



**APPEAL COURT, HIGH COURT OF JUSTICIARY**

**[2025] HCJAC 16  
HCA/2024/000675/XC**

Lord Justice Clerk  
Lord Doherty  
Lord Matthews

**OPINION OF THE COURT**

delivered by Lord Matthews

in

**APPEAL AGAINST SENTENCE**

by

**RH**

Appellant

against

**HIS MAJESTY'S ADVOCATE**

Respondent

**Appellant: McSporran KC; McSporrans Solicitors, Edinburgh  
Respondent: Farrell AD; the Crown Agent**

19 March 2025

[1] Following his plea of guilty to a charge of murder, the appellant, now aged 17 and aged 16 at the time of the offence, was sentenced to detention without limit of time. He appeals against the punishment part of 18 years on the basis that it is excessive.

[2] The charge to which the appellant pleaded guilty was in the following terms:

“(003) on 18 May 2023 at Constitution Street, Edinburgh you RH did, with your face masked, assault Danielle Davidson and did utter threats of violence and repeatedly stab her on the head and body with a knife and you did murder her.”

We are told that the appellant had instructed a special defence of self-defence. On the first day of the trial CCTV footage showing the incident was played and the plea was tendered that afternoon. The appellant had refused to view the CCTV while on remand.

[3] In due course, on 4 November 2024, an agreed narrative of facts was read by the Crown.

### **The circumstances**

[4] The deceased was 33 years of age. She is survived by an 8 year old son who lives with her father.

[5] On 18 May 2023 she received a telephone call from the appellant, who sounded very angry, and she agreed to meet him. The conversation related to the supply of drugs and the deceased left the flat to obtain drugs from the appellant.

[6] She asked a male, Conlan Carr, to go with her. They walked towards the bottom of Leith Walk. The appellant and an associate were on scooters and entered Duke Street where words were exchanged with Conlan Carr. There had been a history of antagonism between them. The appellant’s father received a phone call from the appellant, as a result of which he and a friend left the pub where they had been drinking and went into Constitution Street. The appellant’s associate had by this time gone into Constitution Street, as had the deceased. They were in contact with one another and the deceased had either money or paper in her hand.

[7] CCTV footage showed all five persons in Constitution Street. An argument developed between the appellant’s father and Conlan Carr, who was wielding a knife. The

appellant, who was wearing a black balaclava, pulled a larger knife from his waistband and brandished it at Conlan Carr. It is described as a Rambo or a Zombie type knife. During the course of the argument, Conlan Carr seemed to be attempting to take the appellant's scooter. The appellant's father tried to defuse the situation but was unsuccessful.

[8] At various points, the deceased seemed to be attempting to communicate with the appellant and at one point picked his scooter up from the pavement.

[9] During the course of the altercation, the appellant punched the deceased in the face and then repeatedly stabbed her in the back. She had posed no threat to the appellant.

[10] She was heard to shout, "I've been stabbed" before she collapsed on the tram track. After a short period, the appellant made off southwards on Constitution Street.

[11] He went into Tesco in Duke Street and changed his clothes in a toilet. He then made his way to the home of an associate where he called his uncle and aunt, asking them to collect him. His aunt contacted the police and informed them of this arrangement. His uncle and aunt collected him just after 3.00am on 19 May and he made admissions to them such as "I have done the crime, so I'll do the time." He told them that the people at the locus had pulled knives on him so he had to defend himself. It was a "stab or be stabbed" situation.

[12] Their vehicle was stopped by the police and the appellant was arrested.

[13] As far as the deceased is concerned, police and paramedics attended a short time after the incident, having been contacted by a number of witnesses. The deceased was found to have a slow heart rate and went into cardiac arrest shortly after the arrival of the emergency services. Despite resuscitation attempts, she was pronounced dead at Edinburgh Royal Infirmary at 2050 hours, around an hour after she first met the appellant in the street.

[14] She had sustained five sharp force injuries, four of which were stab wounds and one an incised wound. One stab wound on the top of the head had injured the underlying skull but there was no skull fracture or penetration. The other wounds were on her back. The fatal stab wound penetrated her shoulder blade and punctured her left lung. The depth of the wound was 13.7 centimetres.

[15] In the Note of Appeal it is accepted that this was a brutal and wholly unjustified assault. Senior counsel correctly described it is a dreadful crime. The CCTV footage confirms these descriptions.

