

Neutral Citation No: [2025] NICA 45	Ref: KEE12837
<i>Judgment: approved by the court for handing down (subject to editorial corrections)*</i>	ICOS No: 23/108891/A01
	Delivered: 24/09/2025

IN HIS MAJESTY’S COURT OF APPEAL IN NORTHERN IRELAND

THE KING

v

WINSTON IRVINE

**IN THE MATTER OF A REFERENCE UNDER SECTION 36 OF THE CRIMINAL
JUSTICE ACT 1988 (AS AMENDED BY SECTION 41 OF THE JUSTICE
(NORTHERN IRELAND) ACT 2002)**

**Mr Murphy KC with Ms Pinkerton (instructed by the Public Prosecution Service) for the
Crown**

Ms Campbell KC with Mr Brolly (instructed by Phoenix Law) for the Respondent

Before: Keegan LCJ, Treacy LJ and Fowler J

KEEGAN LCJ (*delivering the ex-tempore judgment of the court*)

Introduction

[1] The court is in a position to provide a ruling in this case today. This is a reference brought by the Director of Public Prosecutions (“DPP”) in relation to an overall sentence of two years and six months imposed on the respondent on 20 May 2025 by His Honour Judge Kerr KC (“the judge”). The DPP maintains that this overall sentence was unduly lenient.

[2] The sentence imposed covers six counts which in summary are: one count of possession of a firearm or ammunition in suspicious circumstances contrary to Article 64(1) of the Firearms (Northern Ireland) Order 2004 (“the 2004 Order”); two counts of possession of a handgun without a certificate contrary to Article 3(1)(a) of the 2004 order; one count of possession of ammunition without a certificate, contrary to Article (3)(2) of the 2004 Order; one count of possession of a prohibited firearm contrary to Article 45(1)(aa) of the 2004 Order; and one count of possession of a

firearm other than a handgun without a certificate contrary to Article 3(1)(b) of the 2004 Order.

[3] On count 1 the judge imposed a sentence of two and a half years' imprisonment. On the other counts he imposed two years. Counts 2, 3 and 5 by law require a minimum sentence of five years which can only be reduced by a trial judge in exceptional circumstances.

[4] This reference is brought solely against the judge's finding that there were exceptional circumstances. The question for us is whether the judge was clearly wrong in finding exceptional circumstances such that the statutory minimum could be reduced on the three relevant counts. The prosecution only asks us to substitute the minimum sentence of five years' imprisonment on counts 2, 3 and 5.

[5] We note that in this case a co-defendant, Adam Robinson Workman, received a total sentence five year's imprisonment as he was jointly charged on counts 1-6 and he was sentenced for one other additional charge. In his case the judge rejected an argument that based upon exceptional circumstances his sentence should be reduced below the statutory minimum.

Background facts

[6] We set these out in summary. On 8 June 2022, the police made observations of both defendants, Irvine and Workman, while parked up in Glencairn Crescent in Belfast. Workman at this stage was reported to drive a red Volkswagen Transporter van and Irvine a black Volkswagen Tiguan. Workman took from the side door of the Transporter an item and walked to Irvine, Irvine then went to the rear of his vehicle and closed the boot. Irvine then proceeded to Disraeli Street where he was stopped by police at 9:32am and a bag containing firearms and ammunition was found in the boot of his car, namely: a Brixia pistol, a Brocock air cartridge revolver, 200 9x19mm calibre cartridges, various other cartridges and magazines and imitation firearms.

[7] When asked, he said he could not account for the bag in the boot and that he did not know what was in it. Body worn video evidence shows the police finding the firearms whilst in the presence of Irvine who made no reaction.

[8] In addition to the police evidence at the scene, CCTV evidence showed the vehicles moving in the area that morning, entering Glencairn Crescent and proceeding onto Glencairn Street. They were also seen leaving Glencairn Street onto the Ballygomartin Road on CCTV.

[9] When questioned about the connection to each other, Workman and Irvine either made no comment or denied association. There were forensic links between Workman and the bag in Irvine's boot.

[10] The reference also refers to the fact that a search of both Irvine's and Workman's properties located various items. A search of Irvine's home located various UVF pins, a UVF pendant, a black balaclava and a UVF framed photograph. A search of Workman's home address located a UVF magazine, a UVF jumper and a UVF armband which stated UVF East Antrim and an air rifle.

[11] It was ascertained that Workman's phone number was saved within Irvine's phone and there had been communications between them, not on that day when it is asserted that they had avoided communication, but in the run up to the incident.

