Neutral Citation No: [2025] NICC 15 *Judgment: approved by the court for handing down (subject to editorial corrections)**	*Ref:* **OHA12788** *ICOS No:* **22/055115** *Delivered:* **06/06/2025**

IN THE CROWN COURT IN NORTHERN IRELAND
SITTING AT LAGANSIDE COURTHOUSE, BELFAST

THE KING

v

JOHN SCOTT

Mr R Weir KC with Mr I Tannahill (instructed by the PPS) for the Crown
Mr N Connor KC with Mr S Devine (instructed by Finucane Toner Solicitors) for the Defendant

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SENTENCING REMARKS

O'HARA J

Introduction

[1] The defendant has pleaded guilty to the following charges:

(i) Murder of Natasha Melendez on 1 April 2020.

(ii) Assault occasioning actual bodily harm to Ms Melendez in December 2019.

(iii) Grievous bodily harm with intent to Ms Melendez between 13 February and 7 March 2020.

(iv) Common assault on Ms Melendez on 15 February 2020.

[2] On 18 June 2024, after the defendant had pleaded guilty to these charges, I imposed on him the sentence which is mandatory in murder cases of life imprisonment. I now turn to set the tariff which is the minimum number of years which he will have to serve in jail before his release can even be considered. The task of deciding at that point whether he should be released falls to the Parole Commissioners who assess what level of risk, if any, he still poses to the public. No

matter when he is released, he will still have the life sentence hanging over him. If he commits any further criminal offences, he is at risk of being recalled to prison.

[3] One point is to be made clear from the start. The victim in all of the offences committed by the defendant was Ms Melendez, who was his partner and also the mother of his youngest child. Her murder was the end result of his repeated violence against her. In our system, I cannot impose sentences which are consecutive to the life sentence for the other three assaults to which Ms Melendez was subjected. What I can do, and what I will do, is to treat those three assault offences as severe aggravating features which will be taken into account when I set the tariff. Or to put it more simply, the tariff will be higher because of these other attacks on Ms Melendez.

[4] As ever, I am grateful to counsel for the assistance which they have all provided, both in writing and orally, especially in this case which for reasons which will be developed below, has developed in unexpected ways.

Background

[5] Natasha Melendez was born in Venezuela in 1987 and came to Northern Ireland in 2009. At the time of her murder she was the mother of four children, the youngest of whom was by the defendant. Sadly, all four of her children had been taken into the care of social services because Ms Melendez had a longstanding difficulty with a drug addiction. She and the defendant had been partners for approximately four years before her death. They had lived together in Finch Gardens in Lisburn for approximately six months before the final attack which took her life.

[6] On 22 March 2020, Ms Melendez was seen in a Citroen car at a garage in Finaghy at about 1:10am. Examination of the CCTV footage suggests that she had no facial injuries at that time.

[7] At around 9:20pm a man went to the Finch Gardens address to buy drugs. He saw Ms Melendez upset and crying, with a swollen face and two black eyes. There was blood on the kitchen floor.

[8] At approximately 10:20pm the Citroen car was seen leaving Finch Gardens. It is believed that at that stage it was being driven by Ms Melendez with a Ms Gorman as a passenger. Less than an hour later a member of the public reported that the Citroen was being driven erratically on the country bound lane of the M1. The vehicle was stopped by police close to Portadown. At that point it was being driven by Ms Gorman with Ms Melendez now being the passenger. It appears that Ms Gorman had taken over driving as Ms Melendez's condition had deteriorated to such an extent that she was unable to drive.

[9] The last registered owner of the vehicle was a Ms Brannigan and there was a passport in that name in the glove compartment. The police initially believed that this was the identity of the badly injured woman who was, in fact, Ms Melendez. Shortly after midnight an ambulance arrived at the scene. The ambulance took Ms Melendez to Craigavon Area Hospital. In the course of that short journey it was noted that her condition declined and she became unconscious with paralysis down her right side.

[10] On the evening of 23 March 2020, the police became aware that the defendant had contacted the Royal Victoria Hospital in Belfast and told them that the person in their care was not Ms Brannigan but was, in fact, Ms Melendez. The police were able to establish that Ms Brannigan was safe and they were able to confirm Ms Melendez's true identity through fingerprints and a small tattoo on her left hand.

