced maturity does not mean that the offender is treated as if they are younger. At most, Ratcliffe's reduced maturity led to a two-year reduction in sentence. Had Ratcliffe been 14 years old at the time of the murder, the appropriate starting point would have been 15 years (Sch. 21 Para 5A (2) Sentencing Act 2020), five years less than that which was applied.

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Right to die – assisted suicide – private life – freedom from discrimination – margin of appreciation

Karsai v Hungary, Application No. 32312/23, decision of the European Court of Human Rights, 13 June 2014

Introduction

In *Karsai v Hungary*, Application No. 32312/23, the European Court of Human Rights has recently delivered a judgment with respect to the compatibility of Hungarian law with the European Convention on Human Rights in this area. The Court had the opportunity to rule that the state has a duty to allow assisted dying and thus offer individuals the right to a dignified death, but followed previous case law (*Pretty v United Kingdom* (2002) 32 EHRR 1), allowing the state a margin of appreciation, and dismissed the applicant's claim