IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand London WC2
9 May 1996

B e f o r e:

LORD JUSTICE OTTON

MR JUSTICE LATHAM

and

MR JUSTICE HARRISON

R E G I N A

-v-

JASON JOHN MITCHELL

E FITZGERALD QC appeared on behalf of the **Appellant**.

OTTON LJ:

1. On 7 July 7 1995, at the Crown Court at Ipswich, before Blofeld J, the appellant, Jason Mitchell, pleaded guilty to manslaughter on three counts, having been charged with murder. Pleas to manslaughter were tendered and accepted on the basis of diminished responsibility. He was sentenced in respect of each count to life imprisonment with a recommendation that a minimum period of 10 years be served, those sentences to run concurrently.

2. On 26 April, this matter came before this Court. We granted leave to appeal. We adjourned the matter so that further medical evidence could be acquired and the appropriate enquiries be made whether a hospital bed was available.

3. This case has been the cause of considerable public anxiety. It led to an independent inquiry chaired by Sir Louis Blom-Cooper, whose report has been published.

4. On 9 December 1994, the appellant absconded from the rehabilitation unit of St Clements Hospital in Ipswich, at which he was a patient undergoing psychiatric treatment. In the early hours of 14 December, the police broke into the home of Mr and Mrs Wilson in the village of Brampton on the outskirts of Ipswich. Both were found dead. Mr Wilson had been bound and gagged and had died from asphyxia secondary to a combination of gagging and strangulation. A thin scarf had been tied around Mrs Wilson's neck. She had been strangled. It is common ground that the appellant must have killed the Wilsons some time after 4.30 p.m. on 12 December; that is, within three days of his absconding from St Clements Hospital. It also transpired that the appellant had stayed with his father from 9 December, until about mid-day on 12 December, when he left.

5. On 20 December, at about 1.30 a.m., neighbours heard noises in the Mitchells' house. Police officers forced entry. They found the appellant sitting in darkness. He said he had killed his father and cut him up. Mr Mitchell senior's torso was found in a bedroom and the rest of his body in two holdalls in the loft. The cause of death was probably asphyxia secondary to compression of the neck. The appellant was arrested.

6. During a psychiatric assessment at the police station he appeared to understand what was happening and appeared relaxed. He admitted the killings. He said he had been unable to resist the urge to kill. He wanted to kill his father first but was afraid that he would be found out too quickly. He wanted to kill people and eat them, but he had not eaten the Wilsons or his father because they were too old. He had intended to look for someone younger to kill and eat on the evening of his arrest. He had cut up his father as practice for when he killed someone young and could eat them.

7. He was subsequently interviewed by the police and made no comment, but at a later date he admitted all three killings to the police.

8. At the time he was 25 years of age. He had five previous convictions. In 1990, he was convicted of possessing an offensive weapon in a public place and common assault. He had attacked a cleaner in a church with a baseball bat. The cleaner ran away. When the appellant was arrested he told the police that he had intended to kill the vicar. He was found with two knives in his possession. Not surprisingly, when the matter came before the Central Criminal Court, a hospital order was made. That order was in force when he absconded in December 1994.

9. At the time of his appearance at the Crown Court the judge had before him a psychiatric report from Dr Ball, a consultant in forensic psychiatry. This had been prepared at the request of the appellant's solicitors. It was Dr Ball's conclusion that the appellant was suffering from schizophrenia at the time of the offence. His history disclosed an extreme level of lack of insight, even when relatively well, a tendency to deny and hide his symptoms, and (and this is perhaps the most significant feature) a deterioration in his mental state when anti-psychotic medication was reduced or discontinued. This was the case after he had left St Clements Hospital. It was his opinion that it was almost beyond question that he was mentally ill at the time of the killings and extremely likely that the killings were motivated by underlying psychotic experiences. Dr Ball's opinion was that the appellant was mentally ill within the meaning of the Mental Health Act. He was a very dangerous person who, in an untreated state, posed a grave and immediate threat to others. Dr Ball recommended that the Court should consider dealing with his case by

making a hospital order under section 37 of the Mental Health Act 1983, with the added imposition of a restriction order, pursuant to section 41, without limit of time. He would require detention in hospital for a considerable period and, given his history, and the offences, such treatment could only be seriously contemplated under conditions of special or maximum security.

