Neutral Citation No: [2025] NICA 50 *Judgment: approved by the court for handing down (subject to editorial corrections)**	*Ref:* **KEE12831** *ICOS No:* **24/006058** *Delivered:* **10/9/2025 (oral reasons) 03/10/2025 (written reasons)**

IN HIS MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

_____

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

THE KING

v

DECLAN COLLINS
and
SEAN MATEER

_____

Ms Walsh KC with Mr McNeill (instructed by the Public Prosecution Service) for the Crown
Mr Chambers KC with Mr Boyd (instructed by McIvor Farrell Solicitors) for the Respondent Collins
Mr O'Rourke KC with Mr Fegan (instructed by McIvor Farrell Solicitors) for the Respondent Mateer

_____

Before: Keegan LCJ, McCloskey LJ and Fowler J

_____

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

Introduction

[1] This is a reference brought by the Director of Public Prosecutions ("DPP") in relation to a sentence imposed on the two respondents by His Honour Judge Kerr KC ("the judge") on 27 March 2025.

[2] We announced our decision on 10 September 2025 with an indication that given the need for guidance in this area, written reasons would follow. These are

the written reasons of the court to which all three members of the court have contributed.

[3] Both respondents pleaded guilty to three counts of hijacking, contrary to section 2(1)(a) of the Criminal Jurisdiction Act 1975 and four counts of attempted hijacking, contrary to Article 3(1) of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 and section 2(1)(a) of the Criminal Jurisdiction Act 1975. Collins was also found to have committed driving offences and pleaded guilty to dangerous driving, contrary to Article 10 of the Road Traffic (Northern Ireland) Order 1995 and driving whilst disqualified, contrary to Article 168A(1)(c) of the Road Traffic (Northern Ireland) Order 1981.

[4] The sentence passed on Collins was a total sentence of four years and six months to cover all of the hijacking and driving offences. The sentence imposed on Mateer was a total sentence of three years and two months to cover the hijacking offences. Various other ancillary orders were made which are not under examination in this reference. Rather, the DPP refers this matter to the Court of Appeal on one discrete ground, namely that the starting point the judge chose for the headline offences of hijacking was in error as it was too low and has resulted in an unduly lenient sentence being imposed on each of the respondents.

[5] As this court has explained in recent references by the DPP including *R v Ali* [2023] NICA 20, the nature of a reference does not amount to a generalised right of appeal. A sentence must be wrong in principle or outside the reasonable range open to a sentencing judge for a reference to succeed. A sentence must not just be lenient, but unduly lenient, and even if a court reaches that conclusion, the court has the discretion not to interfere with the sentence imposed.

[6] In assessing whether the sentences in this case are unduly lenient, we have considered the background to the case, the material that was available to the judge by way of the pre-sentence report and other expert evidence, the relevant sentencing guideline authorities and the submissions of counsel.

Background

[7] The factual background is not in dispute and was provided in the prosecution opening which formed the basis of the guilty pleas. In addition to the counts upon which the respondents were convicted, various other counts were left on the books, namely aggravated vehicle taking and criminal damage counts. Similarly, various other counts were subsumed among amended counts. An accurate description of the case is therefore that it concerned a spree of hijackings, attempted hijackings, collisions and dangerous driving offences committed by the respondents in the area between Newcastle and Belfast on Saturday 1 June 2019, during the morning and into the early afternoon.

[8] The specific facts of the offending require repeating as set out at paras [16]-[34] of the reference as follows:

> "16. The first hijacking was committed shortly after the defendants abandoned Collins' VW Golf. Edmund Brown, aged 85 years old, was driving his orange Peugeot 208, registration CGZ 4147, when he came across the VW Golf attempting to reverse out of a laneway and straddling the road. He slowed down and the passenger alighted from the VW Golf and approached Mr Brown's passenger door, shouting, "Open the fucking door" and trying to force his way in. He was noticeably slurring his words. The driver then approached Mr Brown's door and said, "Right sir. I need your car." Mr Brown refused, and the defendant punched him on the cheek and shoulder, then dragged him out of his vehicle. Mr Brown dropped the keys as he fell to the ground and the defendant took them. They then commandeered the Peugeot and sped off. Both defendants are believed to have driven the hijacked Peugeot at points, because the eyewitness to the hijacking states that the driver of the VW Golf (Collins) drove off in the Peugeot, but Mateer's DNA was also found on the deployed driver's air bag of the Peugeot after it was later abandoned after suffering extensive damage. The whole course of the hijacking of the Peugeot, including the driving of it, is covered by count 1.
>
> 17. After the defendants hijacked the Peugeot, still on the Magheraknock Road, they attempted to dangerously overtake a red BMW 1 Series, registration NL13 NZK, which was driven by Karen Cranston, colliding with it and causing damage: see photographs SAI-SA8 Exhibits p84-91. Ms Cranston had to pay the excess of £350.
>
> 18. At approximately 11:48, the defendants stopped the hijacked orange Peugeot in the area of the Old Ballynahinch Road Saintfield Road junction, parking sideways across the main road. Edward Nesbitt was driving his Audi RS3, registration KW15 GXL, towards Carryduff. He observed the Peugeot coming slowly across his path. The passenger appeared to look at his car and his mouth moved and appeared to be saying, "Fuck that's a nice car." Mr Nesbitt kept his distance, about 35 feet. Suddenly, both defendants jumped out of the Peugeot and ran towards his car, brandishing wine

