

Sentencing offenders with mental health conditions and disorders (R v PS and others)

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Corporate Crime analysis: In conjoined appeals against sentence brought by two young offenders and an adult offender, a powerfully constituted court considered the proper approach to sentencing offenders with mental health conditions and learning disorders. Written by David Bloom, solicitor at Sonn Macmillan Walker.

R v PS and others [\[2019\] EWCA Crim 2286](#), [\[2020\] All ER \(D\) 16 \(Jan\)](#)

What are the practical implications of this case?

The Sentencing Council is drafting guidelines setting out the overarching principles applicable to the sentencing of offenders with mental health conditions and disorders. While awaiting a finalised guideline (the consultation closed on 9 July 2019), the court provided in this case 'general observations' on the proper approach to sentencing such offenders.

The court, comprising the Lord Chief Justice, the Vice President of the Court of Appeal (Criminal Division) and the Chairman of the Sentencing Council, considered three otherwise unconnected appeals against sentence. The court confirmed the four ways in which mental health conditions and disorders may be relevant to the sentencing of offenders; observed that sentencing required 'close focus' at the time of the offence and at the time of sentence; and gave guidance in relation to expert and pre-sentence reports.

What was the background?

In the case of PS, aged 14 at the time of offending, the court allowed fresh evidence, two years out of time, of a diagnosis of mild autism and attention deficit hyperactivity disorder (ADHD), and accepted that those diagnoses were relevant to the assessment of PS's culpability. The court significantly reduced his culpability for the role he played in the joint enterprise murder. The minimum term for murder was reduced from 14 years to ten years' imprisonment.

In the case of Dahir, convicted after trial of grievous bodily harm with intent and sentenced to 14 years' imprisonment, the court found that his mental health was an important factor in the case which should have resulted in a significant downward movement from the starting point. The sentence of 14 years was reduced to ten years' imprisonment.

In the case of CF, aged 15 when he committed sexual offences against children, the court considered reports which diagnosed autism and noted that CF's IQ was such that he was operating at the level of a seven-year-old. A report from CF's case manager at the young offender institute where he was detained described CF as 'probably the most vulnerable young person on a unit with 48 vulnerable young persons on it'. The court viewed CF's problems as relevant both to his culpability and to the impact upon him of a custodial sentence. The sentence of five years was reduced to two and a half years' detention.

What did the court decide?

In addition to reducing significantly each of the sentences because the original sentence had not properly taken account of each defendant's mental health or learning difficulties, the court provided 'general observations'.

It confirmed that mental health conditions and disorders may be relevant to the sentencing of offenders in four ways:

- to assess the offender's culpability in committing the crime in question. The requirement under [section 143\(1\)](#) of the Criminal Justice Act 2003 ([CJA 2003](#)) to consider culpability and harm was reflected in the stepped approach to sentencing set out in Sentencing Council's offence-specific definitive sentencing guidelines. The sentencer must consider whether an offender was able to exercise appropriate judgment, make rational choices,

understand the consequences of his actions or whether the offender acted in a disinhibited way at the time of the offence due to their mental health (at para [8])

- to decide about the type of sentence to be imposed, in particular under powers contained in the [Mental Health Act 1983](#), and the impact of that sentence on the offender. Where a custodial sentence is necessary, mental health conditions and disorders may be relevant to the length of sentence and to the decision whether it can properly be suspended. In these respects, it is the offender's mental health at the time of sentence, rather than at the time of the crime, which must be considered (at para [9])
- to assess whether the offender is dangerous, as defined for sentencing purposes in Chapter 5 of [Part 12](#), CJA 2003 (at para [10])
- to ensure the offender understands the intended effect of any sentence imposed and that any community or ancillary order requirements are capable of being fulfilled (at para [10])

The court made clear that sentencing an offender who suffers from a mental disorder or learning disability 'necessarily requires a close focus on the mental health of the individual offender (both at the time of the offence and at the time of sentence) as well as on the facts and circumstances of the specific offence' (at para [17]).

While a pre-sentence report and appropriate psychiatric or psychological reports can assist, the court stressed that the 'issues to which they are relevant should be clearly identified' (at para [19]).

Both practitioners and judges should be alive to the possibility in adult offenders that there may be nothing in particular that prompts consideration of whether a mental health condition or disorder may be relevant to sentence (at para [20]).

Unsurprisingly, this discretionary language is mandatory where children and young persons are concerned: 'both the court and those representing him must be alert to the possibility that mental health may be a relevant feature of the case. The younger the offender, and the more serious the offence, the more likely it is that the court will need the assistance of expert reports' (at para [21]).

The court confirmed that the Sentencing Council is working towards a definitive guideline setting out overarching principles which will be applicable when sentencing adult offenders and that a draft guideline, even if included in a consultation paper, should not be used by a sentencer (at para [11]).

In the meantime, therefore, sentencers will find the court's observations in this case to be invaluable authority of the correct approach to take.

Case details

- Court: Court of Appeal, Criminal Division
- Judge: Lord Burnett CJ, Fulford, Holroyde LJ
- Date of judgment: 20 December 2019

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