APPEAL COURT, HIGH COURT OF JUSTICIARY

[2025] HCJAC 27
HCA/2025/000097/XC

Lord Justice General
Lord Doherty
Lord Clark

OPINION OF THE COURT

delivered by LORD PENTLAND, the LORD JUSTICE GENERAL

in

CROWN APPEAL AGAINST SENTENCE

by

HIS MAJESTY'S ADVOCATE

Appellant

against

WILLIAM BUDGE

Respondent

Appellant: The Lord Advocate (Bain KC); the Crown Agent
Respondent: Culross; Wilson McLeod

1 July 2025

Introduction

[1] At Edinburgh High Court on 6 January 2025 the respondent pled guilty to charges in an indictment served under section 76 of the Criminal Procedure (Scotland) Act 1995. The charges were in the following terms:

> "(001) on an occasion between 14 April 2016 and 14 April 2017, both dates inclusive, at [an address in] Edinburgh you WILLIAM ANDREW BUDGE, did assault

Sandra Budge, your wife, c/o Police Service of Scotland, and did put your hands around her throat;

and it will be proved in terms of section 1 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016 that the aforesaid offence was aggravated by involving abuse of your partner or ex-partner;

(002) between 1 April 2019 and 14 April 2024, both dates inclusive, at [an address in] Edinburgh you WILLIAM ANDREW BUDGE did engage in a course of behaviour which was abusive of your partner or ex-partner Sandra Budge, c/o Police Service of Scotland, in that you did shout and swear at her, call her abusive names, prod her on the head with your fingers, seize her and push her onto a bed, and contact her by text message and telephone call excessively including during hours of night: CONTRARY to the Domestic Abuse (Scotland) Act 2016, Section 1;

(003) on 14 April 2024 at Muirhouse Parkway, Muirhouse, Edinburgh you WILLIAM ANDREW BUDGE did assault Sandra Budge, your wife, c/o Police Service of Scotland and did seize her on the body, attempt to take her mobile telehone from her and repeatedly attempt to force her into your motor vehicle registered number SJ05 WJA, thereafter repeatedly drive said motor vehicle directly at her, strike her with same, knock her to the ground and drive over her, thereafter drive away only to return to where she lay on the ground and drive said motor vehicle over her again, to her severe injury, permanent disfigurement, permanent impairment and to the danger of her life and did attempt to murder her;

and it will be proved in terms of section 1 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016 that the aforesaid offence was aggravated by involving abuse of your partner or ex-partner."

[2] The respondent had no previous convictions. The sentencing judge adjourned the diet in order to obtain a Justice Social Work Report. Having done so, on 5 February 2025 the judge imposed the following sentences:

- Charge 1: 6 months' imprisonment, discounted from 9 months for the guilty plea;
- Charge 2: 8 months' imprisonment, discounted from 12 months for the guilty plea;
- Charge 3: 7 years and 4 months' imprisonment, discounted from 11 years for the guilty plea.

In respect of charge 3, a period of 3 years was attributed to the aggravation in terms of the 2016 Act.

[3] The judge ordered that the sentences on all the charges were to run concurrently. He backdated them to 16 April 2024 when the respondent had first appeared on petition. He had been in custody since then. Finally, the judge made a non-harassment order for a period of 15 years.

The facts

[4] These were set out in an agreed narrative read to the sentencing judge. The complainer and the respondent had been married for around 33 years. They had two adult children. The circumstances of charge 1 were that the complainer woke up in bed on one occasion to find that the respondent had his hands around her throat. She managed to get him off her.

[5] The facts giving rise to charge 2 were that throughout the relationship the respondent would often shout and swear at the complainer and call her names. At a family wedding he took offence to a joke made by the groom and was still complaining about it a few days later. He was shouting at the complainer and poking her in the head with his fingers to get her to listen to him. While the complainer was on holiday with family members, the respondent was texting her and calling her a "scrounger" because she was in receipt of benefits. He called her abusive names throughout the course of the relationship. On one occasion he pushed her onto a bed. The parties' daughters described their parents' relationship as volatile. They said that the respondent had a bad temper and would often shout at the complainer.

