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CCRC Refer Murder Convictions of Robert and Lee Firkins to Court Of Appeal

Brothers Robert and Lee Firkins were convicted together in January 2006 at Exeter Crown Court for the murders in 2005 of Carol and Graham Fisher at their home at Perch, near Wadebridge in Cornwall. The brothers pleaded not guilty to the murders. Both pleaded guilty to other offences including causing grievous bodily harm, actual bodily harm, possession of a firearm and robbery*. They were sentenced to life imprisonment with a minimum term of 26 years.

Robert and Lee Firkins sought leave to appeal against the murder convictions in February 2006. Their appeals were dismissed. They applied to the CCRC for reviews of their convictions in January 2015. The Commission has decided to refer their murder convictions for appeal because it believes there is new evidence and / or new argument that gives rise to a real possibility that the Court of Appeal will now quash those convictions.

The Commission has sent full details of the reasons for its decision to the Court of Appeal and provided an outline of the reasons to the brothers' legal representatives. The Commission cannot make public any details about its decision because it is based on sensitive information. Lee Firkins was represented in his application to the CCRC by Jane Hickman of Hickman and Rose Solicitors. Robert Firkins was represented by Rhona Friedman of Commons Law CIC.

Olivia Labinjo-Halcrow - Conviction for Manslaughter Quashed

A Birmingham woman jailed for killing her partner has had her manslaughter conviction quashed by the Court of Appeal. Gary Cunningham was stabbed 12 times with a kitchen knife and bled to death in a block of flats in Harborne, Birmingham, on 23 February last year. Olivia Labinjo-Halcrow was acquitted of murder but convicted of manslaughter on the grounds of diminished responsibility and jailed for 18 years.

1.Gary Cunningham died during the morning of 23 February 2019 as a result of a stab wound above and behind his left knee which severed an artery. The appellant was acquitted of his murder but convicted of manslaughter by reason of diminished responsibility. The issue in this appeal against conviction concerns non – defendant bad character evidence, and specifically, the direction given by the judge to the jury as to how they should regard it in relation to self-defence. The appellant is represented by Mr Bajwa QC. The respondent is represented by Ms Bex QC. Both counsel appeared below.

2. The deceased's body was found in the hallway outside the appellant's flat just before 11 am on 23 February 2019. Police and ambulance services were called to the scene to no avail. The Appellant was in her flat at the time, wearing pyjamas and raised from her bed by the police. A knife believed to be the weapon responsible for causing Gary Cunningham's wounds was found in the sink. Her responses to news of the death of Gary Cunningham were unusual and incongruent to the seriousness of the situation. She was arrested. On arrival at the police station she was medically examined. There were some recent injuries and she complained of discomfort in her neck and shoulders. Alcohol and cocaine were subsequently detected in blood samples taken from both the appellant and deceased. Back calculation indicated that they both would have been under the effect of the same in the early hours of that morning; neither would have been legally able to drive.

3. The appellant made no comment in interview but was subsequently to reveal details of what she said had occurred between her and the deceased in the flat during the night/morning of 22/23 February, first in a telephone call from prison to report an allegation of rape, and then to psychiatrists instructed by both prosecution and defence to prepare reports on the question of diminished responsibility. The appellant upon questioning from the psychiatrists also revealed detailed allegations of past physical and sexual assaults at the hands of the deceased, and others, including when she was a child. However, the appellant could not recall stabbing Gary Cunningham on 23 February 2019. She said she had not knowingly taken cocaine and her drink must therefore have been spiked by Gary Cunningham.

4. The prosecution case at trial was that the appellant had murdered Gary Cunningham. She was not acting in lawful self-defence. At the very least she would have appreciated that some harm would be caused by infliction of the wound and so lead to a conviction for an unlawful act manslaughter. The prosecution relied on the number of wounds inflicted, three of which were likely to be defensive and also the fact that whilst under the influence of cocaine, voluntarily consumed, she was the aggressor as indicated in near contemporaneous text messages to her previous partner.

5. In addition the prosecution successfully applied to adduce evidence of the appellant's bad character, namely her aggressive behaviour in drink towards an ex-partner and Gary Cunningham, and an assertion that she had indicated that she could "murder Gary Cunningham and get away with it by blaming it on her PTSD". The evidence was said to be important explanatory evidence (Criminal Justice Act 2003, s 101(1) (c)) , relevant to an important matter in the case between defendant and prosecution (s101(1)(d)) and that the appellant had made an attack on another person's character (s 101(1)(g)) as had become apparent from the defence statement and what she had said to the psychiatrists. The prosecution application stated that it did not seek to "constrain" the "substantial amount of background evidence" in what would be an "all in trial". And so it turned out to be.6. The appellant's case at trial was that she had no memory of stabbing Gary Cunningham, but accepting it was likely she had done so, she would have been acting in self-defence or acting with diminished responsibility or in loss of control.

20. The judge's direction to the jury on self-defence in the first section of his summing up was unimpeachable and we need not repeat it here. His direction to the jury on the question of non-defendant bad character followed his rehearsal of the appellant's account of her relationship with Gary Cunningham, in the following terms: "The next topic is Gary Cunningham's history of violence. Obviously, you have heard about that really as part of the defendant's case because she says, "He has used violence in the past towards me" and that is part of the important background to this case in explaining why she used violence on this occasion. You must decide whether you are sure that the evidence demonstrates the defendant has been physically and sexually assaulted in the past by Gary Cunningham. If you are not satisfied so you are sure that Gary Cunningham behaved in any or all of the ways alleged, then you should ignore those parts of that evidence that you are not satisfied of. If you are sure that he did behave in that way, then you are entitled to consider that evidence along with agreed facts 12 to 21 and the evidence of Sinead Masters when you consider the defendant's claim in evidence that it was Gary Cunningham who started the incident on 23 February, in particular, whether it supports the fact that she was acting in self-defence. The fact that Gary Cunningham has acted in this way in the past does not mean that he must have used unlawful force on this occasion but it is something you may take into account when you are deciding

whether or not the prosecution have made you sure it was the defendant and not Gary Cunningham who started the violence, and that the defendant's use of force was unlawful." .

