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(subject to editorial corrections)**

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

THE QUEEN

v

DAVID SMITH
MICHAEL SMITH
FRANCIS SMITH

Ruling on minimum term - David Smith & Michael Smith
Sentence: Francis Smith

SENTENCING REMARKS

MILLER HHJ

NOTE: The facts of this case are to be found in the opening paragraphs of the Crown submission on sentencing, a copy of which will be appended to the written version of these remarks.

Introduction

[1] On 8 November 2018, after deliberating for a little over 5½ hours from the previous day the jury returned unanimous guilty verdicts upon the defendants in respect of all charges then before them on the Bill of Indictment. This included in respect of both David and Michael Smith, the charge of murder. Michael Smith was also convicted of a separate charge of possessing a firearm with intent to commit an indictable offence, namely, murder. Francis Smith had been cleared of the principle charge by direction of the court at the conclusion of the Crown case. He was, however, convicted by the jury of charges of possessing a handgun without a certificate; possessing a firearm and ammunition in suspicious circumstances and of assisting an Offender by storing the murder weapon and ammunition.

[2] There is only one sentence that can apply in respect of a conviction for murder and that is one of life, which was handed down that day in respect of David and Michael Smith. Nevertheless, in law this court is required to impose a minimum period, which a defendant must serve in prison before he may be considered for release on parole after which he will remain the subject of licence conditions for the remainder of his life. It is that issue that forms the focus of the hearing today in respect of these defendants. The court will also fix the appropriate sentence in respect of Francis Smith.

[3] Before turning to the specific issues for consideration I should place certain matters in context. A primary issue of concern is the impact upon the family and friends of the deceased Stephen Carson of his violent death. The court is in receipt of heartfelt statements from his mother and partner. In addition there is a report on the impact upon his son, Ryan, then only nine years of age who not only experienced the loss of his father but witnessed his murder in such brutal and callous circumstances. Reference was made throughout the trial to the deceased's own criminal antecedents. He was, as his mother acknowledged, "No Angel", with a significant record for a variety of offences including drug dealing. Indeed, he was only out of prison a matter of months at the time of his death. These facts, however, have no bearing on either the culpability of the defendants or the sense of loss caused to his family by his murder.

[4] The court is in receipt of VIS from the deceased's mother, Ms Bernadette Murphy and his partner, Ms Naomi Smyth. They each speak with great dignity and eloquence of the impact upon them both of the manner of Mr Carson's death and the consequential and ongoing sense of grief and loss they continue to experience. Both were witnesses at the trial and attended throughout the proceedings, something each felt compelled to do notwithstanding the harrowing details given of the events of 25 February 2016. I do not intend reading details of these statements into the court record but suffice to say that the pain each feels at their individual and collective loss is palpable and another side to the deceased emerges of a much loved son and partner and of a caring father.

[5] In addition to these statements, the court has received a report on Ryan O'Hara prepared by Dr Fiona McCartan (Consultant Child and Adolescent Psychiatrist). This report is based upon a lengthy consultation the doctor conducted with Ryan and his mother last month. Again, in this public forum I shall not trespass into Ryan's private thoughts and expressions of loss beyond observing that he continues to revisit the dreadful events of that night in February 2016 on an almost daily basis and it has had a lasting effect upon his mood. Dr McCartan concludes that he has developed PTSD as a direct consequence of what he witnessed; something which will take years to settle and most likely will never be fully erased. On the positive side he has the benefit of a loving and stable environment with his mother, paternal grandmother and aunts all providing strong and consistent support.

[6] I turn now to consider the issues for determination today and first I shall deal with the defendant Francis Smith, in respect of whom a tariff hearing is not required.

Francis Smith

[7] I am grateful to Mr Connor QC (appearing with Mr Chambers) for the Crown and Ms McDermott QC (appearing with Ms Smyth) for their succinct and helpful written and oral submissions.

[8] As previously outlined this defendant was acquitted by direction of the court of the principle charge of murder. He was, however, unanimously convicted of four charges relating to the possession of the sawn-off shotgun and ammunition found in his flat 25 hours after the murder of Mr Carson and to assisting his co-accused after the event by storing the weapon.

