

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

Delivered: 21.01.2009

IN THE CROWN COURT IN NORTHERN IRELAND

THE QUEEN

-v-

CHRISTOPHER HUGH GERARD LORENZO KENNY

BILL NO. 08/076400

WEIR J

[1] Christopher Kenny, you have pleaded guilty to wounding Christopher Rice with intent to do him grievous bodily harm contrary to Section 18 of the Offences Against the Person Act 1861 and to making a threat to kill him contrary to Section 16 of the same Act. Your plea of not guilty to a charge of attempting to murder him has been accepted by the prosecution.

[2] On the evening of 1 February 2008 Mr Rice had been drinking in the house of a girl whom he knew at Albert Street, Belfast. Having consumed most of his carry out of 15 beers he left and went to the home of his girlfriend. While he was there you who lived nearby also called at that house and, following a disagreement between Mr Rice and his girlfriend, you left together and returned to the house at Albert Street for more drink. However, on the way, you called at your home where you collected a sheath knife and brought it with you. At Albert Street the drinking continued all night until supplies were exhausted and at about 10.00 am Mr Rice gave you and the girl his bank card with which you went to an off licence and obtained a litre of vodka together with another 15 beers. Thus fortified, the drinking again continued into the afternoon. It appears from what I was told by your counsel, Ms MacDermott QC, that you also took ecstasy and Mr Rice took cocaine.

[3] Towards the middle of the afternoon you appear to have begun to become unpleasant, no doubt due to the influence of the drugs and alcohol. The girls who were present say that you began making remarks about "cutting people up" and by late afternoon the householder had had enough of your behaviour and said that you would have to leave. You wanted Mr Rice

to leave with you but he declined and a row then broke out of which I am satisfied you were the instigator. In the course of the fight you stabbed Mr Rice repeatedly although none of the wounds was especially deep apart from one which punctured his left lung. You then made off but were soon apprehended in a nearby taxi office and were taken to hospital where you were kept in for 48 hours. You received sutures to a wound to your right eyebrow, presumably sustained by a blow from Mr Rice during the fight. There is no suggestion that during the fight Mr Rice possessed, much less used, any weapon.

[4] There seems to have been no sensible reason for your row with Mr Rice. He was and, I am told, remains a friend of yours and apparently bears you no ill-will for your actions. He also said as much to the police while they were investigating the attack. Ms MacDermott has told me that for some time prior to these events you had had something of an obsession with knives and had collected a number which your mother had very properly caused the police to seize. That your pre-occupation with them was not at an end by the time of this offence appears from the facts that you had gone home to collect this knife before going on with Mr Rice to Albert Street and that you began talking about stabbing unspecified people in the period leading up to your fight with Mr Rice. I have been considerably concerned by this aspect of your case.

[5] After you had been admitted to hospital and were there under police guard you began shouting threats to kill Mr Rice, specifically to "cut him into tiny pieces" but it appears that you were at that time considerably under the influence of illegal drugs and alcohol and may also have had therapeutic drugs administered in hospital. Certainly, after uttering these threats the policeman who was with you observed that you fell into a deep sleep. I therefore consider that there are mitigating circumstances surrounding the charge of making a threat to kill and Mr Murphy QC for the prosecution fairly accepted that, if that were the only charge, it would not require an immediate custodial sentence. I am however concerned that an ingredient of the threat was, again, the intended use of a knife.

[6] When this incident occurred you were just over 19 years, having been born on 28 January 1989. You are now almost 20. It is clear from the very comprehensive probation report that you had a difficult upbringing, your parents having separated when you were young and your father having some years thereafter lost contact with the family. You are clearly a person with academic potential because you were at the top of your class at secondary school until third year when you began using cannabis and, later, alcohol so that you ended school without having passed any public examinations. Thereafter you hung aimlessly about the streets abusing alcohol and drugs following the familiar and depressing pattern that seems all too prevalent among some young people at present. Undoubtedly a factor in your

behaviour has been that you were entitled to substantial state benefits totalling £480 per month giving you little or no financial incentive to look for or maintain employment but the money to buy drugs and alcohol and endless time to consume them. Any sporadic employment that you did have appears to have been of short duration. At the same time it is to your credit that you have no previous convictions.