[12] We note from the reference that there was a mixed committal and evidence was called. We also note that the defendant, Irvine, made a prepared statement which was set out by the prosecution at trial. This statement outlined his works as a community representative and interlocutor, but he also made it clear in that statement that he had absolutely no knowledge of what was in the Sainsbury's bag, he said he could not see what was in the bag and that he did not look into the bag. He said that nothing about the bag gave him any indication that it was firearms and ammunition and that he was simply carrying a message. The reference outlines further interviews with both defendants characterised by a denial of the offences.

[13] In the reference and in the prosecution case to the trial judge, the prosecution made an assessment of the aggravating factors as follows:

- (i) That the firearms recovered were functioning firearms.
- (ii) That the compatible ammunition was located alongside the firearms.
- (iii) That there was more than one type of weapon and also an imitation submachine gun type weapon.
- (iv) Reference to criminal records.
- (v) If concurrent sentences are imposed, the prosecution case was that the offences aggravate each other.

[14] In addition, the prosecution submitted that Irvine's role as a community representative, building trust within the community employed by a peace building organisation was an aggravating factor as this was a significant breach of the trust the community placed upon him and undermined the work community representatives try to do.

Judge's sentencing remarks

[15] There is no issue that the trial judge had all of the relevant material before him and there is no issue about the law in relation to the offences charged that the judge considered.

[16] The sentencing remarks are summarised in the reference. In respect of Irvine, the judge stated that he had provided multiple lying accounts designed to mislead the police. The judge went on to acknowledge thereafter that the primary issue in the sentencing exercise was the five-year minimum period unless exceptional circumstances were found. The judge recognised that the minimum period was imposed by Parliament to establish a public deterrent. The judge then set out the four aspects offered on behalf of Irvine to establish exceptionality namely, his character and his long-term commitment and contribution to peace building in Northern Ireland, his wider positive impact on his local community, the impact of imprisonment on his wife and children and the circumstances of the offence.

[17] As we have seen in the sentencing remarks, the judge went on to consider the law in this area and the various factors in play. The judge considered whether there was a terrorist connection, finding that whilst “in Northern Ireland one would ask if the possession was terrorist related ... although there are UVF related items found in the searches of both defendants’ homes, there is no evidence of a direct terrorist connection.”

[18] The relevant law is found in Article 70(2) of the 2004 Order, which replicates section 51A of the Firearms Act 1968 and reads as follows:

- “70.—(1) This Article applies where—
- (a) an individual is convicted of—
 - (i) an offence under Article 3(1)(a),
 - (ii) an offence under Article 45(1)(a), (b), (c), (d), (e) or (g), or
 - (iii) an offence under Article 45(2)(a), and
 - (b) the offence was committed after the commencement of this Article and at a time when he had attained the age of 16.
- (2) The court shall—
- (a) in the case of an offence under Article 3(1)(a) committed by a person who was aged 21 or over when he committed the offence, impose a sentence of imprisonment for a term of five years (with or without a fine), and

- (b) in any other case, impose an appropriate custodial sentence for a term of at least the required minimum term (with or without a fine),

unless (in any of those cases) the court is of the opinion that there are exceptional circumstances relating to the offence or to the offender which justify its not doing so.”

[19] This provision has been discussed in some recent cases of our Court of Appeal, principally the case of *R v Corr* [2019] NICA 64, and *R v Price* [2020] NICA 8. In broad terms, these cases refer to the fact that the consideration of whether exceptional circumstances are made out requires an evaluative judgment by a trial judge, requires a holistic approach and represents a high bar. The statutory scheme set out in Article 70 of the 2004 Order with which we are concerned clearly ensures that the courts send out a message that an offender can expect to be dealt with severely to deter others. As para [32] of *Corr* refers:

“Deterrence is also a feature of Article 70 of the 2004 Order. Under the rubric “Minimum sentence for certain offences” and in so far as this reference is concerned that Article requires a court to impose “an appropriate custodial sentence for a term of at least” five years for the offence of possession of a prohibited weapon under Article 45(1) ‘unless ... the court is of the opinion that there are exceptional circumstances relating to the offence or to the offender which justify its not doing so.’”
[emphasis added]

[20] In this case, three factors convinced the judge that exceptional circumstances could be established. Those were the character and commitment to peace, the wider positive impact on local communities and the impact on the wife and family. The judge did not decide that the circumstances of the offence merited an assessment of exceptional circumstances. It is in that context we reach our conclusions as follows.