[9] Francis Smith is 42 years of age, a single man though he has been in a relationship for three years. He is also the father of a two-year-old son from a previous casual relationship. He has no direct contact with this child though prior to his remand in custody he had been pursuing an application for access through the courts. In terms of his background it is reported that he had a settled and unremarkable childhood with no issues arising at school. Thereafter, whilst he was engaged in casual employment up until his early twenties he thereafter drifted out of employment. At the time of his remand in custody he was in receipt of Employment Support Allowance due to an injury to his hand sustained several years ago. Although there is no history of drug misuse the court notes that since his admission to HMP Maghaberry he has been found in possession of drugs on two occasions.

[10] Two reports dated 4 April 2017 and 17 December 2018 have been received from Dr Maria O’Kane (Consultant Clinical Psychiatrist). The first was prepared for the purposes of the sentencing hearing in respect of the rifle and ammunition found in the attic of the defendant’s flat on the same occasion the sawn-off shotgun was discovered in the wardrobe of his bedroom. In this report Dr O’Kane sets out the defendant’s history of alcohol dependency, which is linked in part to a series of serious assaults resulting in both physical injury and considerable emotional upset and anxiety issues. It is her conclusion that he is a chronic alcoholic who drinks to manage his marked PTSD following the most serious attack upon him when he was struck several times to the head with a hatchet. It is asserted that his heavy drinking results in him making poor decisions, as exemplified by his purchase of the rifle and ammunition, the subject matter of the proceedings then before the court for determination and sentence.

[11] In her addendum report, which is predicated on an inaccurate understanding of the present case, Dr O’Kane provides an update on this defendant’s mental state. She notes his claim that alcohol is no longer an issue for him and that he cites his two year old son and the prospect of gaining access to him as being an incentive to him in changing his lifestyle. I note that he denies use of drugs in prison, something that sits

at odds with the finds referred to in the PSR. Whilst he is still hyper-vigilant and suffering from anxiety, depression and specifically PTSD, Dr O’Kane observes that his mental and physical health is much better than when she last saw him. She concludes by stating that he “continues to present more of a threat to himself particularly when he is drinking, than to the general public.”

[12] Francis Smith appears before the court with 33 previous convictions, including those relating to the find of the rifle and ammunition in the attic on 26 February 2016. For those offences he was sentenced to a DCS of 18 months. Most of his offending, however, dates back to when he was still a youth. Dishonesty, fraud and motoring related offences make up the bulk of the record and he has been dealt with by way of the full range of sentencing options. He has only one conviction for an offence of violence, that being an assault on a police officer that occurred in July 1997. Clearly, the offences detected on the 26 February 2016 including the current charges represent the most serious matters to appear on his record and mark a significant upturn in his offending behaviour.

[13] John Conlon (PBNI) assesses this defendant as presenting a medium likelihood of re-offending based upon factors including his failure to consider the consequences of his offending behaviour on others and himself together with his previous alcohol misuse and negative peer associations. Against that the significant gaps in his offending, his supportive family network and his improved mental state resulting from addressing his alcohol dependency act as protective factors.

[14] Convictions for the current offences require the imposition of immediate custodial sentences, engage the dangerousness provisions of the Criminal Justice (NI) Order 2008 and the court must give consideration to the risk of significant harm posed by this defendant. Notwithstanding the seriousness of the charges and the juxtaposition to the murder of Mr Carson, it is accepted that Francis Smith has a very limited record of direct involvement in violent offending. Mr Conlon, after discussion with the PBNI Area Manager, concluded that the threshold of significant risk was not passed in this defendant’s case. Whilst this decision appears to have been made without recourse to a Risk Management Meeting, I consider that the decision was appropriate and am satisfied that Francis Smith is not a dangerous offender as defined by Article 15 of the 2008 Order. That being so I shall sentence him to a DCS pursuant to Article 8 of the Order.

[15] The court has been referred to a number of authorities in relation to the various offences, all of which I have considered together with the several and specific submissions. Whilst the defendant faces sentence on four counts it has to be acknowledged that these all arise out of a single find of the shotgun and associated ammunition. This being so all sentences should run concurrently to each other. Further, it is acknowledged that a minimum sentence of five years applies in respect of the charge of possessing a handgun without a certificate. So far as the charge of assisting an offender pursuant to section 4(1) of the Criminal Law Act (NI) 1967 is concerned the maximum sentence is set at 10 years where the primary offence was

one that carries a mandatory life sentence (as per section 4(3)(a) of the Act). This effectively means that in considering the defendant's culpability the Court should take care not to double count as the seriousness of the primary offence is already considered by the enhanced maxima that apply. Those same maxima apply in respect of each of the other counts.