[6] In about March 2024, the complainer left the respondent and moved into a flat in Muirhouse Parkway, Edinburgh owned by her niece's partner. After she left, the

respondent would regularly send her text messages and call her mobile phone, sometimes in the middle of the night.

[7] The agreed facts relating to charge 3 were as follows. The *locus* was the residential section of Muirhouse Parkway. The incident was captured on CCTV from a nearby flat. The relevant footage was played to the sentencing judge.

[8] On 14 April 2024, about 3 weeks after she had left the respondent, the complainer had been attending a family gathering. On her return home at about 4pm, she parked her car in a parking space close to the flat where she was living. The respondent parked his car behind the complainer's car, blocking her in, and got out. He approached the complainer's car and tried to speak to her. She got out and he took hold of her and tried to force her into his car. He also tried to take her mobile telephone from her.

[9] The complainer's niece arrived in her own car while this was happening and called the complainer's mobile telephone from her car. When the call was answered, she could hear the sounds of a disturbance and heard the complainer asking the respondent to return her phone. The call was then ended. The complainer's niece got out of her car and began shouting at the respondent who said "she's f…ing embarrassed me". The niece said she was going to call the police. She and the complainer were standing on a pathway next to the road.

[10] The respondent then got back into his car and drove it onto the grass verge, straight at the complainer. It collided with her. The respondent continued driving. The complainer was lifted onto the bonnet before falling off onto the grass. The offside wheels of the car drove over the complainer and the respondent continued to drive over the grass and onto the main road.

[11] The complainer's niece went over to her and found that she was motionless on the grass. The respondent turned his car on the main road and drove back onto the grass and over the complainer again. The niece had to jump out of the way in order to avoid being struck.

[12] The complainer's niece then called for an ambulance and the respondent drove off. The complainer was unconscious and was taken to Edinburgh Royal Infirmary. Police officers attempted to trace the respondent and found his vehicle parked unattended in a car park in Dunfermline. The CCTV footage showed that the whole incident took place in the presence of the complainer's great nephew, who was aged 7 at the time.

[13] The next day police officers in Glasgow were alerted to a man in the River Clyde. He was rescued from the water, taken to Glasgow Royal Infirmary and later identified as the respondent.

[14] The complainer suffered the following injuries:

- An active arterial bleed to her right thigh. This required embolization to stop the bleeding.
- Laceration of her liver, which had also caused some internal bleeding. This was managed conservatively without surgery.
- Several fractured ribs (posterior and anterior) and a flail segment, being an unstable chest wall. The cardiothoracic surgeon repaired some of the rib fractures; the others were managed conservatively.
- Bilateral pneumothoraxes: these included contusions to both lungs and bleeding from the blood vessels of the lung. A small catheter was inserted to drain the left side.

- Soft tissue damage to the face and damage to a muscle in her right eye, which caused double vision.
- Left ankle fracture; this was managed conservatively with a moonboot for around 6 weeks.

The injuries were life-threatening.

[15] The complainer remained in Edinburgh Royal Infirmary until 12 June 2024 when she was transferred to the Astley Ainslie Hospital in Edinburgh as an inpatient for rehabilitation. She was discharged on 26 June 2024. Upon discharge, she was able to walk with one stick indoors and two outdoors. She required continuing physiotherapy at home, but was expected to return to normal walking. She was prescribed glasses with a prism lens to correct double vision. The complainer continued to have difficulties with her vision. She also reported problems with her memory. An MRI scan showed a left temporal lobe contusion of the brain. The contusion was reported as resolving. She was referred to the specialist brain injury team. Finally, the complainer had scarring as a result of the attack.