[7] It is recorded in the probation report that you are now determined to sort out your life and to resume the education that you foolishly abandoned. I am told by Ms MacDermott that you would ultimately like a career in Civil Engineering and I have no doubt that, if you do as you say you intend, that ambition is well within your grasp. When you were arrested for this offence your mother would not support an application for bail as she felt unable to cope any longer with your unacceptable behaviour. As a result you remained in custody at Hydebank YOC between 3 February 2008 and August 2008. During that time you had the opportunity to reflect upon the mess that you have been making of your life and upon how your behaviour had impacted not only upon you but upon your mother and upon your friend Mr Rice. You have told the probation officer that you intend to begin by availing of whatever educational opportunities are available to you during your custodial sentence and to follow on with those after you are released into the community. I very much hope that you keep to that resolve as it has the potential to transform your life out of all recognition. The alternative of life as a hopeless street drunk is not an attractive prospect for you, your family or others with whom you will come into contact in future.

[8] I said that I have been concerned by your apparent obsession with collecting and, in this case, using knives. Indeed at one stage I considered whether this might be a case in which it would be necessary to add a further protective element to your commensurate sentence under Article 20 of the 1996 Order. However I have decided that such is not required on this occasion for the following reasons:

(1) The report of Dr Maria O'Kane, Consultant Adult Psychiatrist which was obtained at the direction of Treacy J before he would admit you to bail, provides a hopeful assessment of you and, in particular, expresses the conclusion that if you avoid alcohol, illicit substances and the carrying of offensive weapons you should not be a danger to the public.

(2) The probation officer, while correctly acknowledging that by committing these offences you have displayed a reckless propensity for violence, concludes that provided you stick to your resolve to give up drink and drugs and further your education and given that you have no previous convictions, your likelihood of further offending is in the lower category.

(3) While you have been on bail you have since 1 October 2008 been attending for counselling at the Lenadoon Community Counselling Service on a weekly basis and your counsellor, Ms McIvor, has reported that you have remained committed throughout to the work and openly engaged in the process, completing any work asked of you between sessions. This I regard as an earnest of your genuine intention to work at changing your life in those areas where significant change is needed.

(4) I have been impressed by your mother's determined efforts to help in the remedial process, firstly by refusing to assist you in obtaining bail until she felt you were ready and by helping you to access professional help when you were. You are very fortunate, as the probation officer indicates you now recognise, to have a mother who is still determined to help you despite all the worry and trouble that you have caused her during your teenage years. I hope that you will repay her constancy and commitment by giving her cause to become proud of you.

[9] The question therefore is what custodial term must I impose upon you, because anyone who commits a crime of this type using a knife is certain to receive such a sentence. Senior counsel for the prosecution and for the defence agreed, following helpful reviews of the authorities both at first instance and of the Court of Appeal, that where there is a plea of guilty the range of sentence is between 4½ or 4 years at its lowest and 10 years at its highest assuming full credit for a plea at the earliest opportunity. Both counsel also expressed the view that this case falls into the lower category by which they meant less than 7 years. I accept their analysis.

[10] I do not consider that this is a case in which you can receive full credit for an early plea. You did plead guilty on the first day of the trial but you could before then either have pleaded guilty to the second and third counts as you ultimately did or at least have indicated to the prosecution through your solicitors a willingness to do so provided your plea of not guilty to the count of attempted murder was accepted. However I shall not reflect any substantial reduction in the allowance on this occasion as I am sure you will have been acting on legal advice. It seems to me however that both branches of the profession would be well advised to give earlier and more active consideration to the likely outcome of cases so as to ensure that their clients do not fail to receive the maximum discount to which a timely and appropriate plea of guilty, or a clear indication of willingness in that regard, would entitle them.

[11] In the light of all the matters that I have discussed it seems to me that the least sentence that I could properly impose upon you on Count 2 would be one of 6 years.

[12] However, I intend to offer you the opportunity to have a custody/probation order made in your case. Such an order will require you to serve the immediate custodial sentence which I am satisfied is required and then, upon your release from custody, to be under the supervision of a probation officer for a further period.

[13] Before I ask you whether you do wish me to make a custody/probation order in your case I want to make it clear to you that a probation order is not an easy option. If you agree to accept such an order you will have to follow any directions that the probation officer may give you throughout the period of probation and attend any courses, counselling, treatment or appointments that may be arranged for you. If you fail to do so you will be in breach of the probation order and will be liable to be brought back before the court and punished accordingly. If you do not wish to accept a custody/probation order I shall sentence you to six years imprisonment on Count 2. If you do wish to accept custody/probation the sentence on Count 2 will be one of four years detention in the YOC followed by two years probation supervision to commence upon your release from prison with an added condition that you attend for all such counselling and treatment as your supervising probation officer may direct.

[14] Do you agree to the making of a custody/probation order? Very well as you do agree I sentence you on Count 2 to four years detention in the Young Offenders Centre together with two years probation subject to the additional condition I have earlier mentioned.

[15] With regard to the third count, making threats to kill, I sentence you to one year's detention in the YOC concurrently with the sentence of four years detention on Count 2 so that the total effective period of detention will be one of four years.