21. We have no hesitation in saying that this direction was fundamentally wrong in law. This direction transfers the evidential burden to the defence and to the criminal standard. This is unwarranted and offends against the basic principles of criminal law. Ms Bex QC informs us that the trial judge was aware that the appellant would give evidence of Gary Cunningham's alleged reprehensible behaviour towards her, and says that since he had not been required to rule upon its admissibility, 'agreement' could have been "the only mechanism". Further, Ms Bex QC says that the judge had drafted directions prior to his first discussions with Counsel; the prosecution agreed with his suggestion and encouraged his direction that it was for the appellant to prove to the criminal standard that the allegations were credible in so far as the issue of self-defence was concerned. We disagree with the assertion that 'agreement was the only mechanism' to admit this evidence and refer in this judgment to the possibility of admitting this evidence pursuant to s 98 of the Criminal Justice Act 2003 which requires no agreement, albeit it may have called for a ruling in this case. However, what is clear from the available transcripts of part of those two discussions on this point, is the disagreement between prosecution and defence, and the judge's professed uncertainty and anxiety in relation to his directions. This prompts us to say that in whatever manner this evidence was said to be admissible, we consider that , not least as a matter of professional courtesy, the judge would have been better served in his overview of the trial and preparation of what would be a complex factual and legal summing up, by being alerted to the situation by Counsel via annotation of the DCS file.

22. Expressing some anxiety, the judge accepted the prosecution submission that, following R v Miller and R v Braithwate the appellant could only rely on the bad character evidence if she had satisfied the jury so they were sure that the relevant incident had occurred. We regret that in doing so he dismissed his initial, and we think correct, view that this evidence was in fact admissible by virtue of s 98 (a) of the Act as evidence which "has to do with the alleged facts of the offence with which the defendant is charged" in light of the live issues of self-defence and diminished responsibility. . Mr Bajwa QC did not seek to support this point. He argued that the evidence agreed to be admissible pursuant to s 100 should receive the same treatment as if admitted as of right, namely the jury need only conclude that it might be true to rely upon it.

23. The prosecution seek to defend the conviction. They maintain as they did below that (i) the evidence was not admissible pursuant to s 98 since they were "temporally distanced from the night of the killing by between 11 days and 9 months" and (ii) it was necessary and right that the judge should direct the jury that the appellant must make them sure that the allegations of previous events of physical and sexual assault occurred before they could rely upon them in relation to self-defence. That is, "the evidence could not have substantial probative value of the deceased's propensity to be violent unless the jury is sure that it is true and that the same test applies whether the evidence is adduced by the prosecution or defence.

24. The prosecution rely on Miller and Braithwaite as before, but additionally cite R v Mitchell (Northern Ireland) as support for the proposition that, if the appellant's argument as to the correct burden and standard of proof is endorsed, it would "allow the jury to rely on evidence of reprehensible conduct which it has concluded is probably untrue". The argument proceeds that this cannot have been Parliament's intention because: the 2003 Act intended to restrict the use of bad character evidence; it would contravene the rule in Miller and would allow mere 'kite flying and inuendo'; it is inconsistent with the obligation pursuant to s 109 on the judge to assess admissibility on the basis that the facts are true; it defies logic to direct the jury that if they concluded that an episode of violence probably did not occur it was nevertheless substantially probative of a violent propensity directed against the defendant; and , would allow a defendant to make wide ranging unproven allegations against another without fear of contradiction by refusing to give evidence.

25. We are unable to accept the interpretation placed upon the authorities cited with regard to non-defendant bad character adduced by the respondent or any of the arguments as to why the direction given to the jury in this case was justified. The cases of Miller and Mitchell concern evidence going to the propensity of a defendant, as support for the prosecution case that s/he committed the offence for which s/he stand trial. Whilst catering for the factual circumstances in each case, and not requiring a separate assessment of each and every individual allegation in order to establish propensity, which must be viewed in the round, the requirement that propensity is established to the criminal standard is not applicable to the evidence adduced by a defendant, nor can the same be inferred. The case of Braithwaite concerned a defendant's failed application to admit 'bad character' "evidence" of a type which the trial judge adjudicated had insufficient probative value, namely CRIS reports. This court agreed, saying at [17] that the report: "was no more than evidence that a complaint or allegation had been made. It was not evidence that the witness had done what was alleged.". The issue in that appeal was admissibility of the "evidence" so called, and its sufficiency in probative value, and not the subsequent assessment by the jury. The case certainly does not support any proposition that the defendant must prove the facts beyond reasonable doubt. The prosecution has accepted in terms, not least in the agreement reached with the defence at trial, that the evidence adduced by the appellant in this case was of substantive probative value.

26. The prosecution arguments are simply misconceived, rely upon a misinterpretation of the authorities and are without any grounding in the context of the accusatorial trial process. There is a restriction upon the admissibility of bad character evidence, by both prosecution and defence. This is explained and illustrated in the authorities above. S 109 directs the judge as to admissibility, not to determine credibility, and does not provide nor imply the standard of proof applicable to the party seeking to rely upon it once admitted. If admissible, the evidence of the defendant as to allegations against a complainant or deceased, will be assessed in accordance with the applicable burden and standard of proof for the issue under consideration. Challenges to the defendant's evidence through cross examination or rebuttal evidence are commonplace, and the legal direction as to possible adverse inference of a defendant refusing to give evidence, caters for opportunistic scandalmongering.

27. Ms Bex QC argues, in the alternative that the conviction is nevertheless safe. She submits that there was " a wealth" of established and agreed evidence of Gary Cunningham's bad character, particularly in relation to a previous partner, and also suggests that the hearsay evidence of what occurred on the 22/23 February as related by the appellant to the psychiatrists would have "attracted the balance of probabilities direction in any event". We consider these to be flawed, and inherently self-contradictory arguments.

28. In directing the jury on the partial defence of diminished responsibility the judge necessarily referred to the appellant's evidence regarding Gary Cunningham past behaviour, since she had provided it to the psychiatrists who examined her in significantly similar terms. He directed them that: "What the defendant said to the psychiatrists is not to be treated by you as additional evidence of what took place between the defendant and Gary Cunningham. All they have done is simply repeat what the defendant told them. You have heard about what the defendant told the psychiatrists because it was those accounts which formed the basis for their expert evidence

about the defendant's state of mind; that is its only relevance in this case. You must decide if the defendant's account to them is more likely than not to be true. The burden is on her to establish that all of the following four things are more likely than not. So, this is different from the prosecution. They have to make you sure of the defendant's guilt so far as their assertions are concerned but here, when the partial defence is raised, there is a reversal of the burden. It now is on the defendant and she only has to satisfy you that it is more likely than not.

