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(subject to editorial corrections)**

ICOS No:

Delivered: 28/05/2025

IN THE CROWN COURT IN NORTHERN IRELAND
SITTING AT BELFAST CROWN COURT

THE KING

v

STEPHEN McCOURT

Mr S Magee KC with Mr S Reid KC (instructed by the Public Prosecution Service) for the
Prosecution

Mr D Fahy KC with Mr B Nugent (instructed by McCourt Maguire Solicitors) for the
Defendant

SENTENCING REMARKS

FOWLER J

Introduction

[1] The defendant Stephen McCourt was indicted for the murder of Mr Damien Heagney (the deceased) and on arraignment pleaded not guilty to his murder. He maintained his innocence throughout the course of his trial. On 8 April 2025, the jury unanimously convicted McCourt of murder. The only sentence permissible in law for murder is one of life imprisonment and I imposed that sentence on McCourt on the day of his conviction. It is now my responsibility in accordance with Article 5 of the Life Sentences (Northern Ireland) Order 2001 to determine the length of the minimum term that he will be required to serve in prison before he will first become eligible to have his case referred to the Parole Commissioners for consideration by them as to whether, and if so, when he is to be released on licence.

[2] In setting the tariff, Article 5(2) of the Life Sentences (Northern Ireland) Order 2001 prescribes that the minimum tariff period must be the period the court considers appropriate:

“to satisfy the requirements of retribution and deterrence having regard to the seriousness of the offence, or the combination of the offence and one or more offences associated with it.”

[3] I make it clear however, that if and when he is released on licence he will, for the remainder of his life, be liable to be recalled to prison if at any time he does not comply with the terms of that licence. Importantly, I want to emphasise to the defendant, and explain to the general public, that the period I shall fix will not qualify for any remission. Consequently, he will be required to serve, in its entirety, the tariff period that I determine.

Victim impact

[4] I have received victim impact statements from Damien Heagney’s mother and brother which I have carefully read, where they describe the pain, sorrow and loss they feel. I have watched them and their family during the course of this trial sit and listen with great dignity and resilience to what was harrowing evidence. I have taken your victim statements into account in this sentencing exercise. I appreciate your lives will never be the same and regrettably no sentence I can impose nor term of imprisonment I can hand down will ever fill the void in your lives.

[5] I will now turn to setting the tariff in this case.

Factual background

[6] The detailed evidence in this case was circumstantial in nature and given before the jury over the course of the defendant’s trial lasting a number of weeks. Accordingly, I intend to provide only a brief summary of the facts and issues.

[7] This case arises out of the murder of the deceased who was born on 17 May 1975 and at the time of his death he was 45 years old. He was born and raised in Cookstown. In the years preceding his death he lived a somewhat unsettled life. He suffered mental health issues and only had sporadic contact with friends and family. In May 2022, staff at the deceased’s pharmacy became concerned he had not been collecting his regular prescriptions. Police carried out a welfare check at his last known address, but he did not appear to be residing there. Concerns were escalated and police began to carry out proof of life investigations.

[8] On 10 August 2022, the dismembered partial remains of the deceased were recovered from Cappagh Reservoir. The remains that were recovered were in two separate packages and had been weighted down. The head, arms and legs were recovered from the reservoir. However, the torso which had been wrapped in plastic and fencing wire had been mistaken as a discarded farm animal and removed earlier from the reservoir and disposed of in a farm waste facility and never

recovered. I am satisfied to the required standard, that the dismemberment of the body and the nature of its disposal in the reservoir was intended to conceal the murder, destroy evidence and avoid detection.

[9] Dr James Lyness, the State Pathologist for Northern Ireland, carried out a post-mortem examination of the deceased's remains on 11 August 2022. In his report he recorded that, while severe decomposition hindered his examination, there were numerous defects/wounds on the recovered head, arms and legs the characteristics of which strongly suggested stab wounds had been inflicted on the deceased.

