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Judgment: approved by the court for handing down (subject to editorial corrections)*	*Delivered:*	**06/10/2025**

IN THE CROWN COURT IN NORTHERN IRELAND
SITTING AT LAGANSIDE COURTHOUSE

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THE KING

v

JAKE O'BRIEN
and
ANDREW THOMAS KENNETH MARTIN

_____

Mr Michael Ivers KC with Ms Aileen Smyth (instructed by Phoenix Law, Solicitors) for O'Brien
Mr Gavan Duffy KC with Mr Damien O'Halleron (instructed by KRW Law, Solicitors) for Martin

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FOWLER J

Introduction

[1] The defendants Andrew Martin and Jake O'Brien were convicted on two counts, specifically:

(i) that, on 19 August 2019, murdered Malcolm McKeown, contrary to common law; and

(ii) that, on 19 August 2019, each had in their possession two firearms, .32 calibre bullets and 9 x 19mm cartridges, with intent to endanger life or to enable another to do so.

[2] The defendant Andrew Martin just prior to his trial commencing, pleaded guilty to the offence of murder as an aider and abettor. This basis of plea was not accepted by the prosecution and the trial proceeded in respect of Martin as a *Newton* hearing in parallel with the trial of O'Brien and on the remaining count of possession of firearms with intent. Both defendants were convicted of murder as principals and of possessing the murder weapons and ammunition with intent.

[3] On being convicted of murder the defendants were informed that, by law, there was only one sentence available in respect of their convictions for murder and that, accordingly, the sentences would be life imprisonment. However, it now falls to me to set the applicable tariffs in respect of each defendant. That is, the minimum period they must serve in prison before being eligible for release on life licence under Article 6 of the Life Sentences (Northern Ireland) order 2001 ("the 2001 order") – and to sentence them in respect of the second count.

Circumstances surrounding the murder

[4] Just before 9pm on Monday 19 August 2019, 54-year-old Malcolm McKeown was found dead in his car at the rear of Dewarts Service Station, Waringstown. He had sustained fatal gunshot wounds to the head and body and was declared deceased at the scene. It was determined that the murder occurred at approximately 7:20pm. He died of multiple gunshot wounds with at least 16 bullets being fired from two guns.

[5] Malcolm McKeown was well known to police in the Craigavon area and had just been released from prison on 7 August 2019, 12 days prior to his murder. He had previously been shot and seriously wounded and received warnings from police that he was under threat from other organised criminals in the locality. He was living close to Dewart's Service Station in Waringstown. A few days prior to his murder he had purchased a BMW 5 series which he parked to the rear and side of Dewart's out of sight of the main forecourt.

[6] CCTV evidence is that at 18:26 hrs on 19 August 2019, a dark VW Passat enters the car park to the rear of Dewarts Filling Station. Then at 19:19hrs, Mr McKeown is seen to enter the forecourt of the filling station and walk past an ATM machine towards the side of the filling station shop. Shortly thereafter two female customers can be seen on the CCTV to react as if to a sound, this is about 24 seconds after Mr McKeown passes the ATM on his way to where his car was parked. Approximately 30 seconds later the dark Passat is captured on CCTV leaving the rear car park of the filling station.

[7] At 19:25 hrs police received a 999-call stating that a vehicle had just been set on fire at Glenavon Lane. This was the dark Passat which had been used in the shooting. Subsequently, Mr McKeown was found slumped over the driver's seat of his car, with gunshot wounds to his head and abdomen. He was confirmed dead at the scene. His death was due to bullet wounds to his head and trunk, he had been hit with at least six bullets. One of which was to the head and would have been rapidly fatal. He had been seated in his car with the door at least partially closed when he was shot at close range by bullets from two guns. Having attended the scene and viewed the location of the shooting it would have been easy for the gunmen to hide and wait until Mr McKeown was seated in his car and then open fire. I am satisfied beyond reasonable doubt this was in fact what occurred having

considered the locus and crime scene evidence, location of bullet cases, bullet holes in the car door, trajectory of bullets and gunshot wounds sustained by the deceased.