[11] At Craigavon Area Hospital Ms Melendez was under the care of a Dr Sharkey. He noted a partially obstructed airway with crackly breathing. Ms Melendez's eyes were swollen and bruised. There was dried blood on her nose which was swollen to "the size of a tennis ball" and was fractured. Her mouth was swollen and she had bruising on her right upper arm.

[12] Further examination of Ms Melendez showed that she had a moderate right side pneumothorax and a tiny left side pneumothorax. She also had multiple rib fractures. Toxicology revealed the presence of benzodiazepines, cocaine and cannabis in her system.

[13] Ms Melendez was transferred to the Royal Victoria Hospital where she was taken into intensive care. Further examination there revealed a dissection of the carotid artery and thrombosis. A dissection of the carotid artery is a condition where the layers of the carotid artery are separated. This can lead to a compromised blood flow to the brain and then to a stroke.

[14] Ms Melendez remained critically ill and in an induced coma during her time in the Royal Victoria Hospital. On 25 March, Dr McCarroll from the hospital contacted Ms Melendez's mother in Miami Florida and explained that her daughter had an injury to the major blood vessel in her brain which had led to a devasting stroke. He informed Ms Melendez that this was a very serious injury which posed a significant risk of death. Her condition continued to deteriorate and on 29 March her mother was informed that she could not survive. At that point Ms Melendez's mother travelled to Northern Ireland in advance of brain stem tests being carried out. At 9:32am on 1 April 2020, she was pronounced dead.

[15] A post-mortem conducted on 3 April by Dr. James Lyness, State Pathologist for Northern Ireland, found that the cause of death was infarct of the left cerebral hemisphere due to thrombosis of the left middle cerebral artery. This was due to dissection of the left internal carotid artery following head and neck trauma. Before the defendant pleaded guilty to the murder it was suggested that while the unusual

injury identified by Dr Lyness could result in death, there were also other possible causes of death such as drug abuse and thyrotoxicosis. Each of these was relevant to Ms Melendez. It was suggested that they could not be completely excluded.

[16] As is clear, already, the defendant then did plead guilty to murder but it is accepted by the prosecution that since there was a possible issue in relation to what caused her fatal injury that had to be fully investigated by the defence. Exploring that possibility led to some of the delay before the ultimate guilty plea.

[17] When interviewed, the defendant accepted that he had struck Ms Melendez. He claimed that this was because of his unhappiness with her involvement with heroin and with injecting a mixture of cocaine and heroin. It is the prosecution case that he sought to minimise the level of the assaults which he carried out on Ms Melendez. The extent of those assaults is proved by the number and seriousness of the injuries which he caused and she suffered before her death.

[18] The grievous bodily harm offence which has been admitted by the defendant was inflicted when he beat Ms Melendez up, threw a vacuum cleaner at her and then jumped hard and repeatedly on her prone body while he held on to a headboard on the bed, presumably to steady himself and give him leverage. Ms Brannigan, who witnessed that attack, said the incident was exceptionally violent and unlike anything she had ever seen before, to the extent that she was so frightened that she hid within the house lest he turned on her next.

[19] The plea of guilty to a charge of actual bodily harm relates to the defendant punching Ms Melendez and pressing on the swelling to try to reduce it.

[20] There is then a further charge of assault which relates to an incident in Crumlin, Co Antrim, when the defendant attacked Ms Melendez while the two of them were in a car. She escaped and ran to a nearby off-licence. He followed her into the off-licence and was seen by staff to whisper in her ear and try to pull her away with him. After he left, Ms Melendez was spoken to by staff. She was seen to be bleeding but she asked the staff not to contact the police as she was afraid that he would kill her.

