



Decision of the Director of Public Prosecutions (ACT)

Police v O - CC2019/3260

Charge of Aiding Suicide under section 17(1) Crimes Act 1900

Statement of reasons

This document outlines the reasons for the ACT Director of Public Prosecutions declining to proceed with the prosecution of one count of aiding suicide, on the grounds that it is not in the public interest.

The DPP recognises that the decision not to proceed with the prosecution of a homicide on public interest grounds is a decision in which the community may have a legitimate interest. The purpose of publishing these reasons is to affirm transparency and accountability in the decision-making process.

The charge

I outline the relevant facts below, however for privacy reasons, the amount of detail has been limited.

The defendant and the deceased had been in a loving supportive relationship for over 25 years. At the time of her death, the deceased was 68 years of age, and the defendant was 63 years of age.

In 2016, the deceased developed a degenerative disease which leads to a loss of mobility, reduced respiratory function, and eventually death. Both the deceased and defendant were medically trained and were acutely aware of the disease's trajectory, and the manner of death from the disease.

By late 2018, the disease was in its advanced stages, and the deceased had conducted research into how to end her own life before respiratory arrest was brought on by the disease. With the assistance of the defendant, the deceased attended an education evening run by an organisation she had discovered during research which taught people suffering from terminal illnesses how to painlessly end their life.

I consider it appropriate to avoid discussing the manner of death of the deceased. However, I will briefly set out the facts, so as to outline the aid rendered by the defendant.

Two items were prepared jointly by the deceased and the defendant. To bring about her death, the deceased used an item which had been modified by the defendant, due to the deceased's mobility issues, to ensure the deceased was rendered unconscious prior to death. The deceased also used another item which she had purchased from the organisation some months prior to her death. The deceased applied the modified item and deployed the purchased item. The defendant was present for the deceased's death.

The Prosecution Policy

The decision to prosecute is summarised as a 'two-stage process' at section 2.4 of the [Prosecution Policy](#). The first question is whether the evidence offers reasonable prospects of conviction.

I can only conclude that there are reasonable prospects of conviction in this case. With the knowledge of the impending suicide, the defendant intentionally assisted in modifying an implement used to bring about the death of the deceased.

The second question is whether it is in the public interest to proceed with the prosecution. Part 2.9 of the Prosecution Policy notes that many factors may be relevant to the public interest, and the weight which should be accorded to them will depend upon the circumstances of each case. In the circumstances of this case, I consider that it would not be in the public interest to proceed with the prosecution against the defendant, for the following reasons.

At the time of the suicide, the defendant and the deceased were aged in their sixties and had been in a loving, supportive relationship for over 25 years. The deceased's state of physical health was such that she had lost all independent functioning, including walking, self-care and toileting. In the month of her death, the deceased had been referred to a respiratory physician by her doctor. The deceased was of sound mind and had expressed to a number of people over a period of time that she wished to end her life before her immobility prevented her from doing so, thus causing her to suffer a distressing death. Her death was imminent within a matter of months, and no financial gain resulted from the defendant aiding the suicide. The defendant has no antecedent criminal history.

Although the evidence establishes that the defendant rendered aid to the deceased, the assistance offered was minimal, motivated wholly by love and compassion, and designed to ensure that the deceased's death was quick and painless. Had the defendant not made minor modifications to an item used in the suicide, death would have still resulted, however, it may have been prolonged, resulting in a highly distressing process for the deceased.

Furthermore, the defendant actively encouraged the deceased to delay ending her life, and successfully convinced her to delay it on at least one prior occasion. The defendant unsuccessfully attempted to dissuade the deceased again on the night of her death. Despite this, the deceased was adamant that she needed to proceed that day before the last of her limited mobility was lost. Prior to her death, the defendant purchased a meal and sat with the deceased hugging and talking until the early hours of the morning. After her death, the defendant removed all items and spent time cuddling the deceased. The defendant then phoned police and was completely cooperative,

including sitting for an interview that lasted more than 3 hours, during which he gave an honest and complete history of the events leading to the death, the death itself and his actions post death.

These facts go to the defendant's level of culpability for the alleged offending.

I consider the consequences of any resulting conviction for the offence would be unduly harsh and oppressive in the circumstances. Although the defendant was present for the deceased's death, he stated that this was because he loved the deceased and did not want her to endure the trauma of death alone. This in turn caused the defendant significant trauma that he displayed during a subsequent lengthy police interview and beyond.

In considering the public interest in proceeding with this prosecution, I have been assisted by the *Policy for Prosecutors in respect of Cases of Encouraging or Assisting Suicide* in the United Kingdom,¹ and a paper entitled 'Prosecutorial guidelines for voluntary euthanasia and assisted suicide'.² Whilst I do not formally adopt either of these as policies, their existence informs my discretion to resolve the issues in this case with judgment, sensitivity and common-sense, consistent with the demands of fairness. The considerations in these policies also reflect the application of some of the discrete public interest factors set out in the ACT DPP's Prosecution Policy.

Conclusion

Whilst I have found the policy from England and Wales, as well as the discussion by White and Downie, of great benefit, I have deliberately avoided the adoption of an offence-specific policy in relation to the public interest test. On this front, I agree with White and Downie that such an approach may risk undermining Parliament's intention that aiding suicide should be an offence.³ Further, it must be made clear that the exercise of my discretion in this matter is in no way intended to provide guidance on how to aid a suicide and avoid prosecution.

Having applied the Prosecution Policy to the facts of this case, I have come to the decision that it is not in the public interest to proceed with the prosecution against the defendant. Accordingly, I exercise my discretion to withdraw the charge.

Neville Shane Drumgold
ACT Director of Public Prosecutions
28 June 2019

Lifeline: 13 11 14

¹ <https://www.cps.gov.uk/legal-guidance/suicide-policy-prosecutors-respect-cases-encouraging-or-assisting-suicide>

² Ben White and Jocelyn Downie, "Prosecutorial Guidelines for Voluntary Euthanasia and Assisted Suicide: Autonomy, Public Confidence and High Quality Decision-Making" (2012) 36(2) Melbourne University Law Review 656.

³ See above.