



SENIOR COURTS
COSTS OFFICE

SCCO Ref: SC-2019-CRI-000008

Dated: 26 November 2019

ON APPEAL FROM REDETERMINATION

REGINA v HOPKINS

CENTRAL CRIMINAL COURT

APPEAL PURSUANT TO REGULATION 29 OF THE CRIMINAL LEGAL AID
(REMUNERATION) REGULATIONS 2013

CASE NO: T20187281

LEGAL AID AGENCY CASE

DATE OF REASONS: 25 JUNE 2019

DATE OF NOTICE OF APPEAL: 31 JULY 2019

APPLICANT:		
ANYA LEWIS	COUNSEL	

The appeal has been dismissed for the reasons set out below.

COLUM LEONARD

COSTS JUDGE

REASONS FOR DECISION

1. This appeal turns on the correct banding of an offence in accordance with the Criminal Legal Aid (Remuneration) Regulations 2013, as applicable to representation orders granted on or after 1 April 2018 and before 31 December 2018. In this case, the Representation Order was made on 30 August 2018.
2. Amendments made to the 2013 Regulations replaced, for such cases, the offence classification provisions of the Advocates' Graduated Fee Scheme at Schedule 1 with the AGFS Banding Document.
3. The issue on appeal is whether the Appellant is entitled to claim a fee based on a band 1.2 or a band 1.3 offence. The relevant provisions are as follows.
4. Regulation 7 of the Criminal Legal Aid (Remuneration) (Amendment) Regulations 2018 amended the Table of Offences in Schedule 1 and replaced it with the AGFS Banding Document. Paragraphs 1(7) and 1(8) of Schedule 1 now read:

“(7) A reference in this Schedule to a “band” is to the band of the offence concerned set out in Table B in the AGFS Banding Document, as read in conjunction with Table A in that document.

(8) Where the band within which an offence described in Table B in the AGFS Banding Document falls depends on the facts of the case, the band within which the offence falls is to be determined by reference to Table A in that document.”

5. Table A of the AGFS Banding Document sets out the way in which cases of murder are to be classified for payment purposes.

“Band 1.1: Killing of a child (16 years old or under); killing of two or more persons; killing of a police officer, prison officer or equivalent public servant in the course of their duty; killing of a patient in a medical or nursing care context; corporate manslaughter; manslaughter by gross negligence; missing body killing.

Band 1.2: Killing done with a firearm; defendant has a previous conviction for murder; body is dismembered (literally), or destroyed by fire or other means by the offender; the defendant is a child (16 or under).

Band 1.3: All other cases of murder.”

Background

6. Gary Hopkins (“the Defendant”) was charged, along with his co-defendant Stacey Doherty, with one count of murder, one count of doing an act or acts tending and intended to pervert the course of public justice, and one count of

preventing the lawful and decent burial of a dead body. The victim of the murder was 17-year-old Abdi Ali.

7. Both defendants stood trial between 27 February and 28 March 2019. The Defendant, having pleaded guilty to the lesser charges, was convicted of murder on 28 March. Ms Doherty, who had assisted the Defendant in concealing Mr Ali's body, was acquitted of murder and manslaughter and subsequently pleaded to a more limited charge.
8. The Defendant had wrapped and hidden Mr Ali's body in his loft, allowing it to decompose over a period of eight months. Mr Richmond QC, who appeared on behalf of the Appellant, advised me that the body was only discovered because the Defendant boasted to acquaintances of the murder and, when disbelieved, showed them the concealed body.
9. By the time Mr Ali's body was recovered, it was no longer possible to identify him from physical evidence. His identity had to be established by circumstantial evidence and evidence of the Defendant's boasts. The conduct of the Defendant had a significant impact on sentencing, the judge's sentencing remarks including an observation to the effect that Mr Ali's body had been found badly decomposed as the result of the grotesque way in which he had been treated.
10. Both defendants were represented at trial by leading and junior counsel. Initially, both leading counsel and one junior were paid on the basis of a banned 1.2 offence. Upon review, however, the offence was treated for all cases as Band 1.3.
11. The Appellant argues that Mr Ali's body was destroyed "by other means". The body's concealment for eight months drew significant parallels with a "missing body" case. The Defendant had a previous conviction for dangerous driving. Both those factors underline the case's suitability for classification within Band 1.2. Dictionary definitions of "destruction" encompass the (passive) fact of being destroyed as well as the (active) activity of destroying.
12. The Determining Officer took the view that "destruction" of necessity requires a deliberate act and that natural decomposition does not meet that definition. She concluded that if the intention of the 2013 Regulations had been to include decomposition of a body over time within Band 1.2, specific provision would have been made to that effect.