Sentence

[16] In his sentencing statement the judge said the following:

> "William Budge, you pled guilty to three offences – a single instance of assault in 2016/2017, a course of domestic abuse over a period of more than 5 years and attempted murder of your wife.
>
> Your conduct in the attempted murder was caught on video and is quite horrifying to watch. You used your car as a weapon and drove it at and over your wife. Having done this, you made a U-Turn and went back and drove over her a second time.
>
> The callousness and cruelty of your acts are astonishing. There can be no doubt that you showed complete indifference as to whether your conduct killed her. Having seen the footage, as was recognised by [counsel] on your behalf, it is remarkable that your wife was not killed. She suffered serious life-threatening injuries including

internal injuries and skeletal injuries, which meant she was in hospital for two months.

I have considered the victim impact statement from your wife and it is clear that she still suffers both physically and mentally and, although she has taken advantage of various therapies and treatments, it seems she will continue to do so for some time.

All this is aggravated by the fact it was an attack on your partner and I will reflect that in the sentence.

Obviously, the last charge is by far the most serious but that should not undermine the seriousness of the other two.

As [counsel] pointed out, you have no previous convictions. You suffered poor mental health prior to the attack. You have accepted your guilt and expressed remorse. You have pled guilty at an early stage avoiding the further trauma for your wife and family that would flow from a trial and the preparation for it.

Regardless of this, it is necessary that the sentence should mark the abhorrence of your behaviour and its serious consequences.

In relation to charge 1 of assault, had there been no plea the sentence would be 9 months which is increased from 6 months to mark the domestic aggravation. This is modified back to 6 months to reflect your guilty plea.

In relation to charge 2, if there had been no plea, the sentence would be 12 months but this is modified to 8 months to reflect the plea.

In relation to the charge of attempted murder, looking at the situation as if there had been no plea and there was no domestic aggravation, I would have imposed a sentence of 8 years. The domestic aggravation means this should be increased to 11 years. That is in turn modified to reflect the guilty plea to become 7 years and 4 months.

These sentences will be concurrent and are all backdated to 16 April 2024.

Finally I make a non-harassment order prohibiting you from contacting or attempting to contact your wife, directly or indirectly, by any means, for a period 15 years."

Crown submissions

[17] A headline sentence of 8 years' imprisonment for the offence of attempted murder showed that the judge erred in his assessment of the seriousness of the offence in charge 3.

This was a particularly serious example of attempted murder, as demonstrated in the CCTV footage. The respondent deliberately ran over the complainer with his car, causing her to fall onto the bonnet, then under the car as it ran over her. He then drove out onto a main road and turned back through traffic to run deliberately over the complainer a second time while she was incapacitated from the first attack and lying on the ground. There was also danger presented to the complainer's niece who, after the first attack, had run over to help her. She had to run out of the way to avoid being struck by the respondent's car when he ran over the complainer the second time. All this took place in the presence of the complainer's great nephew, who was aged 7 at the time; a factor to which the judge had not referred in his report. The offence took place outside the complainer's residence where the respondent had gone uninvited. The incident was the culmination of a pattern of domestic abuse and violence extending over a number of years.

[18] Each of the first or the second attacks would, in isolation, have constituted attempted murder. The respondent's decision to turn back and drive over the complainer again meant that this was a case where there was a clear intention to kill or, at the very least, a particularly serious form of wicked recklessness. In either case, the degree of culpability justified a headline sentence for the offence of attempted murder of well in excess of 8 years' imprisonment. The incident was a particularly serious instance of attempted murder.

[19] As regards the harm caused, the sentencing judge had not placed sufficient weight on the following factors referred to in the complainer's Victim Impact Statement:

- the range and number of life-threatening injuries;
- the continuing and life-changing physical consequences of the attack for the complainer: constant double vision, facial disfigurement, continuing pain in several parts of her body, scarring, difficulty sleeping, weakness in her arm and

leg, requiring to use a walking aid, urinary incontinence, requiring to learn to swallow and eat food again, and requiring fortnightly speech and language therapy;

- the severe emotional and psychological harm which the complainer also continues to suffer (panic attacks, fear, and PTSD);
- the financial harm the complainer has suffered; and
- the broader impact on the complainer's family.

