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Judgment: approved by the Court for handing down | *Delivered:* **15/10/07**
*(subject to editorial corrections)**

BELFAST CROWN COURT

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THE QUEEN

-v-

AARON WHITE

_____

GILLEN J

[1] Aaron White you have been convicted by this court of the attempted murder of Michael Liam Reid on 11 October 2003 contrary to Article 3(1) of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 and Common Law.

Facts of the case

[2] I have already set out the facts in extenso in my earlier judgment in this case. In short, in the early hours of the morning you and a number of other men went to a house where Michael Liam Reid had been visiting a friend. You had clearly ascertained his presence earlier in the morning and had indicated your intention to others in a nearby house that you were going to kill him because of his religion. In the company of others you returned to the house where he was. It is clear that you are a prime mover in a subsequent attack upon him which involved a ligature around his neck, beating and stabbing.

[3] Only by having the presence of mind to feign death did the victim manage to stem the attack upon him. Even then not content with having, as you believed to be the case, killed him, you decided that steps should be taken to cut up his body. You and others left the premises supposedly to obtain the means to effect this .Fortunately Liam Reid took the opportunity to escape the attention of the man left to guard him and fled the scene .

[4] Whilst you Aaron White were not the person who wielded the knife, you played a primary role in orchestrating the events within and without the house where the attack took place. I am satisfied that it was you who gave

the signal to your brother to commence the knife attack and who canvassed the possibility of cutting up the victim's body .The evidence of those who heard you before the assault commenced was a chilling description of someone bent on murder.

[5] Your brother has already pleaded guilty to this attempted murder and was sentenced to 16 years imprisonment by Coghlin J on 16 September 2005.

The Offence

[6] This was an extremely grave offence. The victim sustained multiple injuries that were inflicted in a context where declarations were made by his attackers that they intended to kill him. Mr Reid suffered not only physical injuries but also required psychiatric treatment. I have read the victim impact report of Dr O'Rawe the consultant psychiatrist. She found that Mr Reid is suffering from post traumatic stress disorder, that he has lost his job and has been unemployed since the attack, that he has had to sell his home and now lives outside the jurisdiction. In addition he avoids other people and suffers paranoia and embarrassment with his facial and body scarring resulting in him avoiding physical exercise. He has abused alcohol for the three year period since the attack . That has affected his physical wellbeing and added to his psychological problems. His lack of confidence has led him to develop a reclusive type existence. The social isolation in which he now finds himself serves to further compound his psychological symptoms of post traumatic stress disorder.

[7] You have shown a complete absence of remorse at any time since this event. You avoided detection for a lengthy period prior to your arrest. Thereafter although the evidence against you was overwhelming you contested the matter throughout albeit you did not give evidence. By doing so, you compelled this vulnerable and disturbed man to undergo the stressful ordeal of rehearsing in court the events of that night. As recently as September 2007 when discussing this offence with your probation officer you continued to minimise any culpability stating that you had no recollection of being in the vicinity when this offence occurred. This does not increase the condign punishment you should receive but it serves to remove the large measure of discount that would have been afforded to you had you pleaded guilty as Neill White did.

Aggravating features

[8] I consider that the following aggravating features are present in this case:

[9] First, this was to some degree a premeditated and in large measure a sustained, gratuitous , sadistic and unprovoked attack upon this defenceless

man with a knife, saucepan and a ligature in the form of a telephone cord . He was stabbed a large number of times in circumstances where he must inevitably have suffered great pain.

[10] Secondly the sole motivation for the attack was naked sectarianism. You made your intentions very clear both before and during the onslaught on your victim .You knew nothing of his identity, character or personality save that he was a Catholic. That was sufficient for you to form your murderous intent .

