



APPEAL COURT, HIGH COURT OF JUSTICIARY

**[2025] HCJAC 47
HCA/2025/307/XC**

Lord Justice Clerk
Lord Matthews
Lord Armstrong

OPINION OF THE COURT

delivered by LORD BECKETT, the LORD JUSTICE CLERK

in

APPEAL AGAINST SENTENCE

by

MARK KEEL

Appellant

against

HIS MAJESTY'S ADVOCATE

Respondent

**Appellant: McConnachie KC, Radcliffe; Paterson Bell, Solicitors (for Moir & Sweeney, Solicitors)
Respondent: Prentice KC AD; the Crown Agent**

22 October 2025

Introduction

[1] In this appeal against sentence, the appellant challenges, as excessive, the punishment part of 22 years following his plea of guilty to murder and the imposition of a life sentence.

Procedure

[2] The appellant appeared on petition at Glasgow Sheriff Court on 1 July 2024 and was remanded in custody until he pled guilty, 10 months later, on 30 April 2025 at a continued preliminary hearing. He was indicted to a preliminary hearing on 25 April 2025, adjourned administratively to 30 April.

[3] The charge was as follows:

“on 26 and 27 June 2024 at ... Glasgow you MARK KEEL did assault Maxine Clark, your partner, now deceased and, having previously evinced ill will and malice towards her, repeatedly punch, kick and stamp on her head and body and you did 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.”

[4] The PH judge adjourned for the preparation of a justice social work report and, on 27 May 2025, sentenced the appellant to life imprisonment with a punishment part of 22 years, reduced from a headline of 24 years for the plea of guilty, including two years for the aggravation. The appellant does not challenge the two-year aggravation period.

The circumstances of the appellant and JSWR

[5] The appellant is 33 years old. He was raised by his grandparents and had a happy childhood with no adverse childhood experiences. He began to go off the rails in his teens, truanting from school and associating with older youths. On leaving school at 16, he played in the lower leagues of Scottish football until he was 20. He says he got in with the wrong crowd and began to drink to excess and take cocaine. He mostly funded his lifestyle through drug-dealing. He was unemployed at the time of the murder. He began to use cocaine and drink alcohol and would attend nightclubs and meet women for mostly casual sexual encounters. He fathered a child at 16 and he has had no contact with the child, or her

mother, since she was 2 years old. He says that his experience with this woman caused him to distrust future partners.

[6] In his late teens he began a relationship with a somewhat older woman with whom he had two daughters, now aged 9 and 7. He accepts that he was emotionally and physically abusive to that partner throughout their relationship and for some years afterwards. A non-harassment order was imposed in 2021 for two years. The appellant has not had contact with his daughters for several years. His next relationship began when he was 20 and a non-harassment order was imposed on the appellant in 2021. He was then in another relationship from mid-2020 to early 2022. He was convicted of assaulting this partner to injury.

[7] In addition to his convictions, the police received call-outs from six other domestic partners of the appellant about domestic abuse. Some of it took place in the presence of children. He blamed his abusive conduct on his cocaine addiction. The appellant appears to have had a sense of entitlement towards women. He tried to flirt with the reporting social worker when she interviewed him.

[8] When the appellant was 20, he was the victim of an attempted murder in the context of a drug deal. He has been diagnosed with anxiety, depression and PTSD following that attack. He withdrew from psychological services in 2018. In June 2024 he was hearing voices and was prescribed an anti-psychotic medication, Quetiapine. His prescription continues. He was feeling mentally well at the time when his life sentence was imposed.

[9] The appellant says that 26 June 2024 was the 10th anniversary of the death of his son. He had been to court that day and a restriction of liberty order was imposed on him restricting him to the deceased's address. He spent much of the day and into the evening drinking before returning to her home at about 11pm. His partner was asleep and he woke

her up and they both took cocaine. He gave an account of Ms Clark hitting him on the head with a bottle and goading him about his dead son. He accepted that he reacted violently but claimed not to recall any detail. He claimed that he had assumed Ms Clark was simply drunk and called an ambulance when he realized for the first time that she was not moving.