The Lord Chancellor's Submissions

13. In written submissions, Ms Weisman for the Lord Chancellor accepted that Mr Ali's body was in a badly decomposed state as a result of the Defendant's actions. The decomposition, however, was not a direct consequence of any act by the Defendant. A body undiscovered for months following death by means other than homicide, such as illness or accident, would also be subject to natural decomposition.

14. It is not sufficient, she submits, to argue that the dictionary definition of “destruction” includes either the act of “destroying, or of being destroyed”. The key element of the wording of Band 1.2 is that the destruction is “by the offender”. There is a clear distinction between destruction directly linked to agency on the part of the murderer, and that which could have taken place in a variety of circumstances, including those where no offending behaviour had taken place at all. Had the scope of Band 1.2 been envisaged to apply more widely than the Determining Officer has found, it could have been worded differently to make such an intention clear.
15. Even given that, as the Appellant says, the body’s decomposition had a significant impact on counsels’ approach to and preparation of the case (because the pathological evidence was more complicated), evidence in homicide cases may be complicated or compromised for reasons other than corporeal destruction or decomposition. Not all of these reasons could be listed exhaustively or would necessarily trigger entitlement to an uplift. The Banding Document envisages the fulfilment of specific criteria.
16. The concealment of the body for several months would have been a key feature to consider on sentencing, and these submissions do not seek to detract from its gravity. However, that concealment did not equate to act of deliberate damage or destruction. At least to some extent, that aspect of the case is already accounted for by the extra charges of perverting the course of justice and prevention of lawful burial.
17. The fact that the body was not found for eight months does not put this case in the same category as a “missing body” case at Band 1.1, and the claimed similarities cannot justify categorising this case as Band 1.2. There is always a potential complexity in missing body cases, not least as to whether or not the death itself can be proven. That distinguishes such cases markedly from this case. The Defendant’s previous conviction for causing death by dangerous driving is not on all fours with a previous conviction for murder.
18. Before me, Ms Weisman argued that there must be some causative link between the actions of the Defendant and the destruction of the body. Concealment does not amount to destruction. The banding of murder, always very serious, into three categories is intended to reflect two matters: the gravity of the offence and the complexity of the evidential issues. Without understating the gravity of this offence and of the Defendant’s conduct, one must bear in mind that Band 1.2 envisages an active engagement with the destruction of a body.
19. Whilst this case has similarities with a Band 1.2 case, there are also definitive differences. This inevitably leaves room for argument but determining officers should apply the banding as it stands without being forced into exercising a discretion that they do not have.

The Appellant's submissions

20. Mr Richmond QC, for the Appellant, emphasised the distinction between the complete elimination of a body (which would put a murder offence into Band 1.1 as a "missing body" case, which this might have become) and its destruction. Destruction, for these purposes, means that the body has been altered to such a significant extent that it is not what it was.
21. It is right, he concedes, to say that the mere abandonment of the body, as for example where a murder takes place in an obscure place and the murderer flees, leaving the body to decompose, would not put an offence into Band 1.2. Something more positive is needed. There must be an act. In this case, there was. The Defendant actively concealed Mr Ali's body, allowing it to decompose beyond recognition: hence the additional charge of perverting the course of justice. Had he achieved his aim, the body would have disappeared altogether, putting the offence into category 1.1.

Conclusions

22. I accept that Mr Ali's body was effectively destroyed. Nonetheless, I agree with Ms Weisman that to bring an offence of murder within band 1.2, the murderer must actively engage in an act of destruction.
23. Mr Richmond accepted that some act by the murderer is necessary. It seems to me that the Defendant acted only to conceal the body. In so doing he prevented its discovery and perverted the course of justice, but concealment is not destruction.
24. Mr Richmond argued that the charge of perverting the course of justice was based upon the Defendant's destruction of Mr Ali's body, but the particulars of that charge on the indictment refer to the hiding of Mr Ali's body, not to its destruction.
25. This might well, in other circumstances, have become a "missing body" case, but it did not. I do not think that it could be appropriate to impose upon the Banding Document a sort of progressive scale in which, through the concealment of a body over time, a Band 1.3 murder progresses through Band 1.2 to Band 1.1.
26. For those reasons, the appeal fails.

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