[21] The extent of the harm inflicted on Ms Melendez is captured most succinctly in the pre-sentence report to which I will turn later. It is, however, helpful to refer to it now for the following summary:

> "Following examination, several external injuries were present to include various abrasions, punctures, bruises on her body, scalp, face, right ear, right breast, chest, left and right upper limbs, left and right lower limbs alongside her back. There were also many internal injuries. A report prepared by Dr O'Houghton, consultant osteopathologist, notes how four of the

> victim's rib fractures occurred between 7 and 14 days before death and five rib fractures occurred between 4 and 6 weeks before death; all of these fractures had sustained refractures 7-14 days before death. These injuries were the result of a sustained assault which, as noted within the depositions, may have included jumping and stamping on her chest. The extent of her facial injuries resulted in her being unrecognisable when the car in which she was being transported was stopped by the PSNI. Officers checked the licence on the vehicle and initially believed this was the victim and, in fact, it was an unrelated female."

[22] Although the defendant was arrested in April 2020, he was not interviewed about the murder until January 2022, in large part because of the difficulties caused by the Covid pandemic in arranging for police, lawyers and the defendant to be in the same place together. When he was interviewed, on 18 January 2022, he gave a no comment interview. When he was produced again for interview on 19 January he stated, "Yes I lashed out, it was wrong to do so, I'm a big lump, a small girl you know, I'm so sorry for it."

[23] He then gave an account of the day on which the fatal injuries were inflicted, outlining his knowledge of her movements and arguments between them arising from their joint drug use. As interviews continued on 20 January 2022, he denied hitting Ms Melendez anywhere other than on the head and neck and denied kicking her or using any weapon. When the allegations of other incidents of violence were put to him, no comment was given. Those are the other incidents to which the three less serious charges relate.

[24] It is the prosecution case that the defendant was repeatedly violent to Ms Melendez, with no regard for her well-being nor concern that she would report what was happening to her. The fact that she was so scared of him allowed him to continue his campaign of violence against her.

Victim statements

[25] I have received exceptionally moving statements from Ms Melendez's mother, from one of her children and from two of her aunts. Each of them describes the pain and anguish which her death at the age of 32 has caused to them and to the wider family. Her mother describes how it is impossible to put into words the suffering which this cruel murder has caused the family. That suffering has been made worse by the time it has taken to bring the case to a conclusion in court. Her mother, who lives on the other side of the Atlantic Ocean, has described in vivid terms, coming here on 1 April 2020, the day Natasha was declared dead and her life support was disconnected. She has kept coming back ever since then to maintain contact with Ms Melendez's children, her own grandchildren.

[26] Her two aunts have written about their enormous sadness and depression. The void which has been left by the murder of Ms Melendez is immense and they feel particularly concerned for her children. Each of them struggles to find peace as life goes on for others around them.

[27] Perhaps the most moving statement is from Ms Melendez's teenage son. He says that he was made fun of and bullied at school when his mother's murder was reported on the news. As time has gone on he finds days like his own birthday or Mother's Day especially hard to get through. The final sentences of his statement give an insight into the effect which this murder has had on him:

> "I will never know if my mum would have been able to get better and I could have spent more time with her. I had to start secondary school without my mum knowing and I think of all the big things in my life she will miss out on. I just feel like my life will never be the same without her and every birthday I see is a constant reminder of her."

Pre-sentence report

[28] I am grateful to Ms Finnegan of the Probation Board for Northern Ireland for the helpful and detailed pre-sentence report to which I have already referred. She has detailed in that report the exceptionally difficult childhood endured by the defendant who is now 36 years old. This includes the loss of his own mother when he was only six and the appalling consequences for him and his siblings. She also reports that the defendant has informed her that, he himself, was the subject of abuse when he was 12, that he was expelled from two schools and of the struggles which developed with alcohol and substance use during his adolescence.

[29] In speaking with Ms Finnegan, the defendant claimed to have made some level of recovery from these addictions but then relapsed when he met Ms Melendez who also had her own problems of the same sort.

[30] So far as the four offences to which he has pleaded guilty are concerned, the defendant told Ms Finnegan that he had difficulty in recalling each individual incident. He described to her how they all occurred within emotionally heightened situations and within the context of substance abuse to include alcohol, crack cocaine, cannabis, Xanax, Diazepam, Tramadol and morphine patches.