bottles. Fearing that his vehicle was going to be hijacked, Mr Nesbitt accelerated and drove off. As he did so, one of the defendants threw a bottle at his Audi, hitting it and causing minor damage to the passenger side of the car. The Peugeot was then driven off on the Saintfield Road in the direction of The Temple. The incident left Mr Nesbitt's friend's son, who was in the back seat, crying and upset. Mr Nesbitt states that his passenger said, "That's Declan Collins from St James", referring to the driver of the orange Peugeot. This attempted hijacking constitutes Count 5.

19. At approximately 11:52, the hijacked orange Peugeot rammed a Skoda Superb, registration 191-D-36183, at the junction of the Saintfield Road and Carryduff Road. The Skoda Superb was being driven by a 71-year-old American tourist named Stephen McCool, who was on holiday with his family and was due to fly out that morning. The two defendants approached the vehicle and one punched Mr McCool to the face causing cuts and bruises. Mr McCool defended himself. One of the defendants got into the driver's seat of Mr McCool's vehicle but Mr McCool's wife grabbed the keys from the ignition. His daughter started blowing the car's horn and Mr McCool shouted "Robbers!", causing other vehicles to stop. The defendants then abandoned their attempt and left at speed in the hijacked orange Peugeot, causing another man at the scene to have to jump out of the way to avoid being hit. During this incident the victim's daughter, Jocelyn McCool, was also assaulted and left lying on the ground. Mr McCool attended the Royal Victoria Hospital, where he was suspected to have sustained a fracture to his right wrist, caused by having been pushed to the ground by the defendants. He later attended follow up care in the USA where he was diagnosed with a mildly displaced intra-articular distal radius fracture and was referred for surgery: Exhibits p202-207. This attempted hijacking constitutes Count 7.

20. At the scene of this attempted hijacking the police seized a mobile phone, AF1A, which belonged to Edmund Brown, the driver of the orange Peugeot. It was found on the roadside together with AF1B, a mobile phone belonging to Abbey Smith, one of the females who had been ejected from the VW Golf back in Newcastle.

21. At approximately 12:00, the hijacked orange Peugeot rammed into the rear of a blue Seat Leon, registration LXZ 8519, on Ivanhoe Avenue, Carryduff. The driver, Joanne Bell, got out of her vehicle believing it had been an accident. One of the defendants ran and got into the driver's seat whilst the other defendant approached her and threw her to the ground, causing an injury to her elbow. Ms Bell ran away in fear, moving behind roadside bollards for protection in case the defendants tried to run her over. She called her partner for help and flagged down a passing driver. As she did so, her Seat Leon was driven past her with one of the defendants in the driver's seat, giving her 'the fingers' as he drove by. He was followed by the other defendant in the hijacked orange Peugeot.

22. Both cars were then noted driving erratically up and down the hill off the Saintfield Road, with the Peugeot subsequently crashing into the rear of the Seat Leon and, finally, being abandoned next to traffic lights on the Saintfield Road. It was later written off. Both defendants then left the area in the hijacked Seat Leon. All of Declan Collins' characteristics were represented in a DNA swab later taken from MC1, the driver's airbag from the Seat Leon. There was weak forensic evidence that Sean Mateer could have been a minor contributor to MC1.

23. Between approximately 12:03 and 12:12, the defendants drove the hijacked Seat Leon dangerously between Carryduff and Newtownbreda, colliding with a number of other vehicles before being abandoned.

24. At the entrance to Knockbracken Health Centre on the Saintfield Road, the Seat Leon attempted to squeeze between two lanes of traffic and collided with the passenger side of an Audi Q7, registration GXZ 5775, driven by Jainal Abedin. The passenger side of his vehicle was severely damaged, the repair estimate being £6,857: Exhibits p216. Mr Abedin had to take his 7 and 8-year-old children, who were in the rear, to the Royal Victoria Children's Hospital to be checked over. He, his wife, and his children suffered pain and bruising from the collision and suffered from nightmares for some days afterwards.

25. In the same area the defendants crashed into the driver's side of an Audi A3, registration ST65 HRG, driven by Peter Harvey, causing damage costing £6,055 to repair (Exhibits p226) but fortunately no injuries.

26. On the slip road from the Saintfield Road onto the Purdysburn Road, the defendants collided with the driver's side of a Ford Fiesta, FGZ 9757, driven by Reverend Edward Kirwan, causing damage to his vehicle which was covered by insurance for which he had to pay £200 excess. He also had to pay £152 for a hire car to attend a conference the following week.

