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Case No: MTS/1057/2004

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16/07/2010

Before :

THE HONOURABLE MR JUSTICE MITTING

- -

R v PETER COONAN (FORMERLY SUTCLIFFE)

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HONOURABLE MR JUSTICE MITTING

The Hon. Mr Justice Mitting :

1. The Secretary of State for Justice has referred the case of Peter Coonan, formerly Sutcliffe, to the Court under paragraph 6 of Schedule 22 to the Criminal Justice Act 2003 for the making by the Court of an order under subsection (2) or (4) of s269 in relation to the mandatory life sentences imposed upon him by Boreham J on 22 May 1981. Peter Coonan/Sutcliffe is the Respondent to this application and I will refer to him as such in this judgment.

2. The facts of the case are notorious. What follows is the briefest summary necessary to explain the order which I propose to make.

3. Between July 1975 and January 1981 the Respondent killed thirteen women and attempted to kill eight more. On 2 January 1981 he was arrested in the company of a woman whom he did not harm. He pleaded guilty to seven offences of attempted murder and has unequivocally admitted one more such offence. He was convicted after a trial of thirteen offences of murder. I will take all of these offences into account. I will not take into account a further alleged offence of attempted murder, said to have been committed on 2 March 1979 against Anne Marie Rooney, because he does not unequivocally admit the commission of this offence.

4. The offences:

   i) On 5 July 1975 in Keighley, the Respondent attacked Anna Rogulskyj in the street, causing two depressed fractures of her skull. I do not know for certain what weapon or weapons were used, but it was the Respondent's habit to take with him a ball pein hammer and sharpened screwdriver with which to carry out the attacks. Her injuries are consistent with the use of a hammer.

   ii) On 15 August 1975 in Halifax, he attacked Olive Smelt in an alleyway, causing two depressed fractures of her skull and two lacerations across her back. She was found face down with her skirt pulled up.

   iii) On 27 August 1975, he attacked Caroline Tracey Browne, a 14 year old, in a lane outside the small town of Silsden, striking her repeatedly on the head with a blunt instrument.

   iv) On 30 October 1975, in Leeds, he murdered Wilma McCann, fracturing her skull and stabbing her fifteen times to the throat and trunk. Nine stab wounds were grouped around the umbilicus. When found on an embankment, her jacket and blouse had been torn open and her bra pushed up, exposing her breasts.

   v) On 20 January 1976, in Leeds, he murdered Emily Jackson, causing two depressed fractures to her skull and fifty two stab wounds, inflicted by a screw driver, to her chest, abdomen and back. Her coat and dress were pulled above her waist. There was a boot imprint on her thigh.

   vi) On 9 May 1976, in Leeds, he attacked Marcella Claxton, striking her several blows from behind causing eight lacerations to her scalp.

vii) On 6 February 1977, in Leeds, he murdered Irene Richardson, causing three severe lacerations to her skull with two underlying fractures and gaping wounds at the front of her neck and abdomen, exposing her intestines. Her boots and trousers and one pair of knickers had been removed.

viii) On 23 April 1977 in Bradford, he murdered Patricia Atkinson in her flat, causing severe lacerations and fractures to her skull and small puncture wounds to her lower abdomen, extending in to her genitalia. Her jumper was pulled upwards and bra unfastened. Her panties, jeans and tights were lowered.

ix) On 26 June 1977, in Leeds, he murdered Jayne Michelle McDonald, aged sixteen. She sustained depressed fractures of the skull and repeated stab wounds through the same two openings in her upper abdomen and back. In the pathologist's opinion, she did not die before she was stabbed. Her sun top was pushed up and left breast exposed.

x) On 10 July 1977, in Bradford, he attacked Maureen Elizabeth Long, causing a large depressed fracture of her skull and numerous stab wounds to the trunk, one of which penetrated her liver and fractured ribs. When she was found about six and a half hours after the attack, her dress was pulled down from her shoulders and up from her waist.