[31] The report then continues as follows:

> "He accepts that he had been physically violent towards the victim throughout their relationship and it is indicated within the evidence that he disclosed to his

> stepmother how he 'could not stop hitting' the victim. Whilst the defendant cannot recall making this comment, he alleged that he has also been the victim of violence perpetrated by the deceased. He describes the entire relationship as chaotic; 'we were constantly off our heads, nothing ever got resolved, I accept my actions. I am responsible for what I done, a lot of back and forth, sometimes it was all me…I don't want to blame (the deceased), she bit and scratched me on numerous occasions.'"

[32] The defendant was unable to offer to Ms Finnegan any motivation for his behaviour but he was adamant that his actions were not planned and stated it was never his intention to kill her. He said that he was sorry for what had happened and that "I deserve to be punished."

[33] Ms Finnegan correctly identifies further aggravating factors including the fact that the defendant was subject to bail conditions at the time that he committed these various offences against Ms Melendez, that the majority of the offences were committed within Ms Melendez's home, where she should have felt safe, and that he was not even deterred by the presence of witnesses. In discussing the impact of his offending on this occasion, the defendant did express his inability to imagine what Ms Melendez's family were going through and he commented how Ms Melendez "did not deserve what happened, I genuinely loved her to bits, I want forgiveness, I need to do right by (the deceased), that's why I pleaded guilty, I took her from her family and kids."

[34] As Ms Finnegan's report continues, it deals with the fact that the defendant has 42 previous convictions with his offending reflecting instability in his family life and his substance abuse. He has been in breach of several suspended sentences imposed in 2014 for drug offences and earlier probation orders which were imposed on him in 2005 and 2006 were breached.

[35] Ms Finnegan correctly identified that the most relevant previous convictions are for violence, all of which pre-date the 2020 murder. In May 2019, he committed the offence of assault occasioning actual bodily harm, where the male victim was taken to hospital and treated for fractures to his eye socket. The most recent convictions for assault occasioning actual bodily harm and assault on a designated person were committed on 24 March 2020 following his arrest on the current charges and they occurred within police custody. The victims were two male police officers. One of them sustained a broken nose and the other sustained an abrasion to his right cheek. While the defendant expressed remorse for those actions he sought to minimise personal responsibility and demonstrated limited insight into the consequences of his actions. He was sentenced to six months' imprisonment.

[36] Against all this background, it is inevitable that the defendant was assessed by PBNI as being at the high end in terms of likelihood of reoffending. Multiple risk factors influenced that assessment. They included the escalation and the seriousness of his offending up to the end result of murder, gratuitous violence, a pattern of domestic violence within, not just one but two relationships, a history of volatile interpersonal relationships and significant history of drug abuse.

[37] A risk management meeting convened on 23 July 2024, which was attended by a Probation Board area manager, Probation Board psychologist and Ms Finnegan concluded that the defendant poses a significant risk of causing serious harm in the future. Although it will be many years before the defendant has any prospect of being released from prison, licence conditions are outlined for that day whenever it does come. There is clearly much work to be done with the defendant in the meantime within the prison.

Representations for the defendant

[38] In their submissions for Mr Scott, counsel emphasised the following main points:

- His plea of guilty which the defendant was determined to enter even when there were issues to explore about the cause of Ms Melendez's death.

- His remorse, which is said to be sincere to the extent that he is represented as being racked with guilt.

- His own unhappy childhood and general background.

[39] In addition to the analysis provided by Ms Finnegan in the pre-sentence report, an analysis which is adopted and relied on by the defendant, the defence has called in aid a report on the defendant by Dr Devine, Psychiatrist. He uses the term "developmental trauma" and "attachment disruption" to describe the defendant's experiences as a child which led to him having behavioural difficulties from a young age. Having gone through the background in some considerable detail, Dr Devine concluded as follows:

> "6.13 In summary, Mr Scott has a history of chronic mental health difficulties and drug/alcohol abuse, he struggles with emotional regulation and his behaviour since childhood have been concerning. I understand these difficulties within the context of developmental trauma, attachment disruption, neglectful parenting and further traumatic experiences. Mr Scott has employed negative self-containing coping strategies throughout the years, namely self-harm and drug/alcohol abuse."