27. Finally, on the Purdsyburn Road, the Seat Leon collided with the rear of a Mini UIG 2646, driven by Norman Bruce, buckling the rear driver's side wheel, and rendering the vehicle undriveable: see Exhibits p224. Mr Bruce's wife was hysterical and had trouble breathing after the collision, but both she and her husband (described by witnesses as elderly) were able to walk home, suffering some aches and pains in the following days. The damage to their vehicle cost £6,500.

28. The damage sustained in these collisions ultimately forced the defendants to abandon the Seat Leon on the Purdysbum Road. It had been purchased 6 months previously and was valued at £14,500 but was also written off because of the damage it sustained. The full course of the hijacking of the Seat Leon is covered by Count 9.

29. Two more attempted hijackings followed in quick succession. At approximately 12:09, the two defendants approached a black BMW 2 Series, registration EGZ 7565. The driver, Alan Stewart, states that one of the defendants tried to open his door which was locked. Mr Stewart put his window down about half an inch and asked if the defendant was ok. The defendant put his fingers through the gap and, pulling backwards, shattered the driver's door window. Mr Stewart immediately accelerated and drove off. This is covered by Count 16

30. The defendants then approached a Skoda Octavia, registration LRZ 8146, driven by Jeffery Moorhead. One of them got into the rear driver side seat of the car and put his fingers against Mr Moorhead's head. Saying, "I

have a gun, drive." The defendant then placed his arm around Mr Moorhead's neck from behind and threatened to kill him. This defendant told the victim to drive, but he remained where he was. His wife, in the passenger seat, was shouting for help and trying to call the police. The first defendant hit her on the cheek and knocked the phone out of her hand. The second defendant then appeared at the driver's door and tried to open it. As he did this, Mr Moorhead accelerated and jumped the car forward in an attempt to get away. He is not sure how far they moved but the first defendant got out of the vehicle and both moved on. This is covered by Count 15.

31. The final hijacking, covered by Count 17, took place when both defendants approached a silver Renault Clio, registration CXZ 6113, at the junction of Purdysburn Road and Greenwood Glen. One defendant opened the driver's door and told the driver, Daniel Napier, that he was going to take his car. Mr Napier refused, and the defendant told him he would have him shot, and that the other defendant had a gun. A struggle ensued, during which Mr Napier was punched to the face, causing bruising and bleeding, and had his T-shirt ripped off him. Both defendants got into the Renault Clio and drove off. From the eyewitness descriptions, it is likely to have been Declan Collins who pulled him from the car and got into the driver's seat. Witnesses next saw the hijacked Clio being driven at speed, tyres squealing on Beechill Road towards the Newtownards Road. The driver's side rear door was fully open, and the vehicle was seen to do a handbrake turn and 360-degree doughnut on the road.

32. At approximately 12:19, a number of reports were made to police of this Renault Clio, identified by registration number, driving dangerously on the Boucher Road, including doing doughnuts across the width of the road at one of its junctions, narrowly missing other cars on the road. A passenger in the rear was opening and closing one of the doors and shouting "Yeeo" and "Up the hoods." A brief shot of the vehicle skidding with the back door half open was captured on dashcam footage SMQ3, Exhibit 70.

33. The Renault Clio then left the Boucher Road area and was subsequently abandoned and burnt out on Beechmount Avenue at 12:23. Colour photographs

> provided to police by a member of the public showed two males running away from the burning vehicle, matching the descriptions of the defendants: Exhibits p60-79.
>
> 34. At 14:06 on the day of the offending, 2nd June 2019, Collins contacted police and reported his VW Golf HGZ 5198 stolen from Newcastle, claiming he had parked it in Newcastle for a few days and it had been taken when he returned to it. He refused to engage any further with police that day. On 5th June, he attended Musgrave PSNI station and was arrested for the offences. In reply to caution he stated, "madness that is" and "ridiculous like." He was interviewed and made no comment."

[9] Summarising the foregoing, there were over 50 victims or eyewitnesses to this crime spree, some of whom provided descriptions or footage. The investigation took a period of time to conclude because neither respondent co-operated with police and they maintained 'no comment' stances to most if not all of the questions asked.

[10] Briefly, in terms of case trajectory, the first listing before the Crown Court was on 22 March 2024. At that time, Mateer was in a residential alcohol rehabilitation placement and so the arraignment was postponed until he was released. On 20 June 2024, Mateer having been released from the rehabilitation course, did not attend court. A warrant was issued for him. Collins was arraigned and pleaded not guilty. On 27 June 2024, Mateer, having surrendered to custody was arraigned and pleaded not guilty. He was released on bail again. On 3 September 2024, the trial was fixed for 8 January 2025. However, there was discussion in the case and on 19 November 2024, guilty pleas were entered to the various counts with other counts having been amended and/or left on the books.