[8] Scenes of crime officers and forensic scientists also attended at Glenavon Lane, Lurgan, where that Passat had been burnt out. Along a pathway adjacent to the burnt-out car a pair of black latex gloves were discovered. The gloves were connected to the defendant O'Brien by DNA.

[9] The path leading from the burnt-out car connected to Greenhill Park where CCTV was seized and revealed the defendants O'Brien and Martin running from the direction of the car and getting into a get-away car. This car was subsequently found to be owned by Martin and had been placed there earlier that day.

[10] The defendants were interviewed and neither explained how they came to be running from the burning car, wearing the same or very similar clothing – dark boiler suits and why or how they came to be at and set fire to the car.

[11] The court concluded beyond reasonable doubt that there was an overwhelming circumstantial case against the defendants that they were the gunmen who shot Mr McKeown, each armed with a gun and made their escape in the Passat which they burned out and then left the area in Martin's car.

[12] I am satisfied beyond reasonable doubt that O'Brien and Martin went together to Dewarts filling station armed with a revolver and pistol. I am satisfied both weapons were fired and that each defendant had an intention to kill Malcolm McKeown.

Victim impact

[13] I have read statements from Malcolm McKeown's sisters and brother. They have spoken in very personal terms about their deep sense of loss and the impact that his murder has had on their mental well-being. They also speak to the intense loss felt by Malcolm McKeown's children and his grand children who will never know him, and he will never see them grow up. They also speak of the continued fears, concerns and unease within their everyday lives which this murder has brought to them.

Relevant sentencing principles in tariff hearings

[14] The legal principles that the court should apply in fixing the minimum term are well settled.

[15] Article 5(2) of the 2001 Order provides that the minimum term:

> "… shall be such part as the court considers appropriate to satisfy the requirements of retribution and deterrence

> having regard to the seriousness of the offence, or of the combination of the offence and one or more offences associated with it."

[16] The guidance on sentencing tariffs for murder is now set out in the recent case of *R v Whitla* [2024] NICA 65 which involved the recalibration of the earlier guidance set out in *R v McCandless and others* [2004] NICA 1, which remains the principal authority on fixing the minimum term in Northern Ireland. The practice statement introduced by Woolf LJ and adopted by our Court of Appeal identified a higher and normal starting point of respectively 15/16 and 12 years. These starting points being capable of variation upwards or downwards by taking account of aggravating and mitigating factors relating to either the offence or the offender in any given case. Those factors are set out in paras [14] to [17]. Paras [18] and [19] then deal with particularly grave cases which would justify a term of 20 years and upwards.

[17] The court in *McCandless* emphasised that the process is not one of fixing each case into one of two rigidly defined categories in respect of which the length of the term is firmly fixed. The practice statement is intended as guidance and the starting points are points at which the sentencer may start on his journey towards the ultimate goal of deciding upon a fair and proportionate sentence.

[18] Of importance in *Whitla* the Lady Chief Justice stated at paras [41]-[43] as follows:

> "[41] We are cognisant that most murder cases in Northern Ireland will fall within what has previously been termed a higher starting point of 15/16 years which involves high culpability (subpara 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 subpara [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 sentencer's 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 that have come before our courts in the 20 years since

McCandless was penned. In summary, *McCandless* should now be read with the following revision:

(i) The normal starting point is 15/16 years. This is based on high culpability.

(ii) In exceptional cases of lower culpability, the starting point may reduce to 12 years.

(iii) In cases of exceptionally high culpability the starting point is 20 years."

[19] The aggravating factors which I identify are as follows:

(a) This was a planned assassination reminiscent of a terrorist ambush.

(b) There was destruction/concealment of evidence to evade detection. The burning out of the getaway car, the hiding of weapons, disposal of clothing and phones.

