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IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

v

CHRISTOPHER ROBINSON

Mr Arthur Harvey QC, Mr Neil Fox (instructed by O'Muirigh Solicitors) for the Appellant
Mr David McDowell QC, Mr Samuel Magee QC, Ms Lauren Cheshire (instructed by the Public Prosecution Service) for the Prosecution

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Before: Keegan LCJ, Treacy LJ and O'Hara J

KEEGAN LCJ (*delivering the judgment of the court*)

Introduction

[1] This appeal against sentence is brought by the appellant who was convicted of murdering Adrian Ismay and of causing an explosion with intent to endanger life. These offences arose from the death of Mr Ismay after an explosive device was attached to his car parked outside his home on 4 March 2016. Mr Ismay worked as a Senior Prison Officer in the Training Branch of the Northern Ireland Prison Service at the time of his death. He died 11 days after the explosion on 15 March 2016.

[2] The appellant was charged on the basis of joint enterprise in that it was alleged that he provided intentional assistance and was knowingly involved in a plan to plant an improvised device under Adrian Ismay's vehicle in the early hours of 4 March 2016 with the intention of killing or seriously injuring him.

[3] This court has previously dismissed an appeal against conviction for the reasons contained in the judgment reported at [2021] NICA 65. In that judgment we refer to the appellant's role in events on the night in question but also in the planning stage. In relation to the latter aspect we noted that the appellant repeatedly checked out Mr Ismay's online profile and went so far as to check up on the opening

times of a large supermarket located at the opposite end of Hillsborough Drive where Mr Ismay lived. Also, on 1 and 2 March 2016, a couple of days before the device was planted, the appellant searched websites for magnetic qualities of aluminium, electromagnetism and materials for use in electrical components. We also noted the appellant's "intense and enduring interest in the internet news coverage of the attack".

[4] In our previous judgment dismissing the conviction appeal we summarised the appellant's role as follows:

> "[70] In truth, the numerous strands collectively point to only one conclusion in this case. In our view the learned trial judge was correct to conclude that the evidence establishes beyond a reasonable doubt that the appellant was intimately and inextricably involved in the facilitation and execution of a terrorist operation which involved the attachment of a viable improvised device to the underside of Mr Ismay's vehicle with the intention of causing the death of Mr Ismay or causing him really serious injury. Having assessed the evidence as a whole the learned trial judge was entitled to make the inferences that he did. Accordingly, the elements of the offences of which the appellant was convicted namely murder and causing an explosion with intent to endanger life were established."

[5] The appellant was sentenced by McAlinden J ("the trial judge") to a mandatory life sentence with the minimum term to serve before release fixed at 22 years under Article 5 of the Life Sentences (NI) Order 2001. We are now concerned with an application to appeal the minimum tariff of 22 years' imprisonment.

[6] This appeal was brought outside the 28 day time limit imposed by section 5(8) of the Justice and Security Act 2007. This court therefore has to consider whether to extend time to appeal in accordance with principles set out in *R v Brownlee* [2015] NICA 39. In this case the full court has heard the application as it is tied up with a consideration of the merits of any appeal. To determine this application we have heard full arguments on the appeal points raised as "even where there has been considerable delay or a defendant had initially taken the decision not to appeal, an extension of time could well be granted where the merits of the appeal were such that it would probably succeed". Per paragraph [8](vi) of *R v Brownlee.*

Legal Principles

[7] *R v McCandless* [2004] NICA 1 is the leading authority in this jurisdiction. In that case the Court of Appeal set out the principles applicable in establishing the categories of sentence for cases of murder in this jurisdiction. This case approved

use of the Practice Statement issued by Lord Woolf CJ reported at [2002] 3 All ER 413 as applicable to Northern Ireland. Carswell LCJ emphasised in *R v McCandless* that the Practice Statement was intended to be guidance only and the starting points were intended as aids in finding the right and appropriate sentence for the particular case. In *R v Brown* [2011] NICA 70 Morgan LCJ at paragraph [8] reiterated the point when he said in relation to the Practice Direction:

> "These factors, are not, of course, intended to be comprehensive. They are intended to assist sentencers in assessing the culpability of the offender and the degree of harm caused by the offence. They are not to be applied mechanically or to be interpreted strictly as if they were a statute."