xi) On 1 October 1977 in Manchester, he murdered Jean Bernadette Jordan, causing eleven head wounds and fractures to the skull, striking nineteen blows to her upper body and shoulders and additional wounds to her chest and abdomen, probably inflicted after death. She was found nine days after the attack in an allotment. An attempt had been made to sever her head. She was partly disembowelled. The Respondent said that he had returned to where he had left her body, to retrieve a five pound note.

xii) On 14 December 1977, in Leeds, he attacked Marilyn Moore, hitting her several times from behind to the head, causing seven or eight lacerated wounds and a depressed fracture of the skull.

xiii) On 21 January 1978, in Bradford, he murdered Yvonne Anne Pearson, causing extensive fractures of her skull, lacerations to the top and back of her head and temples and two fractured ribs, believed by the pathologist, to have been caused by kicking. She was not found for over two months. Her upper clothing had been pulled upwards exposing her breasts and her pants rolled downwards. Her mouth was blocked with stuffing from a nearby settee.

xiv) On 31 January 1978, in Huddersfield, he murdered Helen Maria Rytka, causing multiple fractures to her skull, lacerations to her forehead and three stab wounds to the centre of her chest. She was almost naked when found three days later. The Respondent admitted having sexual intercourse with her while she was alive.

xv) On 16 May 1978 in Manchester he murdered Vera Evelyn Millward, hitting her over the head three times with a hammer and stabbing and cutting her abdomen repeatedly. An eight inch wounds exposed her intestines. Her dress and slip had been pulled up to expose her abdomen.

Up until this time, all but one of the attacks were upon women who were, or who were claimed by the Respondent to be, prostitutes, encountered in red light districts. The exception was Caroline Tracey Browne. There was then a gap of ten and a half months until the next series of attacks, none of which involved prostitutes or women initially said by the Respondent to have been believed by him to have been prostitutes.

xvi) On 4 April 1979, in Halifax, he murdered Josephine Whitaker, causing a fracture right across her skull, twenty one stab wounds to the front and back of her trunk, three stab wounds to her vagina through the same wound and six stab wounds to the leg. The weapon used was a sharpened phillips screwdriver. Her outer clothing had been displaced and her knickers torn from around her right thigh.

xvii) On 2 September 1979, in Bradford, he murdered Barbara Janine Leach, a student, fracturing her skull and stabbing her three times to the lower chest and four times around the umbilicus. Again, a sharpened screwdriver was used to stab the victim repeatedly through the same wounds. Her blouse and bra had been displaced upwards and the belt and zip of her jeans undone to expose her lower abdomen.

xviii) On 20 August 1980, in Farsley, he murdered Marguerite Walls, a civil servant, by strangling her. She had multiple lacerations, bruises and abrasions, probably caused during a struggle. There was bruising to the abdominal muscles and three scratches to the external walls of the vagina. She sustained three fractured ribs when the Respondent knelt on her abdomen. She was completely naked, except for stocking tights.

xix) On 24 September 1980 in Leeds, he attacked Uphadya Anandavathy Bandara, a doctor from Singapore, by strangling her with a rope. She sustained a fracture to the back of her skull, possibly caused by a fall, and facial injuries. Her cardigan had been pulled up around her head.

xx) On 5 November 1980, in Huddersfield, he attacked Theresa Simone Sykes, aged 16, striking two blows to the back of her head, causing compound depressed fractures of her skull.

xxi) On 17 November 1980, in Leeds, he murdered Jacqueline Hill, a student, causing four fractures to her skull, one of them to the right eye, penetrating into her skull and another to the inner side of the left breast. Her blouse and bra were pulled up and her jeans pulled down. She may not have died at once.

He was arrested on 2 January 1981 in the company of Olivia Reivers. He admitted that he intended to kill her.