[10] The prosecution case presented to the jury was that the owner of DM Auto Repair around December/January 2022 was called out to a broken-down vehicle, a BMW which he was asked to take to Dromore. He recalled the owner of the car he picked up gave the name "Heagney." He dropped the BMW vehicle off in the vicinity of McGartland Terrace and a person who he assumed knew the owner of the BMW came out to meet Mr Heagney. The prosecution invited the jury to infer this was the defendant and supported this proposition with cell site evidence which placed both the deceased and the defendant McCourt in the vicinity of McCourt's flat in the early hours of 31 December 2021, thus giving the defendant opportunity to murder the deceased.

[11] The prosecution asked the jury to infer that the deceased met his death in the defendant's home in McGartland Terrace. This was the last location where the deceased was seen alive, and there was no further bank transaction on his account after a transaction in a MACE shop in Cookstown on 30 December 2021 suggesting his death occurred a short time thereafter. The prosecution evidence was that cell site analysis supported the contention that the deceased and the defendant spent New Year's Eve together, exchanging text messages where Mr Heagney asked the defendant to bring beer and cigarettes back to the flat at a time when Mr McCourt's phone was in the area of Ballygawley/Clogher and the deceased's phone was in the vicinity of 3 McGartland Terrace. Further, cell site evidence supports the contention that Mr McCourt returned to 3 McGartland Terrace on 1 January, where he remained. The deceased's phone did not leave that area until 3 January with activity on the deceased's phone essentially ceasing on New Year's Day. It was the prosecution case that the defendant disposed of the deceased's phone and purchased a new phone for himself on 3 January suggesting he was forensically aware of the need to dispose of the phones to prevent data and location information being obtained. That he also arranged for the removal of the deceased's BMW car from outside the vicinity of his house around this time.

[12] Another limb of the prosecution case made to the jury was that there can be little doubt that the defendant went to Cappagh Reservoir on 6 January 2022, when his van got stuck there in soft snow and mud. A recovery driver and police officer gave evidence and described where the van was located with its rear door towards

the water where the search diver located the remains of the deceased not far away from where the rear of the white van has been located. Police officers had been informed of the defendant's vehicle being, what appeared to be, abandoned close to a body of water and police officers attended at his home to carry out a check on his wellbeing. During conversation with police the defendant indicated that he was not driving the vehicle and that his father was probably responsible for the vehicle being there. This being at complete variance with the evidence of his father who said he never drove any of the defendant's vans. The prosecution inviting the jury to infer this was a lie to distance himself from having been in the area knowing fine well he had murdered the deceased and deposited his dismembered body there.

[13] The prosecution also invited the jury to take into account the defendant's failure to give evidence in the circumstances of this case and draw the inference that he had no case to make that would stand up to scrutiny.

[14] While the defendant in interview denied having anything to do with the murder of the deceased the jury after hearing the evidence over several weeks rejected this and convicted him of murder.

Principles in determining evidential basis for tariff

[15] Mr Fahy in his sentencing submissions argues that the factors relevant in determining the appropriate tariff in the present case must begin and end with the evidence the jury heard and considered. That while the jury found the defendant guilty of murder, the precise factual circumstances forming the basis upon which that verdict was reached is unclear in relation to (i) the pathology evidence of Dr Lyness; (ii) dismemberment and disposal of the deceased's body; (iii) the involvement of a third party in the offence or its aftermath:

[16] In such circumstances, Mr Fahy says it is for the court to form its own view as to the facts of the offence as established in the evidence, beyond reasonable doubt. The court in carrying out this exercise must be keenly astute to give to the defendant his entitlement to be sentenced on the factual basis which on the evidence is most favourable to him. The court should give the defendant the benefit of the doubt about the facts of the offence. However, the law is that where there is more than one possible interpretation of the verdict and the sentencing judge can reach a conclusion, to the criminal standard, as to the factual basis on which to pass sentence, the judge is entitled to sentence on that basis. This was articulated in *King (Dwayne)* [2017] EWCA Crim 128, [2017] 2 Cr App R (S) 6 (25), where the court stated:

“In our view the correct approach by the judge, after a trial, to the determination of the factual basis upon which to pass sentence, is clear. If there is only one possible interpretation of a jury's verdict(s) then the judge must

sentence on that basis. When there is more than one possible interpretation, then the judge must make up his own mind, to the criminal standard, as to the factual basis upon which to pass sentence. If there is more than one possible interpretation, and he is not sure of any of them, then (in accordance with basic fairness) he is obliged to pass sentence on the basis of the interpretation (whether in whole or in relevant part) most favourable to the defendant.”