Conclusions

[21] The nature of a reference is explained in a number of recent decisions of this court including *R v Ali* [2023] NICA 20. The reference procedure is not a generalised right of appeal. The appellate court can only deal with matters referred to it and on the basis of facts found or agreed at the lower court. To find that a reference is made out and grant leave, an appellate court must find that the judge was clearly wrong. A reference does not succeed simply because the appeal court might have imposed a greater sentence. Rather, a sentence is unduly lenient when it falls outside a reasonable range of sentences that a judge could impose applying all the relevant facts. The outcome will also depend on the facts of a particular case.

[22] In this case, the judge was equipped with all the relevant facts and the relevant law, and he had the unique advantages that a trial judge has. He also made an assessment of exceptional circumstances based upon the papers before him including the many references in favour of Irvine. We too have the relevant documents on which to assess whether the judge's decision was clearly wrong.

[23] The methodology for deciding whether exceptional circumstances are established is well explained including in the Northern Ireland cases referred to at para [19] above and in the recent case of *R v Bassaragh* [2024] EWCA Crim 20. That case makes the point quite clearly that good character is not itself a reason to find exceptional circumstances. In addition, some useful guidance is provided drawing on the England & Wales guidance in relation to the equivalent statutory provisions at para [13] namely at paras 6 and 9 to 12 under Step 3 in the Guideline, in the following terms:

“6. In considering whether there are exceptional circumstances that would justify not imposing the statutory minimum sentence, the court must have regard to:

- the particular circumstances of the offence and
- the particular circumstances of the offender

either of which may give rise to exceptional circumstances

...

9. Circumstances are exceptional if the imposition of the minimum term would result in an arbitrary and disproportionate sentence.

10. The circumstances must truly be exceptional. It is important that courts do not undermine the intention of Parliament and the deterrent purpose of the minimum term provisions by too readily accepting exceptional circumstances.

11. The court should look at all of the circumstances of the case taken together. A single striking factor may amount to exceptional circumstances, or it may be the collective impact of all of the relevant circumstances.

12. The mere presence of one or more of the following should not in itself be regarded as exceptional:

- One or more lower culpability factors

- The type of weapon or ammunition falling under type 2 or 3
- One or more mitigating factors
- A plea of guilty”

[24] The judge correctly found that there were no exceptional circumstances regarding the offending. That is unsurprising given the nature of the firearms and ammunition found in the vehicle. However, the judge did find exceptional circumstances regarding the offender for a combination of reasons. His analysis of that requires some close consideration. The test which overarches any consideration of exceptional circumstances from *Bassaragh* is whether the statutory minimum would result in an arbitrary and disproportionate sentence.

[25] Having considered all of the submissions made we find that the judge was clearly wrong for the following reasons.

[26] Firstly, the factors that were raised in support of exceptional circumstances were essentially mitigation by way of good character, albeit from a variety of sources.

[27] Secondly, there were no exceptional circumstances regarding the offence. This should not be viewed in a vacuum given the lack of explanation by this respondent as to why weapons were found in the car.

[28] Thirdly, these were weapons capable of use, namely two firearms and large amounts of ammunition were found, which usually attract minimum sentences due to Parliament’s decision to deter offences of this nature.

[29] Fourthly, the references which we have carefully read, point to positives in the respondent’s life including peace making and community activities. However, they cannot rationally excuse this offending behaviour leading to a sentence below the minimum term. Indeed, in our view the offending is in breach of the trust placed on him by the many people who he has interacted with and who have provided the references. The references, whilst indicating good character, only go so far, and cannot actually provide an informed view on the respondent’s intentions in relation to this offending in a situation where he has given no explanation as to what he was doing with the firearms and ammunition found in his car.

[30] Fifthly, the issues raised as regards family circumstances are not exceptional as explained in recent decisions of this court in *R v Ruddy* [2025] NICA 13 and *R v Devlin* [2023] NICA 71.

[31] Sixthly, in our view, whilst we recognise the points made by Ms Campbell as to the advantages a trial judge has, his methodology has clearly led to an outcome which does not reflect the totality of this offending.

Conclusion

[32] In conclusion, we agree with the prosecution submissions in this reference that the judge was clearly wrong to find exceptional circumstances. That is the only question referred to us and so our conclusion yields one result that the sentence must be increased to five years as the prosecution contends for. Furthermore, in our view it would offend public confidence and frustrate the intention of Parliament if the statutory minimum was not imposed in this case on the relevant counts. We, therefore, grant leave for the reference, declare the overall sentence unduly lenient and replace it with a sentence of five years on counts 2, 3 and 5. We see no reason to interfere with the other counts given the overall sentence will now be five years. All of the sentences are to run concurrently.