5. The Respondent's case at trial was that, in 1967, he had heard a voice, which he took to be a divine voice, in a graveyard in which he was working. In 1969 the voice told him that it was his mission to kill or eradicate prostitutes. Acting under that impulse, he committed the crimes. When interviewed after arrest, he made no mention of divine voices, but told the police that he was caused to commit the offences by anger at a particular prostitute who had humiliated him in 1969. He stated that after the first fatal attack on Wilma McCann, he "developed and built up a hatred for prostitutes in

order to justify within myself the reason why I had attacked and killed Wilma McCann". He said that killing prostitutes "became obsessional with me". When asked about the first of his last six victims, none of whom were prostitutes, Josephine Whitaker, he said that he realised that she was not a prostitute but was not bothered, "I just wanted to kill a woman".

6. The sole issue at the trial was whether or not, when he committed the thirteen killings, his responsibility for the killings was diminished by mental abnormality. He called three psychiatrists, Dr Milne, Dr McCulloch and Dr Kay, who each diagnosed that he suffered from encapsulated paranoid schizophrenia. His case was that, while subject to that condition, he attacked all of his victims, believing them to be prostitutes. The Crown's case was that he had told something approaching the truth in his police interviews and did not and could not have believed that his last six victims were prostitutes.

7. As I explained at greater length in my judgment of 1 March 2010, this was an all or nothing case: either the Respondent told the truth to the psychiatrists, so that their diagnosis of encapsulated paranoid schizophrenia was right, or he did not, in which case the only motive for his crimes considered at the trial was his own explanation in interview: anger, developing into hatred and obsession, arising from his humiliation by a prostitute in 1969. No other explanation was offered at the trial and none has been since. By its verdict, the jury rejected, on balance of probabilities, the truth of the account given to the psychiatrists by the Respondent.

8. In his sentencing remarks, Boreham J said that he was not going to attempt to describe the brutality and gravity of the offences, but would take two matters into account in recommending the tariff: the depth, in human terms, of the terror which the Respondent induced into the population of a wide area of Yorkshire and the assessment that he was "a very dangerous man indeed". He recommended a tariff of thirty years, but also expressed the hope that when he said "life imprisonment", "it will mean precisely that". He said that he did not believe that he was able to make that recommendation to the Home Secretary.

9. For reasons which I do not know, nothing further was done to recommend or set a tariff until October 1997. Lord Bingham CJ apparently sought the views of Boreham J, who responded by a letter dated 15 October 1997. The salient features of the case were still firmly held in mind. He went on to state:

> "On the counts of murder I recommended a minimum period of thirty years imprisonment. I now think it would have been better to have made no minimum recommendation. However that may be, I have no doubt that this is one of the rare cases where the offences were so heinous and the perpetrator so dangerous that life should mean life".

As is apparent from his sentencing remarks and from the terms of that letter, Boreham J did not draw the distinction now required to be drawn between retribution and deterrence and the protection of the public.

10. By a letter dated 22 October 1997, Lord Bingham CJ stated that he had had the opportunity to read the papers enclosed by the Home Office (I do not know what they

were) and the observations of the trial Judge. On the basis of that material, he observed:

> "It seems clear that when committing these crimes Sutcliffe's mental state was disturbed, even if his responsibility for the crimes was not diminished. This leads me to the conclusion that the requirements of retribution and general deterrence should be met by a term of years rather than a ruling that life should mean life. But plainly, given the number and brutality of these crimes, and their public consequences, the term should be one of exceptional length. I recommend a term of thirty five years."

In making that recommendation, Lord Bingham clearly had in mind only the requirements of retribution and deterrence, because he went on to observe that it seemed unlikely that it would ever be thought safe to release the Respondent.

11. No tariff was set by the Home Secretary. Hence, this reference.

12. Paragraphs 7 and 8(b) of Schedule 22 to the Criminal Justice Act 2003 require me to undertake the following tasks in setting the minimum term:

 i) to consider under s269(3) or (4) the seriousness of the offences.

 ii) to do so having regard to:

  (a) the general principles set out in Schedule 21.