[17] A judge sentencing in a murder case is obliged to sentence the defendant in accordance with the jury verdict, however, sentence must reflect the evidence and the inferences which can reasonably be drawn from that evidence beyond reasonable doubt. The judge must first determine whether there is only one possible interpretation of the evidence, if so, that is the factual basis of sentence. Second, absent only one possible view of the evidence the judge must go on to consider whether there is more than one possible interpretation of the evidence and if so, the judge is enjoined to determine what that factual basis is beyond reasonable doubt and proceed to sentence. Third, only where this is not possible the defendant is then entitled to be sentenced on the factual basis which on the evidence is most favourable to him.

[18] The court had the benefit of hearing all the evidence in this case which lasted over several weeks, during which I heard detailed evidence from a number of expert witnesses including Dr Lyness, State Pathologist.

[19] In his sentencing submissions, Mr Fahy draws attention to the autopsy report prepared by Dr Lyness where he states:

“Whilst severe decomposition somewhat hindered the examination, there were three defects within the skin behind the left ear, the characteristics of which were strongly suggestive of stab wounds. In addition, smaller similarly shaped defects were identified within the left side of the scalp towards the back. However, there was no bruising surrounding any of these defects to confirm that they had occurred during life. (p.224)

In summary the post-mortem examination revealed evidence of multiple stab wounds to the head but it was difficult to be certain as to whether these were inflicted before or after death. Indeed, it was not possible to determine a definitive cause of death due to the dismemberment and severe decomposition.” (p.225)

He argues that it is impossible, in the absence of any determined cause of death, to conclude beyond reasonable doubt that any of the observed injuries were inflicted before death.

[20] In evidence Dr Lyness said that on examination of the deceased's remains he noted three defects within the skin behind the left ear, characteristics of which strongly suggested stab wounds. There were smaller similarly shaped defects identified within the left side of the scalp towards the back. However, there was no bruising surrounding any of these defects to confirm that they had occurred ante mortem. Also found on examination were multiple superficial linear notches to the surface of the skull consistent with being caused by a pointed object such as a knife. Found embedded within the bone of the skull was a piece of metal consistent with being the broken tip of a knife blade. There were further defects observed to the left axilla, left elbow and little finger suggestive of stab wounds. Dr Lyness concluded that his examination of the deceased's partial remains revealed evidence of multiple stab wounds to the head and other recovered parts of the deceased's arms and legs but due to dismemberment and decomposition it was difficult to say whether the wounds were caused before or after death. Likewise, for the same reasons it was not possible to determine a definitive cause of death. However, the pathology evidence was only part of the circumstantial evidence the jury were invited to consider holistically before arriving at their verdict.

[21] Additional strands of circumstantial evidence were relied upon by the prosecution including, inter alia, the following:

- (i) The defendant was the last person to see the deceased alive at 3 McGartland Terrace, Dromore on 31 December 2021.
- (ii) There was no banking activity conducted by the deceased after this date.
- (iii) Cell site analysis placed the deceased in the vicinity of 3 McGartland Terrace from the early hours of 31 December 2021. Cell site analysis also placed the defendant's phone in the vicinity of 3 McGartland Terrace at the same time.
- (iv) Telephone and text evidence placed both men on New Year's Eve together.
- (v) Cell site evidence supports the contention that the deceased's phone did not leave the vicinity of 3 McGartland Terrace, until 3 January and was inactive from 1 January.
- (vi) The defendant moved the deceased's car away from the vicinity of his flat.
- (vi) Evidence suggests that the defendant went to Cappagh Reservoir on 5/6 January 2022 the locus of the body deposition site where his van got stuck in snow and mud.

- (vii) The defendant lied saying that it was probably his father who had driven the van there. This evidence being contradicted by his father.
- (viii) The defendant failed to give evidence in court when called upon to do so.