(c) The use of two easily concealed weapons capable of discharging bullets rapidly.

(d) Multiple wounds inflicted by two gunmen directed to vulnerable parts of the deceased's body – head and torso with an unequivocal intention to kill.

(e) The deceased was shot while unarmed and seated in his car with the door at least partially closed. He was therefore unable to run or seek cover. He was clearly shot when he was vulnerable.

(f) This shooting took place at the side of a busy filling station in broad daylight within metres of customers in the forecourt of the garage at petrol pumps and an ATM machine.

(g) The impact on the family of the deceased has been significant.

[20] The defendants were joint participants in this murder and as such the above aggravating feature are equally applicable to both.

[21] I have read and considered the PSR which summarises that O'Brien is a 31-year-old man with no children. He was 25 at the date of offending. He left school aged 16 and gained employment as a tyre fitter which he maintained until his arrest. He has a criminal record comprising of 50 previous convictions including those for road traffic offences, drugs, assault on police, criminal damage and possession of a firearm other than a handgun without a certificate, for which he was fined. Probation assessed him as a high likelihood of reoffending and he is assessed as

presenting as a significant risk of serious harm at this juncture. This is due to the nature and degree of violence in what was a preplanned murder. The fact he has a further similar charge pending and is awaiting trial. His propensity is to use firearms. His aggressiveness in domestic situations and his pattern is of escalating offending.

[22] In terms of mitigation I do not identify any mitigating features and none are put forward on his behalf.

[23] In relation to Martin he is 30 years of age and has been unemployed since 2017. On leaving school he joined the army. However, after about a year he was injured in an exercise and had to leave. He is single and has no health issues. Martin has convictions for driving offences, drugs, criminal damage, disorderly behaviour and common assault. Probation considers him to be a high risk of re-offending. However, surprisingly, do not consider him to be a significant risk of serious harm at this juncture.

[24] I do not identify any mitigating features in Mr Martin's case other than his plea to murder as an aider and abettor. However, he was unsuccessful in his Newton hearing and contested the firearms and ammunition offence.

[25] In the circumstances of the present case, I have no hesitation in concluding that the appropriate starting point is the higher starting point as provided for in *Whitla* of 20 years. I have listened carefully to the submissions of defence counsel arguing for a starting point of 15/16 years. However, I reject their arguments for the following reasons. The features of this being a planned assassination and the multiple wounds inflicted alone take this case into the category of exceptionally high culpability. I have identified a further number of aggravating features in this case as being present at para [19] above. I acknowledge that two of these have influenced my selection of the 20 year starting point ([a] and [d]) but have been anxious not to engage in 'double-counting.' By reason of the additional aggravating factors identified above I consider there should be an upwards variation from 20 years to 26 years' imprisonment. I have stood back and considered this sentence and consider it to be the proper and necessary sentence in all the circumstances.

[26] Accordingly, the tariff O'Brien will serve before consideration for release will be 26 years on count one.

[27] In the case of Martin his guilty plea to count one will be recognised by a reduction of two years. I note the guidance in *R v Turner* [2017] NICA suggests a reduction of one sixth for a plea entered on arraignment. However, in the present case the plea was not until the day of trial and was not accepted and the ensuing Newton hearing unsuccessful. Albeit the prosecution accept that some credit should be afforded to Martin on the basis that his plea was to some extent helpful. Accordingly, the tariff Martin will serve before consideration for release will be 24 years on count one.

Possession of firearms and ammunition with intent

[28] The defendants have been convicted of possession of two firearms with intent. This offence carries a maximum sentence of life imprisonment in its own right. The statutory provisions in respect of dangerousness apply in the circumstances of this case as provided for by the Criminal Justice (NI) Order 2008 ("the 2008 order").