  (b) any recommendation made to the Secretary of State by the trial Judge or the Lord Chief Justice.

 iii) To refrain from making an order under subsection 296(4) unless of the opinion that under the practice followed by the Secretary of State before December 2002 he would have been "likely" to notify the Respondent that he should never be released on licence.

Although "likely" is not defined in paragraph 8(b) and has a number of potential meanings, I am satisfied that it means "more likely than not", rather than "possible".

13. Schedule 21 requires me to determine a starting point and then to take into account any aggravating or mitigating factors, to the extent that I have not allowed for them in my choice of starting point. The only possible starting points are a whole life term or a minimum term of thirty years. A whole life term is appropriate if I consider that the seriousness of the offences are "exceptionally high". Examples are given in paragraph 4(2):

> "(a) The murder of two or more persons, where each murder involves any of the following –
>
> (i) a substantial degree of premeditation or planning.

> (ii) the abduction of the victim, or
>
> (iii) sexual or sadistic conduct".

I emphasise that these are examples of offences of "exceptionally high" seriousness and not an exhaustive catalogue. The appropriate starting point for offences not falling within paragraph 4(1) when I consider that the seriousness of the offences are "particularly high" is thirty years. Examples of such a case include,

> "(2)…
>
> (f) The murder of two or more persons"

14. Potentially relevant aggravating factors, of those set out in paragraph 10 are:

> "(a) A significant degree of planning or premeditation,
>
> (b) The fact that the victim was particularly vulnerable because of age…
>
> (c) Mental or physical suffering inflicted on the victim before death….
>
> (g) Concealment, destruction or dismemberment of the body".

Of the mitigating factors identified in paragraph 11, the following may be relevant:

> "(c) The fact that the offender suffered from any mental disorder or mental disability which (although not falling within s2(1) of the Homicide Act 1957…lowered his degree of culpability".

Mr Fitzgerald QC and Mr Bowen, for the Respondent, do not suggest that any other mitigating factor is relevant.

15. In written submissions, Mr Bowen suggested that I should have greater regard to the recommendations of the trial Judge and the Lord Chief Justice than I should to the practice of the Home Secretary before December 2002. I do not agree. My task is that set out by the Court of Appeal in *Pitchfork* [2009] EWCA Crim 963 at paragraph 27:

> "As we have emphasised, the legislation does not, as it could, simply invite the Judge or require him to endorse the recommendation of the trial Judge or that of the Lord Chief Justice, or where they differ, find a mean between them. The reviewing Judge is expressly required to address the general principles in Schedule 21. Neither the original judicial recommendation nor the Schedule enjoys some kind of hidden, unspecified primacy. The assessment by the reviewing Judge is not fixed exclusively by reference to the general principle set in Schedule 21, any more than it is fixed by the judicial recommendations. The Judge is conducting a fresh review,

taking account of both the judicial recommendations and Schedule 21."

My task is to assess, by reference to the factors set out in Schedule 21 and the recommendations of the trial Judge and the Lord Chief Justice, what the minimum term should be. Having done so, if I conclude that the appropriate term is a whole life term, I must not set such a term unless I am of the opinion that the Home Secretary would have set a whole life tariff under his practice before December 2002.

16. Putting to one side the possibility that the Respondent suffered from mental disorder or mental disability which lowered his degree of culpability, and the issue of the Home Secretary's practice before December 2002, I have no doubt that the appropriate term is a whole life term. I reject the suggestion that because the murders were "of two or more persons", the appropriate starting point should be thirty years, even without the existence of aggravating features. The number of victims and intended victims takes this case outside the category envisaged by the Parliamentary draftsmen in paragraph 5(2)(f). As Boreham J observed, the brutality and gravity of the offences speak for themselves. This was a campaign of murder which terrorised the population of a large part of Yorkshire for several years. The only explanation for it, on the jury's verdict, was anger, hatred and obsession. Apart from a terrorist outrage, it is difficult to conceive of circumstances in which one man could account for so many victims. Those circumstances alone make it appropriate to set a whole life term.