The judge's sentencing remarks

[11] The judge had the benefit of a comprehensive prosecution opening which set out the factual background to this case. He was also aware of the personal circumstances of each of the respondents. Specifically, Collins had 56 convictions of which 17 preceded the commission of these offences and 40 post-dated them. These previous convictions included 27 road traffic offences of which three were for dangerous driving and three were for driving whilst disqualified. The pre-sentence report in the case of Collins set out his difficulties with drugs and alcohol and referred to a brain injury which he had sustained in an assault in 2010 and mental health problems since. The respondent told the probation officer that his offending was linked to the transient lifestyle he was leading at the time of the offences in 2019 and threats having been made to him in the community. It is noted in the pre-sentence report that Collins expressed remorse and some victim insight, but he had continued to commit offences after the index offences. He had pleaded to the court that his personal circumstances, namely his chaotic and rootless life since his

early youth and his addiction to alcohol and drugs were at the heart of the offending.

[12] Mateer had 31 convictions at the date when the pre-sentence report was compiled of which six preceded the commission of these offences. These included five common assaults and one vehicle taking offence. He accrued 25 further convictions between the commission of the offences and sentence in this matter and further accrued two further convictions after sentence. Mateer's pre-sentence report highlights a similar background to that of Collins, characterised by alcohol and drug addiction. In Mateer's case there was also a report from an expert Dr Carol Weir, consultant psychologist who referred to his alcohol addiction. Additionally, reference is made to Mateer's six-month daughter with an ex-partner which was seen to be some motivation for him. Dr Weir diagnosed the respondent, Mateer, with alcohol dependence syndrome, but highlighted that he had maintained some abstinence which was to his credit and that he had completed a residential alcohol rehabilitation course at Cuan Mhuire, Newry, in May 2024.

[13] The judge considered all aforenamed personal circumstances as evidenced by his sentencing remarks. He also considered the delay occasioned in this case given that when this case was initially listed for plea and sentence on 19 March 2025, the judge required a chronology to be provided by the prosecution in relation to this. We have had the benefit of reading that chronology ourselves. From same we can see that both respondents made no admissions in interview in 2019 and 2021. This led to a complex investigation and that was referenced by the prosecution in considerable detail. The judge was aware of all of this but determined, not that there was any culpable delay in the case, but that the delay that it had taken the case to conclude worked in favour of the respondents by way of allowing them to provide some mitigation in the case.

[14] The prosecution presented the following as aggravating factors without issue (and no issue is taken before this court in relation to the aggravating features):

(a) Multiple hijackings and serious attempts at hijackings carried out over the course of just one hour on a Saturday morning and afternoon.

(b) Physical injuries caused to multiple victims. Several victims suffered minor wounds, bruises and other injuries. One broken wrist which was the most serious injury sustained.

(c) Psychological impact on those victims and their passengers.

(d) Threatening victims with being shot on two occasions.

(e) Several vehicles written off or destroyed as well as damage to other vehicles.

(f) Extremely dangerous driving over a prolonged period. This included excessive speed, dangerous overtaking, deliberate ramming of other vehicles, joyriding behaviour and driving as a person unfit.

(g) The respondents were both heavily intoxicated at the time of the offences as confirmed in both pre-sentence reports.

(h) Relevant previous convictions, particularly in the case of Collins.

(i) Collins was disqualified from driving at the time.

[15] Additionally, the judge, having heard from counsel in relation to the various issues, decided that neither of the respondents met the test for dangerousness within the meaning of the Criminal Justice (Northern Ireland) Order 2008. However, he summarised the case as follows:

> "This was an appalling morning of crime. The damage and injuries that were caused were severe and numerous. However, the carnage that could have been caused by these men driving around in this vehicle, whilst both were drunk and, in particular, Collins who was the main driver and disqualified, could have had catastrophic results. I consider this one of the worst cases of hijacking that I have come across in these courts over many years practicing and sitting as a judge. Sentencing for hijacking does not tend to be in the highest category. However, this case, in my view, is highly exceptional and I consider the sentencing should reflect the totality of the individual incidents. I could, of course, sentence on an individual basis for each offence and make sentences consecutively to each other, but I consider the proper way to deal with this is as one course of conduct, which should be the subject matter of a sentence which reflects the totality of the behaviour involved. There will be one exception to that and that is the case of Collins for driving whilst disqualified. In my view, it is normal and proper that there should be a consecutive sentence for that particular offence to be added to any sentence I impose in relation to the general offending. Having considered the level of criminality in this case, I consider the starting point for both defendants for the main offences, that is the hijacking and attempted hijacking, should be six years' imprisonment."

[16] Then the judge reduced Collins' sentence by one year to five years on the basis of personal mitigation. He decided that a larger reduction was due to Mateer

for his greater efforts in terms of his attitude and behaviour since the offences and reduced his sentence by two years to four years. The judge then accorded 20% reduction for the guilty pleas, and this resulted in the total sentences which we have already described. The judge added to Collins' total sentence a further six months' imprisonment consecutive for the dangerous driving and four months for the driving whilst disqualified concurrent to each other but consecutive to his four years for the hijacking offences.