[29] The leading authority on sentencing in firearms cases is that of *R v Avis and others* [1988] 1CR App 420 where the court posed four questions which the court should ask and answer in cases involving firearms these are as follows:

> "What sort of weapons are involved?
>
> The fact that the weapons in the present case were real firearms as opposed to imitation firearm. That they were loaded and fired as opposed to unloaded. They were easily concealed firearms which had no lawful use.
>
> What use has been made of the firearms?
>
> The firearms were used in a carefully planned ambush resulting in a brutal murder.
>
> With what intention (if any) did the defendants possess or use the firearms?
>
> A clear and unambiguous intention to kill. Bullets from both weapons struck the deceased."

[30] These features make this a serious case of its kind and in any event possession of firearms is categorised a serious offence under schedule 1 of the 2008 order.

[31] In these circumstances an assessment of dangerousness is necessary. Whether an offender presents a significant risk of serious harm requires a careful analysis of all the relevant facts in the case. This is as relevant in a case involving conviction for terrorist offences as in any other case. I bear in mind the observation of Morgan LCJ in *R v Wong* [2012] NICA 54 that:

> "… in cases involving firearms and explosives, even with a terrorist background, the court should be careful not to make the assumption that the offender is dangerous. The risks posed by those involved in such offences can vary enormously and each case will be heavily fact sensitive."

[32] The relevant statutory provisions dealing with dangerousness are set out in articles 13 to 15 of the Criminal Justice (Northern Ireland) Order 2008.

> "13.—(1) This Article applies where—
>
> (a) a person is convicted on indictment of a serious offence committed after [15th May 2008]; and
>
> (b) the court is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences.
>
> (2) If—
>
> (a) the offence is one in respect of which the offender would apart from this Article be liable to a life sentence, and
> (b) the court is of the opinion that the seriousness of the offence, or of the offence and one or more offences associated with it, is such as to justify the imposition of such a sentence,
>
> the court shall impose a life sentence.
>
> (3) If, in a case not falling within paragraph (2), the court considers that an extended custodial sentence would not be adequate for the purpose of protecting the public from serious harm occasioned by the commission by the offender of further specified offences, the court shall—
>
> (a) impose an indeterminate custodial sentence; and
>
> (b) specify a period of at least 2 years as the minimum period for the purposes of Article 18, being such period as the court considers appropriate to satisfy the requirements of retribution and deterrence having regard to the seriousness of the offence, or of the combination of the offence and one or more offences associated with it.
>
> (4) An indeterminate custodial sentence is—
>
> (a) where the offender is aged 21 or over, a sentence of imprisonment for an indeterminate period,

(b) where the offender is under the age of 21, a sentence of detention for an indeterminate period at such place and under such conditions as the Department of Justice may direct,

subject (in either case) to the provisions of this Part as to the release of prisoners and duration of licences…

14.—(1) This Article applies where—

(a) a person is convicted on indictment of a specified offence committed after 15 May 2008; and

(b) the court is of the opinion—

(i) that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences; and

(ii) where the specified offence is a serious offence, that the case is not one in which the court is required by Article 13 to impose a life sentence or an indeterminate custodial sentence.

(2) The court shall impose on the offender an extended custodial sentence.

(3) Where the offender is aged 21 or over, an extended custodial sentence is a sentence of imprisonment the term of which is equal to the aggregate of

(a) the appropriate custodial term; and

(b) a further period ("the extension period") for which the offender is to be subject to a licence and which is of such length as the court considers necessary for the purpose of protecting members of the public from serious harm occasioned by the commission by the offender of further specified offences …

(8) The extension period under paragraph (3)(b) or 5(b) shall not exceed –

(a) five years in the case of a specified violent offence

…

15.—(1) This Article applies where—

(a) a person has been convicted on indictment of a specified offence; and

(b) it falls to a court to assess under Article 13 or 14 whether there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further such offences.

(2) The court in making the assessment referred to in paragraph (1)(b)—

(a) shall take into account all such information as is available to it about the nature and circumstances of the offence;

(b) may take into account any information which is before it about any pattern of behaviour of which the offence forms part; and

(c) may take into account any information about the offender which is before it."