17. Although I do not put this at the forefront of my reasons for reaching that conclusion, there were aggravating features in several of the murders. All were pre-planned. The Respondent armed himself with a hammer and sharpened screwdriver and set out to kill lone women. The Respondent's treatment of the clothing of many of his victims and the penetrating injuries into or near the genital organs of some of them evidences sexual or sadistic conduct. In several cases, the bodies were dragged from the scene of the attack and in one case (Jean Bernadette Jordan) revisited and mutilated.

18. The primary submission of Mr Fitzgerald and Mr Bowen is that the degree of culpability of the Respondent was lowered by mental disorder or mental disability, not falling within s2(1) of the Homicide Act 1957. As originally made, the submission was that the lengthy, detailed and forceful report of Dr Murray (the consultant psychiatrist responsible for the Respondent at Broadmoor since 1 November 2001) of 29 November 2006 demonstrated that the Respondent did suffer from an abnormality of mind which substantially impaired his mental responsibility for the killings. Accordingly, despite the verdict of the jury, Dr Murray's views could be taken into account as a mitigating factor in setting the minimum term. In my judgment of 1 March 2010, I explained why I did not consider that his report could be used for that purpose. I summarise my conclusion here. Dr Murray's diagnosis, like that of other colleagues who have considered the Respondent's mental condition, is that he was suffering from encapsulated paranoid schizophrenia when he committed the crimes and that his responsibility for the thirteen killings was, in consequence, substantially diminished. These propositions were, however, unquestionably rejected by the jury. As a matter of principle, it is for the jury, not the Judge, to decide whether a person's responsibility for killing is diminished by reason of mental abnormality. The burden of proof is on the Defendant. Unless he discharges that burden by satisfying the jury on balance of probabilities that his responsibility was substantially diminished, he is

guilty of murder. It is not, in my opinion, open to a Judge, setting a minimum term, to go behind the verdict of the jury by concluding that, although the Defendant's responsibility was not proved to have been substantially diminished, he should be given the benefit of the doubt for the purpose of setting the minimum term, by concluding that it might have been. That is not what paragraph 11(c) of Schedule 21 provides. Its premise is that the offender's degree of culpability was lowered, but not to the extent required to establish the defence of diminished responsibility. It is a factor which may be taken in to account in some cases – for example, alcoholism or depression – in which responsibility remains very great, but is diminished to a very small extent by mental abnormality. On Dr Murray's diagnosis in this case, such a conclusion was not open: either the jury's verdict was wrong, or it was not. If it was not, there is no room for a finding that culpability was lowered by reason of mental disorder or disability.

19. I am conscious of the fact that, in reaching that conclusion, I appear to differ from the views of Lord Bingham CJ – to whose views I am required to have regard. I discount them, principally for two reasons: I do not know what material Lord Bingham had upon which he based that view; and he was not applying the statutory test. I do not, of course, know what view he would have formed if he had done so. It is unsound to read into his words a retrospective application of a test which was not in existence when he wrote them; but it is at least possible that, given his conclusion that responsibility for the crimes was not diminished, he would have determined that mental disorder or disability did not lower his degree of culpability.

20. I must also have regard to the views of the trial Judge; but, understandably, they were not expressed with the clarity that would now be required by the statute. It appears that Boreham J, if unconstrained by practice or law, would have imposed a whole life term, but felt that he could not do so. No doubt, his reasons for doing so would have been partly to reflect public abhorrence of the crimes and partly for public protection. I cannot discern in his remarks anything to indicate that, if required to fulfil the task which I must perform, he would have reached a different conclusion.

21. In the end, I must reach my own conclusion. It is that, subject to two further issues – good behaviour in detention and the Home Secretary's practice before December 2002 – the appropriate minimum term is a whole life term.