[8] All of the parties in this case accepted that guidance on the appropriate tariff in murder cases in this jurisdiction was contained in *R v McCandless* and none of the parties submitted that any modification to that guidance was necessary in this case. It was accepted that this was a "higher starting point" case attracting a starting point as explained at paragraph 12 of the Practice Statement:

> "12. The higher starting point will apply to cases where the offender's culpability was exceptionally high or the victim was in a particularly vulnerable position. Such cases will be characterised by a feature which makes the crime especially serious, such as: (a) the killing was "professional" or a contract killing; (b) the killing was politically motivated; (c) the killing was done for gain (in the course of a burglary, robbery etc.); (d) the killing was intended to defeat the ends of justice (as in the killing of a witness or potential witness); (e) the victim was providing a public service; (f) the victim was a child or was otherwise vulnerable; (g) the killing was racially aggravated; (h) the victim was deliberately targeted because of his or her religion or sexual orientation; (i) there was evidence of sadism, gratuitous violence or sexual maltreatment, humiliation or degradation of the victim before the killing; (j) extensive and/or multiple injuries were inflicted on the victim before death; (k) the offender committed multiple murders."

[9] Variation of the starting point up or down is the next step, explained in the following paras:

> "13. Whichever starting point is selected in a particular case, it may be appropriate for the trial judge to vary the starting point upwards or downwards, to take account of

aggravating or mitigating factors, which relate to either the offence or the offender, in the particular case.

14. Aggravating factors relating to the offence can include: (a) the fact that the killing was planned; (b) the use of a firearm; (c) arming with a weapon in advance; (d) concealment of the body, destruction of the crime scene and/or dismemberment of the body; (e) particularly in domestic violence cases, the fact that the murder was the culmination of cruel and violent behaviour by the offender over a period of time.

15. Aggravating factors relating to the offender will include the offender's previous record and failures to respond to previous sentences, to the extent that this is relevant to culpability rather than to risk."

[10] Mitigation is then referred to as follows:

"16. Mitigating factors relating to the offence will include: (a) an intention to cause grievous bodily harm, rather than to kill; (b) spontaneity and lack of pre-meditation.

17. Mitigating factors relating to the offender may include: (a) the offender's age; (b) clear evidence of remorse or contrition; (c) a timely plea of guilty."

[11] Finally, under the heading "very serious cases" the following is found:

"18. A substantial upward adjustment may be appropriate in the most serious cases, for example, those involving a substantial number of murders, or if there are several factors identified as attracting the higher starting point present. In suitable cases, the result might even be a minimum term of 30 years (equivalent to 60 years) which would offer little or no hope of the offender's eventual release. In cases of exceptional gravity, the judge, rather than setting a whole life minimum term, can state that there is no minimum period which could properly be set in that particular case.

19. Among the categories of case referred to in para 12, some offences may be especially grave. These include cases in which the victim was performing his duties as a prison officer at the time of the crime or the offence was a

> terrorist or sexual or sadistic murder or involved a young child. In such a case, a term of 20 years and upwards could be appropriate."

[12] Utilisation of the guidance has remained the consistent approach in this jurisdiction: see *Attorney General's Reference Number 6 of 2004 (Doyle)* [2004] NICA 33, *R v Hamilton* [2008] NICA 27, *R v Wootton and McConville* [2014] NICA 69 and *R v Ward* [2019] NICA 18. The trial judge also made reference to it and applied it to the particular facts of this case which was the correct approach.

[13] The elements of this offence that we have referred to above were uncontentious and clearly render this a case of high culpability and high harm. The trial judge also made a finding that the appellant who was charged on the basis of joint enterprise was integral to the planning and execution of the crime.

[14] It is readily apparent that this case is within the very serious category given its ingredients in particular the planned nature of the offending and the politically motivated nature of the crime as it was directed against a serving prison officer. In addition, in terms of execution of the crime, the use of an explosive device is clearly a highly aggravating factor. The harm caused by this crime is also high. The death of a serving prison officer has a particularly chilling effect upon our society. The profound personal effects are also clear from the victim impact statements from Mr Ismay's family which reflect the great loss they have suffered and the effect of his death upon them.