[22] Taking the pathology evidence in conjunction with all the other strands of circumstantial evidence I am satisfied beyond reasonable doubt that the jury determined that the deceased met his death at the hands of the defendant in 3 McGartland Terrace. That he attacked the deceased and inflicted numerous knife wounds on him to the area of his head, arms and legs. The ferociousness of the attack can be inferred from the tip of the blade of a knife being embedded in the deceased's skull. It is significant that the last place the deceased was seen alive was at 3 McGartland Terrace. Cell site analysis places him in the vicinity of McGartland Terrace on New Year's Eve. There is no banking activity or mobile phone activity by the deceased after this date. Within five to six days the defendant's van is observed parked with its rear door close to where the deceased's body is recovered from the reservoir; none of which was controverted by the defendant in evidence. I reject the submission made by Mr Fahy and I am satisfied to the requisite standard that the proper factual basis for sentence is based on a murderous attack, including an attack with a knife, which was perpetrated by the defendant on the deceased in 3 McGartland Terrace.

[23] I am further satisfied beyond reasonable doubt that the defendant disposed of the deceased's dismembered body in Cappagh Reservoir. The evidence supports the defendant's van being present at Cappagh reservoir when it becomes stuck in snow and mud and he lies about how his vehicle came to be there to distance himself from the murder and dismemberment of the deceased. I am also satisfied to the required standard that the dismemberment was designed to hide the body and his involvement in the murder, destroy evidence and thwart the investigation.

[24] The issue of involvement of a potential third party in the murder was fully canvassed before the jury. The senior investigating officer in the case was cross-examined regarding this aspect of the case and rejected this suggestion put to her under oath. The jury clearly accepted this officer's evidence dismissing any suggestion of third-party involvement which they were entitled to do. I am satisfied having heard the senior investigating officer give evidence that there was no credible or reliable evidence before the court that there was any third-party involvement in this murder.

Legal principles

[25] Until recently the relevant legal principles the court should apply in fixing a minimum term were set out in *R v McCandless and others* [2004] NICA 1, in which the Court of Appeal held that the *Practice Statement* issued by Lord Woolf CJ and reported at [2002] 3 LER 412 should be applied by sentencers in this jurisdiction who are required to fix tariffs under the 2001 Order. The relevant parts of the Practice Statement for the purposes of this case are 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 premeditation.

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."

[26] In *McKinney* the Court of Appeal underlined that each murder case is fact specific and that guidance arising from *McCandless* applying the Practice Statement of Lord Woolf should not be applied in a rigid compartmentalised or mechanistic way. The benefit of *McCandless* is that in this jurisdiction it allows flexibility in the many different factual circumstances that invariably come before the courts in murder cases.

[27] More recently the guidance given in *McCandless* was considered and the 'flexibility' afforded sentencing judges reinforced in *R v Whitla* [2024] NICA 65 at para [37] the court observed in relation to *McCandless* that:

"[37] This decision has been applied in our jurisdiction for a considerable period of time. It has also recently been discussed in a number of other murder cases by this court, such as *R v Hutchison* [2023] NICA 3, *R v Nauburaitis* [2024] NICA 37 and *R v McKinney* [2024] NICA 33. All of these decisions point to the fact that sentencing for murder in Northern Ireland allows for flexibility on the part of sentencers within the guidelines provided by *McCandless*. It seems to us, that these cases also reflect the fact that as societal conditions change, judges should be aware of different issues which may not have been expressly stated in *McCandless*, but which, nonetheless, they can take into account. In particular, in *Hutchison*, the fact of a prolonged history of domestic violence against the victim and other partners was a relevant aggravating factor. In *Nauburaitis*, the fact that there was desecration of the deceased's body was also an additional aggravating factor."

The court went on to say:

“[39] Recently, in *R v McKinney* this court reiterated that each murder case is fact specific. In this jurisdiction the Court of Appeal has also consistently said that the guidelines that derive from *McCandless* applying the Practice Statement of Lord Woolf should not be applied in a rigid compartmentalised way. The benefit of *McCandless* is that in this jurisdiction it allows flexibility to sentencers in the myriad of different scenarios that arise in murder cases. We repeat what we have said in many previous decisions that judges should be free to consider factors not specifically mentioned in *McCandless* as aggravation in a particular case, including a track record of domestic violence (see *R v Hutchison*) and desecration of a dead body (*R v Nauburaitis*). This way murder sentences in Northern Ireland have been able to reflect the circumstances of murder cases with the benefit of the reference procedure if sentences are thought to be too lenient or appeal if manifestly excessive. It is the function of the Court of Appeal to set appropriate guidelines and to review any guidelines previously given.