[20] With regard to the discount applied by the sentencing judge, on 25 September 2024 the Crown received a letter signed by the respondent in which he offered to plead guilty to the charge of attempted murder libelled on the petition and to "criminal conduct involving domestic abuse towards [the complainer] during the course of the marriage, the details of which are to be subject to discussion and agreement with the Crown". The charge on the petition had not included an aggravation of permanent impairment. The offer to plead guilty was conditional on receipt of vouching of the aggravation in terms of the injuries caused and the disclosure of medical records.

[21] On 28 November 2024, the Crown received a second letter signed by the respondent, in which he offered to plead guilty in terms acceptable to the Crown. This letter was received more than 7 months after the respondent had first appeared on petition and 6 months after the CCTV footage of the offence in charge 3 had been disclosed. On 5 November 2024 the Crown had also disclosed the requested medical records to the respondent's solicitor. The records comprised about 1,500 pages, which had to be reviewed and redacted before they could be disclosed.

[22] The offer to plead guilty, contained in the original letter of 25 September 2024, was conditional and was an offer to plead to a less serious charge than the one to which the

respondent ultimately pled guilty. That offer should be disregarded when assessing the level of discount. The respondent had not pleaded guilty at the earliest opportunity. His plea was offered more than 7 months after he had appeared on petition and after substantial disclosure had been made by the Crown. The utilitarian value of the plea did not merit a discount of one-third.

[23] The judge had erred in ordering that the sentences imposed on the three charges should run concurrently. The effect was that the offences in charges 1 and 2 were committed for free. The offences in charges 1 and 2 were quite distinct from the offence in charge 3. The offence in charge 1 occurred at least 7 years before the offence in charge 3. The offence in charge 2 was of a substantially different character to the offence in charge 3, involving a course of domestically aggravated conduct over a period of many years, predominantly during the course of the parties' relationship. The offence in charge 3 occurred after the complainer had left the respondent, was vastly more serious and was of a substantially different nature to the offences in charges 1 and 2.

[24] The imposition of a *cumulo* sentence would have resulted in a sentence which reflected the totality of the offending libelled on the indictment. The impression had been given that the offences in charges 1 and 2 were trivial. This could have been avoided had the judge specified the sentences he would have imposed for charges 1 and 2 following the approach in *Fergusson* v *HM Advocate* 2024 JC 376. An alternative approach to a *cumulo* sentence would have been to treat the background of domestic abuse, illustrated by charges 1 and 2, as an aggravating factor and to have increased the sentence imposed in respect of charge 3 to reflect that.

[25] In the Justice Social Work Report the respondent had been assessed as presenting a high risk of harm as there were identifiable indicators of risk of serious harm. The potential event could happen at any time and the impact would be serious.

[26] The judge's reasoning for declining to impose an extended sentence was based to a significant extent on the fact that his task was to assess risk at the point of release. He concluded that in either of the scenarios in which the respondent might be released from custody, the level of risk would have reduced such that an extended sentence would not be merited. This reasoning was flawed. If correct, it would mean that there would be no circumstances in which a person serving a lengthy sentence of imprisonment could be made subject to an extended sentence.

[27] The judge had also erred in taking the view that the only person who might be at risk was the complainer. There was no suggestion of that in the Justice Social Work Report. A high risk of harm to others was not excluded. The imposition of a Non-Harassment Order did not mitigate the risk presented by the respondent. An extended sentence should have been imposed.

Respondent's submissions

[28] The test for undue leniency was not met. In selecting the sentence for charge 3 the judge took proper account of all the relevant considerations and correctly focussed on the particular facts of the case. He had regard to the degree of culpability and the harm caused. A comparison with other cases was of limited value.