29. The jury were correctly directed upon the defence of diminished responsibility, and the 'value' of the information she provided to the psychiatrists. They were specifically told that it was not to be treated as 'additional evidence' of what took place to that which she had related in evidence to them. However, in following the legal direction regarding the appellant's need to prove the factual matrix upon which the psychiatrists relied on the balance of probabilities to find diminished responsibility , as we assume they did, they were obliged to consider whether her account of past events was or may be correct. They obviously did so to return the verdict of guilty they did. This raises an obvious question as to whether, if correctly directed in relation to the appellant's evidence relating to past misconduct, the jury would have been made sure by the prosecution that she was not acting in self-defence.

30. We have no hesitation in quashing the conviction as unsafe. We allow the appeal.

Mohammed Zahir Khan v SSJ - Challenge to Early Release Regime

2. By this judicial review application, brought with my permission on 5 May 2020, Mohammed Zahir Khan ("the Claimant") seeks to challenge the early release regime introduced by the Terrorist Offenders (Restriction of Early Release) Act 2020 ("the 2020 Act"). Formally, the Claimant challenges the decision of the Secretary of State for Justice to enforce the legislation in his case, but in substance the challenge is to the legislation itself. The relief which the Claimant seeks is a declaration that s.247A of the Criminal Justice Act 2003 ("CJA 2003"), which was inserted by the 2020 Act, is incompatible with Articles 5, 7 and 14 of the European Convention on Human Rights ("the ECHR" or "the Convention").

3. The 2020 Act was introduced in direct response to two terrorist incidents on the streets of London. On 29 November 2019, five people were stabbed on London Bridge, two fatally, by Usman Khan. Immediately before the attack, Usman Khan had been attending an offender rehabilitation conference at Fishmongers Hall. Two months later, on 2 February 2020, Sudesh Amman was shot dead by police in Streatham High Road after attacking two passers-by with a knife.

4. On 3 February 2020, the Secretary of State for Justice made a statement to the House of Commons announcing the new legislation. He said: "yesterday's appalling incident makes the case plainly for immediate action. We cannot have the situation, as we saw tragically in yesterday's case, where an offender – a known risk to innocent members of the public – is released early by automatic process of law, without any oversight by the Parole Board. We will be doing everything we can to protect the public, that is our primary duty. And we will therefore introduce emergency legislation to ensure an end to terrorist offenders getting released automatically, having served half their sentence with no check or review. The underlying principle has to be that offenders will no longer be released early automatically and that any release before the end of their sentence will be dependent on risk assessment by the Parole Board. We face an unprecedented situation of severe gravity and, as such, it demands that the government responds immediately, and that this legislation will therefore also apply to serving prisoners. Now, the earlier point at which these offenders will be considered for release will be once they have served two-thirds of their sentence and, crucially, we will introduce a requirement that no terrorist offenders will be released before the end of the full custodial term unless the Parole Board agrees."

5. The 2020 Act received Royal Assent, and came into force, on 26 February 2020. It had an immediate effect on the Claimant's release date.

8. On 8 March 2018, at the Crown Court in Newcastle, the Claimant pleaded guilty to five counts of encouraging terrorism, contrary to s.1(2) of the Terrorism Act 2006, one count of dissemination of a terrorist publication, contrary to s.2(1) of the 2006 Act and two counts of stirring up religious hatred contrary to s.29C of the Public Order Act 1986.

9. Those offences related to conduct by the Claimant online in the period between 4 December 2016 and 15 March 2017. During that period, the Claimant repeatedly endorsed acts of terrorism, including murder and martyrdom, to provoke local support for ISIS. He also disseminated terrorist publications including an ISIS video calling for a terrorist attack.

10. On 2 May 2018, the Claimant was sentenced to a determinate sentence of four years and six months. He was provided with documentation from the Ministry of Justice that suggested his release from prison would take place on 1 March 2020. That would have been in accordance with the existing regime for automatic release at the halfway point.

35. (Article 14) On behalf of the Claimant, Mr Southey argues that the 2020 Act creates a difference in treatment on grounds prohibited by Article 14. He says that being made subject to the 2020 Act is a form of status for the purpose of Article 14. He says the purpose of the 2020 Act was not to penalise persons convicted of terrorist offences, but instead was to protect the public from the risk posed by the early release of prisoners serving certain forms of sentence. He argues that the 2020 Act applies to a raft of different offences, the nature and gravity of which vary. He says that any exception from the scope of Article 14 should be narrowly construed.

36. Mr Southey maintains that it is important to concentrate not on the question whether the proposed status has an independent existence but on the situation as a whole. He says that prisoners subject to a determinate sentence to which the 2020 Act applies enjoy a status which prisoners serving a normal determinate sentence, a sentence of life imprisonment or an extended sentence, do not. He says that the distinction in status is not simply about what the Claimant did as the new provisions do not apply to all those convicted of terrorism offences. He says that the fact that the changes to the Claimant's sentence are retrospective illustrates the extent to which his status exists independently of what he did.

37. In response, the Secretary of State contends that distinctions based on the nature and gravity of the crimes committed do not fall within "other status". He says that the changes wrought by the 2020 Act only apply to individuals convicted of terrorist offences and reflect the gravity of those crimes and the specific risk posed by terrorist offenders.

61. he Claimant submits that there are two broad categories of prisoner who are in an 'analogous situation' to determinate prisoners caught by the 2020 Act. First, prisoners serving discretionary life sentences who are ordinarily required to serve one-half of their notional determinate term. Second, prisoners serving standard determinate sentences whose release arrangements are not affected by the 2020 Act.

62. Mr Southey argues that all three groups have the same interests in obtaining their liberty as soon as possible. He says that the 2020 Order does not affect the standard determinate sentence prisoners both because it is not retrospective and because offenders sentenced to less than 7 years imprisonment are exempt. The analogous prisoner sentenced to the same sentence term as the Claimant would already have been released under the terms of the CJA 2003. His length of sen-

tence would also mean that the 2020 Order did not apply. He says that the discretion to impose a minimum term that is more than one-half of the notional determinate term in a discretionary life sentence does not affect the validity of discretionary life sentence prisoners as an analogous group. The possibility remains of release at the halfway point of the equivalent determinate term.