[15] The authorities we have mentioned all turn on their particular facts however two principles emerge which we highlight once again in this court. First, for terrorist crimes involving serving police or prison officers, significant sentences of upwards of 20 years can be expected. *R v Wootton and McConville* makes clear that a minimum term of in or about 25 years was appropriate for one of the accused in a terrorist murder of a police officer who was subject to a suspended sentence at the date of the offence.

[16] Second, personal mitigation is likely to be of limited, if any value, in a case of this nature. When dealing with personal mitigation in *R v Ward* the Court of Appeal said at paragraph [23] that in a case where a defendant plays "an important and integral role in planning and carrying out the terrorists' operation" and where he has been involved in the targeting of the victim, the existence of a mental disorder of itself does not afford significant mitigation. In *R v Doyle* at paragraph [37] Kerr LCJ also said that "the offender's youth and the absence of any significant criminal convictions, his good working record and his excellent family background, are all matters to be borne in mind but, as this court has frequently observed, the personal circumstances of an offender will not normally rank high in terms of mitigation, particularly where the offence is as serious as that in the present case."

Consideration

[17] Following from the above summary of the sentencing principles applicable to murder, there can be no doubt that this is a case which falls properly in the higher range category of 15/16 years' starting point. In addition, given that a prison officer was killed after being targeted by an explosive device this is also a case where a sentence of 20 years and upwards would be appropriate.

[18] The only reason proffered by Mr Harvey why the court would not impose such a lengthy sentence centres upon the appellant's personal circumstances as set out in three reports from Dr Loughrey, Consultant Psychiatrist.

[19] The trial judge considered these reports. At paragraph [20] of his judgment in *R v Robinson* [2020] NICC 16 he sets out the psychiatric background of the appellant established in the reports of Dr Loughrey provided to the court. It is apparent that the trial judge accepted that the reports did provide significant information as to the psychological complexities, deficits and vulnerabilities of the appellant that left him vulnerable to exploitation.

[20] In fact the trial judge made some allowance for these particular circumstances and explained this in the following core paragraphs of his ruling:

> "[20] I have carefully considered the contents of the medical report provided by Dr Loughrey, Consultant Psychiatrist, dated 4 September 2020 and I note that Dr Loughrey offers a diagnosis of complex post-traumatic stress disorder resulting from childhood sexual abuse and other later trauma and stressors with a concomitant history of alcohol abuse and cannabis misuse. Whether this report gives rise to a matter of mitigation will be addressed below but in the present context, there is one respect in which the report from Dr Loughrey comes to the aid of the defendant and that is how it subtly and indirectly offers an explanation as to how and why a person with the complexities, deficits and vulnerabilities exhibited by the defendant could and would allow himself to be used by other sinister individuals and become intimately involved in the murder of Mr Ismay.
>
> [21] This issue did not form part of Mr Harvey's plea because the defendant does not see himself in this almost pathetic light but it is clear that others who are not before the court and who presently remain at large, no doubt continuing to pursue their terrorist aims, made use of the defendant with all his complexities, vulnerabilities and deficits to further those terrorist aims. The term of