[40] In effect, Dr Devine appears to agree entirely with Ms Finnegan who did not have the benefit of Dr Devine's report when she wrote her report. While Dr Devine couches his analysis in medical and psychiatric terms, the end result is effectively the same.

[41] Following on from these contentions, the defendant then developed a plea of mitigation as follows:

(a) It was submitted that within the guidelines set out in various legal authorities, this case falls within what is described as the normal starting point of 12 years and that it does not have any of the characteristics or features which would cause a higher tariff to be set.

(b) The case can be viewed as one where it came close to the borderline between murder and manslaughter because there was no intention to kill or is one in which the defendant suffered from a mental disability which lowers the degree of criminal responsibility. On either approach, the defendant's culpability is significantly reduced.

(c) On no approach could the culpability be regarded as exceptionally high.

(d) Ms Melendez was not particularly vulnerable.

(e) The crime has none of the characteristics which make it especially serious. Those characteristics would include extensive multiple injuries being inflicted on the victim before death.

[42] In addition, considerable emphasis was placed on the lack of an intention to kill and on the defendant's remorse. Some reference was also made to the effect of Covid on the defendant in the early years of his detention in prison, an issue which has been recognised in some cases as one which may lead to a reduction in sentence.

[43] The prosecution responded to this submission on 13 October 2024, by taking issue with the defence and contending that the following factors must inevitably take the case to the higher starting point:

- The victim, Ms Melendez, was vulnerable.
- There was gratuitous violence inflicted on her.
- There were extensive and multiple injuries inflicted on her before death.
- The murder was the culmination of cruel and violent behaviour by the defendant over a period of time.

- The fact that this was a domestic incident or series of incidents is an aggravating factor in and of itself. In this regard, the prosecution submitted that the approach to domestic violence has been consistent, as explained by Morgan LCJ in *R v Brownlee* [2015] NICA 58, and by Keegan LCJ in *R v Hughes* [2022] NICA 12.

[45] In relation to the timing of the plea of guilty, the prosecution acknowledged, as it had done previously, that it was legitimate for the defence to fully investigate the mechanism of death and whether, to put it bluntly, the death was as a result of drugs or violence, the defendant had sought to minimise the level of violence during his interviews with the police by making very limited admissions to the allegations which were put to him.

Sentencing guidelines

[45] In this jurisdiction, for many years, the courts took as their starting point for tariffs in murder cases the approach which was adopted in *R v McCandless* [2004] NICA 1. In that case, the Court of Appeal endorsed the Practice Statement issued in England & Wales by Lord Woolf [2002] 3 All ER 412.

[46] Paras [10]-[19] of the Practice Statement read as follows:

> "**The normal starting point of 12 years**
>
> 10. Cases falling within this starting point will normally involve the killing of an adult victim, arising from a quarrel or loss of temper between two people known to each other. It will not have the characteristics referred to in para 12. Exceptionally, the starting point may be reduced because of the sort of circumstances described in the next paragraph.
>
> 11. The normal starting point can be reduced because the murder is one where the offender's culpability is significantly reduced, for example, because: (a) the case came close to the borderline between murder and manslaughter; or (b) the offender suffered from mental disorder, or from a mental disability which lowered the degree of his criminal responsibility for the killing, although not affording a defence of diminished responsibility; or (c) the offender was provoked (in a non-technical sense), such as by prolonged and eventually unsupportable stress; or (d) the case involved an overreaction in self-defence; or (e) the offence was a mercy killing. These factors could justify a reduction to eight/nine years (equivalent to 16/18 years).

The higher starting point of 15/16 years

12. The higher starting point will apply to cases where the offender's culpability was exceptionally high or the victim was in a particularly vulnerable position. Such cases will be characterised by a feature which makes the crime especially serious, such as: (a) the killing was 'professional' or a contract killing; (b) the killing was politically motivated; (c) the killing was done for gain (in the course of a burglary, robbery etc.); (d) the killing was intended to defeat the ends of justice (as in the killing of a witness or potential witness); (e) the victim was providing a public service; (f) the victim was a child or was otherwise vulnerable; (g) the killing was racially aggravated; (h) the victim was deliberately targeted because of his or her religion or sexual orientation; (i) there was evidence of sadism, gratuitous violence or sexual maltreatment, humiliation or degradation of the victim before the killing; (j) extensive and/or multiple injuries were inflicted on the victim before death; (k) the offender committed multiple murders.