*The circumstances of the appellant*

[16] The sentencing judge was told that the appellant had been engaged in street level drug dealing since the age of 13 or 14. We have been provided with documentation from the Home Office that he was a victim of modern slavery during the approximate period between February 2019 and 7 December 2022, for the specific purposes of forced criminality. The significance of the latter date is not clear and senior counsel was not able to assist. There had been evidence available that Carr had been communicating with another person who wished serious violence to be inflicted on the appellant, apparently in revenge for the appellant having stolen drugs and a scooter from this person. The appellant had phoned his father because he had seen Carr. He was intoxicated that day by drugs. He was afraid that Carr would inflict violence upon him and thought that the deceased had set him up, although there was no evidence of that. Carr had been the first to produce a weapon and the appellant had escalated matters. He thought that he was being robbed when Carr and the deceased had laid hands on the scooter. All that having been said, such a brutal attack on the deceased could not possibly be explained or justified.

[17] The appellant had presented as a boy in all of senior counsel's dealings with him. His age was the key factor relied on in mitigation. The context of abuse of drugs and engagement in drug dealing was normal for the appellant. While it was accepted that he had not taken up options to disengage, he nonetheless remained a child at the time of the offence. He suffers from attention deficit hyperactivity disorder (ADHD) and that would have had an impact on his terrible decision-making. His treatment for that had been stalled. He had had a far from ideal childhood, albeit he had received support from his grandmother and father. That support might bode well for his return to the community in due course. He was surrounded by people who wished to work with him and he had, on the whole, demonstrated that he wished to work with them.

### **The sentencing judge's approach**

[18] The judge accepted that the appellant's age was a key mitigatory factor. This was however, an appalling and genuinely shocking murder of a young mother in a public street in broad daylight. The appellant had been engaged in the dealing of controlled drugs, was masked, and was armed with a large bladed weapon while intoxicated. He left his victim dying in the roadway. A far higher punishment part would have been imposed but for the appellant's youth.

### **The appeal**

[19] In this appeal against sentence, the appellant's age was the primary mitigating factor relied upon. He faced a period in custody longer than the whole time he had thus far lived, which was disproportionate even when regard was had to the terrible nature of the crime.

[20] It was submitted that the background of modern slavery was a significant factor in understanding the circumstances in which the crime came to be committed. The criminal justice social work report (CJSWR) set out the adverse childhood experiences the appellant had encountered from an early age and the circumstances existing at the time of the offence. He had been described as “a vulnerable young person with a significant history of trauma, including early childhood experiences of parental substance abuse and the sudden loss of his mother.” At the time of the offence he had, as yet, undiagnosed, ADHD. That was not an insignificant factor, poor judgment being a feature of that condition. It was, however, amenable to treatment. The fact that the crime was captured on CCTV did not make it any more grave than would otherwise have been the case and it should not affect the punishment part. The appellant currently presented a high risk of further violent offending and causing serious harm if at liberty and much work needed to be done with him. Nonetheless, having regard to the Sentencing Young People Guideline and the general principles of sentencing, the punishment part was longer than was necessary. In any event the appellant would not be released until the parole board was satisfied that it was appropriate. That would only be the case if the appellant had engaged actively in offence focussed work and there had been significant improvements in his mental health. The appellant’s rehabilitation was an important consideration. He could and would engage with work, as set out in the CJSWR.

[21] While his adverse childhood experiences were not as bad as the appellant in *Haig v HM Advocate* [2024] HCJAC 28, they were nonetheless significant. He had been exploited and street drug running was his life. That having been said, he did not blame anyone for his actions.

## Analysis and decision

[22] As was made clear in *Haig* at para 33, the guideline on Sentencing Young People did not emerge in a vacuum. It was informed by a substantial body of jurisprudence discussed in *Haig* from paragraph 26 and in *NRL v HM Advocate* [2025] HCJAC 4 at paragraphs 28 to 31. See, for example, the well-known authorities of *Kane v HM Advocate* [2003] SCCR 749, *R (Smith) v Secretary of State for the Home Department* [2006] 1 AC 159 and *Hibbard v HM Advocate* 2011 JC 149.

[23] Importantly, the court in *Haig* said that, while the punishment part of a life sentence is to be such part of a sentence as a court considers appropriate to satisfy the requirements for retribution and deterrence (section 2(2)) of a Prisoners and Criminal Proceedings (Scotland) Act 1993), the requirement for “retribution” is sufficiently broad and flexible to encompass the prospect of a young offender’s rehabilitation. Inherent in the concept of retribution is the fact that the court imposes upon the offender the “deserved” punishment.

