Neutral Citation No: [2025] NICA 42	*Ref:*	**KEE12830**
	ICOS No:	**23/70919/A01**
*Judgment: approved by the court for handing down (subject to editorial corrections)**	*Delivered:*	**12/09/2025**

IN HIS MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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THE KING

v

WIKTORIA MAKSYMOWICZ

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Mr Duffy KC with Mr Boyd (instructed by Joe Mulholland Solicitors) for the Applicant
Mr Tannahill (instructed by the Public Prosecution Service) for the Crown

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Before: Keegan LCJ, Treacy LJ and McLaughlin J

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Ex tempore judgment

KEEGAN LCJ (*delivering the judgment of the court*)

Introduction

[1] This is an application for leave to appeal a sentence imposed by Mr Justice O'Hara ("the judge") on 3 July 2024, for murder and other offences of possession of cannabis, possession of a bladed instrument and assault occasioning actual bodily harm. The headline offence is obviously murder, for which the judge imposed a mandatory life sentence with a minimum tariff of 14 years' imprisonment. The applicant maintains that this sentence was wrong in principle and manifestly excessive.

[2] The single judge, Mr Justice Kinney, refused leave in a written judgment given on 24 March 2025. We have had the benefit of reading both the single judgment and the judgment of the Crown Court judge. I will simply summarise some of the salient elements from both.

Background

[3] This is set out comprehensively at first instance by the judge. The victim, Mr Browne, was in October 2022, 54 years of age. As the judge said, he had led a difficult life because of issues of alcohol abuse which contributed to him separating

from his wife. However, as the judge records Mr Browne had been sober, according to the depositions, for around ten years before he met the defendant approximately six months before his death. She was at that time 33 years of age. After meeting the defendant, Mr Browne soon began drinking again and drinking to excess and this was a cause of concern. There are also statements that the judge refers to concerning domestic abuse within this relationship, but there were no interventions and no reports made to the police.

[4] What this case relates are events that occurred on 13 October 2022 and 14 October 2022. Briefly, on the first date, 13 October 2022, which was the day before the murder, the applicant and Mr Browne were drinking on a Glider bus in Belfast. There was a knife present which was reported to the driver of the bus and resulted in two customer protection officers boarding the bus.

[5] Later that day, Mr Browne's nephew called at his home and found the applicant and Mr Browne there. They were reported to be in good form at this time. As the judge at first instance describes that made it all the more shocking that, the applicant went into the kitchen, returned with a dinner knife and stabbed Mr Browne just above the knee. The applicant herself then cleaned up the blood and got a bandage and that incident is recorded in that way, principally on the basis of the evidence of Mr Browne's nephew.

[6] The next day, 14 October at approximately 1:20pm, a neighbour called to the house and found both Mr Browne and the applicant very drunk. That night, just before 10pm, a 999 call was made requesting an ambulance. When the ambulance arrived, Mr Browne was found lying on the floor of a bedroom beside the bed and it transpired that he been stabbed and died from a stab wound to the neck. The applicant was reported to be in a distressed condition. Mr Browne was unresponsive and taken to hospital and, shortly thereafter, was confirmed as deceased.

[7] Police were summoned to the address. When they arrived various representations were made by the applicant at that time which included a representation that "I tried to save him, I tried to protect him" and "I did not kill him." Further representations were made by the defendant at the police station.

[8] The above facts of the case that are uncontentious and recorded. We have also considered the progress of this case and the fact that a guilty plea was entered after some period of time, but nonetheless, was entered and as Mr Duffy KC submits, that would have been of some value in the case. The applicant confirmed that she and the victim were the only people in the house at the time that Mr Browne was killed. In addition, she repeatedly stated that she could not remember anything of the events.

The judge's sentencing remarks

[9] We have had the benefit of reading the written sentencing remarks. The judge first considered the background facts. He also considered the pre-sentence report which referred to the applicant's background, her history of living in the Republic of Ireland, her background in Poland, her employment history and the fact that she has no criminal record.

[10] The pre-sentence report assessed the applicant as a medium likelihood of reoffending but not meeting the Probation Board's threshold for significant risk of harm. The pre-sentence report makes clear that the victim was murdered in an apparently unprovoked attack when he was vulnerable due to his alcohol intake. The report also records that the defendant expressed remorse but could not provide any explanation or insight into her offending.

[11] A neuropsychiatric report was also prepared on the defendant which revealed a diagnosis of alcohol use disorder, but no evidence of underlying serious mental illness apparent.

[12] We also note that the judge had the benefit of victim statements and victim impact reports from Dr Kierans, a clinical psychologist, about the effect of Mr Browne's death on his twin daughters. The judge also received victim statements from a niece and from his sister and his ex-wife. Para [17] of the judge's ruling stresses how loved Mr Browne was by his family and missed. It also highlights the fact that he had recovered from his earlier troubles with alcohol and that he had maintained close and loving relationships with those who had lived through those difficult times says so much about him. The judge states "the fact that he was then murdered without provocation and when he was completely vulnerable to the point to being unconscious, makes the whole event infinitely more difficult for his family and friends to understand and to come to terms with" and we also understand that position.