[17] The guidance given to the judge in terms of sentencing authorities was limited as there were a limited number of authorities concerning hijacking and most were of some vintage as follows. In *R v Blaney* [1989] NI 286, a custodial sentence of two years and upwards were handed down to offenders who had taken part in numerous instances of hijacking during widespread disturbances in Belfast. In *R v Townley* [1999] 5 BNIL 70, the appellant hijacked a pizza van delivering food, holding the driver at gunpoint for a significant time and demanding money before tying her to a fence post and stealing the vehicle and was sentenced to three years' detention. In *R v Conway* [2001] NIJB 27, the Court of Appeal held the appropriate sentence for an offender with a poor record who, when drunk in a taxi, pulled out a plastic bag and made threats would be two and a half years. In *R v O'Neill* [2005] NICC 2, the defendant who pleaded guilty to hijacking a truck using an imitation pistol but had a clear record, suffered from some mental health issues and was affected by delay received a three-year suspended sentence.

[18] The only recent case that was referred to was *R v McCullough* [2023] NICA 36, where Keegan LCJ dealt with a single offence of hijacking in the following terms:

> "[10] … That is, of course, a serious offence. We reiterate the view of previous courts that any form of hijacking will in almost all cases require custodial sentence even for a first-time offender. Realistically, Mr Mullan had no submission contrary to this guiding principle.
>
> [11] The second point that we make is that reference to other cases in this area particularly cases of some vintage do not assist in adjudicating upon a sentence because these cases are fact sensitive. The offence of hijacking arises in a very wide range of circumstances and so it is not particularly useful for this court to provide rigid guidance, we think, in this area particularly as this offence is usually allied to other associated offending. Suffice to say that the outcome on sentence in a particular case will naturally depend on a consideration of all of the circumstances, the aggravating and mitigating factors."

[19] The starting point in *McCullough* for a single incident was four years reduced to three years on a guilty plea. No guidance from authorities was available in relation to situations of multiple hijacking. Therefore, in this reference, we must consider what the appropriate range should be for multiple hijacking. In doing so we bear in mind, that for hijacking the maximum sentence is currently 15 years' imprisonment.

Our analysis

Sentencing methodology

[20] First, we deal with the sentencing methodology employed by the judge. The following analysis is drawn from the sentencing remarks:

(i) The judge first rehearsed the aggravating features of the offending of both respondents.

(ii) Next, he expressed his conclusion that the statutory test for "dangerousness" was not satisfied in respect of both respondents.

(iii) The judge then specified six years' imprisonment as the "starting point" in respect of both respondents, with the qualification of his acknowledgment that Mr Collins must receive a consecutive sentence for the driving while disqualified count.

(iv) The judge then rehearsed the personal circumstances of Mr Collins.

(v) Next, the judge considered the issue of delay.

(vi) This was followed by his assessment that Mr Collins should receive "a small discount" of one year in respect of "personal mitigation."

(vii) Next, the judge assessed "discount" of 20% in both cases.

(viii) The judge then pronounced consecutive sentences of six months for driving while disqualified and four months for dangerous driving, in the case of Mr Collins, to operate concurrently *inter se*.

(ix) Turning to Mr Mateer the judge, having reiterated that the starting point was six years' imprisonment, made an allowance of (a) 20% for "personal mitigation" and (b) 20% for the guilty plea.

[21] The above sentencing methodology did not comply with the jurisprudence of this court. In short, as should be well known given numerous pronouncements by this court, sentencing judges are required to proceed in the following sequence:

(i) Identify the aggravating facts and factors;

(ii) Identify the mitigating facts and factors;

(iii) Having completed steps (i) and (ii), determine the "starting point" for the ultimate sentence;

(iv) Where appropriate, specify any downwards adjustment for a plea of guilty.

(v) Where appropriate, address any issue of article 6 of the European Convention on Human Rights ("ECHR") delay or any issue of providing assistance to the Crown (*R v Hyde* [2013] NICA 8).

(vi) Pronounce the sentence.

[22] Adherence to the structured approach outlined in para [21] above enhances and promotes the important goals of coherence and transparency, as well as facilitating the provision of legal advice to defendants. It also serves to reduce the risk of judicial error, such as overlooking an essential issue or double counting. Furthermore, this structure should ordinarily be reflected in all parties' sentencing skeleton arguments.

Delay

[23] Next, we turn to the question of delay. Article 6 of the ECHR protects the right to a fair trial in the determination of a person's civil rights and obligations or of any criminal charge against them. This right has a series of constituent elements. One of these is expressed as the right to "… a fair and public hearing **within a reasonable time** …" [emphasis added]. This is commonly described as "the reasonable time guarantee." All of the constituent rights protected by article 6 are conferred on litigants in this jurisdiction by virtue of section 6 of the Human Rights Act 1998.

[24] In the present case a delay issue was canvassed before the sentencing judge. The way in which this unfolded can be traced from the transcript of the plea and sentencing hearing. First, the context, which can be outlined succinctly: the plethora of offences to which the respondents pleaded guilty occurred on 1 June 2019; both were promptly arrested; their initial interviews by the police were conducted on 4 June 2019; they were released on police bail; the police file was transmitted to the Public Prosecution Section ("PPS") on 16 June 2021; the respondents were committed for trial on 26 February 2024; and they were sentenced on 27 March 2025.