63. It is often difficult to draw analogies between different categories of prisoners. The sentences for each category are designed for the offenders that fall within it, in order to address the particular type of offending and the risk which that type of offender presents. In Stott, the majority of the Supreme Court concluded that prisoners serving extended determinate sentences were not in an analogous position with other prisoners. The headnote to the report includes the following useful summary of the decision: The various sentencing regimes laid down under English law had to be considered holistically; that each sentencing regime had its own detailed set of rules dictating when it could be imposed and how it operated in practice, with the early release provisions being part of those rules; that each sentence was tailored to a particular category of offender, addressing a particular combination of offending and risk to the public; that an ordinary determinate sentence was not comparable with an extended determinate sentence because the former could not be broken down into a component for punishment and a component for avoidance of risk to the public whereas the latter could; that, likewise, a discretionary sentence of life imprisonment, although broken down into such components, was not comparable with an extended determinate sentence because a prisoner serving an extended determinate sentence was entitled to be released after serving the whole of the appropriate custodial term while a discretionary life prisoner, even though entitled to apply for release after serving the specified minimum term, had no right to be released at all; that, consequently, prisoners serving extended determinate sentences were not in an analogous position with other prisoners; and that, even if they were, the difference in treatment was proportionate and justified.

64. In our judgment, the suggestion that prisoners serving discretionary life sentences are in an analogous position to those caught by the 2020 Act is hopeless. The whole of a determinate sentence is properly regarded as punishment for the offence; the period of detention of a discretionary life sentence prisoner, after expiry of the tariff, is a means of managing risk. Release for the latter is not automatic. Terrorist offenders made subject to a discretionary life sentence are already subject to a restricted release regime and to a review by the Parole Board before release. The two regimes have different elements and are designed for different sets of circumstances.

71. We note first that Mr Southey accepts that the involvement of the Parole Board was justified by the need to assess prisoners before release. But he argues that the extension of the custodial part of the Claimant's sentence from one-half to two-thirds cannot be justified because there is no nexus between the individual risk posed by the offender, his prospects of being rehabilitated, and the arbitrary extension of his release point. He says that the risks that arise in the context of terrorist offenders "might provide a justification for the Parole Board considering entitlement to release", but do not justify delaying release in all cases to which the 2020 Act applies. The risk posed by individual terrorist offenders will vary and there has been no individual assessment of whether release should be delayed. The extension of the custodial period bears no relationship to the actual risk posed by each individual offender.

72. Mr Southey points out that the minimum period of imprisonment has been changed in the case of prisoners to whom the 2020 Act applies but has not been changed for other terrorism prisoners such as those serving a discretionary life sentence. He says that prisoners subject to the 2020 Act suffer the disadvantage of delayed release without any compensating benefit.

73. Sir James contends that any relevant differential treatment is clearly justified. The 2020 Act

pursued the legitimate aim of keeping terrorist prisoners in custody for a longer proportion of their sentence. The change in the law was a direct response to repeated terrorist attacks in the UK between 2017 and 2020. Reference to the Parole Board at the two-third point was justified by the very particular nature of terrorist offending and the need to ensure the public were not put at risk by the prisoner's release. Parliament was entitled to conclude that terrorist offenders are to be distinguished from others because of the immediate and significant risk they pose, a risk that materialises in "serious, unpredictable harm to innocent and random members of the public". Sir James refers to well-known postscript to the speech of Lord Hoffmann in Rehman at 62.

74. Sir James argues that the "twin features of the 2020 Act are inextricably linked". A longer period of custody before a prisoner becomes eligible for release improves the evidence base on which the Parole Board makes its decision and increases the opportunity for rehabilitation.

75. On this element of the analysis, the Secretary of State has much the more compelling argument.

106. (Article 5)Article 5 provides that: (1) Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law; (a) the lawful detention of a person after conviction by a competent court.

107. In considering Article 5, the Grand Chamber in Del Rio Prada concluded that it was well established that all deprivations of liberty must not only be based on one of the exceptions listed in sub paragraph (a)–(f) but must also be "lawful". Where the "lawfulness" of detention is in issue, the Convention refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules of national law. This requires any arrest or detention to have a legal basis in domestic law, but also relates to the quality of the law, requiring it to be compatible with the rule of law. The "quality of the law" implies that where a national law authorises deprivation of liberty it must be sufficiently accessible, precise and foreseeable in its application to avoid all risk of arbitrariness.

108. The standard of "lawfulness" set by the Convention requires that all law be sufficiently precise to allow the person—if need be, with appropriate advice—to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. Where deprivation of liberty is concerned, it is essential that the domestic law clearly define the conditions for detention. The Court reiterated that although Article 5(1)(a) of the Convention does not guarantee, in itself, a prisoner's right to early release, be it conditional or final, the situation may differ when the competent authorities, having no discretionary power, are obliged to apply such a measure to any individual who meets the conditions of entitlement laid down by law.

109. Of particular importance to its analysis was what was said in [107] of the Grand Chamber's decision: The Court notes that the application of the "Parot doctrine" to the applicant's situation deprived of any useful effect the remissions of sentence for work done in detention to which she was entitled by law and in accordance with final decisions by the judges responsible for the execution of sentences. In other words, the applicant was initially sentenced to a number of lengthy terms of imprisonment, which were combined and limited to an effective term of 30 years, on which the remissions of sentence to which she was meant to be entitled had no effect whatsoever. It is significant that the Government have been unable to specify whether the remissions of sentence granted to the applicant for work done in detention have had—or will have—any effect at all on the duration of her incarceration.

110. Mr Southey argues that the Court's reasoning in Del Rio Prada applies with equal force here. According to the law in force at the time of sentence, the Claimant would have been entitled to automatic early release at the halfway point of his sentence. There was no discretion in play. And he could not have foreseen that the law would be changed to prevent this automatic release.

111. Referring to Robinson and Abedin, Sir James submits that the contention that the 2020 Act is incompatible with Article 5 flies in the face of well-established principle. He says that Del Rio Prada has no application here. The effect of the decision of the Spanish Supreme Court in 2006 was retroactively to cancel remissions that had already been granted. He says that in those circumstances it is wholly unsurprising that the ECtHR "had concerns". The present context, he says, is entirely different. The issue of foreseeability simply does not arise: it is well established in the case-law that there is no right to early release; it was always open to Parliament to change the early release provisions. This is not a case where the Claimant is serving any longer a period than that which was ordered by the sentencing Judge (indeed, it remains possible that he will serve only two-thirds of his sentence in custody).