[24] In *Haig* the appellant had pleaded guilty to an assault to injury with a garden fork, causing cuts to the victim’s face. That was committed on 31 July 2021. On 2 August 2021, he was observed to be in possession of a knife in Glasgow Green. On 16 October 2021, in the context of gang rivalry, he murdered a member of another group in a railway station, by striking him once with a knife in the lower abdomen. He was 16 years of age at the time of the murder and 18 years old at the time of sentence. The sentencing judge fixed the punishment part at 16 years, made up of 15 years attributed to the murder and an additional year to mark the other charges. The appellant had experienced a high level of violence in the community involving weapons and was exposed to domestic violence, physical abuse and inter-family conflict from a young age. His brain development was likely to have been distorted. That was impacted further by him being subject to physical abuse at the hands of

his mother from at least the age of 5. Since being remanded, he had acted maturely with staff and participated in structured activities including playing the guitar, playing chess and indulging in activities such as arts, cookery and physical education. Mental health difficulties had been reported from a young age, including a lack of impulse control, difficulty in processing information and reasoning, a lack of problem-solving skills and a lack of emotional intelligence. He was hyper-vigilant to threats and his behaviour was dysregulated. He had learned to see violence as an acceptable way of managing difficulties. The reports available at his appeal showed that he had reasonable prospects of rehabilitation. He had been able to excel in certain activities. He was educationally capable, articulate and bright and he found value and motivation in education. In short, he was a young man with some potential. The punishment part was reduced to 13 years, which did not include any period attributable to the other charges.

[25] While each case must turn on its own merits, it is helpful to look at the position of the appellant in the instant case in the light of the court's approach in *Haig*.

[26] The CJSWR makes it plain that there was social work involvement with the appellant's family from 2007 in relation to concerns about parental substance use and poor mental health, with adverse impact on the care that he received. Three years later he and his sister were placed with their paternal grandmother. His mother committed suicide in April 2012. His grandmother was a consistent and supportive figure throughout his childhood and still has a close relationship with him. In 2014 and 2018, concerns about his behaviour had resulted in referrals to Social Care Direct but there was no ongoing involvement. He was offered additional support for learning via weekly home visits, which he did not take up, but despite that he managed to achieve five National 3s while at school. Around 2019 he began to associate with older peers in the community and a child protection investigation



was instigated in 2021 due to concerns that he was a victim of child criminal exploitation.

He became entrenched in drug dealing and criminality as result of this exploitation. As we have indicated, the national referral mechanism was invoked and the result of that has been set out above.

[27] Following the appellant's remand, he committed assaults against staff members and other young people. As a result, he was confined to his bedroom and a corridor area for a period of 3 weeks. Restrictions were relaxed in July 2024 and he was permitted to mix with other young people in communal areas. He moved to another institution in October 2024 where he settled in well and formed relationships with staff and peers.

[28] Since being remanded, he has engaged very well with education. It is anticipated that he will achieve National 4s and he has qualified as a barista.

[29] He was diagnosed with ADHD in 2023 and he has shown insight into how this affects him. Since being remanded, he has twice been prescribed courses of medication but, due to a national shortage, the medication could not be sourced. At the time of writing the report, he was awaiting an appointment with the local child and adolescent mental health service to discuss recommencing the medication. He struggles to engage in work to address his past experience of trauma and his emotional regulation, but his mental health and wellbeing will continue to be closely monitored by staff.

[30] While he is currently assessed as posing a high risk of further violent offending with a higher likelihood of causing serious harm, there is scope for him to engage in offence focussed work, which will enhance his prospects of rehabilitation.

[31] Senior counsel was correct in pointing out that the CCTV footage did not of itself add to the serious nature of the offence, although it spoke to that more graphically than mere words could convey. This was a shocking offence and the sentencing judge was quite

correct to have regard to its nature. Nonetheless, we are satisfied that the punishment part he imposed was excessive and that he placed insufficient weight on the appellant's age, his adverse childhood experiences, including years of criminal exploitation, and his prospects for rehabilitation. The sentence was more akin to that which might have been imposed on an adult offender.

[32] In the whole circumstances we quash the punishment part imposed by the sentencing judge and in its place substitute one of 14 years.