Variation of the starting point

13. Whichever starting point is selected in a particular case, it may be appropriate for the trial judge to vary 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.

14. Aggravating factors relating to the offence can include: (a) the fact that the killing was planned; (b) the use of a firearm; (c) arming with a weapon in advance; (d) concealment of the body, destruction of the crime scene and/or dismemberment of the body; (e) particularly in domestic violence cases, the fact that the murder was the culmination of cruel and violent behaviour by the offender over a period of time.

15. Aggravating factors relating to the offender will include the offender's previous record and failures to respond to previous sentences, to the extent that this is relevant to culpability rather than to risk.

16. Mitigating factors relating to the offence will include: (a) an intention to cause grievous bodily harm, rather than to kill; (b) spontaneity and lack of pre-meditation.

17. Mitigating factors relating to the offender may include: (a) the offender's age; (b) clear evidence of remorse or contrition; (c) a timely plea of guilty.

Very serious cases

18. A substantial upward adjustment may be appropriate in the most serious cases, for example, those involving a substantial number of murders, or if there are several factors identified as attracting the higher starting point present. In suitable cases, the result might even be a minimum term of 30 years (equivalent to 60 years) which would offer little or no hope of the offender's eventual release. In cases of exceptional gravity, the judge, rather than setting a whole life minimum term, can state that there is no minimum period which could properly be set in that particular case.

19. Among the categories of case referred to in para 12, some offences may be especially grave. These include cases in which the victim was performing his duties as a prison officer at the time of the crime or the offence was a terrorist or sexual or sadistic murder or involved a young child. In such a case, a term of 20 years and upwards could be appropriate."

[47] That is how matters stood until the judgment of the Court of Appeal in *R v Whitla* [2024] NICA 65, a judgment which was delivered on 21 October 2024. In that judgment at para [39] the court reiterated that the guidelines which derive from *McCandless* were never to be applied in a rigid and compartmentalised way. The court stated:

> "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*)…"

[48] The court then continued at para [40] by stating:

"[40] This appeal turns upon application of *McCandless* once again. As such we consider that the time has come to refresh the *McCandless* categories. This approach is based on the collective experience of the members of this court that a lower starting point of 12 years, previously termed the normal starting point…rarely arises in murder cases. Only exceptionally if the circumstances explained in *McCandless* arise may consideration be given to the lower culpability of the offenders. The experience of 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. Recourse to this starting point will only arise where culpability is low and so arises in only a small number of cases. This should be the practice going forward."

[49] The court then continued at para [41]:

"[41] We are cognisant that most murder cases in Northern Ireland will fall within what has previously been termed the higher starting point of 15/16 years which involves high culpability. As such we think it better that this should now be termed the normal starting point.

[42] In addition, where exceptionally high culpability arises a higher starting point as described in sub para [19] of the Practice Statement adopted in *McCandless* can be applied of 20 years or more. We are content that the descriptors given in *McCandless* cover most circumstances that arise for this higher bracket based upon exceptionally high culpability but repeat the fact that sentencers have flexibility to consider modern circumstances...

[43] We stress that what we have said 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 following revision:

(i) The normal starting point is 15/16 years. This is based on high culpability.

(ii) In exceptional cases of low culpability, the starting point may reduce to 12 years.

(iii) In cases of exceptionally high culpability the starting point is 20 years."

[50] If any further clarity was required, the court continued at para [44] by stating:

> "[44] It is not necessary for us to redefine *McCandless* any further as the factors that feed into each starting point and aggravating or mitigating factors 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."

Delay

[51] The hearing which is taking place today was originally scheduled for 18 October 2024. It was adjourned because I was aware that on 21 October the Court of Appeal was going to deliver judgment in *R v Whitla*, cited above. It was clear to me that the written submissions which I had received would be affected by the imminent decision of the Court of Appeal, hence the tariff hearing was adjourned and I allowed further submissions to be presented.