[33] The test for dangerousness under article 13(1) of the 2008 order is met where the offence is a serious offence and the court is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences.

[34] In making this assessment, in accordance with article 15, the court:

"(a) Shall take into account all such information as is available to it about the nature and circumstances of the offence;

(b) May take into account any information which is before it about any pattern of behaviour of which the offence forms part; and

(c) May take into account any information about the offender which is before it."

[35] In *R v EB* [2010] NICA 40 the Court of Appeal approved the approach of the English Court of Appeal in *R v Lang* [2005] EWCA Crim 2864 on how the assessment of the risk of serious harm should be made under these provisions. The Court of Appeal identified that:

> "(i) The risk identified must be significant. This was a higher threshold than mere possibility of occurrence and could be taken to mean "noteworthy, of considerable amount or importance".
>
> (ii) In assessing the risk of further offences being committed, the sentencer should take into account the nature and circumstances of the current offence; the offender's history of offending including not just the kind of offence but its circumstances and the sentence passed, details of which the prosecution must have available, and, whether the offending demonstrated any pattern; social and economic factors in relation to the offender including accommodation, employability, education, associates, relationships and drug or alcohol abuse; and the offender's thinking, attitude towards offending and supervision and emotional state. Information in relation to these matters would most readily, though not exclusively, come from antecedents and pre-sentence probation and medical reports. The sentencer would be guided, but not bound by, the assessment of risk in such reports …
>
> (iii) If the foreseen specified offence was serious, there would clearly be some cases, though not by any means all, in which there might be a significant risk of serious harm. For example, robbery was a serious offence. But it could be committed in a wide variety of ways, many of which did not give rise to a significant risk of serious harm ...
>
> (iv) If the foreseen specified offence was not serious, there would be comparatively few cases in which a risk of serious harm would properly be regarded as significant …"

[36] *R v Wong* [2012] NICA 54 is also instructive in relation to the approach to be taken when assessing dangerousness. Morgan LCJ at para [11] cited with approval the following passage from *R v Pedley and Others* (2009) EWCA Crim 840:

> "… we agree that within the concept of significant risk there is built in a degree of flexibility which enables a judge to conclude that a somewhat lower probability of particularly grave harm may be significant and conversely that a somewhat greater probability of less grave harm may not be."

[37] He went on to suggest at para [15] that matters likely to require consideration will usually include:

> "(i) the nature of the harm to which the offence was directed;
>
> (ii) the intention or foresight of the offender in relation to that offence;
>
> (iii) the stage at which the offending was detected;
>
> (iv) the sophistication and planning involved in the commission of the offence;
>
> (v) the extent to which the conduct of the offender demonstrates a significant role in the carrying out of the offence;
>
> (vi) the previous conduct of the offender;

The observations made in the terrorism case of *Wong* are equally apposite to the present offending, which was committed by an organised crime gang with origins and associations rooted in terrorism.

[38] In respect of O'Brien the court has the benefit of a pre-sentence report. Where probation is of the view the defendant is a significant risk of serious harm at this juncture. The reasons given for this was the nature and degree of the violence perpetrated by this defendant. He has further pending offences of a similar nature. He has come to the attention of police before in relation to a firearm. The level of fear firearms and imitation firearms instil in the public. Escalation in the defendant's offending and his disregard for external constraints put in place to manage this risk.

[39] Further, I am of the view that the harm directed towards Malcolm McKeown was a clear and unequivocal intention to kill him. The weapons used were lethal and used in a proficient manner. The planning in this case to carry out the shooting was detailed and extensive.

[40] In relation to Martin probation identified the following risk factors: the level of violence inflicted, the targeted nature of attack and its premeditation. The

offences were committed during daylight hours and in public with the use of two firearms in the attack. Also noted were the defendants lack of personal responsibility and that motivation for the attack not evident. It was assessed that the level of victim awareness was unknown. Added to that is the fact as a result of the defendant's actions Malcolm McKeown was shot six times, one of those shots being to the head at close quarters. However, Probation considered that the defendant's capacity for engaging in risk reduction work in custody, and absence of previous convictions for violent offending were such that he was not a significant risk of serious harm.