[25] There is no mention of delay or Article 6 ECHR in the written submissions of either advocate. In the oral submissions on behalf of Mr Collins counsel made a fleeting reference to this issue - "… a very unusual delay in the case." However, it is clear that the judge was alert to the issue of delay prior to the sentencing hearing.

He proactively directed that this be addressed on behalf of the PPS. This stimulated the preparation of a comprehensive timeline by prosecuting junior counsel, in advance of the hearing. This is included among the materials before this court. In the sentencing decision of the judge there is the following material passage:

> "I asked for submissions from the prosecution in relation to the issue of delay in this case. I received full submissions, setting out the timescale of the investigation concern. My view was that I had to be sure that there was no breach of the Article 6 requirement for trial within a reasonable time and if there was what steps I would take to remedy that. In my view, having read the submissions and heard submissions from the defence, I am satisfied that there is no breach of the Article 6 right in this case and accordingly no remedy on that basis is necessary."

[26] The immediately succeeding passage in the transcript is of unmistakable relevance. Summarising, the judge observed that during the period under scrutiny Mr Collins had taken steps "*to stop* [his] *offending history*." Pausing, it is not possible to link this submission with either the oral or written submissions of Mr Collins' counsel. However, the genesis for it must almost certainly be the passage in the pre-sentence report recording Mr Collins' self-reporting that:

> "… he was able to address his substance abuse in earnest during his most recent probation order (completed in 2022); PBNI records evidence he engaged in an alcohol and drug counselling with Dunlewey alongside completing educative work around substances, coping skills and emotional regulation during probation supervision sessions."

[27] In addition, Mr Collins expressed a willingness to continue to engage with relevant agencies to assist his rehabilitation. His suitability for such support was clearly accepted by the probation officer.

[28] Before this court, the issue of delay in the prosecution of the respondents was raised, particularly in the written submissions of Mr Chambers KC on behalf of Mr Collins. The central submission formulated was that "*... insufficient discount was allowed for the mitigation and the delay combined.*" In response to questions from the bench, Mr Chambers appeared to submit that as a result of the judge's assessment of the issue of delay his client's sentence of imprisonment was too high. Further questioned, Mr Chambers confirmed the absence of any suggestion that the sentence was manifestly excessive. This concession was inevitable, given the absence of any appeal against sentence to this court. On behalf of Mr Mateer, Mr O'Rourke KC adopted the submissions of Mr Chambers on this issue.

[29] Against the preceding background we take this opportunity to make clear the following. In an appeal against sentence in a case raising the issue of delay in the prosecution of a defendant and a possible breach of the reasonable time requirement enshrined in article 6 ECHR, three scenarios are readily identifiable:

(i) In the first scenario, the complaint before this court may be that the punishment of the offender – typically a period of imprisonment – is manifestly excessive by virtue of, *inter alia*, the failure of the sentencing judge to recognise a breach of the reasonable time requirement.

(ii) Alternatively, the case may be made that the judge in failing to make the aforementioned assessment erred in law. The asserted error of law might, illustratively, be a misunderstanding of binding authority or a failure to give effect to same.

(iii) In the third scenario, which entails a recognition by the sentencing judge of a breach of this aspect of Article 6 ECHR, the case may be made that the judge, consequentially, failed to make any – or any adequate – allowance. Purely hypothetically, the appellant might challenge the judge's selection of an acknowledgment of the breach of the reasonable time requirement, or a reprimand of the defaulting public authority, to be contrasted with a reduction in the custodial sentence which would otherwise be imposed.

[30] These three scenarios are not designed to be exhaustive but are readily conceivable. They should be considered in conjunction with this court's detailed examination of the reasonable time guarantee in *R v Dunlop* [2019] NICA 72, paras [19]–[34].

[31] The review by this court of a sentence of the Crown Court arises most frequently in the guise of an appeal by the defendant. It can also arise in a second way namely, as in the present case, pursuant to a referral of a sentence by the DPPs to this court pursuant to Part IV of the Criminal Justice Act 1988.

[32] Turning to the present case, we would elaborate on the formulation of the relevant framework of legal principle as follows. The judge's treatment of the article 6 ECHR reasonable time issue did not entail a trial and conclusion in respect thereof. Nor was it a ruling. Equally, it is not to be characterised as a "finding." Properly analysed, it was, rather, an evaluative assessment. Any challenge to an evaluative judgement of this kind must engage with the restraint principle (*supra*). There was no such engagement in the present case. Rather, the arguments presented to this court took the form of a simple disagreement, did not engage with the restraint principle and, indeed, were devoid of any reference to the applicable legal principle or threshold. In substance, this court was invited to simply substitute its view for that of the sentencing judge. For the reasons explained above, that is not a permissible exercise for this appellate court.

[33] Giving effect to the foregoing and summarising:

(i) The respondents were entitled to canvass before this court their dissent from the sentencing judge's treatment of the article 6 ECHR reasonable time guarantee.

(ii) For the reasons given, in the judgment of this court, no actionable legal flaw has been established.

