

IN THE CROWN COURT IN NORTHERN IRELAND

DOWNPATRICK CROWN COURT (SITTING AT BELFAST)

THE QUEEN

-v-

B

HART J

[1] The defendant is a 26 year old man who is before the court to be sentenced in relation to his plea of guilty to unlawfully and maliciously causing grievous bodily harm to George Johnston with intent to do him grievous bodily harm on 5 July 2007, contrary to Section 18 of the Offences Against the Person Act 1861. As it will be necessary to refer to offences committed by George Johnston against the defendant's sisters many years ago when they were children, in order to protect their identity nothing must be published which would identify them, and for that reason I shall refer to the defendant only as B.

[2] On 5 July 2007 George Johnston was drinking in a bar in Holywood, County Down, when he was approached by the defendant who spoke to him and ascertained his identity. The defendant then produced a knife and stabbed Mr Johnston repeatedly before he was restrained and disarmed by a number of those present. Several of the witnesses described how the defendant was heard to allege that Mr Johnston had abused his sisters.

[3] The police were called and the defendant arrested. Constable McConn described in his witness statement that when the defendant was asked was he okay he replied:

"I'm happy, I'm happy, I'll do time for that bastard. I got him, I fucking got him."

And then the defendant started singing:

“Yeah ha is the fucker dead yet? He’s a fucking child abuser, he got his comeuppance, he abused my sisters.”

On the journey he was heard to say out loud to himself “I got the fucker, I got the fucker”.

[4] The defendant was unfit to be interviewed at that time, but when he was questioned he said that he had been drinking heavily and consumed cannabis. He stated that he had not taken his medication for several days, and that he had started to brood on the sexual abuse of his two sisters by Mr Johnston, together with the physical abuse of himself, his brother and his mother.

“Well basically, I went out yesterday with my step-father and a friend for a few, few drinks. Went down em then I met my father at 4.00 o’clock in the Welders in, on the Newtownards Road em I then left my father at around sevenish and got a taxi home. Eh got home and there was no one there em, I sat down for about ten minutes and my mind basically just wandered. Basically I haven’t, I hadn’t actually taken my medication for the last 4-5 days so I was feeling a bit shaky and I wasn’t feeling myself and then, I, I started reminiscing basically what he use to do to my family. He sexually abused my two sisters. He physically abused my brother and myself and he used to always beat my mum up as well, so he did. Em, I then ordered a taxi, to Holywood and (inaudible) its very vivid (inaudible) you know I got into the bar and all the rest of it, its very, very vivid.”

[5] He said that he had drunk about ten pints, consumed cannabis, and then armed himself with a knife before he got a taxi to Holywood. When he was asked what the thoughts were that led him to arm himself with the knife he replied:

“I, I just felt he, he needed punished for what he done to, done to my family. He needed punished.”

When asked why he had done it at this time and not earlier he replied:

“Cause its been like a volcano, it’s been like a volcano just yesterday I’d so much drink in me, I haven’t been taking my tablets and eh I wasn’t mentally, mentally

right in my head like. I couldn't have meant to do, to do something like that know what I mean, nobody could be right in the head."

[6] At the beginning of his interview just after the passage quoted at [4] above he said:

"It's very vague em, but basically I was just so angry when I seen his face and (inaudible) I stabbed him, I'm not, I'm not proud of it, I'm very, very sorry for what I've done em, today, I can't believe what I've done, its totally out of character for me."

[7] The references to Mr Johnston having abused other members of the defendant's family relate to charges to which Mr Johnston pleaded guilty and was sentenced to three years imprisonment in 1993. None of the charges related to the defendant. In 1989 when those offences were committed the defendant was only seven. It is clear that the defendant had been brooding upon this for some time and was acting out of revenge when he carried out this violent and determined attack on Mr Johnston.

[8] The medical evidence is a little confused, as can be seen by comparing the location and number of wounds described by Dr Kirk in his statement of additional evidence with the analysis of the hospital records contained in the report by Dr Carson, a consultant forensic pathologist, prepared on behalf of the defendant. However these differences are of little importance, because what is clear is that the defendant stabbed Mr Johnston at least eleven times, although the wounds were randomly distributed, and in Dr Carson's words, "with none over what one might regard as a chosen target area with the intention of causing death". As Mr Adair QC for the prosecution accepted, it is this distribution of the wounds that led the prosecution to accept that, despite the defendant's remarks in the immediate aftermath of the attack to which reference has already been made, it was not possible to establish the specific intent to cause death required for the crime of attempted murder.

[9] Mr Adair QC informed the court that Mr Johnston did not wish to make a formal statement to the police, nor to cooperate to enable up to date evidence of the effect of his injuries to be placed before the court. However, Dr Carson had access to his medical notes, and he records that:

"At a review appointment on 31 October 2007 it was noted that Mr Johnston appeared to be managing well and that his injuries, probably meaning in particular the hand injuries, had little impact on his day-to-day activities."