112. In our judgment, Sir James is right in his submission that Del Rio Prada does not undermine well-established principles as to the application of Article 5.

121. From those authorities it is possible to draw the following principles: i) The early release arrangements do not affect the judge's sentencing decision; ii) Article 5 of the Convention does not guarantee a prisoner's right to early release; iii) The lawfulness of a prisoner's detention is decided, for the duration of the whole sentence, by the court which sentenced him to the term of imprisonment; iv) The sentence of the trial court satisfies Article 5(1) throughout the term imposed, not only in relation to the initial period of detention but also in relation to revocation and recall; and v) The fact that a prisoner may expect to be released on licence before the end of the sentence does not affect the analysis that the original sentence provides legal authority for detention throughout the term.

122. In our judgment those principles are not affected by the decision in Del Rio Prada. Del Rio Prada does not detract from the core distinction between sentence passed by the sentencing judge and the administration or execution of the sentence. Throughout the relevant period, the governing authority for the detention is the original sentence. It is entirely foreseeable (if necessary with appropriate legal advice) that during the currency of a determinate sentence, which was calculated and imposed without account being taken of the possibility of early release, the arrangements for the execution of the sentence might be changed by policy or legislation. Accordingly, the lawfulness of the sentence was not undermined or compromised by changes of the sort made by the 2020 Act.

123. In those circumstances, the challenge under Article 5 must also fail.

124. For those reasons we reject the challenges under Articles 14, 5 and 7 application dismissed.

William Francis Jones Conviction Quashed

1. On 29 April 2019 in the Crown Court at Liverpool (HHJ Cummings QC), the appellant was convicted (by a majority of 11 to 1) of Count 1 on a single-count indictment alleging conspiracy to possess explosives for an unlawful purpose, contrary to section 1(1) of the Criminal Law Act 1977. On 2 May 2019 at the same Court (HHJ Cummings QC) he was sentenced to life imprisonment with a minimum term of 6 years

2. There were co-accused who were tried with the appellant. RM, KS and WW were jointly tried on the same indictment: each was found not guilty.

3. The appellant appeals against conviction by leave of the single judge, who also granted a representation order

4. The present constitution of this court first heard this appeal on Friday, 12 June 2020. We considered that it was necessary for us to review the transcript of the evidence given by the DNA expert for the Crown, along with some other material bearing on the DNA evidence. Accordingly, the appeal was adjourned while that material was obtained. We have now seen it and read it. On 24 July 2020, we heard and considered very short supplementary submissions from counsel on both sides. *We then indicated that we were minded to quash the conviction. We now do so, and provide our reasons in writing.*

29. (Conclusions) We have considered carefully the submissions of both parties. There is no doubt that there was a conspiracy, and there is no doubt that the DNA of this appellant was on the firing pin of the grenade. The firing pin was a single assembly, never disassembled, and thus if the jury could be sure that the transfer of DNA was direct, there was a very strong case indeed against the appellant. Given that the allegation was one of conspiracy to possess this explosive device, it was not in any sense essential that the appellant had placed the grenade by the house, or indeed had undertaken any other specific act to do with the grenade. The essential ingredient was that he was party to the conspiracy to obtain the grenade.

30. With great respect to the judge, we do not agree that the association between this appellant and Warrington, the centre of all the relevant events, and the home and operating area of the co-accused and of those they wished to intimidate, is capable of distinguishing between direct and indirect deposit of the DNA. In a case where the DNA link itself was in question, such proximity might help, but that is not the issue here. Paradoxically, if this appellant lived in the north of Scotland or the west of Cornwall, the risk of innocent secondary transfer might be thought to be very much lower. If the appellant lived at a distance from Warrington it would arguably make secondary transfer less likely, through (for example) a casual handshake with a conspirator, or the vendor of the commercially available paintball grenade before adaptation.

31. There was no expert evidence before this jury, paralleling that in Tsekiri, to the effect that secondary transfer onto the door handle was improbable. The evidence here is that as a point of general principle direct transfer is more likely than indirect transfer, qualified by the observation that no conclusion along those lines could be reached in relation to the individual case. That is a significant distinction from the position in Tsekiri.

32. The position in FNC was farther removed from this case, since it was clear from the facts of that case that the DNA on the victim's clothing was deposited by the offender.

33. Each such case turns on its own facts. We have already indicated some of the material distinctions between the evidence in this case and those to which we have been referred.

34. The DNA evidence here was restricted by the particular circumstances. Since the grenade was a live explosive device, the sampling could not be carried out in such a way as to determine whether the DNA deposit was by way of skin, blood, or other tissue or fluid. The conspiracy was not confined to those indicted, and so the absence of DNA from the co-accused in the sample recovered was not of help, in the sense that the presence of the appellant's DNA but absence of any residue from those who might be the obvious vector for secondary transfer could support direct rather than indirect deposit. There was no observation evidence or other evidence associating this appellant with any step in the conspiracy or the acts in furtherance of the conspiracy. Given the admitted weakness of the telephone evidence, not relied on by the judge in his rejection of the submission, but left to the jury despite the Crown's concession as to its weakness, no support for the Crown's case can be derived from that evidence.

35. As we have seen, the agreed evidence here, in paragraph 12 of the joint statement and reaffirmed by Mr Walton, was that 'it is not realistic to expect anyone to be able to account for the ways in which their DNA may have been transferred by indirect methods.' This was a very broadly phrased formulation, and we are sceptical as to whether it was wise to reach an agreement in those terms. There are many circumstances where it may be reasonable to expect an individual to put forward

a case in relation to the presence of their DNA, not because they can be expected to analyse the science or the detailed material on which the scientific conclusions were based. Such an expectation may arise, for example, because the presence of their DNA may be explained by some connection or contact, or because the opportunity for direct transfer can be precluded or shown to be unlikely, or because the facts mean that the presence of their DNA at least calls for explanation.