22. Dr Murray has produced a further report, intended by those who commissioned it to address the issue of progress in detention. It reveals that in July 1993 the Respondent was started on anti-psychotic medicine and has persevered with it ever since. He has thrice been the subject of assaults, two of them serious. In the second assault, his right eye was put out. In the third, an attempt, in the event unsuccessful, was made to put out his left eye. He has been well-behaved and has posed no threat to other inmates. Jehovah's Witnesses who have befriended him for over fifteen years are emphatic that he now shows remorse for his crimes. In the opinion of Dr Murray and his colleagues, he suffers from a chronic treatable mental illness for which he has been willing to accept appropriate treatment, which has successfully contained it for many years.

23. Their view was endorsed by the First-Tier Mental Health Tribunal on 7 July 2010 which found that his treatment had produced "complete remission of his positive symptoms". It was satisfied that the improvement "now requires to be tested in conditions of lesser security" and that it would be deleterious to his mental health and

well-being if he were to be returned to prison. The Tribunal's view confirms the sharp difference which has always existed between the jury's verdict and the views of those responsible for the Respondent's mental health.

24. I do not accept that any reduction from a whole life term would be appropriate on the ground of exceptional progress whilst in detention, for two reasons:

    (i) It does not meet the high threshold explained in *Caines* [2006] EWCA Crim 2915 at paragraphs 51 to 53,

    (ii) It is, in any event, impossible to apply rationally in the case of a prisoner for whom otherwise a whole life term is appropriate. The maximum discount normally allowed is two years, with one year more common. An order cannot be made for "whole life less one year". To fix a determinate minimum term would be to make a judgment about the Respondent's life expectancy, about which I have no information and which I would, in any event, be ill-equipped to determine.

25. Establishing the Home Secretary's practice before December 2002 is not straightforward. I have not been provided with any contemporaneous statement of policy. What I have is a schedule of 28 offenders, in respect of most of whom a whole life tariff was set by the Home Secretary between 1966 and 2002. In the case of nineteen prisoners who are still alive, a whole life tariff was undoubtedly set. In three cases (Duffy, Arkwright and Green), the Home Secretary set a whole life tariff, even though both the trial Judge and the Lord Chief Justice recommended a finite tariff. In nine cases (Childs, Nielsen, Hutchinson, Bamber, Entwistle, Miller, Castigador, Ireland and Moore), the Home Secretary set a whole life tariff when either the trial Judge or the Lord Chief Justice had recommended a finite tariff. In seven cases (Brady, Nielson, Hardy, Mawdsley, Hilton and West), the Home Secretary set the whole life tariff recommended by both the trial Judge and the Lord Chief Justice. The statistical sample is too small to permit anything other than an impression of the Home Secretary's practice. The very clear impression which I have is that this case comes right at the top of the range of cases in which the Home Secretary has set a whole life tariff. Only Rosemary West and Dennis Neilsen approach the number of victims murdered. Even they did not reach the total number of the Respondent's victims. The conduct of Brady towards his three victims and of Ireland towards his five victims included greater sadism than that demonstrated by the Respondent. Childs, a contract killer with six victims, may have been more ruthless. But none of them could reasonably have been regarded by the Home Secretary as more deserving of retribution than the Respondent. In my opinion, it is more likely than not that if the Home Secretary had set a tariff for the Respondent, it would have been a whole life tariff. On that premise, I am not forbidden by paragraph 8(b) of Schedule 22 to set a whole life term.

26. For the reasons explained above, under s269(4), I direct that the provisions of s28(5)-(8) of the Crime (Sentences) Act 1997 (the early release provisions) are not to apply to the Respondent.

27. I have read statements by relatives of the six murdered victims identified in the confidential schedule to this judgment. They are each moving accounts of the great loss and widespread and permanent harm to the living caused by six of his crimes. I

have no doubt that they are representative of the unspoken accounts of others who have not made statements. None of them suggest any term other than a whole life term would be regarded by them as appropriate.

Confidential Annex

Wilma McCann

Irene Richardson

Patricia Atkinson

Josephine Whitaker

Barbara Leach

Jacqueline Hill