[41] I am of the view that as with O'Brien the harm directed towards Mr McKeown by the defendant Martin was extreme in nature, brutal in its execution as evidenced in a clear and unequivocal intention to kill. Access to and possession of lethal weapons used proficiently by an ex-military man are such that I conclude he is dangerous as defined by the 2008 Order

[42] Having considered all of the specific circumstances in this case I'm satisfied that the test for dangerousness as set out in *R v Lang* and *R v Wong* has been met and I find both defendants dangerous as defined by the 2008 Order.

[43] Having found the defendant dangerous the court is required to consider the following sentences, a life sentence, indeterminate sentence or extended sentence.

[44] Life sentences are reserved for a small category of cases that are so exceptional that they require the defendant to be imprisoned for the rest of his life see *Kehoe* [2008] CLR 728. I do not consider the possession of firearms case falls within the ambit of article 13(2) requiring the imposition of a life sentence.

[45] Turning now to article 13(3) I must consider whether an extended custodial sentence would not be adequate to protect the public from serious harm occasioned by the commission by the offender of further specified offences in this instance. In the event that it would not be adequate I must impose an indeterminate custodial sentence.

[46] Of particular importance when considering the imposition of an indeterminate custodial sentence is the case of *R v Pollins* [2014] NICA 62. Morgan LCJ in this case at paras [26] and [27] observed that:

> '… Apart from a discretionary life sentence an indeterminate custodial sentence is the most draconian sentence the court can impose. A discretionary life sentence is reserved for those cases where the seriousness of the offending is so exceptionally high that just punishment requires that the offender should be kept in prison for the rest of his life. It is not a borderline decision. … An indeterminate custodial sentence is

> primarily concerned with future risk and public protection. …
>
> [27] However, in a case in which a life sentence is not appropriate an indeterminate custodial sentence should not be imposed without full consideration of whether alternative and cumulative methods might provide the necessary public protection against the risk posed by the individual offender. In that sense it is a sentence of last resort. The issue of whether the necessary public protection can be achieved is clearly fact specific. That requires, therefore, a careful evaluation of the methods by which such protection can be achieved under the extended sentence regime."

[47] The question therefore is whether an indeterminate custodial sentence is the only way of dealing with the future risk presented by the defendants or whether an extended custodial sentence would be adequate for the purpose of protecting the public. I am not satisfied an extended custodial sentence would in these circumstances be adequate. Accordingly, I impose an indeterminate custodial sentence under article 3(3)(a) of the 2008 order. The minimum period for the purposes of article 18 I intend to impose is a period of 10 years on count two concurrent with the tariff imposed on count one. Again, this period of 10 years I have looked at in terms of totality and considering that is to be a concurrent sentence I am satisfied that it is just and proportionate to the circumstances of this case.

Conclusion

[48] Jack O'Brien, in respect of the offence of murder on count one I have already sentenced you to life imprisonment. I am fixing your tariff at 26 years. That is the period of time you must serve in custody before you are eligible to apply for release on life licence. For the offence of possession of firearms and ammunition on count 2, I sentence you to an indeterminate custodial sentence with a minimum term to satisfy the requirements of retribution and deterrence of 10 years which will run concurrently with your tariff of count one.

[49] Andrew Martin, in respect of the offence of murder on count one I have already sentenced you to life imprisonment. I am fixing your tariff at 24 years. That is the period of time you must serve in custody before you are eligible to apply for release on life licence. For the offence of possession of firearms and ammunition on count 2, I sentence you to an indeterminate custodial sentence with a minimum term to satisfy the requirements of retribution and deterrence of 10 years which will run concurrently with your tariff on count one.

[50] The appropriate offender levies apply.