10. Dr Wilson also prepared a report at the request of the Crown. Dr Wilson had been responsible for the appellant since his transfer to Rampton Hospital on 18 January 1995, shortly after his arrest for these three offences. He gave a full account of the psychiatric history and the circumstances of his transfer to the unit from which he had absconded. Dr Wilson made a similar diagnosis to Dr Ball. It was likely that he was acutely mentally ill at the time of the killings. Dr Wilson made a similar recommendation for a disposal, pursuant to sections 37 and 41 of the Act.

11. Dr Paul Bowden also prepared a report at the request of the Crown. It was his opinion that the appellant had been suffering from schizophrenia for 10 years. It was his view also that this was clearly a case for orders under sections 37 and 41, without limitation of time.

12. That was the evidence which was before the learned judge and it was the basis upon which the Crown were prepared to accept pleas of not guilty to murder and guilty to manslaughter, on the ground of diminished responsibility. The judge also accepted those pleas. However, the learned judge declined to follow the recommendations of the psychiatrists.

13. In passing sentence he said this:

> Having heard the history of your previous offending, the history of your previous hospital order, and the fact that you were then released to a place from where it was possible for you to abscond, and having heard Dr Wilson say clearly at some stages during the last few years your condition was such that responsible doctors can differ about it, I take the view that in this case the ultimate decision as to when, if ever, it is safe to release you, must be one for the Home Secretary. Consequently, I propose to reject your counsel's submissions, cogent though they are, and I propose to impose three concurrent sentences of life imprisonment upon you.

14. He went on to set the appropriate term for a minimum period to be served of 10 years in respect of each of the offences concurrent. It is against that background that this appeal is mounted.

15. Mr Edward Fitzgerald QC has submitted that it was wrong in principle for the sentencing judge to impose a discretionary life sentence rather than a hospital order with restriction, without limit of time; the appellant was a chronic schizophrenic, whose mental disorder was the cause of his offence, and in respect of whom there was unanimous medical evidence, both that the pre-conditions for a hospital review were satisfied and that a bed in a special hospital was available. He submits that the sentence imposed conflicted with the general principle found in the cases of *Morris* (1961) 45 Cr App R 186, *Howell* (1985) 7 Cr App R. 360 and *Mbatha* (1985) 7 Cr App R (S) 373, that when the pre-conditions for a hospital order are satisfied and a bed is available in a secure hospital a hospital order rather than a prison sentence should be imposed. He further submits that the trial judge misdirected himself in law when he justified the imposition of a life

sentence rather than a hospital order, with restrictions, on the basis that "the ultimate decision as to when, if ever, it is safe to release you, must be one for the Home Secretary".

16. Mr Fitzgerald points out, in our view correctly, that the effect of the life sentence was to confer the ultimate decision on release not on the Home Secretary but on to the discretionary lifer panel of the Parole Board, created by virtue of section 34 of the Criminal Justice Act 1991. He further submits that the trial judge, in so proceeding, and the single judge when refusing leave, addressed the previous decision of *Fleming* (1993) 14 Cr App R (S) 151, as justifying an exception to the general rule. It is submitted that *Fleming* was decided on the basis of a misunderstanding of the law and is, thus, a decision of this Court *per incuriam* and we should not follow it. It is submitted that Fleming was decided on the mistaken basis that the imposition of a life sentence rather than a hospital order with restrictions carried with it the additional safeguard (his emphasis) that the Home Secretary and not a tribunal would take that ultimate release decision. In fact, as a result of the provisions of section 34(4) of the Criminal Justice Act 1991, the ultimate release decision for discretionary lifers is with an independent judicial tribunal and not the Home Secretary. It is their decision. It is not even a recommendation to the Home Secretary. The composition and powers of the discretionary lifer panel and the Mental Health Review Tribunal are closely analogous. In neither case is the ultimate release decision with the Home Secretary.

17. We have considered those submissions with the greatest of care and we have come to the conclusion that they are well founded. On the balance of previous decisions the principle is clearly established that when the pre-conditions for a hospital order are satisfied and a bed is available in a secure hospital, a hospital order, with the appropriate protection of a section 41 order, is the appropriate disposal, rather than a life sentence. We attach little weight to *Fleming*, which is better disregarded. The course recommended was appropriate in the light of the evidence, where it is clear, from the facts of the offences themselves, the conduct of the appellant immediately after the offences were committed and his first utterances to that psychiatric specialist in the police station, that he was in a highly florid state of schizophrenia.

