Judicial Communications Office

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COURT INCREASES SENTENCE FOR MURDER

Summary of Judgment

The Court of Appeal[1] today allowed a reference brought by the Director of Public Prosecutions that the sentence imposed on John Paul Whitla was unduly lenient. The court replaced the minimum term of 15 years imposed by the Crown Court with one of 19 years.

John Paul Whitla ("the respondent") pleaded guilty to the following offences:

- Murder of Nathan Gibson ("the deceased") on 16 January 2020, contrary to common law (count 1).
- False imprisonment of JB (the deceased's partner), contrary to common law (count 2).
- Common assault, contrary to common law and section 47 of the Offences against the Person Act 1861 (count 3).
- Trespass with intent to commit a sexual offence, namely a sexual assault, contrary to Article 67 of the Sexual Offences (Northern Ireland) Order 2008 (count 6).

The Crown Court judge ("the judge") imposed a life sentence with a minimum tariff of 15 years' imprisonment. Where a life sentence is imposed the protection of the public is achieved by the executive discretion exercised by the Parole Commissioners over the time of release, after the minimum term has elapsed, as an offender will not be released if he still presents sufficient risk to the public. The other material sentence imposed by the judge was on count 6 which was committed against JB. On that count the judge indicated that he would have sentenced the respondent to a determinate custodial sentence of six years which meant that he added three years to the minimum tariff for murder to reach 18 years which was then reduced to 15 years on account of the guilty plea.

The agreed facts of this case

Shortly after 9pm on 16 January 2020, police received a 999 call reporting that a neighbour, JB, had arrived at his house and told him that a male had broken into her house and told her that he had murdered the deceased and that he was going to rape her. Police attended and spoke with JB who stated that the respondent, who she had known for approximately two years, had left her house covered in blood. The deceased had earlier that evening told her he was going to meet the respondent, who he had known since childhood, as he had three boxes of "Bud" for him. (Buds is a reference to Pregabalin/Lyrica which is prescription drug.) JB reported that the deceased sold these tablets.

JB reported that the respondent appeared at her door and asked her to open the door, claiming to have been jumped by two men. She opened the door, but just enough so that her body was blocking the space of the door to stop him gaining entry to her house. She could see that the respondent had dry blood on both his arms and hands. She opened the door to him thinking he was injured and brought him into the kitchen to help him. She could not see any wounds on him

[1] The panel was Keegan LCJ, O'Hara J and Fowler J. Keegan LCJ delivered the judgment of the court.

but described how he had blood on both his hands that went up to both elbows. She said she started to tend to him but then realised that he was not bleeding.

The respondent then proceeded to take the deceased's phone from his pocket and admitted that he had killed the deceased. He told JB that she could not leave until the deceased returned. He said that "the Firm" were taking him for a drive and that he would be back soon. She said that she knew from Facebook that certain people in the area who were involved in drugs called themselves "the Firm." She described herself as being very scared but doing her best not to show it. She then explained that the respondent said very calmly "why are you worrying, there is nothing to worry about, you are fine. Just calm down there, just calm down love, I know you are a lovely wee girl."

The respondent then said that he needed a change of clothes. JB went to go upstairs, and the respondent followed her. He grabbed her by the throat. JB said he threw her onto her bed, and he then jumped on to the bed beside her. She was able to wriggle out of it. He grabbed her by the back of the neck and again calmly said to her that he was not going to hurt her, that the Firm had Nathan and that they just needed to stay there until he came back. The respondent then explained, according to JB and verified by her statement, that he worked for the Firm and that they had him kill the deceased. She also reported that in the next sentence he said that Nathan was fine and that the Firm would be bringing him back and that she was to stop worrying. Her evidence was that the respondent explained that he owed the Firm £7,000 for cocaine but that the debt had been taken out in the deceased's name. JB thought that she was going to be raped by the respondent and managed to run down the stairs and out the window to escape to a neighbour's house.

The police commenced a search for the respondent. Before he could be found, at 23:39 hours police located a male with a bad head injury lying on one of the paths near the Lake Road between roundabouts in Craigavon. The body was subsequently identified to be that of Nathan Gibson. The cause of death was identified following post-mortem, as being stab wounds to the head and neck. There were approximately 18 stab wounds to the head and 31 stab wounds to the neck.

The respondent was eventually located. During police interview he denied being responsible for the murder of the deceased, claiming they were going to buy drugs at the path and that when they were there, two or three men were hiding in the bushes and attacked them. He stated that he went to JB's house, but never made any threats to kill her. He stated that he tried to explain to JB what had happened, but that she just jumped out the window. He denied assaulting JB.