[34] In cases where a breach of the article 6 ECHR reasonable time guarantee is canvassed, there is one further step to be added to the aforementioned exercise. This should be undertaken at the penultimate stage, after step (iv) above. It is convenient to explain why an article 6 ECHR downwards adjustment should not be considered a mitigating factor. In short, it has absolutely nothing to do with mitigation. The concept of mitigation concerns facts and considerations which operate to dilute, or reduce, the culpability of the offender in perpetrating the offence or offences in question and sometimes the gravity of the offending. Thus, the characterisation in para [39](d) of *R v Jack* [2020] NICA 1 of a breach of the reasonable time guarantee as a "mitigating feature" is fallacious.

[35] It is appropriate to highlight one further consideration of relevance to this context. In *R v McGinley* [2025] NICA 11, this court corrected and recalibrated the methodology approach advocated in para [45] of *R v Jack*.

Guidance in cases involving multiple hijackings and associated offences

[36] Applying the principles enumerated above we have determined this reference as follows. First, we are satisfied that the nature of this offending places it in a serious category for sentencing. That is because there were multiple incidents, affecting multiple victims, during the day on the public road, and both respondents had relevant criminal records. Against that, we accept that some allowance should have been given for the mitigating factors in this case. With the maximum for the headline offence of 15 years as a guide and, indeed a ceiling, we consider that in multiple incident cases the range is from eight years to 15 years. The range is necessarily wide given the wide range of circumstances in which these offences may occur. However, where a case will fall within the range will depend on the number of incidents and the harm caused.

[37] Applying the above guidance, in the case of each of the respondents, we consider that having considered the aggravating and mitigating factors, some difference can be drawn between them. That is because of Collins' driving offences and lesser mitigation. However, both were involved in a very serious enterprise on the day in question committing multiple offences. Therefore, we consider that the correct position should have been, in each case, after consideration of aggravation and mitigation, to determine the point within the range we have identified above of eight to 15 years to reflect the entirety of the offending before reduction for the plea.

[38] Given the large number of offences against different victims, this was self-evidently a case in which the principle of totality applied. Same has been discussed in some recent cases of the Court of Appeal, principally in relation to sexual offending such as *R v Hutton* NICA [2024] 19, however, the following rudimentary principles cross over into any criminal case, namely:

> "1. Consider the sentence for each individual offence, referring to the relevant sentencing guidelines.
>
> 2. Determine whether the case calls for concurrent or consecutive sentences. When sentencing three or more offences a combination of concurrent and consecutive sentences may be appropriate.
>
> 3. Test the overall sentence against the requirement that the total sentence is just and proportionate to the offending as a whole."

[39] In this case the judge was cognisant of totality. No issue can be taken with his decision to impose concurrent sentences. However, where he has fallen down is in imposing too low a sentence for the headline offence resulting in a sentence which is manifestly not just and proportionate to the scale of the offending.

[40] At this point it is appropriate to draw attention to two further matters. First, the well-established principle concerning the intrinsically limited scope for an offender's personal circumstances to mitigate did not feature in the submissions of the parties at first instance, the sentencing decision of the judge or the submissions advanced to this court.

[41] Also, we note that the formulation – purely factual – by the judge of both respondents' criminal records involved a significant distortion – and error – in the form of a substantial understatement. How these errors came about is unclear. While they were brought to the attention of the parties' representatives at the hearing before this court this failed to elicit any explanation. Self-evidently, they can only serve to reinforce the case for undue leniency.

[42] Accordingly, in Collins' case, we consider the appropriate sentence was mid-range between the eight and 15 years we have identified as 11 years. That level of sentence should have been reduced for the plea to nine years. In Mateer's case, we consider that the appropriate sentence given the additional mitigation was 10 years before reduction for the plea which then would reduce the sentence to eight years.

[43] Therefore, we determine that in each case the sentence imposed was unduly lenient. We grant leave for the reference. We have also considered whether, in our

discretion, we should not alter the sentence passed. We consider that that would be contrary to our duties and the public interest. We will, therefore, substitute a sentence of nine years in the case of Collins, split equally between custody and licence and eight years in the case of Mateer, split equally between custody and licence.

Prosecutorial duties

[44] Finally, we also consider it appropriate to provide some further guidance in this area in relation to prosecution obligations. That is because this is yet another reference brought by the DPP in which the issue of whether the prosecution can properly make submissions about the appropriate sentencing range on appeal, when it had not advocated a specific range at first instance. This matter having been previously raised in the cases of *R v Anderson* [2025] NICA 33, *R v CD* [2024] NICA 9 and *R v Edward Corr* [2019] NICA 64.

[45] Defence counsel argue that this court should not permit the prosecution in the present reference to introduce arguments on appeal that could and should have been argued at first instance but were not. Specifically, the prosecution should not now be permitted to argue that the appropriate sentence should be close to the maximum 15 year sentence for hijacking by reference to the sentencing range for a different offence – robbery.