[52] For the defendant, the following submission was advanced:

> "It is submitted that the common law sentencing regime, post *Whitla*, is, on any view, more onerous than that which existed previously and that any attempt to apply it (post-conviction) to the instant case would render the proceedings unfair and a breach of natural justice. In short, the defendant was entitled to know and be advised of the sentencing regime in place and applicable to him at the time he entered his plea of guilty."

[53] The submission went on to refer to Article 7 of the European Convention on Human Rights which states:

> "No man can receive a heavier penalty than was applicable at the time of the crime."

[54] Reference is then made to authorities which state:

> "Where the law changes between the date of a defendant's conviction and the date of the sentencing

> hearing, Article 7 requires the sentencing court to apply the most favourable of the two sentencing regimes."

[55] It is then submitted, on behalf of the defendant, that that statement of principle applies to the present case, otherwise, the defendant would be the subject of procedural unfairness. It is also submitted that he pleaded guilty on the basis of advice, which itself was based on the sentencing framework which existed at the time and that any degree of uncertainty regarding the applicable sentencing regime would render the provision of professional advice impossible in such situations. The submission concludes with the proposition that the defendant should have his tariff fixed according to the principles established in *R v McCandless* and without regard to the judgment in *R v Whitla* which came after he had pleaded guilty.

[56] In short reply, the prosecution takes issue with the defence submission. It is contended that:

> "The case of *R v Whitla* has been described as the recalibration and by the court as not amounting to a sea change in the tariff setting exercise. It is also an acknowledgment of the rarity of low culpability cases. The case of *Whitla* was arrived at by the application of the extant case law including *McCandless*."

[57] That submission continues with the prosecution point, in effect, that it never accepted that this was a lower starting point case, and that it was always a higher starting point case because of the significant aggravating features which were present. The prosecution then ends by reminding the court that the setting of the tariff has never been a mechanistic or purely mathematical exercise and the guidelines in cases are not intended as straitjackets.

Conclusion

[58] I do not accept the original defence submission that the defendant should be sentenced without regard to the Court of Appeal decision in *R v Whitla*. To be fair to Mr Connor he has retreated from that position in his oral submissions today. In my judgment, there is a world of difference between new legislation being introduced which changes the law on sentencing on the one hand and, on the other hand, the Court of Appeal updating its guidance by, in effect, formalising or acknowledging what was already happening over a period of time in the Crown Courts. What the Court of Appeal said in *Whitla* was that there are now very few cases for which what was once described as a normal starting point of 12 years is appropriate. Over time 15-16 years has become the normal starting point. That has been proved and endorsed by the Court of Appeal in *Whitla*.

[59] I must also make one blunt observation about the original defence submissions on the "normal starting point of 12 years." It is beyond me how it could

ever have been envisaged that this case involving the murder of Ms Melendez, along with a series of violent assaults on her, could ever have been accepted by the court as a case which would attract a starting point of 12 years. The defence was right to move from that position today.

[60] Apart from the plea of guilty which I will deal with later, the only true mitigating factors which I recognise in this case for the defendant are some signs of remorse and the horrible childhood which he endured which led into the addiction and mental health problems recognised by Dr Devine and Ms Finnegan.

[61] However, while I do recognise the unhappy way in which the defendant's life developed from a very young age, the fact is that in murder cases because the crime is so great, personal circumstances, while not ignored, just do not carry the same weight as they do in other cases.

[62] Contrary to the defendant's submissions, I do not regard this as a case which was anywhere near the borderline between murder and manslaughter. Nor is it one where culpability could possibly be significantly reduced by reason of mental disorder.

[63] In my judgment Ms Melendez was a particularly vulnerable young woman. The defendant himself recognised the disparity between them in terms of their physical size. In addition to that, she was a drug addict who he beat up again and again and again until he killed her. While he contended that he himself suffered some injuries, there is no evidence that he suffered any injury of any note at any point at her hands. The evidence all goes the opposite way. When he attacked her, he inflicted extensive and multiple injuries on her before the final assault as the evidence of healing fractures proves beyond any doubt. These are all aggravating factors. As for the submission that there was a lack of intention to kill, I accept that the murder was not premeditated, but it was an easily foreseeable end result of how the defendant treated Ms Melendez. What on earth did he think might happen to her if he beat her up again and again and again and again? She begged the staff in the off-licence not to call the police because she was afraid he would kill her. And that is exactly what he did.