[16] With regard to the possession of firearms and ammunition charges faced by Francis Smith and indeed the charge of possession of a firearm with intent to commit an indictable offence faced by Michael Smith the court takes due note of the case of *R v Esmaily* [2010] NICC 20 in which Stephens J adopted the approach espoused in the English case of *R v Avis and Others* [1998] 1 Cr App R 420:

"The appropriate level of sentence for a firearms offence, as for any other offence, will depend on all the facts and circumstances relevant to the offence and the offender, and it would be wrong for this court to seek to prescribe unduly restrictive sentencing guidelines. It will, however, usually be appropriate for the sentencing court to ask itself a series of questions:

(1) What sort of weapon is involved? Genuine firearms are more dangerous than imitation firearms. Loaded firearms are more dangerous than unloaded firearms. Unloaded firearms for which ammunition is available are more dangerous than firearms for which no ammunition is available. Possession of a firearm which has no lawful use (such as a sawn-off shotgun) will be viewed even more seriously than possession of a firearm which is capable of lawful use.

(2) What (if any) use has been made of the firearm? It is necessary for the court, as with any other offence, to take account of all circumstances surrounding any use made of the firearm: the more prolonged and premeditated and violent the use, the more serious the offence is likely to be.

(3) With what intention (if any) did the defendant possess or use the firearm? Generally speaking, the most serious offences under the Act are those which require proof of a specific criminal intent (to endanger life, to cause fear of violence, to resist arrest, to commit an indictable offence). The more serious the act intended, the more serious the offence.

(4) What is the defendant's record? The seriousness of any firearm offence is inevitably increased if the offender

has an established record of committing firearms offences or crimes of violence.”

[17] I shall apply these principles when determining the secondary charge faced by Michael Smith. So far as Francis Smith is concerned Ms McDermott in her helpful skeleton argument makes the following points by way of mitigation in relation to the actual offending:

- (a) there is nothing to suggest that the assistance provided was anything other than of short duration;
- (b) the assistance was passive rather than active;
- (c) the family relationship between Francis and Michael Smith may account for the former’s actions;
- (d) assuming that Michael Smith brought the shotgun to Francis Smith’s flat the assistance the latter provided involved a single indivisible act rather than two separate acts, as contended for by the Crown.

[18] Ms McDermott further argues that this defendant’s actions did not in fact impede the arrest of the co-accused, the recovery of the shotgun or the investigation generally. I consider that whilst there is merit to some of these submissions I do not lose sight of the fact that on the evening of the murder, the two principal offenders spent upwards of 40 minutes at this defendant’s flat between shortly after 6:00pm and 6.40pm after which all three left together. This was approximately four hours before the murder took place. A little over an hour after the killing David Smith was back at the Kashmir Bar a matter of yards from this defendant’s flat. This court does not speculate as to what discussions took place between the various parties that night nor can it be assumed that it was Michael Smith who brought the shotgun back to his cousin’s flat still less as to when precisely this was done. What is clear, however, is that by their verdict the jury accepted that whenever the shotgun was placed in the wardrobe of his bedroom Francis Smith knew that the murder had taken place and that this was the murder weapon. By allowing it to be thus secreted he actively assisted in impeding the arrest of those involved in the actual killing.

[19] Unlike the cited cases of *R v Taylor & Harkness* [2007] NICC 41 and *R v McAllister, O’Hara & Pearson NICA* (5 October 2018) this is not a terrorist case. Nevertheless, this makes little difference given that the primary offence is one of murder and the principle to be followed is that those who assist in the aftermath of such a crime must expect condign punishment. In assessing the appropriate level I take into account that Francis Smith has already served an 18-month DCS for possession of the Ruger rifle and ammunition, a sentence that would most likely have been made concurrent to that imposed for the present offences had they all been dealt with at one time. That being so and in consideration of all the factors set out in the

foregoing paragraphs I consider that the appropriate sentence is one of seven years six months.

Sentence

Count 3 6 years (3 years custody followed by 3 years on licence)
Count 4 6 years (3 years custody followed by 3 years on licence) (concurrent)
Count 5 6 years (3 years custody followed by 3 years on licence) (concurrent)
Count 6 7 years 6 months (45 months custody followed by 45 months on licence)
 concurrent.