[10] He sought to persuade the social worker that he could not have been in his right mind and must have psychological problems to have done what he did. His description of his relationship with the deceased showed that he aimed to control and isolate her. He sought to dispute that he had caused all the deceased's injuries. Despite this he stated that he prays for his victim and her family and implied that he chose to plead guilty to spare the victim's family the ordeal of a trial.

Previous convictions

[11] The appellant has a record of convictions from 2015, with domestically aggravated convictions in 2016, 2018, 2021 and 2022. These include assault to injury in 2018 that, initially, was met with a community payback order but was breached and a sentence of imprisonment for 220 days imposed. He also has offences involving weapons. Possession of a knife in 2020 was met with a restriction of liberty order of 7 months. In 2021, for domestically aggravated statutory breach of the peace and violence with the police, both involving his possession of scissors, he was made subject to a CPO for 24 months with restriction of liberty and unpaid work requirements. On 30 June 2022 he was sentenced to imprisonment for 20 months on sheriff court indictment for a domestically aggravated assault to injury. He was subject to a community payback order with a supervision requirement and restriction of liberty at the time of the murder. He has been the subject of NHOs prohibiting him from approaching or contacting three former partners.

Agreed narrative

[12] There had been a history of domestic violence during the deceased's relationship with the appellant. She made disclosures of physical abuse at the hands of the appellant to advocacy workers however she had been afraid to report the abuse to the police for fear of repercussions. She was repeatedly seen to have black eyes and other visible injuries.

Post-mortem examination revealed various injuries predating her death. In June 2024, a neighbour saw the deceased in her back garden with a black eye and injuries to her jaw. The deceased indicated that the appellant had punched her.

[13] In the afternoon of 26 June 2024 the deceased attended a meeting in the Kingston area of Glasgow. She had a black eye, but said she had fallen whilst drunk. She received a call from the appellant who wanted to join her meeting. He was told that this was not allowed. Later that day, she visited the neighbour who saw the black eye. This time she had "grab marks" on her neck and what looked like a broken jaw. During the visit, the deceased called the appellant and asked him to return a set of keys. Meanwhile, the appellant arranged for his mother to collect him from the deceased's home. He had packed bags full of his belongings and he said that he was leaving the deceased. He spent the evening drinking alcohol, before returning to the deceased's home at around 11pm. Both the deceased and her son aged 13 were in bed.

[14] Her son woke at around 10am the following morning, 27 June 2024. He noticed that the deceased was in bed, with the appellant sitting beside her with a blanket around his lower body. The deceased appeared to have fresh facial injuries and was having difficulty breathing. Her son and the appellant rolled the deceased onto her side. The boy left the house around 1pm to play with friends and returned every hour to check on his mother. The appellant said he thought the deceased was having an allergic reaction and that there

was no need to call an ambulance. At around 6pm, G4S staff attended at the deceased's address to fit an electronic GPS tag to the appellant to monitor his location under his restriction of liberty order. When the appellant answered the door, he said that he had just woken up and he asked them to return later. Around 20 minutes later, he made a 999 call to the Scottish Ambulance Service using her son's mobile phone. The appellant told the operator that the deceased had been drinking the night before and that her tongue looked swollen and that she was struggling to breathe. He explained that he had not seen her awake that day.

[15] When paramedics arrived, they found the deceased to be lying horizontally across the bed. She was partly covered by a duvet, with only her head and shoulders visible. On removing the duvet, they noticed she was naked. She had no pulse and CPR proved unsuccessful. She was pronounced dead at the locus, and the appellant was arrested.

Injuries

[16] At the time of her death, the deceased was noted as having 51 separate injuries to her head and body. Post-mortem examination revealed significant internal bruising. The cause of death was recorded as the result of an acute subdural haemorrhage, a head injury caused by extreme blunt force trauma. There was 60g of fresh subdural haemorrhage overlying the right cerebral hemisphere which led to pressure effects within the skull causing brain herniation.