> imprisonment referred to in paragraph [22] below fairly takes account of this issue and without this issue being brought to the attention of the court, the extent of the upward adjustment for aggravating features in this case would have been somewhat greater.
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> [22] Having full regard to all the matters set out above, I am convinced that the higher starting point in this case must be increased to meet the gravity of the crime and the culpability of the defendant and that an uplift to beyond 20 years is required and that prior to taking into account any matters than can legitimately be considered as having a mitigating impact on the issue of culpability, the appropriate minimum term would be 22 years. I now propose to deal with the issue of mitigation.
>
> [23] Put bluntly, there is really nothing by way of personal mitigation in this case that would give rise to a need to factor in a reduction from the figure set out in the previous paragraph. The defendant expresses not one scintilla of remorse or regret for his actions. He continues to deny any involvement in the killing of Mr Ismay. In any event, personal mitigation is of little importance in offences of this nature. See, in particular *R v Cunningham and Devenney* [1989] NI 350 per Hutton LCJ at pages 5 and 7 and *Attorney General's Reference (No 6 of 2004) (Conor Gerard Doyle)* [2004] NICA 33 per Kerr LCJ at paragraph [37]. As already referred to, the medical report provided by Dr Loughrey, Consultant Psychiatrist, dated 4 September 2020 offers diagnosis of complex post-traumatic stress disorder resulting from childhood sexual abuse and other later trauma and stressors; but this diagnosis and the symptomology described in detail in the report, coupled with a previous history of alcohol abuse and cannabis misuse in no way goes to explain or offer any excuse for his actions."

[21] The sole appeal point raised was whether the trial judge was wrong to conclude at paragraph [23] that there was nothing by way of personal mitigation in the case that could give rise to a need to factor in a reduction in the sentence of 22 years. Therefore, Mr Harvey maintained that in the specific circumstances of this case the court ought to take into consideration by way of mitigation the following factors:

(i) The severe, enduring, distressing and debilitating mental health problems suffered by the appellant over a long number of years were such as to limit

his capacity for rational control and heightened his impulsivity. He has required long term drug therapy and suffers from long standing PTSD.

(ii) His isolation and multiple psychiatric deficits made him vulnerable to exploitation.

(iii) Treatment for his complex and chronic psychological condition is not available in prison.

(iv) That, in spite of the role he played in this case and his significant psychiatric illness he demonstrated over a long number of years his commitment to assisting others to protect and preserve life in a broad and varied spectrum of circumstances. He held numerous qualifications in the provision of advanced first aid and provision of life support, attended a course on Coronary Heart Disease, was a First Responder at the 2012 London Olympics, was awarded a Special Service Certificate for giving over 500 hours of voluntary service in a year, was a member of the Mountain Rescue Service, voluntarily organised and provided first aid at numerous public events, and in February 2016 assisted in organising support, including the purchase of personal alarms at his own expense, for the elderly community in the Divis Street area of the Falls Road which had been subject to attack.

[22] We accept that the appellant experienced a fractured life and continues to experience some difficulties. However, he was also intimately involved in the execution and pre-planning of this callous murder. Therefore, any personal mitigation which flows from Dr Loughrey's reports is limited. We understand that the appellant has some vulnerabilities and may benefit from specialist treatment for his various conditions however these are not sufficient reasons for reducing the tariff. The appellant will no doubt receive some assistance in prison for his difficulties and should avail of that.

[23] In addition we cannot accept the argument that because the appellant may have undertaken some good deeds during his life that his criminal culpability for this terrible crime should be reduced. That is particularly so given his lack of remorse or regret for his actions.

[24] The trial judge took into account the entire context of this case and decided upon the minimum term on that basis. We cannot fault that approach. In particular we note his comments at paragraph [21] that the upward adjustment for aggravating features could have been somewhat greater. We agree with that assessment in the light of the cases we have mentioned which have upheld sentences between 20-25 years in this area. Accordingly, we do not intend to interfere with the approach taken by the trial judge primarily because the final sentence was arrived at after careful consideration of all of the facts and with the benefit of his extensive knowledge of the case gleaned during a lengthy trial.

[25] The sentence is a life sentence as Mr Harvey stressed however some minimum term must be set to reflect the circumstances of each case. We have considered the role played by the appellant in this crime and his personal circumstances as the trial judge did. Overall, we consider that the minimum term of 22 years reflects the especially serious nature of this terrorist offence against a prison officer.

[26] In line with previous Court of Appeal authority we have mentioned this court reiterates the position that in this jurisdiction such lengthy sentences should be applied to offences of this nature not least to mark our society's abhorrence of such terrorist crimes. We repeat the fact that personal mitigation has a minimal role to play for offenders who chose to act in this way.

Conclusion

[27] In all of the circumstances we see no merit in this appeal. Accordingly, we decline to extend time for appeal. The application is dismissed.