The Offender Levy of £50.00 applies.

David Smith & Michael Smith

[20] I am grateful to Mr Moloney QC (appearing with Mr Devine), Mr O'Donoghue QC (appearing with Mr JP Shields) for David and Michael Smith respectively for preparing succinct submissions for the court's consideration. Equally, I am grateful to Mr Connor QC (appearing with Mr Chambers) for his written observations, taken together with their respective supplementary oral submissions. Whilst for the purposes of these remarks I will not make specific reference to every point raised by each side it should be understood that all have been fully considered by the court.

[21] There is no dispute as to the guiding principles applicable to how a court approaches the fixing of a minimum term. Both Crown and defence accept that these are to be found in *R v McCandless & Others* [2004] NICA 1, which is the leading case in this jurisdiction. The principles are set out in the Crown written submission, which I adopt for the purposes of these remarks:

[22] The case sets out the Practice Statement issued by Lord Woolf, C.J. and reported at [2002] 3 All ER 412. The principal sections of the Practice Statement are set out at paras 10 to 19 thereof 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."

[23] The Crown contends that on the facts each defendant falls to be sentenced within the bracket of cases where the higher starting point applies. Counsel for each defendant, however, submits that the normal starting point is applicable in the case of their respective clients. Reference has been made to several decisions regarding

sentence at both first instance and appellate level. I consider that as each case is fact specific these references are of limited assistance.

[24] Each side has set out the basis for their respective submissions in a clear and commendably concise fashion, focusing in particular on the factors that would attract the higher starting point. Paragraph 10 of the Practice Direction outlines the type of case to which the normal starting point applies, that is one involving “the killing of an adult victim, arising from a quarrel or loss of temper between two people known to each other.” This is plainly not the situation in the present case. Paragraph 12 is predicated on a finding that either the defendant’s culpability was exceptionally high or that the victim was in a particularly vulnerable position. The Direction then sets out what are clearly examples of features that “makes the crime especially serious.”

[25] Both Mr Moloney and Mr O’Donoghue accepted that each case is fact specific and it is a matter of judicial discretion as to how the court interprets the terms of the Practice Direction within the applicable factual matrix. They each conceded that as the trial judge I am in the best position to make this assessment.

[26] In submitting that this case falls within the range of the normal starting point counsel accepted that it would be at the upper end of that range and that the court would be entitled to then consider the aggravating features, which Mr O’Donoghue conceded could lead to a determination above the threshold of the higher starting point. Both he and Mr Moloney, however, submitted that if the higher starting point was adopted it was incumbent on the court not to fall into the error of double counting as aggravating features those factors, which had already been considered in fixing the appropriate starting point. I bear those submissions in mind as I now turn to consider the starting point applicable to this case.

[27] Whereas counsel strenuously contested the suggestion that the murder of Mr Carson was a professional or contract killing as set out in para 12 of the Practice Direction I am in no doubt that it does have characteristics akin to a gangland execution. Looked at in the round, I am in no doubt that this case falls into the range of cases where the higher starting point applies.

[28] With regard to any variation from the starting point the court is enjoined to consider any aggravating or mitigating factors relevant to both the facts of the case and the personal circumstances of the defendant. Neither Mr Moloney nor Mr O’Donoghue suggested that there were any mitigating factors on the first limb though Mr Moloney did submit that David Smith’s personal circumstances could and should be taken into account in a limited way in mitigation of the applicable tariff figure. Mr Connor submitted that there were no mitigating factors in respect of either defendant on either limb.

[29] Mr Connor (at para 13 of his skeleton argument) identified 11 aggravating features though in discussion he did concede that there was an element of double counting with respect to several of these factors. Mr Moloney and Mr O’Donoghue

focused on three factors, which they each submitted represented the totality of the aggravating features of this case. These were the pre-planning; the arming in advance and the use of the firearm. These are all significant factors specifically highlighted at para 14 of the Practice Direction.