[40] This appeal turns upon application of *McCandless* once again. As such we consider that the time has come to refresh the *McCandless* categories. This approach is based on the collective experience of the members of this court that a lower starting point of 12 years, previously termed the normal starting point (sub para [10] of the Practice Statement) rarely arises in murder cases. Only exceptionally if the circumstances explained in *McCandless* arise may consideration be given to the lower culpability of the offenders. The experience of this case illustrates the fact that having to consider this starting point in every case may deflect the sentencer away from reaching an appropriate sentence. Recourse to this starting point will only arise where culpability is low and so arises in only a small number of cases. This should be the practice going forward.

[41] We are cognisant that most murder cases in Northern Ireland will fall within what has previously been termed the higher starting point of 15/16 years which involves high culpability (sub para 12] of the Practice Statement). As such we think it better that this should now be termed the normal starting point.

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

[43] We stress that what we have said does not amount to any sea change in terms of murder sentencing. It is simply a recalibration to reflect the complexion of cases we have had before our courts in the 20 years since *McCandless* was penned. In summary, *McCandless* should now be read with following revision: (i) The normal starting point is 15/16 years. This is based on high culpability (ii) In exceptional cases of low culpability, the starting point may reduce to 12 years. (iii) In cases of exceptionally high culpability the starting point is 20 years.

[44] It is not necessary for us to redefine *McCandless* any further as the factors that feed into each starting point and aggravating or mitigating factors are comprehensively set out. In addition, sentencing judges are expressly reminded that they have the flexibility to vary the starting point upwards or downwards to take into account the particular circumstances of each case."

[28] I also remind myself of the caution in para [45] in *Whitla* that where the court chooses the higher starting point because of one particular aspect of the case, it should not normally vary the starting point upwards because of the same factor.

Consideration

[29] The defence in the present case contends that this is a case of exceptionally low culpability and that the case should be categorised as a killing without any discernible premeditation or motive. That the court should conclude that this was a killing of an adult victim, arising from a quarrel or loss of temper between two people known to each other.

[30] I reject this submission and consider it to be against the weight of the evidence in this case. I am satisfied that Mr Heagney's death was as a result of a vicious attack with a knife including numerous blows to one of the most vulnerable

parts of the body, the head. It involved a number of injuries to the head including the tip of the knife breaking off and lodging in the skull, I am also satisfied that it is a compelling inference from a consideration of the totality of the evidence including what is reasonably to be inferred that knife wounds were also sustained to the deceased's armpit, and finger. That the deceased died from the attack by the defendant. I consider this to be a case of multiple stabbing. Having considered the authorities of *Doyle* and *Heaney* I consider this to be a case of high culpability with a starting point of 20 years.

[31] I also find the following aggravating factors to be present:

- (i) Dismemberment of the deceased's body which was callous in the extreme and added greatly to the distress caused to V's family and in particular to his mother who sat through the most heart rending evidence imaginable for any mother.
- (ii) Disposal of the body in the reservoir was an additional step taken to conceal/destroy evidence, cover the murder and subvert the police investigation which added to the seriousness of the offending.
- (iii) The defendant's criminal record and record for violence. He has previous convictions for wounding with intent and has two previous findings of dangerousness. He has failed to respond to previous sentences and interventions.

A pre-sentence report was received from the Probation Service. Unsurprisingly, the report concludes that the defendant poses a significant risk of serious harm given the myriad of risk factors and absence of protective factors. This conclusion is of limited relevance to the tariff which relates to the requirements of retribution and deterrence. However, it is clearly relevant to any decision-making of the Parole Commissioners at the expiry of the tariff.

[32] In terms of mitigation, the only matter in relation to the offending I can identify is that there is no evidence this attack was premeditated or planned given the text messages between the two men. However, I see no personal mitigation in this case.

[33] Having identified the aggravating factors, I consider an uplift of five years in sentence is merited which is tempered by very modest mitigation which will be reflected in a reduction of one year.

[34] Accordingly, the tariff will be 24 years the equivalent of a determinate sentence of 48 years.

[35] I direct that any time served on remand for this offence of murder should be taken into account.