[17] There was significant bruising on the deceased's head and face. There was bruising on the bridge of her nose, her left cheek and around her mouth. There was a laceration below her left eyebrow, and multiple bruises and lacerations within her mouth. There was extensive bruising throughout the soft tissue and muscles of her cheeks, as well as a fracture

through either side of her jaw. These injuries were typical of multiple direct blows, such as punches and kicks to the face. The nature of the fractures in her jaw suggested that this was caused by the appellant stamping on her head as she lay on a hard surface. There was bruising on the rear of her larynx and on her tongue, probably caused by punches or kicks.

[18] The deceased sustained multiple fractures to the back and side of her chest. Seven of her ribs had been fractured, some in more than one place, such that a flail segment had formed which would have compromised her breathing. Whilst some of the fractures may have been caused by CPR, they were most likely caused by kicks or punches. There was bruising to her chest wall together with the deep tissue in her left breast. There was significant bruising to her abdomen resulting from heavy blows or kicks. Her liver was noted as having three lacerations and her pancreas was bruised. Bruising throughout the lower part of her abdomen extended into the pelvic region and around the outer aspect of her vagina. The appellant stamped on the deceased's upper thigh, leaving the imprint of the soles of both of his shoes on her leg.

Victim information

[19] The deceased was in a relationship with the appellant for 18 months or so prior to her murder. She was 37 when she died and is survived by her four children, who are now between 3 and 16 years old. Her eldest child, and her parents, each explained in Victim Impact Statements the pain and anguish they continue to suffer since her murder.

[20] Her mother struggles to sleep and described the murder of her daughter as "a pain that will never go away". She explained that she used to be sociable and go out a lot but now she stays in. Her father explained that nothing could have prepared him for his everlasting hurt. He described the difficulties of having his only child taken from him and

that he suffers in silence. He misses his daughter so much that he now struggles to maintain concentration and no longer socialises. The deceased's eldest child described how much she loved her mother and her admiration for her kind and loving nature and numerous other qualities. She described feeling lost without her mother, and of pain and grief that can strike at any moment. She recognises that her mother will be absent for all the significant moments in her life and the lives of her siblings. She recognises the pain it has caused, and will cause, them.

Plea in mitigation

[21] Senior counsel stated that nothing could be said in mitigation of an appalling crime. The judge should note that there were no previous convictions until the appellant was 23. Senior counsel reviewed the information in the JSWR about the appellant's biography and the serious assault he suffered. The appellant had a son born with spina bifida who died in 2014 on the same date as the murder. The appellant was in a bad mood and took alcohol and cocaine. All of this led to arguments. He believed his partner may have sparked the attack by suggesting that his deceased son was not his natural son, but he could remember little more after that. He is ashamed of what he did and shocked by the injuries he inflicted. There was little mitigation other than the utilitarian value of his guilty plea at a preliminary hearing.

The judge's report

[22] The judge considered the circumstances of the offence to be brutal and savage, noting in detail the injuries caused and the implication of force involved. He took account of the extent and nature of the appellant's violence and the injuries suffered by the deceased

together with his failure to seek emergency assistance and his false claims that she had suffered an allergic reaction, preventing her from getting medical treatment. He considered the victim statements and the effect that the murder had on the deceased's family. He noted from the appellant's record of previous convictions, that at the time of the murder, the appellant was subject to a 12-month supervision order and a restriction of liberty order for domestic violence. He has been subject to NHOs banning him from approaching or contacting three former partners. The appellant had previously inflicted violence on the deceased such that her friends and family had warned her of the threat he posed. The offence was aggravated in terms of section 1 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016.

[23] Considering all the circumstances, alongside the example of *Kennedy v HM Advocate*

[2024] HCJAC 50, 2025 JC 156, a headline punishment part of 24 years was appropriate, of which 2 years was attributable to the statutory aggravation. Whilst the appellant had pled guilty, there was an interval of 10 months between first appearance and his guilty plea.

