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## Manslaughter Sentencing – Diminished Responsibility

Submitted by Jessica Armfelt on Mon, 11/16/2020 - 08:29

On Friday, Luigi Palmas was sentenced at Exeter Crown Court to a s.37 Hospital Order with a s.41 limitation, following his plea of guilty to manslaughter by reason of diminished responsibility. Adam Vaitilingam QC represented him.

Palmas was a volunteer farm worker at Coombe Farm. He developed irrational ideas about a woman who also worked there, before carrying out a plan to kill her. He had longstanding mental health illness - a schizoaffective disorder - although no symptoms were observable on the day of the killing, when witnesses said he was behaving normally. Several days later, however, he was seen running naked in the fields around the farm and behaving strangely. Psychiatrists thought it likely that he was in the grip of his illness at the time of the killing, hence the plea to diminished responsibility being accepted by the prosecution.

The key issue for sentence was whether he should be given a Hospital Order with limitation, or a “Hybrid Order” involving both prison and hospital. In essence, the emphasis of the former is on treatment and recovery, while with the latter it is on both punishment and treatment.

Under a Hospital Order with limitation (s.37/41 Mental Health Act 1983) the patient is detained in a secure hospital. The built-in safeguards mean that, as his health improves, transfer (to a less secure hospital) or discharge (into the community) require permission from the Ministry of Justice and/or a Mental Health Review Tribunal.

Under a Hybrid Order (s.45A), there is a term of imprisonment **and** a hospital and limitation direction. The defendant is sent to hospital but, when his health improves, he is sent to prison to serve the rest of his sentence. If there is no improvement by the automatic release date, the limitation direction falls away and he remains in hospital under s.37, with his discharge a matter simply for the clinicians..

What determined the outcome here was the view of the psychiatrists that:

- (a) the defendant’s culpability for the killing was low. He was suffering with severe mental illness, and the need for punishment was therefore less important;
- (b) prisons are not good at managing people who are psychotic; they often act irrationally and rarely do well; and
- (c) his eventual release into the community should be managed by mental health services, better set up to guard against or respond to relapse, rather than by the probation service.

Judges are encouraged by the Court of Appeal to challenge psychiatric opinion rather than slavishly

follow it: see, for example, *Edwards* [2018] EWCA Crim 595. But here the judge, having carefully considered all matters, agreed with the psychiatric opinion. Had he passed a custodial aspect to the sentence, it would have been seven years (less credit for plea), but in the unusual circumstances of the case it was not appropriate to pass it.

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