18. We have to consider whether that disposal is still appropriate on the evidence, not only which was before the trial judge but also now available to this Court.

19. Dr Wilson has prepared a further report dated May 3, for which we are extremely grateful. He sets out in considerable detail the history of the matter and has considered the progress of the appellant since his admission to Rampton Hospital on 18 January under sections 48 and 49 of the Mental Health Act. He remained there until the date of his trial. When he was given three life sentences, and he was readmitted to Rampton, under sections 47 and 49 of the Act, on 17 July. He has remained as an in-patient at Rampton Hospital since that date.

20. He notes that on being remitted to prison Jason Mitchell's mental state deteriorated further. He was transferred urgently from Norwich Prison to Rampton Hospital for specialist psychiatric treatment. He also reveals that the existence of psychiatric notes not previously seen related to the psychiatric treatment that Mitchell received in 1988 and 1989 whilst an inmate at Feltham young offender institution. These records described his

experiencing symptoms of mental illness and confirmed the onset, in his late teenage years, of the schizophrenic illness from which he continues to suffer.

21. Dr Wilson expressed the opinion that:

> Jason John Mitchell suffers from chronic paranoid schizophrenia the more florid symptoms of which are now controlled by the regular administration of antipsychotic medication but which requires continuing treatment.
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> This mental illness has been present since at least 1988 and has developed against a background of Mr Mitchell's personality difficulties. These are his disturbed upbringing, under achieving at school, poor work record, failure to establish enduring relationships and his drug abuse and repeated petty offending. However, I do not consider that these amount to the degree of severity of antisocial behaviour or abnormal aggressiveness to satisfy the criteria of psychopathic disorder but have been complicating the factors in assessing him in each of the settings where this has taken place.

22. Finally, in his recommendations, Dr Wilson states:

> Jason John Mitchell continues to require treatment in conditions of maximum security in hospital and will do so for the indefinite future. If his appeal against the life sentence is successful I would recommend the substitution of a hospital order under section 37 of the Mental Health Act 1983 with the additional imposition of a restriction order under section 41 of the Act to ensure that protection of the public and to ensure that he remains in treatment. In the event of such an order being imposed a bed would be available at Rampton Hospital.

23. Dr Wilson has attended court this morning and has enlarged upon that report. He told us that at the time of these killings Mitchell was suffering from schizophrenia to a profound degree and that he was at the end of grossly diminished responsibility at the time of the offences.

24. In those circumstances, we have no hesitation in saying that the appropriate disposal is that recommended by the unanimous opinion of the psychiatrists. In so expressing ourselves, we can well understand how it came about that Blofeld J, having heard the evidence before him, and in particular the fact that Mitchell had been able to leave St Clements Hospital and within such a short period of time had committed these ghastly offences, came to pass a life sentence. He no doubt felt that that was the proper disposal for the protection of the public.

25. We have concluded, having heard Dr Wilson this morning, that the interests of the public will be properly protected by the regime which exists at Rampton Hospital. He told us that it is extremely unlikely that Mitchell will be released into the community in a period of less than 10 years and will probably require incarceration in maximum security, or less secure accommodation, beyond that time.

26. We emphasise that aspect of the case to allay any unease the public may have as a result of the unfortunate history of this matter and of this particular appellant before these offences were committed.

27. In those circumstances we propose to set aside the three sentences of life imprisonment. We make an order under sections 37 and 41 of the Mental Health Act. We are satisfied that the appropriate arrangements have been made for the admission of him as a patient to Rampton Hospital. We are satisfied that he is suffering from mental illness within the Act. The gravity of his offence and the seriousness of his mental illness makes him a grave and immediate risk, thus making it appropriate for such special hospital orders to be made.

28. We are also satisfied, on what Dr Wilson has told us, that the mental disorder from which the patient is suffering is of a nature or degree which makes it appropriate for him to be detained in hospital for medical treatment and that such treatment is likely to alleviate or prevent a deterioration of that condition.

29. Dr Milton, the senior Registrar in Psychiatry at Rampton Hospital, has furnished a report in addition to that of Dr Wilson to the same effect.

30. In those circumstances the appropriate orders will be made.

This document was prepared for Mental Health Law Online, based on the words of the judge as stated in (1997) 1 Cr App R (S) 90, with the addition of paragraph numbering and some typographical amendments.