[29] The Crown had been made aware from an early stage that the case was likely to be capable of resolution; an email to that effect was sent on 11 September 2024. On 18 September the respondent gave instructions for a section 76 plea to be tendered, subject to

confirmation of the complainer's medical issues. The letter of 25 September 2024 confirmed that the case was going to be a plea. A great deal of necessary work was being done by the defence in the background. Investigations into the respondent's mental health had to be carried out. There were delays in the disclosure of evidence. The CCTV footage was not received until 13 August despite repeated requests. The complainer's medical records were not disclosed until 30 October. Following that a consultation with counsel took place on 15 November.

[30] There had been no delay on the respondent's part in making his position known and in finalising the plea once full disclosure had taken place. There had been substantial utilitarian value in the saving of court time and avoiding the attendance of witnesses. In the whole circumstances the judge could not be said to have erred in applying a discount of one-third.

[31] The imposition of concurrent sentences could not be faulted. What mattered was the totality of the ultimate sentence. Concurrent sentences struck an appropriate balance.

[32] The judge had correctly applied the statutory test set out in section 210A of the 1995 Act in deciding not to impose an extended sentence. The test was not met. There was no recommendation for an extended sentence in the Justice Social Work Report. The non-harassment order would assist in managing risk.

[33] The judge properly took account of the fact that the respondent was a 62 year old man with no previous convictions and a history of poor mental health. He was remorseful. He had shown insight into the harm he had caused to the complainer and her family. He was willing to undertake offence-focussed work.

[34] There were no special factors sufficient to justify increasing the sentence. A more severe sentence was not necessary for the protection of the public.

Decision

[35] The test which falls to be applied in a Crown appeal against sentence was set out in the opinion of the court delivered by the Lord Justice General (Hope) in *HM Advocate* v *Bell* 1995 SCCR244, 250D:

> "It is clear that a person is not to be subjected to the risk of an increase in sentence just because the appeal court considers that it would have passed a more severe sentence that that which was passed at first instance. The sentence must be seen to be unduly lenient. This means that it must fall outside the range of sentences which the judge at first instance, applying his mind to all the relevant factors, could reasonably have considered appropriate. Weight must always be given to the views of the trial judge, especially in a case which has gone to trial and the trial judge has had the advantage of seeing and hearing all the evidence. There may also be cases where, in the particular circumstances, a lenient sentence is entirely appropriate. It is only if it can properly be said to be unduly lenient that the appeal court is entitled to interfere with it at the request of the Lord Advocate."

[36] In his report to this court the sentencing judge explains that in selecting the sentence for charge 3 he had regard to certain previous cases. The first of these was *Foye* v *HM Advocate* (2003) GWD 34-964; Morrison, *Sentencing Practice*, C9.0014. In that case the appellant was convicted of attempted murder, having reversed his car at speed towards two detective constables. One officer managed to take evasive action, but the other was struck by the vehicle, being carried on the back of it until being thrown off. This resulted in severe injury, permanent disfigurement and danger to life. The sentence of 10 years was disturbed on appeal only insofar as it concerned backdating. The offence was aggravated by the appellant's numerous road traffic convictions (including for dangerous driving) and by the fact that the attack was on police officers. The judge observes that neither of those factors existed in the present case. We consider that there are, however, important features which distinguish *Foye* from the present case. The offence in *Foye* was not committed against the offender's partner or in the presence of a child; it was not committed against a background of domestic abuse; the offender did not drive his car at the victims on more than one

occasion; the offender reversed his car at the victims; and there is no indication as to the severity and lasting nature of the injuries suffered.