36. However, in this case that agreement was reached/reinforced in evidence by Mr Walton.

37. Set beside the straightforward denial by the appellant in interview that he had ever touched a grenade, and without more exploration or development in evidence, the evidence could not properly be supported by an adverse inference pursuant to section 34 of the Criminal Justice and Public Order Act 1994. The statute requires that the appellant 'failed to mention [a] fact … which the accused could reasonably have been expected to mention when … questioned ...'. The judge would of course have been fully entitled to rely on such a fact when addressing a submission (see s34(2)(c)), and the jury would also be so entitled, provided there was such a fact. Here, the relevant 'fact' would have been an explanation as to how indirect transfer might have taken place. In his ruling he did make express mention of the absence of any explanation, but it is not clear if he had such an inference in his mind. When he came to sum up to the jury, he did not leave that matter to the jury, although he did leave to them the possibility of drawing an adverse inference from the fact that the appellant had not given evidence.

38. It is hard to see how such an explanation 'could reasonably have been mentioned', when the experts in the case had agreed in such broad terms that 'it is not realistic to expect anyone to be able to account for' transfer by indirect means. If this point was to be made good by the prosecution, it would have required greater development in the evidence, laying the groundwork as to why such explanation was called for. We repeat that the breadth of the formulation in paragraph 12 was unwise. The expert evidence should have been confined to purely scientific questions, leaving open any issue as to the surrounding facts.

39. We bear in mind that at the time of the judge's ruling, the Crown was still seeking to rely on the telephone evidence. However, he did not rely on that in giving his reasons.

40. As matters stand, this case was encapsulated by a frank response by Mr Mills, in the course of submissions on the resumed hearing before us. He accepted that, on the facts of this case, the proposition that direct deposit of DNA was more probable than indirect 'was the height of it'. Probability is insufficient for conviction of guilt. In the absence of at least some further evidence, we are of the view that neither the judge nor the jury had the basis for a safe conviction.

41. We emphasise that this case turns upon its own facts. Save in respect of our remarks about the breadth of paragraph 12 of the Joint Witness Statement of the experts, it does not represent guidance for other cases.

Rebuttal of Rape Allegations

How amazing that after the Henrique report into the Met's handling of the allegations against Cliff Richard and Paul Gambaccini, which was followed by the senior police officer's investigation into the validity of the Henriques report. A change in the re-training of police officers was made. All in the name of equality and fairness Now that not many accused are being sent to court and found guilty, or cases dropped – there is an outcry that the accused are 'getting away with it' How many of these numbers are actually those falsely accused? Strangely there are no figures to identify that fact, nor whispers that may be the case.

False allegations are buried by both media, government, police/CPS, the victim's commissioner, and the women's lobby – whilst there Is no counter lobby for those being falsely accused (which includes women, children and others) because if they try to raise their heads above the parapet, they are again vilified as society views them as 'no smoke without fire'

Also, Women's group argue that that having the complainant's phones/computers examined in a police investigation is an abuse of privacy against their human rights. However, if the accused person is to be entitled to any defence at all then this is often necessary. People accused of offences will invariably have their phones/computer examined and their privacy compromised. The Liam Allan case demonstrates how important it is for the police to check the veracity of the complaint in this way in order to avoid miscarriages of justice. Police should be doing a thorough investigation into who is telling the truth – and looking at digital input will help to show this.

Those accused have never had the right in stopping the police taking all their digital phones and computers etc - and the police have been doing so for the past 20 years. What is equality here. There is supposed to be one law for all Unfortunately, the law is weighted on the side of those who shout the loudest and get the most media cover, in order to brow beat the police/CPS, government who tend to give way to those creating such an outcry.

It is about time those falsely accused and their supporters got together, and started shouting with their evidence of the wrong being done against them, despite the pressures of being falsely accused a second time, as they have the temerity (will be said) to tell the truth and shout out against the false accuser. The falsely accused is the modern form of the witch hunt which ceased in the 1750's – you are dammed if you stand up for your truth, and forever after targeted, when found not guilty or there is no evidence against you.

False Allegations Support Organisation (FASO), https://is.gd/FM3oRq

English Child Care Judge Found To Have Potential Bias After Leaving Remote Link Open

Scottish Legal News: The Court of Appeal (Civil Division) has remitted care proceedings in respect of a baby whose brother died to the Family Division after finding that the original judge may have expressed bias against one of the parties when she made a number of pejorative comments to her clerk about the appellant including that she had tried "every trick in the book" to avoid having to answer difficult questions. One of the appeal judges in the present case said that it was "to the credit of those that overheard the judge" that they attempted to "speak over and distort the conversation" she was having with her clerk. Proceedings were conducted by way of a "hybrid" hearing in which the case was conducted both remotely via Zoom conference and in court. The original judge, Mrs Justice Judd, refused to accede to an application to recuse herself from the case, a decision which was appealed by the child's mother.

The care proceedings originally arose after E's brother, A, had died of a catastrophic head injury. At the time of A's death E was living with his mother, the appellant, and her partner. The first respondent, the child's father, and the appellant had previously separated. The purpose of the hearing was to establish whether A had died of inflicted injuries and, if so, to identify if possible who had caused them. From 1 July to 13 July 2020, various medical witnesses gave evidence remotely by Zoom. The appellant was physically present in court on 13 and 14 July, along with her legal team, to give evidence before the judge subject to appropriate social distancing measures.

The appellant gave evidence wearing a mask which she pushed down when she was speaking. Cross-examination was not completed on the 13th as the appellant had said that she felt unwell with back pain and blurred vision. On 16 July the appellant told the court that she had developed a cough, and it was agreed that she could finish giving her evidence remotely. The court accordingly rose

to allow arrangements to be made. An associate took the judge's closed laptop through to her room but unbeknownst to the judge the remote link to the courtroom remained open. The judge was therefore overheard having a private conversation on the telephone with her clerk about the Appellant by a number of people who still remained on the call. During this call, the judge was heard making a number of pejorative comments about the appellant, including that she was only pretending to have a cough and was trying "every trick in the book" to avoid having to answer difficult questions. The judge did not express a view on the circumstances of A's death.

The appellant made an application for the judge to recuse herself from the case, which she refused to do. An appeal of this decision was made, with proceedings stayed until its resolution. The appellant submitted that the comments gave rise to a real possibility of bias, which was compounded by the fact that she was not given an opportunity to address the comments on the genuineness of her cough. The effect of the judge's comments was that she had concluded that the Appellant was actively misleading the court in an effort to avoid answering difficult questions.