Mitigating factors

[11] I have listened carefully to what your counsel Mr Mateer QC, who appeared with Mr Rafferty , has said on your behalf. I have taken into account the following matters in mitigation :

[12] Your previous criminal record comprises mainly offences of dishonesty together with low level assaults and one more serious incident involving arson and a petrol bomb offence in 1989.This record does not reveal an historical pattern of propensity for violent offences of this nature.

[13] Mr Paul Wiseman, probation officer, who has prepared a pre-sentence report dated 24th September 2007pursuant to article 21 of The Criminal justice (NI)Order 1996(the 1996 Order), records:

> "The court will be aware that the defendant's criminal record does not suggest a pattern or propensity for violent offences of this nature. The defendant is therefore assessed as low risk regarding the likelihood of a further violent offence of this nature occurring in the future. Probation Board for Northern Ireland assessment tools deem the defendant as not posing a significant risk of dangerousness to the public. When returned to the community such an assessment would perhaps be required to recur particularly if the defendant returns to heroin use."

[14] You have, according to your own account , endured a troubled childhood which may have planted the seeds of your disposition to commit antisocial crimes. Subjected to abuse as a boy , later in life you became addicted to heroin. You assert that you have overcome that heroin addiction and established a family life in recent years .

Sentencing principles

[15] I have considered the risk of harm that you present to the public and whether it is necessary to impose a protective sentence on you and a period of life imprisonment .

[16] In R v Gallagher [2004] NICA 11 the Court of Appeal in Northern Ireland revisited the principles governing in the imposition of discretionary life sentences. The current principles to be adopted were set out by Kerr LCJ in paragraphs [21]-[24] as follows:

> **"[21]** In *R v Hodgson* [1967] 52 Cr App R 113 the Court of Appeal, dealing with the circumstances in which a discretionary life sentence might be imposed said: -
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> > 'When the following conditions are satisfied, a sentence of life imprisonment is in our opinion justified: (1) where the offence or offences are in themselves grave enough to require a very long sentence; (2) where it appears from the nature of the offences or from the defendant's history that he is a person of unstable character likely to commit such offences in the future; and (3) where if the offences are committed the consequences to others may be specially injurious, as in the case of sexual offences or crimes of violence.'
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> **[22]** These conditions were refined somewhat by the judgment in *Attorney-General's Reference No. 32 of 1996 (Whittaker)* [1997] 1 Cr App R (S) 261 where the court said: -
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> > 'In our judgment the learned judge was taking an unnecessarily narrow view of the circumstances in which a discretionary life sentence can be imposed. It appears to this Court that the conditions may be put under two heads. The first is that the offender should have been convicted of a very serious offence. If he (or she) has not, then there can be no question of

> imposing a life sentence. But the second condition is that there should be good grounds for believing that the offender may remain a serious danger to the public for a period which cannot be reliably estimated at the date of sentence.'

[23] The continuing relevance of the first condition came under scrutiny in the case of *R v Chapman* (2000) 1 Cr App R 77. In that case the Crown had suggested that a number of recently decided cases had cast doubt on the continued applicability of the first condition. The Court of Appeal dealt with that suggestion in the following passage: -

> 'In most of those cases there was no express departure from the criteria laid down in *Hodgson*, and certainly no doubt has to our knowledge ever been cast on the authority of that decision, which was very recently reaffirmed in *Attorney-General's Reference No. 32 of 1996 (Whittaker).* In *Attorney-General's Reference No. 34 of 1992 (Oxford), Hodgson* was indeed specifically relied on as laying down principles which were described as "not in dispute". It is in our judgment plain, as the Court has on occasion acknowledged, that there is an interrelationship between the gravity of the offence before the Court, the likelihood of further offending, and the gravity of further offending should such occur. The more likely it is that an offender will offend again, and the more grave such offending is likely to be if it does occur, the less emphasis the Court may lay on the gravity of the original offence. There is, however, in our judgment no ground for doubting the indispensability of the first condition laid down for imposition of an indeterminate life sentence in *Hodgson*, reaffirmed, as we say, in the more recent *Attorney-General's Reference No. 32 of*