[37] The judge also refers to *Kelly* v *HM Advocate* ([2009] HCJAC 16; Morrison, *Sentencing Practice*, C9.0009). In that case a man deliberately crashed his car into his ex-wife's car. He then ran to her car, jumped on her, compressed her throat so that she lost consciousness, struck her on the neck with a saw he had taken from his car and sawed at her neck. The attack lasted for about five minutes. The complainer suffered a severe injury with significant blood loss; her life was in danger. The injury caused permanent disfigurement with scar tissue and meant that she had no sensation on the lower half of the left side of her face. She was still in pain at the time of sentencing and had substantial psychological sequelae. The Appeal Court imposed an extended sentence with a custodial period of 10 years (reduced from 12) and an extension part of 6 years. The judge considered that the element of the assault committed directly on the complainer with a saw meant that the brutality of the attack and the culpability of the accused in that case were significantly greater than in the present one. It appeared also to him that the horror suffered by the complainer and therefore the harm inflicted would have been greater. There are, however, certain features which distinguish *Kelly* from the present case. In *Kelly*, the appellant drove his car into the victim's car on a single occasion. He did not run over the victim, a pedestrian, on two occasions. The charge did not include an aggravation of permanent impairment.

[38] Finally, the judge referred to a sentence he imposed in *HM Advocate* v *Scott Wilson* on 27 July 2022. He imposed a sentence of 8 years' imprisonment following conviction on the following charge:

> "did while driving motor vehicle registered number … accelerate towards him, mount the pavement and strike him on the body with the said vehicle, to his severe injury, permanent disfigurement and to the danger of his life and did attempt to murder him and you did previously evince malice and ill will towards him".

The judge observes that the Crown did not appeal against the sentence. Having regard to the limited information about *Scott Wilson*, it is not possible to draw any helpful comparison between it and the circumstances of the present case.

[39] The Crown drew attention to a number of other sentencing decisions. In *HM Advocate* v *William McBurnie* (unreported), the offender pleaded guilty at trial to a single charge of assault to the danger of life and attempted murder of his former partner and her mother by driving a car through a window of his former partner's business premises while she and her mother were inside. On 10 October 2024, the sentencing judge imposed an extended sentence of 13 years' imprisonment, comprising a custodial part of 11 years and an extension period of 2 years. The custodial part would have been 12 years but for the plea. The offender had a previous conviction for driving while intoxicated. He was intoxicated and on bail at the time of the offence. The facts in *McBurnie* bear some degree of similarity to those of the present case.

[40] In *HM Advocate* v *John Hughes* (unreported), the offender pleaded guilty at a preliminary hearing to a charge of assault to severe injury, permanent disfigurement, permanent impairment, danger to life and attempted murder by repeatedly striking the victim on the head and body with a pickaxe, in the presence of a 5 year old child. On 4 November 2024, the sentencing judge selected a headline extended sentence of 18 years (comprising a 14 year custodial element and a 4 year extension part) reduced to 15 years (comprising an 11 year custodial element and a 4 year extension part) to reflect the timing of the guilty plea. The offender had four previous convictions. There are some similarities

with the present case: the offences occurred in daylight in a residential area; a young child was present; both offences involved repeated blows with deadly weapons; both were aggravated to severe injury, permanent disfigurement, permanent impairment, danger of life and attempted murder; and the victims suffered significant long-lasting injuries. The Crown submitted that a headline sentence approaching the duration of that selected in that case was merited in the present case.

[41] In *Wishart* v *HM Advocate* 2022 JC 259, the appellant was convicted after trial of attempted murder and sentenced to 6 years imprisonment. He had been driving a car, the wing mirror of which clipped one of the victims, who was in the centre of the road on which the appellant was driving. The victim ran after the vehicle and aimed a kick at it; he may have made contact. The appellant turned the vehicle and drove back at the victim on two occasions. The car did not strike the original victim but hit an innocent passerby who was thrown over the bonnet but sustained only minor injuries. The offence in the present case and its consequences are substantially more serious.