[64] On the issue of detention in prison during Covid, that has been considered as a factor but typically only in cases involving much shorter sentences than the one facing this defendant. In this case, I do not consider it to be a factor of any weight.

[65] The murder of Ms Melendez and the preceding assaults on her took place before the statutory offence of domestic abuse came into law in 2021. Notwithstanding that, the fact that the context of these crimes was a cycle of violent abuse by the defendant of Ms Melendez is yet another aggravating factor, one already recognised in our courts for example at para [14] of *McCandless*.

[66] It is also an aggravating factor that the defendant was so blatant about his violence against Ms Melendez. He beat her up horribly in front of Ms Brannigan. The off-licence staff saw her bleeding in plain daylight. And the man who came to buy drugs on the day of the final attack saw her in an awful state, beaten and distressed.

[67] There is no limit on the number of ways in which murders are committed. The guidelines which assist judges to ensure consistency in sentencing are written to steer us, not to dictate the outcome. This gives us flexibility and discretion to vary sentences upwards or downwards depending on the circumstances.

[68] In this case, the old starting point of 12 years was never remotely the appropriate sentence. In light of all the factors which I have analysed above, and the defendant's criminal record, I do not believe that even the current recognised starting point of 15/16 years is sufficient either. While I give some limited recognition to the defendant for his remorse and personal circumstances, I consider that before taking account of the guilty plea, the proper tariff in this case is one of 22 years. That will necessarily include the concurrent sentences for the three other counts to which the defendant has pleaded guilty.

[69] Turning finally to the plea of guilty, it has been long recognised in our criminal justice system that some reduction in sentence is appropriate even in cases where the plea comes relatively late. I bear in mind in the present case, that there was, as the prosecution have acknowledged, some issue about whether Ms Melendez died because of the defendant's actions. That was a necessary and legitimate line of inquiry for the defence to explore before any plea of guilty was entered.

[70] It may not seem to Ms Melendez's family and friends that a guilty plea in the present case deserves any recognition whatever, given that the case against the defendant was always strong. I should also acknowledge, again, that I appreciate from the victim statements how frustrated the family has been at the drawn-out legal process. However, a guilty plea really is something of value for at least two reasons. One is that it allows the family to hear the defendant accept his guilt openly in public. The second is that it saves the family from the ordeal of having to give evidence or hear others give evidence about the terrible events which led to the death of Ms Melendez.

[71] In the circumstances of this case, I will make some allowance to the defendant for his plea of guilty. I, therefore, set the tariff that Scott must serve at 19 years. Only when that term has been served will the Parole Commissioners consider whether he should be released from jail.

[72] I must formally impose sentences for the other three crimes which the defendant committed against Ms Melendez, even though they will run concurrently with the life sentence. They are as follows:

(i) Five years for inflicting grievous bodily harm.

(ii) 18 months for assault occasioning actual bodily harm.

(iii) Six months for common assault.

[73] There is one final issue which is to be considered. The defendant has been in custody since 26 March 2020 but he was not charged until 20 January 2022. I have already summarised at para [22] above the reasons for the delay between the arrest and the charge by reference to the Covid pandemic. It has been submitted to me on behalf of the defence that it would be unjust not to recognise that time in custody. The only way for me to recognise it is to reduce the tariff from 19 years by the period of days during which his custody was effectively due to the crimes against Ms Melendez. Once I am satisfied as to the number of days which are in play, I will formally reduce the tariff by that number of days. The prosecution has considered that submission by the defence and does not present any contrary position to me. This issue can be settled with an agreed paper to be submitted within five days. That paper should set out, for the total period of 22 months or so, the days which are said to have been spent in prison by reference only to the crimes against Ms Melendez. I trust that it will not be necessary to reconvene for an oral hearing but, if needs be, there will be such a hearing. The outcome will of course be made public.