Core issues pertaining to this reference

The core of the prosecution case was that the starting point chosen for the murder minimum tariff was too low. In this regard, the prosecution accepted that the case had been presented in an inadequate way before the judge, in that cases involving multiple stabbings which were of particular assistance, were not put before him. The prosecution maintain that both cases support the submission that this type of case is to be regarded as exceptionally grave and falling within the category of case that was within the contemplation of the Court of Appeal as set out in *McCandless*[2] and accordingly the starting point should have been in the order of 20-23 years. The main argument for this along with the fact that this was a multiple stabbing case was that the judge was wrong not to find that this was a case of pre-planning or premeditation. Reliance was placed upon the fact that JB, in her statement, referred to the fact that there was a background to this case in

[2] *R v McCandless and others* [2004] NICA 1 – see Notes for Editors

terms of killing on instructions from the Firm, but the prosecution say that, in any event, there can be no doubt on the evidence that the deceased had left his home to meet the defendant who, on the available evidence, had plainly armed himself in advance with a bladed weapon which he used with repeated and lethal effect upon the deceased at a time when they were in a remote location together. Hence, the prosecution submitted that whether the killing was prompted by an instruction from others, the inference that the attack and killing was pre-planned, premeditated and foreseen, was irresistible and that the starting point for the killing alone was at least 20 years. In addition, the prosecution pointed to further aggravating factors given the trespass and assault on JB.

R v McCandless

The decision in *R v McCandless* has been applied in this jurisdiction for a considerable period of time. It has also recently been discussed in a number of other murder cases by the Court of Appeal which all point to the fact that sentencing for murder in Northern Ireland allows for flexibility on the part of sentencers within the guidelines provided by *McCandless*. The court said these cases also reflect the fact that as societal conditions change, judges should be aware of different issues which may not have been expressly stated in *McCandless*, but which, nonetheless, they can take into account. In particular, the fact of a prolonged history of domestic violence against the victim and other partners was a relevant aggravating factor or the fact that there was desecration of the deceased's body.

Each murder case is fact specific. The Court of Appeal in Northern Ireland has consistently said that the guidelines that derive from *McCandless* applying the *Practice Statement* of Lord Woolf[3] should not be applied in a rigid compartmentalised way:

> "The benefit of *McCandless* is that in this jurisdiction it allows flexibility to sentencers in the myriad of different scenarios that arise in murder cases. We repeat what we have said in many previous decisions that judges should be free to consider factors not specifically mentioned in *McCandless* as aggravation in a particular case, including a track record of domestic violence (see *R v Hutchison*) and desecration of a dead body (*R v Nauburaitis*). This way murder sentences in Northern Ireland have been able to reflect the circumstances of murder cases with the benefit of the reference procedure if sentences are thought to be too lenient or appeal if manifestly excessive. It is the function of the Court of Appeal to set appropriate guidelines and to review any guidelines previously given."

The court said that as this appeal turns upon application of *McCandless* again, it considered that time had come to refresh the *McCandless* categories. It said it was taking this course cognisant that most murder cases in Northern Ireland will now fall within what has previously been termed the higher starting point of 15/16 years which involves high culpability and that, should now be termed the normal starting point. The court said that a lower starting point of 12 years, previously termed the normal starting point rarely arises in murder cases. Only exceptionally will the circumstances explained in *McCandless* giving rise to lower culpability of the offender will arise. The court said this case illustrates the fact that having to consider this starting point in every case may deflect the sentencer away from reaching an appropriate sentence:

[3] *Practice Statement* [2002] 3 All ER 417

> "Recourse to this starting point [of 12 years] will only arise where culpability is low and so arises in only a small number of cases. This should be the practice going forward."

The court added that where exceptionally high culpability arises a higher starting point of 20 years or more can be applied. It considered that the descriptors given in *McCandless* cover most circumstances that arise for this higher bracket based upon exceptionally high culpability, but again stressed that sentencers have flexibility to consider modern circumstances. Multiple stabbing cases can come within this bracket. The court noted that this does not amount to any sea change in terms of murder sentencing:

> "It is simply a recalibration to reflect the complexion of cases we have had before our courts in the 20 years since *McCandless* was penned. In summary, *McCandless* should now be read with the following qualification:
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> (i) The normal starting point is now 15/16 years. This is based on high culpability.
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> (ii) In exceptional cases of low culpability, the starting point may reduce to 12 years.
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> (iii) In cases of exceptionally high culpability the starting point is 20 years."