> *1996 (Whittaker).* It moreover seems to this Court to be wrong in principle to water down that condition since a sentence of life imprisonment is now the most severe sentence that the Court can impose, and it is not in our judgment one which should ever be imposed unless the circumstances are such as to call for a severe sentence based on the offence which the offender has committed.'
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> **[24]** We agree with the reasoning of this passage. A discretionary life sentence should be reserved for those cases where an extremely grave offence has been committed. Of course it is true that the criminal record of the offender may affect the view to be taken of the seriousness of the offence since a repeat of earlier offending may indicate a more determined and settled criminal propensity and may cast doubt on any claim that the offence was spontaneous. But it would be wrong to impose a life sentence *solely* because it was considered that the offender is likely to re-offend on release from a determinate sentence for a less than serious offence. As Lord Bingham CJ pointed out in *Chapman,* a sentence of life imprisonment is the most condign punishment that a court may impose and it is therefore fitting that this should be reserved for the most serious type of offence and where it is likely that there will be further offending of a grave character."

[17] I consider that these principles should also be read in light of what Carswell LCJ said at page 7 in McDonald's case:

> "Lord Lane CJ observed in R v Wilkinson (1983) 5 Cr App R (S) 105-108 that with a few exceptions such sentences are reserved for offenders who for one reason or another cannot be dealt with under mental health legislation yet who are in a mental state which makes them dangerous to the life or limb of members of the public. Accordingly the court will look for medical evidence showing that the mental state of the offender is such as to create such a danger before it imposes a discretionary life sentence."

[18] I do not take this to mean that there may not be rare circumstances where for example the record of the accused and the facts of the offence indicate even in the absence of medical evidence, that the offender does present as a serious danger to the public for a period which cannot be reliably estimated at the date of sentence. Examples might include persistent paedophiles or an offender with a serious criminal record illustrating that he was a danger to women. (see commentary in the Criminal Law Review 1996 LR 917).

[19] The provisions of Article 20(2)(b) of the 1996 Order, dealing with the length of protective custodial sentences , are as follows :

> "(2) The custodial sentence shall be…..
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> (b) where the offence is a violent or sexual offence, for such longer term (not exceeding that maximum) as in the opinion of the court is necessary to protect the public from serious harm from the offender ."

[20] In R v McDonald (2001) NICA 52(McDonald) at page 6, Carswell LCJ said:

> "There are certain features common to both protective sentences and discretionary life sentences. The conditions which require to be met in relation to the former appear in Article 2(8) of the Criminal Justice (Northern Ireland) Order 1996:
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> > 'In this Order any reference, in relation to an offender convicted of a violent or sexual offence, to protecting the public from serious harm from him shall be construed as a reference to protecting members of the public from death or serious personal injury, whether they are physical or psychological, occasioned by further such offences committed by him.'
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> In respect of discretionary life sentences the third criterion led down in R v Hodgson was that the consequences to others may be specially injurious. It may be seen that in the reported cases in which appellate courts have upheld discretionary life sentences there was a danger to members of the public in general, not only to the particular victim."

Application of the principles to this offence

[21] I am satisfied that the first condition set out in Whittaker is met in this instance. This offence, with all the attendant aggravating factors, is extremely grave and of the type which calls for a severe and deterrent sentence .

[22] However I have come to the conclusion that the criteria for a protective sentence have not been fulfilled in that it is not necessary to protect the public from serious harm from you for longer than the commensurate determinate tariff for a crime of this gravity and a discretionary life sentence should not be invoked. The absence of medical evidence depicting you as a danger to the public and the presence of the comments by Mr Wiseman the probation officer have persuaded me that the element of danger to members of the public required for the imposition of a protective or life sentence has not been satisfied. Moreover there is no evidence that you suffer from any serious mental health problem, your criminal record is not such as to suggest otherwise and the availability of probation supervision under Article 26 of the 1996 Order are all factors in favour of a determinate sentence. I have determined therefore not to go beyond the term that I consider commensurate for this crime bearing in mind the need for deterrence and retribution