I therefore approach the case on the basis that Mr Johnston has not suffered any permanent disability other than some inevitable scarring, which, to judge by the photographs taken of his injuries in hospital, is unlikely to be particularly significant.

[10] Two reports on the defendant have been prepared by Dr Graeme McDonald, a consultant psychiatrist. The first was prepared after an examination of the defendant on 20 August 2007. In that report Dr McDonald said:

“When I asked about remorse, [B] said that he felt sorry. On closer questioning he said he presently feels very ambivalent and that his sorrow relates more [to] the effect of the assault on himself and his family rather than the effect on the victim. He remains of the view that his victim had not, until July, suffered sufficiently for his actions against [B] and his sisters.”

[11] In his second report following an examination of the defendant on 6 May 2008 Dr McDonald said:

“On the occasion of the second examination there was certainly more evidence of remorse being genuinely held. [B] clearly expressed a view that he had no excuse or reason for doing as he did. He added that he had no wish ever to see the victim of the assault but told me that was because of his long held views about him.”

[12] Dr McDonald concluded that there was sufficient evidence to warrant a diagnosis of cannabis dependence. In addition there was evidence of harmful use of alcohol and acute intoxication due to alcohol, and he concluded “these substances abuses had led to him suffering episodes of depressive illness and of psychosis.” Having referred to the defendant’s account of the abuse suffered by his sisters and his brother, as well as his mother, and the sexual abuse he now alleges to which he was subjected by Mr Johnston, Dr McDonald concluded that the defendant had been sexually abused by Mr Johnston as a child. Dr McDonald also said:

“I believe that the emotional effects of childhood sexual abuse, the chronic adverse mood and thought effects of the cannabis and the acute intoxication with alcohol, combine to alter [B’s] mental state at the time of the alleged assault. I believe that in addition the

absence of antipsychotic medication added to his difficulties.

He had stopped the antipsychotic medication some five days before the alleged offence. A relapse of psychosis would not commonly occur for some weeks or months after discontinuation of antipsychotic medication. It would however be reasonable to believe that [B] quickly lost the protective effects of the Olanzapine in preventing harmful effects of drugs abuse."

[13] This confirms that the defendant acted out of revenge for the abuse to which he and his family had been subjected by Mr Johnston. One can readily appreciate that abuse of this type will give rise to acute and lasting feelings of resentment, but the defendant's actions many years later were also fuelled by a combination of alcohol, illicit substances, and his failing to take his medication. Mr Johnston has been punished by the courts, and any form of revenge must be strongly discouraged by the courts. This community has suffered greatly from people taking the law into their own hands, and such behaviour cannot be condoned.

[14] I have been referred to a number of sentencing authorities by Mr Adair QC and by Mr McKay QC for the defendant, and I do not consider it necessary to refer to these individually. I am satisfied that, as I pointed out in R v Wesley Smylie [2007] NICC 50, the appropriate range of sentence for cases of this nature is between three and eight years on a plea of guilty. In fixing the appropriate sentence I have to take into account both aggravating and mitigating factors. The aggravating factors are that the attack was pre-meditated and that there were several wounds because the defendant repeatedly stabbed Mr Johnston. There are a number of mitigating factors.

- (i) The defendant has a completely clear record.
- (ii) He immediately admitted the offence when he was questioned and although he pleaded not guilty to the count of attempted murder, he pleaded guilty to the count contrary to Section 18 of the Offences Against the Person Act 1861 as soon as it was added to the indictment, and he is therefore entitled to the maximum credit for his plea of guilty to this charge at the first opportunity.
- (iii) Despite what may have been an initial ambivalence on his part when Dr McDonald first saw him, I am satisfied that the defendant is now genuinely remorseful for his behaviour. As the author of the pre-sentence report puts it "He presents as being genuine and sincere in his remorse despite the history of the case."

(iv) He was undoubtedly subject to a degree of provocation in that he was abused by Mr Johnston in the past.

(v) Dr McDonald's report refers to the well-documented psychiatric problems from which the defendant has suffered in the past. These have to a considerable extent been created by, or at least accentuated by, his excessive drinking and consumption of illicit drugs.

[15] This is a case in which a custodial sentence is inevitable and as the sentence must exceed twelve months imprisonment I am required by statute to consider whether a custody probation order is appropriate. I am satisfied that such an order is appropriate in the present case, and that a period of probation supervision upon his release, and in particular his attending at a NICAS Relapse Prevention Programme, could do much to cement the abstinence from alcohol and drugs which he appears to have developed whilst in custody.

[16] Provided the defendant consents, I therefore propose to sentence him to three years imprisonment followed by one year's probation, subject to the following requirement:

"That he shall present himself in accordance with instructions given by the Probation Officer to participate for eight sessions on the Drug Treatment Programme at NICAS, and while there comply with the instructions given by, or under the authority of, the person in charge. He must also attend any further drug treatment as directed by the Probation Officer."

The sentence would otherwise have been one of four years imprisonment.