[30] My own conclusion on this issue is that this was a cold-blooded, pre-planned murder, which must be seen in the context of what might be considered as a long-running vendetta against the deceased and members of his family. The two defendants crossed town to the deceased's home off the Ormeau Road with but one thought and intention in mind, namely to kill Mr Carson. They were armed with the sawn-off shotgun, a weapon that has no legitimate purpose or use and one, which if used at close range will inflict horrendous injuries, as was the case here. Furthermore, they went prepared for the fact that Mr Carson would not be alone, hence, David Smith was armed with the pepper spray, which he used to subdue and disable Ms Smyth and Ryan. Whilst it may not in strict parlance, have been a professional killing, it was executed with chilling and clinical efficiency and the defendants walked calmly from the house before making their way back to West Belfast. Based on these findings, I am in no doubt that this case not only falls within the higher starting point as identified in the Practice Statement but at the upper range of that category.

[31] It has been conceded that there is nothing in Michael Smith's background such as would amount to personal mitigation.

[32] Michael Smith comes before the court with 168 convictions including the index offences. Several of those convictions relate to events, which occurred after the commission of Mr Carson's murder and at a time when he was still on bail in relation to that offence. That record indicates someone who has consistently been in conflict with the Criminal Justice system since the age of 12 with the only gap apparently being between 2011 and 2015. The range of offending is wide with most related to road traffic matters. There are, however, two historic convictions for robbery and one of wounding together with several for more minor offences of assault.

[33] So far as this record is concerned this is clearly indicative of someone who has failed to respond to previous sentences, (as per para 15 of the Practice Direction). Nevertheless, I consider that this issue is more applicable to the question of risk rather than culpability that does not amount to an additional aggravating feature.

[34] I shall now consider David Smith's personal circumstances to ascertain the degree, if any to which these point towards any mitigating factor.

David Smith

[35] David Smith is now 35 years of age and the father of two children aged eight and five years. He is estranged from their mother, his partner for 12 years up until he was 30 years of age. The court is in receipt of a PSR prepared by Deborah Kane (PBNI), which provides details of his personal history and development. From this it is clear

that he experienced difficulties in childhood with behavioural problems leading to his being excluded from CBS, Belfast and eventually leaving the Conway Mill Educational Resource Centre at the age of 16 without any qualifications. Nevertheless, thereafter he held down a succession of jobs mainly in the construction industry for several years. Solvent and cannabis abuse, which began in early adolescence soon gave way to drug abuse on a more sustained basis. Ecstasy, amphetamine and then “crack” cocaine and heroin became staples of his life by the time he reached his early twenties and his use of these drugs grew to a daily dependence. Eventually, this addiction resulted in his being unable to sustain regular employment and by the time of the index offences he was unemployed and in receipt of benefits.

[36] Whilst he describes no issues with regard to his physical health it is clear that the drug abuse over many years has impacted seriously upon the defendant’s mental well-being. He has engaged with A:DEPT drug counselling during his time in custody but struggles to curb his addiction with several failed drug tests and adjudication this year alone.

[37] The court is in receipt of two reports from Dr Carol Weir (Consultant Clinical Psychologist) both prepared in February 2018 in anticipation of his being sentenced in respect of serious offences including section 18 wounding, to which more reference is made later in these remarks. The reports provide more detailed background information relating to his long history of substance abuse, undiagnosed ADHD and OCD and developing pattern of criminality. All of these factors were exacerbated by a disruptive childhood and being spoiled by his grandmother who was his primary carer when a child. Psychiatric and behavioural difficulties, poor concentration, anxiety and depression feature throughout the GP notes supplied to Dr Weir and reference is made also to overdoses and suicide attempts.

[38] This defendant has 28 previous convictions including several offences of violence. There is a clear progression of offending starting with common assault in 2006, then AOABH in 2011 and in 2014 wounding with intent to do GBH. This last offence involved a premeditated attack using a machete and was motivated by a family feud and revenge, factors very relevant to the index incident. He was sentenced in March 2018 to a DCS of five years in respect of that assault, though he has been in custody in relation to the murder of Mr Carson since his arrest on 26 February 2016.

[39] The progressively more serious level of offending over the years has not been halted by previous custodial sentences and the defendant’s engagement with programmes whilst on licence designed to address his underlying issues related to his drug abuse and propensity to violence. Indeed, the wounding with intent incident occurred during such a period of post-custodial licence and the index offence took place less than a year after that licence period ended.

[40] In common with his co-accused David Smith denies any involvement in Mr Carson’s murder and therefore Ms Kane had no opportunity to explore triggers,

motivations and attitudes behind his involvement. Nevertheless, the examination of his record as highlighted above in these sentencing remarks, point to a man with a volatile and aggressive personality who bears grudges and exhibits deeply held resentment, something, which is at the heart of the background to this case.

