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*Judgment: approved by the court for handing down (subject to editorial corrections)**

ICOS No:

Delivered: 14/04/2000

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

v

STEPHEN FULTON

GILLEN J

Stephen Fulton, you have pleaded guilty to the manslaughter of your wife Coriel Adel Fulton on 4 June 1999 when you shot her through the head in the bedroom of your house.

Your counsel has represented to me that you acted in circumstances where you had been provoked by your wife's determination to leave you and that at the time you committed this offence you were suffering from a reactive depressive adjustment disorder. It seems clear that shortly before this incident occurred, you had been in an army camp in England. I accept that unexpectedly your wife spoke to you on the telephone indicating that she was considering leaving Northern Ireland and residing in England. She also revealed in the course of that telephone conversation that she had met another male person with whom I believe you may have felt she was conducting a relationship. Clearly you thought that your marriage was now in dire straits. You returned home I accept with the intention of repairing the relationship if at all possible.

Upon your return I believe it became fairly clear to you that your wife was bent on ending your marriage forthwith. It appears that you became consumed with thoughts of your wife leaving you in the succeeding days. The unexpected nature of her declaration and your evident failure to dissuade her were clearly compelling factors in the tragedy that unfolded. It is clear from the depositions that you sought assistance from close friends and your pastoral adviser, but regretfully it proved to no avail.

On the morning of this offence, you contacted your wife's parents, your daughter and some friends again. Whether or not you really had any intention, as you have protested, of committing suicide I do not know. However, Dr Bownes, the consultant forensic psychiatrist who has examined you, describes how you "provided a convincing account of the onset during the days immediately prior to the incident of a range of symptoms of anxiety and depression consistent with the psychological effects of an acute life crisis, including low mood, tearfulness, subjective feelings of tension and agitation, a loss of interest in usual activities and pre-occupying thoughts and distressing and disturbing themes related to your domestic situation".

He goes on to conclude that whilst you were not suffering from any formal mental illness, your behaviour was consistent with the onset of a reactive depressive adjustment disorder and your capacity to tolerate and react appropriately to the events described would in all probability have been substantially impaired by a classifiable mental disorder. I accept what Dr Bownes has said. I believe that it is against this background that the final straw which precipitated your taking your wife's life occurred when she removed her wedding ring in the bedroom. I think that it may well have been at this moment when you decided to shoot her.

You have killed a comparatively young woman and for that the public interest requires that you be punished notwithstanding the medical report before me and the provocation under which you acted. As Lord Lane CJ stated in R v Taylor (1987) 9 Cr App R (S) 175 at 176:

"There are two objects in view which the sentencer must have in mind. First of all the necessity to ensure that the criminal expiates his offence. For that of course a term of imprisonment is almost always necessary. Secondly, although to some extent where there is provocation it may seem illogical, it has got to be a lesson to other people that if possible they should keep their tempers and not be provoked in such circumstances. Bearing those two matters in mind, the judge then has to determine what the least period is which will reflect those two matters."

This court, therefore, must make it clear that whatever the mitigating circumstances, a killing of this type will not be tolerated and those who allow themselves to be provoked in this way will suffer condign punishment. I must be mindful of the public dimension of criminal sentencing and the importance of maintaining public confidence in the sentencing system.

However, you have pleaded guilty and your counsel has eloquently and cogently urged on me a number of personal mitigationary matters. These are:

1. I am prepared to accept that your final action in shooting your wife was spontaneous and unpremeditated. I accept that your possession of the firearm may initially have been fuelled by consideration of your own suicide.
2. You have admitted responsibility for the offence now before the court albeit that you have pleaded guilty only after a jury has been sworn. Nevertheless I take into account that the lateness of your plea has doubtless been dictated by the presence of the murder charge which you were justified in contesting. Under the terms of Article 33 of the Criminal Justice (Northern Ireland) Order 1996, I wish to make it clear that as a result of taking into account your plea of guilty in these circumstances, I am imposing a less severe punishment on you than otherwise would have been the case.
3. Some measure of leniency will ordinarily be extended to offenders of previous good character, the more so if there is evidence of positive good character such

as solid employment record as opposed to a mere absence of previous convictions. Not only do you have a clear record but you have an exemplary work record and of service to your country. You have served in the army attaining the rank of staff sergeant after completing 24 years service. Thereafter you served part-time with the Ulster Defence Regiment and Royal Irish Rangers and full-time as an assistant greenkeeper at Killymoon Golf Club for 12 years. I have read a number of references on your behalf - they bear eloquent testimony to your good character.

4. I do accept that there was a measure of provocation in this case occasioned by your wife's threatened departure. I accept that the shock of this was fuelled by the unexpected nature of her intention.
5. I take into account the medical factors which have been outlined to me in Dr Bownes' report and to which I have adverted earlier in this judgment.
6. I am satisfied that you are genuinely remorseful for what you have done and that you had profound feelings for your deceased wife. The consequences of what you have done shall no doubt bear down on you for the rest of your life.

Finally, I have given consideration to Articles 19 and 20 of the Criminal Justice (Northern Ireland) Order 1996 which contains provisions governing the exercise of the court's discretion to impose a custodial sentence. I have obtained and considered a pre-sentence report before forming my opinion in this matter. In this case I have concluded that the offence was so serious that only a custodial sentence can be justified for the reasons I have already explained to you.

I have also considered the possibility of imposing a custody probation order under Article 24 of the Criminal Justice (Northern Ireland) Order 1996. In the pre-sentence report, Ms Devlin, the probation officer, recorded:

"The probation component of the sentence would offer support in his re-integration into the community on his release from custody. He would also seek to address the

issues in relation to the offence which includes his pronounced feelings of guilt and his sense of loss at the death of his wife. It would also support him in developing strategies 'managing negative mood states' as outlined by Dr Bownes. The probation order will also allow Mr Fulton's future behaviour in the community to be closely monitored according to this agency's minimum standards of practice."

Given the explosive nature of your outburst on this occasion, I consider that there is material which indicates that there will be a need to protect the public from harm by you and prevent the commission by you of further offences at the time of your release. I consider that you will co-operate with and benefit from probationary supervision at the end of your sentence. I note from the conclusion of Ms Devlin that you have consented to such a course being taken.

Accordingly, I consider that the appropriate custodial sentence under Article 20 of the Criminal Justice (Northern Ireland) Order 1996, is six years. The custodial period shall be less one year which I consider is an appropriate period for you to be under supervision of a probation officer. In short you shall serve five years in custody and thereafter one year under a probation order.

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