Noting the approach of this court in *Geddes v HM Advocate* [2015] HCJAC 43, 2015 SCCR 230, a reduction of 2 years was appropriate in the circumstances.

Submissions

Appellant

[24] Albeit this murder was particularly brutal, the appellant's significant record of previous convictions includes convictions for domestic abuse and the report was not positive, the headline sentence was excessive. Drugs, alcohol and the death of his infant son, who was born with spina bifida, in 2014 contributed to his poor criminal record and aggravated his use of alcohol and drugs with adverse consequences for his behaviour.

[25] The judge had used *Kennedy* as a yardstick. In that case the appellant murdered his long-term partner using a knife. The court described the attack as being a “frenzied one involving severe force” and it took place in front of their 17-year-old daughter. The circumstances in *Kennedy* were more serious. Nevertheless, the court substituted a punishment part of 25 years with one of 23 years. The sentencing judge erred by selecting a headline punishment part that was greater than that imposed in *Kennedy*.

[26] In *Kennedy*, the court had considered the decision in *Rizzo v HM Advocate* [2020] HCJAC 40, 2020 SCCR 397, where a punishment part of 22 years was sustained on appeal for a brutal murder involving both sustained blunt force assaults and the infliction of numerous stab wounds to the head and neck. The court described the sentence as severe, but it was not excessive.

[27] The reduction for the appellant’s early guilty plea ought to have been greater. The Crown had been uncertain what allegations would feature on the indictment. Only once the indictment was in its final form could either party decide what would be an acceptable plea. Its utilitarian value was significant. The deceased’s family were spared from giving evidence and the necessary time and expense of a trial was avoided.

Decision

[28] Identification of precedents such as *Kennedy* and *Rizzo* does not determine precisely what sentence should follow in the circumstances of a different case. They can only provide a very broad indication of what might be appropriate. That was the use that the sentencing judge properly made of the opinion in *Kennedy*, where the court examined *Rizzo* and other examples of domestic murders. It is true that there was a knife used in *Kennedy*, and that the deceased’s 17-year-old child was present, but the violence used by the appellant in this case

was also extreme and sustained. Unlike the first offender Mr Kennedy, the appellant has a relevant record of significant previous convictions including a prison sentence imposed on indictment for domestic offending. He has a markedly worse record than Mr Rizzo's single domestic conviction on a summary complaint met with a fine.

[29] The appellant was subject to a community payback order and restriction of liberty when he murdered his partner. The considerable length of time over which the appellant left his partner to die from the extreme injuries he inflicted, and his dissuading her son from seeking medical help for her, are materially aggravating features of this case absent in both *Kennedy* and *Rizzo*. Even if Mr Rizzo did not seek medical assistance immediately after he had fatally injured his partner, he had alerted people that the complainer was dead within less than 40 minutes of the murder. We note that, in *Kennedy*, the court saw some, limited, mitigating effect in the appellant being 64 years old. Similarly, in *Rizzo*, both the sentencing judge and this court took account of Mr Rizzo being 23 and still a young offender. The court considered that the sentence imposed on Mr Rizzo was severe but determined that it was not excessive.

[30] Accordingly, we find nothing erroneous or inappropriate in the headline sentence selected. Even if we did, it is not the process by which the sentence is reached but the sentence imposed after taking account of a guilty plea that must constitute a miscarriage of justice if an appeal against sentence is to succeed: *Barnes v HM Advocate* [2024] HCJAC23, 2024 JC 364, at para [24] and the cases cited there.

