

IN THE CROWN COURT IN NORTHERN IRELAND

BELFAST CROWN COURT

THE QUEEN

-v-

ANTHONY McMULLAN
and
JAMES OWEN BROPHY

His Honour Judge McFarland
11th October 2012

- [1] The defendants have pleaded guilty to various counts relating to their participation in a riot in the Tigers Bay/North Queen Street area in Belfast on the 11th and 12th July 2011.
- [2] Several community representatives have made statements in this case, and they describe being present at the scene in the hours approaching midnight on the 11th/12th July 2011. One, Gerard Magee, described a crowd of youths with an “intent .. to attack loyalists and wreck the place”. He added that “two were at the forefront and very clearly the ring-leaders”. Caral Ni Chuilin, described a crowd of a “lot of young children but also older teenagers gathering in the area”, with two males in particular encouraging the crowd towards confrontation. It is clear that the two defendants were those ring-leaders. Another community representative, Gerard O’Reilly became involved in an attempt to stop the crowd and calm the situation. This involved him remonstrating with McMullan and Brophy, but he was the subject of aggression, abuse and intimidation from both defendants, and particularly Brophy when he assaulted Gerard O’Reilly and threatened to burn his home. Later on the 21st July 2011 McMullan made a threat to Constable Stothers to burn the home of Gerard O’Reilly.

- [3] Sergeant Caskey was on duty during the early hours of the 12th July 2011 and he described a serious incident of public disorder, with petrol bombs and other missiles being thrown in the direction of police officers. A log prepared by the police of the specific conduct and role of each defendant shows that McMullan threw petrol bombs and used a catapult in addition to encouraging others to act in a similar fashion. Brophy is also seen throwing petrol bombs and other missiles at police.
- [4] No detail has been given as to the extent of injuries sustained by the police, or others, that evening or the cost to the public purse of providing police cover, damage to property and the clean-up operation. In the circumstances I assume that there were no serious injuries, but it is likely that the costs were significant, as was the unquantifiable disturbance to the community residing and working in the immediate vicinity of the incident.
- [5] Both defendants come before the court with significant criminal records. McMullan who is now 20, and was 18 ³/₄ at the time, has 43 convictions, including 7 assaults on police, 4 common assaults, 6 criminal damage offences, intimidation, as well as riotous and disorderly behaviour. In the early part of 2011 he had served a six month sentence, and on 15th June 2011 had received a 4 month sentence for assaults on police suspended for 2 years. He also received a Probation Order of one year on that date. Brophy's criminal record is not so long, but it does him little credit. He is 20, and was 19 at the time of the riot. He has 27 convictions, including assaulting police, common assault, criminal damage as well as riotous and disorderly behaviour. He had served a 3 month sentence earlier in 2011, and had been placed on Probation for one year on the 22nd June 2011.
- [6] Both defendants have been assessed in the reports from the Probation Board as not posing a significant risk of serious harm. I accept these assessments and therefore the sentence will be under the provisions of Article 8 of the Criminal Justice (NI) Order 2008.
- [7] My predecessor as Recorder of Belfast, His Honour Judge Burgess, in sentencing remarks earlier this year (**R-v- Heagney & others** (*unreported*)) reviewed the guidance in relation to offenders involved in riotous behaviour. The cases, like this one, involved riots in the Belfast area during the summer of 2011. Although mindful of the fact that the offence in Northern Ireland carries a maximum sentence of life imprisonment, Judge Burgess did refer, with approval, to the decision of the English Court of Appeal of **R -v- Najeib and others [2003] 2 Cr App R (S) 69**. That case set out a suggested range of sentences in the following terms -
- Ringleaders - at or near what is the English maximum of 10 years

- Active and persistent participants who throw petrol bombs or use a crossbow or drive a car at the police - 8 - 9 years
- Participants for several hours who throw missiles less dangerous than petrol bombs, but potentially more damaging than stones - 6 - 7 years
- Participants for a significant period who repeatedly throw bricks or stones - 5 years
- Participants to a lesser degree would attract sentences at a lower level.

These sentences would be after a contest.

[8] The aggravating factors are, and these apply to both defendants -

- The riot had the appearance of being pre-planned, with the motive of stirring up community tension in what is a very difficult time in the Northern Ireland calendar
- Both defendants were essentially ringleaders playing an active role in the riot. As they encouraged children and teenagers to join in, there is a very high degree of culpability.
- Both acted aggressively against Gerard O'Reilly a community worker doing his best to avoid trouble and working for the benefit of the local community. The attacks and abuse levelled against him represented an attack on the long-suffering community that he serves.
- Both have relevant criminal records and both were on probation at the time.

[9] The mitigating factors are as follows.

In the case of McMullan:

- He entered his plea at the first opportunity.
- He would appear to be remorseful. Remand in custody would appear to have provided him with a degree of stability and routine to his life which was clearly lacking in the past. He has thrived in this new environment, and has taken several positive steps with regard to education.
- He would appear to have had a very difficult upbringing associated with drug and alcohol abuse. He has a diagnosis of attention deficit hyperactivity disorder.
- He is 20 years of age.

In the case of Brophy:

- He also entered his plea to the main charges on arraignment, although there was some delay in his pleas of guilt to the other counts. The delay was not significant and largely covered the lesser counts. He will receive full credit.

- He has also shown a degree of remorse. He has progressed reasonably well under the Probation Order in place at the time of these offences, and appears to be engaging with support services.
- He is diagnosed as suffering from moderately severe Polysubstance Dependency Syndrome.
- He is 20 years of age.

[10] The aggravating factors put this case, in respect of both defendants, in the highest range of sentencing suggested by the case of **Najeeb**. Clearly this level of sentencing does involve a strong deterrent element. This is deliberate, as it puts down a clear marker to offenders and potential offenders that their conduct is completely abhorred and rejected by society. Those who indulge in this type of activity should expect to receive long sentences. Given the deterrent element in the sentence, the impact of personal mitigation will be limited. Full credit for the early pleas of guilt will however be given.

[11] The appropriate sentence, taking everything into account, after a contest would have been 8 years, which I will reduce by one third by virtue of the plea to 5 years and 4 months. As required by the legislation, I determine that each will serve a 2 years 8 months custodial term, and a licence term of 2 years 8 months. In McMullan's case I intend to put his suspended sentence into full operation to run consecutively. It was for a relevant offence, and it is in the interests of justice that it be activated. He will therefore serve a sentence of 4 months, but this will be under the Criminal Justice (NI) Order 1996. It will not be subject to the automatic reduction of at least 50%, although he may be entitled to remission. The Probation Reports make some suggestions for conditions to any Licence. All these suggestions would appear to be suitable. However, I feel that the Department of Justice will be in a better position to finalise conditions nearer the time of release, so I make no recommendations.

[12] Breaking down the sentence, in McMullan's case the determinate sentence under the 2008 Order of 2 years 8 months custodial term and 2 years 8 months licence term is for Counts 12, 13 and 14. There will be a lesser sentence of 6 months custodial term and 6 months licence term for Count 4. All sentences run concurrently, but consecutive to them will be the activated suspended sentence of 4 months for the three assaults on police and resisting police. This is a sentence under the 1996 Order. In Brophy's case the determinate sentence under the 2008 Order of 2 years 8 months custodial term and 2 years 8 months licence term is for Counts 12, 13 and 15. There will be lesser sentences of 6 months custodial term and 6 months licence term for Counts 9, and 10. All his sentences will run concurrently.