Considerable sympathy: Giving the judgment of the court, Lady Justice King noted the case was an example of the hazards of remote proceedings, and added: "It is to the credit of those that overheard the judge's conversation with her clerk that they did everything they could both to draw the judge's attention to the situation and indeed to speak over and distort the conversation." She continued: "What happened is undoubtedly a consequence of the tremendous pressure under which family judges at all levels find themselves at present. All over the country judges are trying, against powerful odds, to 'keep the show on the road' during the pandemic for the sake of the children involved. They are faced daily, as are the court staff and practitioners, with all the difficulties, technological and otherwise, presented by remote hearings generally and hybrid hearings in particular."

On whether the judge's comments were indicative of bias, she said: "We have considerable sympathy with the judge. We have, however, no hesitation in concluding that her comments did indeed fall on the wrong side of the line. The fact that the comments were intended to be private does not salvage the situation in circumstances where those comments were, unhappily, broadcast across the remote system and were made during the course of the appellant's evidence." She continued: "We agree with [the appellant] that unfiltered comments as an expression of frustration at a situation (here, further delay in an already delayed case) are different from negative and pejorative language about a party in the case, all the more so when made while that party is in the witness box at the time." On whether a reasonable person would have reached that conclusion, she said: "The case could not be more serious. The Appellant is accused of either causing the death of her toddler or of failing to protect him from the man who caused his death. The judge made highly critical remarks about the Appellant's honesty during the course of her evidence, remarks which we believe a person looking in from the outside could not do other than think would colour the judge's view of that witness and demonstrate a real possibility of bias." For those reasons, the case was remitted to the Family Division for the Acting President to give directions for the future conduct of the proceedings before a fresh judge.

Bristol Prison Race Failings Led to Attack on Muslim Inmate

Diane Taylor, Guardian: Serious failings in the handling of race and diversity at a Bristol prison led to a devastating attack on a black Muslim by a fellow inmate who had previously told guards he would only share a cell with a white person, a report has found. Mohamed Sharif, 43, of Somali heritage, was left so severely brain-damaged by the attack at HMP Bristol that he needs round-the-clock care and supervision. An independent report commissioned by the Ministry of Justice and published on Wednesday – six years after the incident took place – finds that despite some commendable efforts to engage with the Somali community, insufficient priority was given by the prison to addressing racism, inadequate risk assessments were carried out and the unit was poorly managed.

Rob Allen, the author of the report, has made 54 findings and 31 recommendations, and called for additional scrutiny through an independent public hearing. Sharif was on remand following an arrest for common assault in June 2014 when the attack happened. Another inmate, Ryan Guest, who had previously told prison officers he would only share a cell with a white person who was not homosexual – a racist and homophobic remark that was not explored by prison officers – attacked Sharif during an unsupervised session in the prison exercise yard on 26 June 2014. After Guest kicked Sharif and forced him to the ground he repeatedly stamped on his head.Guest was in prison after being charged with the murder of his step-grandmother in a care home outside Bristol. He pleaded guilty to this charge and to the charge of attempted murder of Sharif and was detained in Broadmoor in December 2014 following a diagnosis of paranoid schizophrenia.

Sharif's sister-in-law, Ugaso Dahir,said Sharif and the family were still waiting for justice. "The long delay in receiving today's report has made everything so much worse," said Dahir. "We are black and we are Muslim. I don't think this would have happened to a white person. We are too sad about everything that happened to Mohamed. Our hearts are broken. Mohamed is not dead but it is as if he is dead. He has no life. We thought he would be safe in prison but we were wrong."

The case has chilling parallels to that of 19-year-old Zahid Mubarek, who was murdered by white racist Robert Stewart at Feltham young offenders' institution in March 2000. Campaigners say it highlights institutional racism in the prisons system. Alex Ardalan-Raikes of Stand Against Racism and Inequality, who has supported Sharif and his family since the attack, said: "When are we going to learn from racist attacks like Zahid Mubarek and Stephen Lawrence? Institutional racism is still rife in the prison environment. This was blatant racism compounded by institutional racism." Jane Ryan, of Bhatt Murphy Solicitors, who is representing Sharif, said: "The family is calling for meetings with those responsible, including the justice secretary, Robert Buckland, so they are listened to and so that no other family has to endure the agony they are experiencing."

A Ministry of Justice spokesperson said: "This was a horrendous assault and our thoughts remain with the victim and his family. We have since implemented all recommendations from the Allen report, including increased staffing and CCTV, and are continuing to work closely with HMP Bristol on a range of measures to improve safety for both staff and offenders." The Avon & Wiltshire mental health partnership NHS trust, the mental health provider in the case, has been approached for comment.

Chinese Court Clears Zhang Yuhuan of Murder After 27 Years in Prison

China's legal system is trying to stamp out the use of forced confessions. A man in eastern China has been acquitted of murder and freed after spending 27 years in prison. Zhang Yuhuan maintained he was tortured by police and forced to confess to the murder of two young boys in 1993. He was China's longest-serving wrongfully convicted inmate, after having served 9,778 days in the prison in Jiangxi province. Prosecutors who reopened the case said his confession had inconsistencies and did not match the original crime. He walked free after a high court found there was not enough evidence to justify his conviction. Observers say China is growing more willing to quash wrongful convictions, but only criminal not political. Footage on Chinese media showed Mr Zhang in an emotional reunion with his 83-year-old mother and his ex-wife following his release on Tuesday.

China cracks down on forced confessions: It is an open secret in China that the police

use various kinds of torture, including sleep deprivation, cigarette burns and beatings, to force suspects to confess to crimes. In the past, entire cases might then be pinned on that "confession". In 2010, a serious effort began in China's legal system to stamp out the use of forced confessions. Death sentences must now be approved by China's Supreme Court and there is a growing drive to eliminate cases that are pinned solely on a suspect's confession. However, China's legal reform has clear limits. Police in many provinces remain under heavy pressure to "solve" cases, often by producing suspects and there is little appetite to improve the treatment of dissidents and some ethnic minorities, including Muslim Uighurs. The authorities regularly detain individuals in politically sensitive cases and interrogate them outside of the normal detention system. Behind those closed doors, almost anything can happen. It is far more likely that China will reform its treatment of criminal suspects than those who appear to threaten the dominance of the Communist Party.

Rise in Care Children Being 'Deprived of Liberty'

Noel Titheradge, BBC News: The number of children in care in England and Wales who have restrictions placed on their freedom has tripled in the last two years, BBC News has found. Deprivation of liberty orders are increasingly being used to detain children in homes when suitable accommodation cannot be found. Campaigners say it shows a "wilful neglect" of young people at risk of exploitation. The government said supporting vulnerable children "is a priority".

