

BETWEEN:

THE QUEEN

Appellant

- and -

AKON GUODE

Respondent



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RESPONDENT'S OUTLINE OF ORAL SUBMISSIONS

Part I: Suitability for publication on the internet

1. The Respondent certifies that this outline is in a form suitable for publication on the internet.

Part II: Outline of propositions to be advanced by the Respondent in oral argument

2. All four offences were committed at the same time by the same *actus reus* accompanied by the same state of mind.

- Respondent's Submissions, [15]

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3. With respect to that state of mind, forensic psychiatrist Dr Danny Sullivan concluded that the Respondent was suffering from a major depressive disorder, mild-moderate in severity, with somatic syndrome. Dr Sullivan stated that the Respondent's mental functioning at the time of the offences was impaired by a clinically significant mood disorder, and that this was likely causally associated with her behaviour in driving into the lake. Dr Sullivan opined that that depression impaired the Respondent's capacity to exercise appropriate judgment, and her capacity to think clearly and make calm and rational choices. Further, her capacity to appreciate the wrongfulness of her conduct at the time was impaired.

- Respondent's Submissions, [9]

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- Report dated 13 January 2017, [62]-[64] (CAB 287)

- Report dated 11 February 2017, [20] (CAB 292) & [30] (CAB 293)

- *Viva voce* evidence, 8 March 2017 (**CAB 65-99**) (in particular **CAB 76-77, 80 & 81**)
4. Dr Sullivan concluded that the Respondent's depressive illness was a consequence of having given birth to Bol within the preceding two years, and that at the time of the incident, the balance of the Respondent's mind was disturbed.
- Report dated 13 January 2017, [66] (**CAB 288**)
 - Report dated 11 February 2017, [18]-[19] & [23] (**CAB 292**)
 - *Viva voce* evidence, 8 March 2017 (**CAB 75, 77 & 96**)
- 10 5. In circumstances where the Respondent was indicted on a charge of infanticide, sentence was to be imposed on Charge 1 with respect to the state of mind for infanticide, as described in paragraph 4 herein.
6. Further, the Respondent's mental state and impaired mental functioning necessarily mitigated the sentences to be imposed on Charges 2, 3 and 4. The consequence of being indicted on the charge of infanticide on the plea indictment was that there was an agreed factual position that, at the time when the Respondent drove her car into the lake, the balance of her mind was impaired; and that impaired mental functioning had implications for a number of relevant sentencing factors as regards Charges 2, 3 and 4.
- Respondent's Submissions, [3], [15] & [16]
 - Judgment of the Court below, [65] (**CAB 395**) & [67] (**CAB 396**)
- 20 7. That is how the sentencing judge imposed sentence. His Honour characterised the symptoms described by Dr Sullivan as severe, and accepted Dr Sullivan's opinion that the Respondent's condition impaired her ability to exercise appropriate judgments, think clearly, make calm and rational choices, and appreciate the wrongfulness of her conduct. His Honour noted that the *Verdins* principles applied so as to reduce but not eliminate the moral culpability of the Respondent's conduct, and to significantly moderate the role of specific deterrence and general deterrence in the sentence to be imposed.
- Respondent's Submissions, [16]
 - Reasons for sentence, [53], [56]-[58] & [77] (**CAB 333-335 & 339**)

8. And that is how the Court below analysed the sentence imposed by the sentencing judge, in order to determine whether the sentence imposed was manifestly excessive.

- Respondent's Submissions, [16]-[23]
- Judgment of the Court below:
 - [33]-[34] (CAB 384)
 - [61] (CAB 393),
 - [65]-[69] (CAB 395-397)
 - [72]-[73] (CAB 397-398)

9. Moreover, having first determined that the sentence imposed at first instance was manifestly excessive, that is how the Court below re-sentenced the Respondent.

- Judgment of the Court below, [73]-[75] (CAB 398-399)

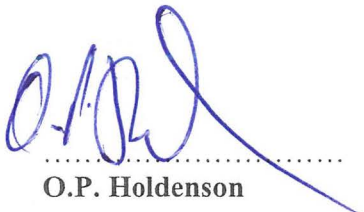
10. At no point did the Court below in either determining that the sentence imposed by the learned sentencing judge was manifestly excessive or in re-sentencing the Respondent on Charges 2, 3 and 4:

(a) take into account as a relevant consideration the fact that the offence of infanticide (with a prescribed maximum penalty of five years' imprisonment) had also been charged, with the consequence that the prescribed maximum penalties for those offences were to be "moderated" to reflect that fact; or

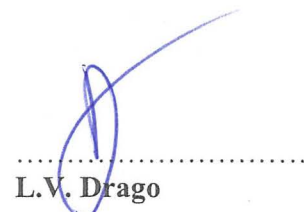
- cf. Appellant's Submissions, [6.16], [6.17] & [6.22]

20 (b) reduce the culpability of the Respondent for those offences merely by reason of the fact that the Respondent had also been indicted on a charge of infanticide.

- cf. Appellant's Submissions, [6.8]


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Thursday 14 November, 2019