[46] The prosecution contends that where there are express Court of Appeal guideline authorities on an offence or where a sentencing range may be implied from such authorities it is permissible for counsel to open to the first instance sentencing court an appropriate sentencing starting point and range. However, absent Court of Appeal sentencing authorities the Code of Conduct of the Bar of Northern Ireland and the Code for Prosecutors prevents prosecution counsel from advancing a sentencing starting point or range before the first instance court. The rationale being that this approach would tend towards a system of sentencing where both prosecution and defence are incentivised to advocate ever higher and lower sentences respectively on an entirely subjective basis.

[47] The distinction drawn by the prosecution between the approach at first instance and on appeal is based on the Court of Appeal being a court of review where a determination of whether a sentence is unduly lenient or not necessarily involves submissions as to what the appropriate starting point and/or range should be.

[48] The extent to which counsel is obliged to assist the sentencing court at first instance requires consideration of the Code of Conduct of the Bar of Northern Ireland and the Code for Prosecutors.

[49] The Code of Conduct of the Bar of Northern Ireland provides as follows:

"20.9 In relation to sentencing the prosecuting barrister:

(a) should not attempt by advocacy to influence the trial judge. If, however, a defendant is unrepresented, the prosecuting barrister shall inform the trial judge about any matter which the barrister considers is relevant to mitigation;

(b) should assist or correct the trial judge in relation to all statutory provisions and authorities which are relevant to the convictions and any guidelines laid down by the Court of Appeal;

(c) should inform the trial judge about all relevant compensation, forfeiture and restitution matters which arise on foot of the conviction;

(d) should inform the defendant's barrister about assertions of material facts made in mitigation, and which they believe are untrue. If the defendant's barrister persists with any such assertions, the prosecuting barrister should invite the trial judge to resolve the issue and, where appropriate, call evidence.

20.10 The prosecuting barrister should read and follow the current Code for Prosecutors issued by the Public Prosecution Service."

[50] The relevant section of the Code for Prosecutors provides as follows:

"**Sentencing**

5.20 Sentencing is a matter for the court. Prosecutors must not approbate expressly or impliedly the sentence to be imposed by the court.

5.21 Prosecutors must not attempt to influence the court with regard to sentence. If, however, a defendant is unrepresented it is proper to inform the court of any mitigating circumstances about which counsel is instructed.

5.22 Although prosecutors should not advocate a particular sentence, they must be in a position to assist the court as to any statutory provisions relevant to the offence

and to any relevant guidelines as to the sentence laid down by the Court of Appeal. In this context it is appropriate for the prosecutor to indicate the sentencing range appropriate to the facts of the case in line with relevant authorities. The prosecutor's attention is also drawn to the decision in *Attorney General's Reference No 8 of 2004 (Dawson)* in which the Lord Chief Justice stated:

> 'Where an indication is given by a trial judge as to the level of sentencing and that indication is one which prosecuting counsel considers to be inappropriate or would have been considered to be inappropriate if he had applied his mind to it, he should invite the attention of the court to any relevant authorities.'

The prosecutor should also draw the court's attention to any expert evidence or specialist reports in relation to relevant matters, such as where a defendant has a mental health issue. The prosecutor must also be able to assist the court in relation to the provisions of the Criminal Justice (Northern Ireland) Order 2008 which relate to the assessment of the dangerousness of a defendant. In these cases a prosecution advocate should ensure the court has available all relevant material and is aware of all relevant facts to enable it to determine whether the defendant poses a significant risk to members of the public of serious harm." [our emphasis]

[51] To our mind, it is clear from the Code of Conduct at 20.9(b) that prosecuting counsel is required to assist the sentencing judge in relation to all statutory provisions and authorities which are relevant to the sentencing exercise and any guidelines laid down by the Court of Appeal. This is further fortified by the Code for Prosecutors at 5.22 concerning sentence, which mandates the prosecutor be prepared to assist the court on relevant statutory provisions, relevant guidelines in comparable cases and to indicate a sentencing range relative to the facts and authorities.

[52] It is our view that these paragraphs, purposively considered, allow a prosecutor to indicate what the appropriate sentencing range is having considered and opened the appropriate authorities in similar cases and any relevant Court of Appeal decisions on comparable facts whether purporting to be guidelines or not provided they are analogous. While ultimately, it is for the sentencing judge to consider the submissions of both prosecution and defence on sentencing range and determine what is an appropriate range, judges are entitled to assistance from counsel in this regard and this should be the practice moving forward.

[53] This approach will hopefully reduce the number of Director's References coming before the Court of Appeal where the prosecution gives no assistance in terms of sentencing range but proceed to refer the sentence as unduly lenient. Often in circumstances where the case is made on appeal the prosecution seeks to advance for the very first time an entirely new case or sentencing range. Not only is this ineffectual, but it also lacks transparency, and consistency of approach and is inherently unfair to trial judges in the Crown Court.

Conclusion

[54] Accordingly, for all the reasons we have given, we grant leave, allow the reference and substitute total determinate custodial sentences of nine years in respect of Collins and eight years in respect of Mateer to be split equally between custody and licence.