[13] The judge applied the relevant law that applied at the time of sentencing and by reference to *R v McCandless* [2004] NICA 4. In *R v Whitla* [2024] NICA 65 this court has more recently recalibrated the *McCandless* guidelines to take into account what this court considers is the prevalence of murders in a domestic setting and to reflect an uplift in some of the starting points. In particular, *Whitla*, no longer supports a normal starting point of 12 years given the matters that we discuss in that case. In any event, the judge was faced with applying the *McCandless* guidelines in his sentencing analysis and he was clearly cognisant of what the prosecution and the defence said in this case.

[14] The judge's sentencing remarks properly accord with the methodology that this court has set out in numerous cases including *R v Stewart* [2017] NICA 1 in relation to how judges should approach sentencing. This is not an arithmetical mechanical exercise. A judge does not have to place a figure on each element which

forms a sentence. What a judge does have to do, is state a point reached in any sentencing exercise of this nature, after consideration of aggravation and mitigation and then take into account the appropriate reduction for a guilty plea.

[15] In this case, there was a domestic violence aggravator which the judge took into account. Overall, we consider that the sentencing remarks are transparent in that the judge having been guided by agreement of the parties to a starting point of 12 years moved that to 16 years having considered the relevant factors in the case and then applied a reduction of one eighth for the plea.

This appeal

[16] Mr Duffy, on behalf of the applicant on this appeal, effectively makes two points to us. Firstly, that the judge made an error of principle in relation to how he assessed mitigation. That, he submits, has led to a sentence which is manifestly excessive because the mitigation offset the aggravation and so the sentence should have been reduced.

[17] The second substantial point is that the reduction from the plea following the case of *R v Turner* [2017] NICA 52 given by this court, should have been greater and amount to one sixth rather than one eighth in this case.

[18] We have also considered Mr Tannahill's helpful submission on behalf of the prosecution which succinctly encapsulates the prosecution position that on any read this sentence is not manifestly excessive applying *McCandless* or, indeed, the *Whitla* methodology.

Conclusion

[19] As to the first limb of appeal, we are not satisfied that it can realistically be said in this case that issues of mitigation could offset the aggravation. There is an arguable point to be made that, in fact, even on *McCandless*, this case should have attracted a higher starting point case given the features in play namely:

(i) the vulnerability of the deceased;

(ii) the use of a knife; and

(iii) the domestic violence context.

[20] But whatever way you look at it, the judge having been effectively asked to consider 12 years as a starting point did rightly increase that by virtue of the aggravation. In addition, he did take into account the personal circumstances of the applicant. He also took into account the concession made as to intention and, in our view, he reached a wholly sustainable end point having done so.

[21] Mr Duffy's arguments are not sustainable. We agree with the single judge's assessment found at para [25] of his ruling as follows:

> "[25] The trial judge's observations and findings were entirely within the range open to him on the facts of the case. It was uncontested that the applicant stabbed the victim the day before in an entirely unprovoked manner. The following day, again using a knife, the applicant stabbed the victim and killed him. I am satisfied that it was entirely appropriate for the judge to note that whilst the fatal stabbing may not have been premeditated, the actions of the applicant the day before were relevant. There was a history and pattern of domestic abuse by the applicant towards the victim but no evidence of the victim ever abusing the applicant. It was also noteworthy that the victim was in all probability unconscious at the time of the fatal stabbing."

[22] We also consider that the judge was entitled to take the view that notwithstanding the prosecution concession that it could not prove that the applicant had an intention to kill the victim, the applicant had a knife and the victim was in all probability unconscious at the time of his death.

[23] In our view, that the judge was entitled after consideration of aggravation and mitigation to reach a minimum tariff of at least 16 years for murder. If the point is that the judge did not specify exactly what he provided for in terms of mitigation in formula of years, it is misconceived. As we have said previously, judges are not obliged to set out mathematical formulas in sentencing as this is a highly fact sensitive exercise which requires a judge to look at the overall circumstances of a case. We dismiss the first ground of appeal which encompasses a number of the points in relation to mitigation verses aggravation.

[24] The second ground of appeal is in relation to the reduction given for the guilty plea. *R v Turner* deals with the issue of guilty pleas in murder cases. This remains good law. In summary, Turner states that the reduction for a guilty plea in a murder case will be less than other cases given the subject matter. Also, one sixth would be the greatest reduction given in such a case. Most pertinently, the *Turner* authority states that this is a discretionary area for judges.

[25] In our view, this judge, who was the trial judge, was well placed to make an assessment of what should be afforded for the guilty plea. He has considered all of the circumstances including how the applicant approached this case. He has not left anything out of account. The judge has exercised a discretionary judgment. We do not consider that he strayed outside the range open to a Crown Court judge in these circumstances. Hence, the second substantive ground of appeal must also fail.

[26] In summary, we conclude that the judge has not made any error of principle which would make us consider adjusting this sentence. In our view the sentence was arrived at by a proper route and is explained in a reasoned judgment. The argument that it is manifestly excessive is not a sustainable one.

[27] We also refuse leave to appeal and dismiss this application.