Deprivation of liberty orders are often used for adults who lack the mental capacity to consent to changes in their care, such as elderly people with Alzheimer's. But BBC News has learned they are increasingly being used for children and young people on safeguarding grounds. The orders can cover a range of restrictions from detention in a house to taking away a mobile phone - and are commonly secured from the High Court or Court of Protection by a local authority in charge of the care of the child. Freedom of information responses from 91 of 170 local authorities in England and Wales show the number of deprivation of liberty orders for children and young people went from 43 in 2016-17 to 134 in 2018-19. The vast majority of these will be for children in care.

More than a quarter of orders granted over the last five years were made primarily because of concerns about the child or young person going missing, without relating to mental capacity. One recent hearing granted a deprivation of liberty order for a 13-year-old child to be detained in a rented council house while being cared for by four local authority staff. The order meant the child could be locked in a bedroom at night, stripped of all loose items and restrained if attempting to self-harm, hurt staff or escape. The judgement acknowledged the restrictions were "draconian" but said 30 applications for a place in a secure unit or alternative settings had been declined. At another hearing, a High Court judge complained of being "almost drowned out" by applications at that time and said he was increasingly concerned they were "operating to bypass" safeguards provided by secure accommodation.

BBC News has learned a 14-year-old victim of so-called modern day slavery had been placed on a deprivation of liberty order and was moved to an unregulated home Despite being banned from having a mobile phone because of her vulnerability, the girl told a social worker she was given an iPhone and moved between residences across the UK by a company, sometimes without the local authority being informed. The number of children waiting for placements in secure accommodation - residences children are prevented from leaving - hit a peak of 54 open referrals in England, according to records released by the Department for Education following a freedom of information request.

'Wilful neglect': BBC News has learned three children have spent more than six months waiting for a secure accommodation placement, and one child had 27 individual referrals declined. The lack of appropriate placements for such children and young people is an "absolute disgrace", according to Carolyne Willow, director of the charity Article 39, which campaigns for the rights of children in institutional settings. "It demonstrates wilful neglect at the highest level and a readiness to permit the decaying of children's services. "You don't have to be a child welfare expert to be able to imagine the risks of putting an individual child into accommodation where there's no other children… where everything you do is monitored and supervised, where every aspect of ordinary childhood experiences are taken from you." Such orders "are meant to be last resort measures, they're not meant to be regular, routine ways of protecting children", she said.

Investment is needed, not only in secure accommodation, but a range of specialised placements that cater to the dangers now faced by vulnerable children, said Jenny Coles, the President of the Association of Directors of Children's Services. "The children, young people, that are coming into care over the last three or four years, their needs and their experiences have changed", she said. "[These range] from sexual exploitation, criminal exploitation, gangs, county lines. "If we had that broader range [of placements], that was meeting complexity, we wouldn't have to potentially use those orders as we have been using them."

In a statement, a government spokesperson said: "Supporting the most vulnerable children in the country is a priority for this government, and every young person in care deserves appropriate, safe accommodation that supports them in the best way possible. "Local authorities have a duty to make sure there are sufficient places, including secure care, for their looked-after children. "We have invested £40m in supporting councils in England to improve and expand the secure provision available, and we have consulted on radical reforms to the quality of independent and semi-independent placements to make sure the right checks and balances are in place."

Protest Royal College of Psychiatrists Endorsing Prison Segregation Units

As networks that do work with women and men in prisons, we have been outraged to find out that the Royal College of Psychiatrists (RCP) is “endorsing” Close Supervision Centres (CSCs), prisons within prisons, where human beings are kept in relative or complete isolation sometimes for years. We hope that after you read the letter below to the RCP, you will be as surprised and outraged as we are, and will add your organization/name to the signatories on the list demanding that the RCP withdraw any and all “enabling environment” accolades to CSCs. Evidence shows that “severe restriction of environmental and social stimulation has a profoundly deleterious effect on mental functioning” and that “psychological stressors such as isolation can be as clinically distressing as physical torture” This level of confinement and deprivation of contact with other human beings in CSCs is comparable to “solitary confinement”. Prolonged solitary confinement is considered psychological torture and is a breach of the United Nations Mandela Rules. The UN Special Rapporteur on torture called for “an absolute prohibition” of “indefinite and prolonged solitary confinement in excess of 15 days”. Amnesty International has identified CSCs (formally SSUs) as “cruel, inhuman or degrading treatment.”

Serving Prisoners Supported by MOJUK: Walid Habib, Giovanni Di Stefano, Naweed Ali, Khobaib Hussain, Mohibur Rahman, Tahir Aziz, Roger Khan, Wang Yam, Andrew Malkinson, Michael Ross, Mark Alexander, Anis Sardar, Jamie Green, Dan Payne, Zoran Dresic, Scott Birtwistle, Jon Beere, Chedwyn Evans, Darren Waterhouse, David Norris, Brendan McConville, John Paul Wooton, John Keelan, Mohammed Niaz Khan, Abid Ashiq Hussain, Sharaz Yaqub, David Ferguson, Anthony Parsons, James Cullinene, Stephen Marsh, Graham Coutts, Royston Moore, Duane King, Leon Chapman, Tony Marshall, Anthony Jackson, David Kent, Norman Grant, Ricardo Morrison, Alex Silva,Terry Smith, Hyrone Hart, Warren Slaney, Melvyn 'Adie' McLellan, Lyndon Coles, Robert Bradley, Thomas G. Bourke, David E. Ferguson, Lee Mockble, George Coleman, Neil Hurley, Jaslyn Ricardo Smith, James Dowsett, Kevan & Miran Thakrar, Jordan Towers, Patrick Docherty, Brendan Dixon, Paul Bush, Alex Black, Nicholas Rose, Kevin Nunn, Peter Carine, Paul Higginson, Robert Knapp, Thomas Petch, Vincent and Sean Bradish, John Allen, Jeremy Bamber, Kevin Lane, Michael Brown, Robert William Kenealy, Glyn Razzell, Willie Gage, Kate Keaveney, Michael Stone, Michael Attwooll, John Roden, Nick Tucker, Karl Watson, Terry Allen, Richard Southern, Peter Hannigan.