[42] In the present case the level of culpability was particularly high as was the degree of harm caused. The respondent deliberately attempted to kill the complainer by driving his car at her. He did this twice, on the second occasion slowing down so that he could be sure to drive over her as she lay on the ground. In effect he used his car as a deadly weapon against the complainer in two murderous attacks. It is obvious that a car driven directly at a person, which is what happened in the present case, is highly likely either to kill the target of the attack or at least to cause very serious injury with lasting consequences. The offence was seriously aggravated by being committed in the presence of the complainer's niece and her young child. The physical and psychological effects for the complainer have been severe and life-changing.

[43] Since sentencing is an inherently fact-sensitive exercise and no one case is likely to be exactly in line with others, considerable care requires to be exercised when drawing comparisons between different sentencing decisions. Having regard, however, to the sentences imposed in cases such as *McBurnie* and *Hughes*, each of which involved somewhat similar sets of facts to those of the present case, and to the collective experience of the members of this court, we are satisfied that the total headline sentence of 11 years' imprisonment fell outside the range of sentences which, taking account of all the relevant factors, could reasonably be considered appropriate. The sentence failed adequately to reflect the gravity and consequences of the offence libelled in charge 3. It can properly be categorised as unduly lenient in the sense described in *Bell*.

[44] In view of the determined nature of the attacks, their murderous quality and the many other aggravating features, we consider that the headline sentence for the offence of attempted murder should be 14 years and 6 months' imprisonment, of which we would attribute 18 months to the aggravation under section 1 of the 2016 Act. We consider that 18 months represents a significant additional penalty, having regard to the totality of the sentence (*McGowan* v *HM Advocate* 2024 JC 359).

[45] As to the question of discount, we note that the plea was promptly confirmed following disclosure of the complainer's medical records. It was reasonable and professionally responsible for those representing the respondent to insist on considering the medical records before advising him that he should accept liability for causing permanent impairment to the complainer. Until the medical records had been disclosed to them, the respondent's advisers were not in a position to furnish him with properly considered advice on the allegation of permanent impairment. In a carefully worded letter sent to the Crown on 25 September 2024 it had been made clear that the offer to plead guilty to attempted

murder was subject to vouching of the aggravations in terms of the injuries caused. The letter observed that the defence had requested disclosure of the medical records on a number of occasions, but they had not been produced. In the whole circumstances, we are not persuaded that the judge erred in allowing a discount of one-third. The circumstances are not sufficiently exceptional to justify this court interfering with a discretionary decision of this nature (*Gemmell* v *HM Advocate* 2012 JC 223, paragraphs [29] and [81]).

[46] The test for the imposition of an extended sentence is not satisfied. Section 210A of the 1995 Act allows the court to impose an extended sentence where it considers that the period for which the offender would be on licence would not be adequate for protecting the public from serious harm from the offender. While the respondent was assessed in the Justice Social Work Report as posing a high risk of harm, there was no information to entitle the judge to conclude that the normal licence arrangements would not be sufficient to protect the public from serious harm. The author of the report observed that a further assessment of the respondent's needs and risks would take place while he was in custody and that he would be offered support to address any identified risks and needs. When released, he would be bound by licence conditions designed to mitigate his risk of harm. No recommendation for an extended sentence was made. In the circumstances, we do not consider that the judge erred in not imposing an extended sentence.

[47] We consider that there is force in the Crown's submission that by making the sentences on the three charges run concurrently the judge imposed an overall sentence which was unduly lenient. The offences on charges 1 and 2 were entirely separate and independent crimes. They are deserving of separate punishment. The appropriate means of marking each of those offences, in the particular circumstances of the present case, is to make each of the three sentences run consecutively.

[48] In the result we shall quash the sentence imposed by the judge on charge 3 and substitute for it a sentence (after discount) of 9 years and 8 months' imprisonment. We shall order that the sentences on the three charges will run consecutively. This means that the total sentence of imprisonment to be served by the respondent will be one of 10 years and 10 months, an increase of 3 years and 6 months from the ultimate sentence imposed by the judge.