The court said it was not necessary for it to redefine *McCandless* any further as the factors that feed into each starting point and aggravating or mitigating factors as these are comprehensively set out. In addition, sentencing judges are expressly reminded that they have the flexibility to vary the starting point upwards or downwards to take into account the particular circumstances of each case. The court however, provided one further matter of clarification in relation to multiple stabbing cases. It reiterated that where the court chooses the higher starting point because of one particular aspect of the case, it should not normally vary the starting point upwards because of the same factor. Where, however, there are several reasons that a case might be regarded as meriting a higher starting point, then some measure of increase of the minimum sentence may be warranted. Again, it is important to avoid an over-mechanistic approach to this issue, while guarding against the danger of double counting.

Sentencing in this case

The court commented that the prosecution had not argued the pre-planning element of this case before the judge with the necessary vigour and as a result he did not consider this fact was established. The court considered there was in fact sufficient evidence to make a more positive finding on this aspect than the judge did and that the respondent's actions in arming himself with a knife and inflicting multiple stab wounds cannot simply be explained as a drug rendezvous gone wrong. There was also clear evidence from JB that a drug debt was in the background of this case.

Furthermore, the court said this was clearly a higher starting point case and that the prosecution should have been much clearer on this in written submissions and should have provided the judge with the multiple stabbing authorities it had examined. It said that if the judge had been assisted in the way he should have been, it was confident he would have arrived at a higher sentence in this case. The court said the standout characteristic of this stabbing was the number of wounds

inflicted to the face and neck in such a brutal fashion. These stark facts meant the judge was entitled to increase the starting point by varying the sentence upwards from the minimum tariff when high culpability was established. The court said the judge could have put this case into an even more serious category, or he was entitled to uplift the higher starting point because of the serious aggravating features he identified:

> "Either way, the starting point should have been 20 years for murder. There was, to our mind, no mitigation that would reduce this down save reduction for the plea. This was not a case where lower culpability was established on the medical evidence. The judge rightly said that the voluntary injection of drink, drugs, "may in part explain the defendant's actions but is not a mitigating factor." He also said, "I find it hard to comprehend how his undoubted mental limitations impact upon the nature of the offending, but I have taken them into account to determine the appropriate sentence."

The court said it was clearly possible for judges to make allowances for a mental illness in some circumstances where it can be said to reduce culpability. Each case will of course depend on its own facts. In this case the judge considered the issue and decided that there was no reduction in culpability based on the medical evidence he had. The court said his assessment cannot be faulted.

The court added that the judge could have added additional years for the separate trespass charge or he could have used it as an aggravating factor to increase the minimum tariff. Either way no issue was taken with the three years he settled upon to reflect this additional offending against a second victim. It stated that before any reduction for the plea the sentence should have been 23 years. The judge then applied credit for the plea which was not under challenge in this case as it was roughly one sixth which is appropriate.

Conclusion

The court found that the sentence was unduly lenient given pre-planning and the fact that a brutal multiple stabbing such as this required an uplift on the starting point selected to reflect the horrific nature of this crime:

> "We are satisfied that an adjustment in the sentence was necessary and so in the interests of justice we consider that the respondent's tariff will have to be increased. To our mind the sentence for murder should have been in the region of 20 years with three years then added for the separate offence against JB (to reflect a six-year determinate sentence for the offence against her). If a one sixth reduction is made for the plea that leaves a final minimum tariff of around 19 years. … Our decision means that the respondent will as part of his sentence of life imprisonment have to serve a term of 19 years after which he becomes eligible for release on life licence if the Parole Commissioners determine that imprisonment is no longer necessary for the protection of the public from serious harm. It is for the Parole Commissioners to decide whether he is released at that stage."

NOTES TO EDITORS

1. This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available on the Judiciary NI website (https://www.judiciaryni.uk/).

2. The minimum term is the term that an offender must serve before becoming eligible to have his or her case referred to the Parole Commissioners for them to consider whether, and if so when, he or she can be released on licence. Unlike determinate sentences, the minimum term does not attract remission. If the offender is released on licence they will, for the remainder of their life, be liable to be recalled to prison if at any time they do not comply with the terms of that licence. The guidance is set out in the case of *R v McCandless & Others* [2004] NI 269.

3. A *Practice Statement* [2002] 3 All ER 417, sets out the approach to be adopted by the court when fixing the minimum term to be served before a person convicted of murder can be considered for release by the Parole Commissioners. It also sets out two starting points. The lower point is 12 years, and the higher starting point is 15/16 years imprisonment. The Practice Statement also identifies that in very serious cases a minimum term of 20 years and upwards may be appropriate with cases of exceptional gravity attracting a minimum term of 30 years. The minimum term is the period that the court considers appropriate to satisfy the requirements of retribution and deterrence having regard to the seriousness of the offence. This sentencing exercise involves the judge determining the appropriate starting point in accordance with sentencing guidance and then varying the starting point upwards or downwards to take account of aggravating or mitigating factors which relate to either the offence or the offender in the particular case.

ENDS

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