[41] It is of no surprise that David Smith is assessed as presenting a high likelihood of re-offending and moreover of presenting a significant risk of serious harm. The fact that he has been convicted of an offence carrying a mandatory life sentence renders any determination of dangerousness to be otiose but for the avoidance of doubt I am satisfied that he fully meets the criteria for such a finding.

[42] Based on the foregoing I am satisfied that notwithstanding the issues highlighted in Dr Weir's reports these cannot amount to a sufficient ground to reduce the tariff in his case. His recent history of violence only exacerbates the concerns raised regarding his involvement in the murder of Mr Carson and I can see no basis to view his level of culpability below that of Michael Smith.

Conclusion

[43] In conclusion I am satisfied for the reasons given that there are several aggravating and no mitigating factors in this case. Weighing all these factors in the balance I consider that the starting point of 15 years should be increased to 20 years, which I set as the minimum term that each defendant must serve before he may be considered for parole and release on licence. Michael Smith will be sentenced to a concurrent term of 15 years on count 2.

Appendix 1

R v Smith, Smith and Smith

Facts

1. In 2010 the deceased was involved in an altercation during which Michael Smith was attacked with a sword leading to a serious injury. Thereafter the Smith family, including David and Michael Smith, engaged in a campaign of intimidation and threats which resulted in Stephen Carson moving away from West Belfast to settle in the Ormeau Road area of South Belfast.
2. During the afternoon of the 25 February 2016 David and Michael Smith were with their cousin Francis at his flat on the Springfield Road.
3. At around 10pm on the 25 February 2016 David and Michael Smith travelled from West Belfast to the area close to where Stephen Carson lived.
4. At approximately 10:40pm they forced entry into Stephen Carson's home at 77 Walmer Street. Michael Smith was armed with a sawn-off shotgun and David Smith was armed with a hammer. A third man entered the property with them and a fourth man remained outside.
5. Stephen Carson's partner, Naomi Smyth, was sitting on the sofa with Stephen Carson's nine year old son, Ryan O'Hara. Mr Carson was in the kitchen making a cup of tea.
6. Stephen Carson hid in a small bathroom at the rear of the property. Michael Smith told Naomi and Ryan to "sit the fuck down" and demanded to know where Stephen Carson was. Michael Smith physically assaulted Naomi Smyth by pushing her down onto the sofa. David Smith produced an incapacitate spray and sprayed Naomi Smyth and Ryan O'Hara in the face. All the while Michael Smith was demanding to know where Mr Carson was.
7. At that stage the third unknown male went upstairs in the property. He returned stating: "He's not there." Michael Smith insisted that Mr Carson must be in the property. At that stage David Smith shouted from the kitchen area: "He's fucking in there." Michael Smith then produced the shotgun and made his way through to the back of the house. Ms Smyth and Ryan O'Hara were begging the Smiths to leave.
8. Either David Smith or the unknown male said: "he's on the phone to police we need to get out." Michael Smith continued towards the bathroom. Stephen Carson was on the phone to police begging for assistance. Michael Smith shot him in the left hand side of the head at close range through the bathroom door

having aimed just above the door handle. The position of the injury suggests that Stephen Carson was right against the door holding it closed.

9. The murderers then calmly left the property and returned by car to West Belfast. At around midnight David Smith, having changed his clothes, travelled to pick up a "carry out" from the Kashmir Bar on the Springfield Road.
10. Michael and Francis Smith were arrested the day after the murder in Francis Smith's flat. The shotgun used in the murder together with a quantity of ammunition was discovered in a bag within a wardrobe of the property.
11. The defendants largely made no comment interviews. Michael Smith refused to participate in a VIPER procedure. David Smith latterly pleaded a defence of alibi which he ran at trial albeit he did not call any alibi witnesses in support of his case.

Convictions

12. The defendants were convicted of the following offences:

David and Michael Smith Murder of Stephen Carson

Michael Smith Possession of a firearm with intent to commit murder

Francis Smith Possession of a handgun without a certificate

Francis Smith Possession of a firearm in suspicious circumstances

Francis Smith Possession of Ammunition in suspicious circumstances

Francis Smith Assisting an Offender by storing the murder weapon and ammunition.