[23] The offence which you have committed stands out as one of the most viciously sectarian and unprovoked attacks that the court has had the misfortune to encounter in recent years. This community has now stepped back from the abyss and it is to be hoped that crimes such as this have now been consigned to the dark side of the past. It remains the duty of the courts to impose severe punishment for very grave crimes and to impose sentences which give effect to the requirements of retribution and deterrence. There is merit in the view expressed by Coghlin J in his sentencing remarks when dealing with your brother Neil White that the starting point for a sentence in respect of attempted murder with a sectarian motive, imposed after conviction, should normally be in excess of 20 years. In the absence of any specific guideline from the Court of Appeal(which neither counsel could draw to my attention)the approach of Coghlin J is of no more than persuasive authority and is not binding on me. Each case must depend on its own factual matrix and there may be cases where such a sentence might be inapposite. However in the context of the factors which I have found to exist in the instant case I am satisfied that such an approach is appropriate when dealing with you .

[24] Mr Mateer QC, urged me to ensure there that was parity of approach with the sentence imposed on the accused's brother Neill White. As counsel recognised however his sentence had clearly been discounted to reflect the

plea of guilty albeit not entered at the earliest stage to acquire maximum benefit. He sought to distinguish this case from the conventional contest in that this accused had not gone into the witness box to perjure himself but had put the prosecution on proof of their case .I consider that a substantial discount would always be generated in a case such as this where the victim in his vulnerable state was spared the ordeal of giving evidence. This far transcends any credit to be given to the accused for not giving evidence particularly in circumstances where the state of the evidence overall was such that he had little to gain by so doing . This accused has clearly forfeited the material discount that he would have been afforded had he pleaded guilty .

[25] Mr Mateer drew my attention to certain instances where the courts have imposed sentences of 20-25 years imprisonment for convictions of attempted murder of those performing public functions by terrorist organisations. It was his submission that offences such as the instant case, motivated by sectarianism, were to be considered in a less serious category. I reject that submission. All cases are fact sensitive and must be considered on their individual circumstances .However, in the context of Northern Ireland, few offences strike closer to the very fabric of our society than those fuelled by sectarianism particularly where the intent is to kill. I can conceive of no more reprehensible motivation and accordingly such crimes are characterised as being as serious as any to come before the courts.

[26] I have considered the provisions of Article 19(4)of the 1996 Order and I have concluded that this offence is so serious that only a custodial sentence is justified .I have also considered the possibility of imposing a custody/probation order under Article 24 of the 1996 Order .I have determined that such an order would be inappropriate in your case because there is no evidence before me that would indicate that you would obtain any benefit whatsoever from such an order. On the contrary Mr Wiseman has opined that it would be difficult to carry out probation supervision given your present approach to culpability

[27] In light of the aggravating factors in this case and in the absence of a material discount which would have been invoked had you pleaded guilty, I have decided that the sentence which is commensurate with your crime in this instance is one of 22 years .

[28] In Attorney-General's Reference (No. 52 of 2003) [2003] EWCA Crim 3731 Woolf LCJ said:

> "Prosecuting counsel appearing in cases where there were guideline cases should regard it as part of their duty, before sentence was imposed, to indicate to the judge that there were guideline cases and that they

> had copies available if the judge wished to look at them.
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> Prosecuting counsel sometimes feel diffident about taking such a course before an experienced judge because they felt that the judge might be offended. They should not be so inhibited. It was their duty to draw relevant guideline cases to the judge's attention and the judge must understand that.
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> Even experienced judges could be unfamiliar with guideline cases and in consequence impose inappropriate sentences. That did not help the administration of justice."

[29] In this case I am grateful to both counsel for their helpful submissions and skeleton arguments on the relevant guideline cases applicable in this instance.