[31] The appellant acknowledges, correctly, that any allowance for a plea of guilty, and its extent, is a matter of discretion for the judge: *Gemmell v HM Advocate* [2011] HCJAC 129, 2012 JC 223 at para [29]. In delivering the leading opinion of a full bench, the Lord Justice Clerk (Gill) also explained, at paragraph [41], the general principle is that the essential

consideration in determining the level of any discount is how early in the proceedings the accused indicates an intention to plead guilty to the charge finally before the court. At paragraph [42], he explained that accused persons can plead guilty at the outset and must recognise that time is not on their side. That guidance remains entirely apt: *HM Advocate v McMahon* [2025] HCJAC 34, 2025 SCCR 344 at paras [69] and [70] endorsing both *Gemmell* and *Geddes*. The court explained, and we reiterate, that:

“Those representing persons accused of crimes in solemn proceedings should understand that if a case is capable of resolution by plea of guilty, it is in their client's interest that they intimate the plea at the very earliest opportunity. It is only in such circumstances that the court will be contemplating a reduction of, or approaching, [the relative maximum level.]”

[32] In this case, if he sought the most advantageous level of discount, the appellant could have intimated his intention to plead guilty to murder at the outset of proceedings. That he wished to wait to find out what other charges there may be and if, as it turned out, the Crown would depart from them if he pled guilty to murder, does not demonstrate that the judge erred. It was these principles that led the court chaired by the Lord Justice Clerk (Carloway) to proceed as it did in *Geddes*. For a guilty plea intimated 3 months after first appearance, the appropriate reduction was one-quarter, not one-third as Mr Geddes had contended.

[33] As the appellant acknowledges in suggesting that a reduction of about one-eighth should have been made, in murder cases the notional maximum level of discount available is not one-third but about one-sixth, in some cases reducing to nil: *HM Advocate v Boyle* [2009] HCJAC 89, 2010 JC 66, the Lord Justice General (Hamilton) delivering the opinion of a full bench at para [21].

[34] In the appellant's case the plea was first intimated on 17 April 2025, nine and a half months after first appearance. He appears to think that pleading guilty at a preliminary

hearing attracts a reduction of one-eighth in a murder case. That appears to be based on what was said in *Spence v HM Advocate* [2007] HCJAC 64, 2008 JC 174 where the court suggested, *obiter*, that in a case other than murder, a reduction for a plea of guilty at preliminary hearing may be in the region of a quarter.

[35] We reiterate that, as the full bench in *Gemmell* made plain, this is not a matter of entitlement. The leading opinion in *Gemmell*, and its subsequent application in *Murray v HM Advocate* [2013] HCJAC 3, 2013 SCCR 88 where this court in sentencing of new determined that pleas of guilty of somewhat limited utilitarian value intimated two months after first appearance would attract a 30 month reduction from a headline of 12 years (21%), *Geddes*, and *McMahon*, demonstrates that the court is concerned with how early a plea is tendered and that the extent of any reduction depends entirely on its utilitarian value. There plainly was utilitarian value in the appellant's plea of guilty to murder where a child was not required to testify as might otherwise have been necessary but, as the court explained in *McMahon*, utilitarian value:

“...is at its highest at or shortly after first appearance. A plea tendered and accepted at this stage informs any witnesses that they will not have to give evidence. It avoids the Crown spending resources on preparation and disclosure. Resolving prosecutions at a very early stage is of most value to the administration of justice. Time is not on the side of an accused person so far as a reduction for a plea of guilty is concerned.”

Even if the Crown had rejected a truly early plea of guilty to murder, the time when it was first formally and unequivocally tendered would have been relevant when sentence was imposed: Criminal Procedure (Scotland) Act 1995 section 196(1)(a).

[36] In *Gemmell*, the Lord Justice Clerk made it plain (at paras [29] and [81]) that since reduction of sentence for a guilty plea is a matter of discretion, it will only be in exceptional circumstances that the court would interfere with it on appeal. He added that a sentencing judge exercises judgement and discretion on consideration of all of the circumstances of a

case. He repeated these points as Lord Justice General in *Murray* where the Lord Justice Clerk (Carloway) and Lady Paton agreed.

[37] We disagree that the judge erred in making a reduction of one-twelfth when the plea was intimated nine and a half months, and tendered 10 months, after first appearance. It was an exercise of his discretion broadly consistent with the principles and caselaw we have examined. The sentence imposed was not excessive, there was no miscarriage of justice and the appeal is refused.