

IN THE CROWN COURT IN NORTHERN IRELAND
THE CROWN COURT SITTING AT LAGANSIDE COURTS, BELFAST

THE QUEEN

-v-

DAVID ROBERT BOYD

SENTENCING REMARKS

COLTON J

[1] The defendant was charged with the murder of Richard Gerard Scullion on 10 July 2018.

[2] He was arraigned on 24 May 2019 and pleaded not guilty. A trial date was fixed for 23 September 2019. He was re-arraigned on 6 September 2019 and entered a plea of guilty.

[3] Having pleaded guilty, the court accordingly imposed upon the defendant the only sentence permitted by law for that offence, one of life imprisonment. It is now the responsibility of the court in accordance with Article 5 of the Life Sentences (Northern Ireland) Order 2001 to determine the length of the minimum term that the defendant is required to serve in prison before he will first become eligible to have his case referred to the Parole Commissioners for consideration by them as to whether, and if so, when he is to be released on licence. I make it clear however that if and when he is released on licence he will, for the remainder of his life, be liable to be recalled to prison if at any time he does not comply with the terms of that licence.

Factual Background

[4] The deceased, Richard Gerard Scullion, was a 55 year old man who lived alone at 22 Millmount Court, Banbridge. The defendant called with the deceased at

his home on the afternoon of Friday 6 July 2018. They had known each other for approximately 2 years and they passed the afternoon and early evening consuming alcohol whilst watching television and listening to music.

[5] According to the defendant's account during his police interviews, the mood changed after a male had called at the house and the deceased accused him (the defendant) of "bringing trouble to his door". The deceased left the living-room and entered the kitchen followed by the defendant. The defendant asserts that the deceased turned around with clenched fists and that he reacted to the perceived threat by lifting a frying pan which he used to strike the deceased on the head.

[6] According to the defendant the blow with the frying pan caused the deceased to fall, face down on the kitchen floor. Whilst on the ground the deceased was punched and kicked by the defendant. The deceased moved and said "I've had enough" at which point the defendant knelt on his back and grabbed a knife from the draining board and stabbed the deceased in the back.

[7] The body of the deceased was discovered by a friend on the afternoon of Monday 9 July 2018. Police attended at the scene and found the deceased lying face down in a pool of dried blood in the kitchen.

[8] Inquiries quickly led police to the defendant who was arrested and interviewed. He initially stated that he had gone to the home of the deceased for a few drinks, returning home before 10.00 pm on the Friday night. In subsequent interviews he admitted killing the deceased and disposing of the murder weapon (19.5 cm long black handled kitchen knife) and his shirt and shoes in an area adjacent to the River Bann (his wallet was also found at this location) before returning home, shirtless and shoeless, to his partner at around 10.30 pm.

[9] An autopsy was performed by Professor Jack Crane, consultant pathologist and a post mortem report was prepared. Professor Crane found that the deceased had sustained extensive bruising of the face and a laceration over the left eye due to multiple blows to the head, possibly by punching. There was also a fairly long (though superficial) incision across the front of the neck which was likely to have been caused by a knife being drawn across the skin. There was a stab wound to the left front lower chest which incised the seventh left side rib and entered the chest cavity but not the lung itself. There were four further stab wounds noted, three of which were sustained when the deceased was still alive. One of these wounds penetrated the wall of the aorta (the principal artery of the body) and all would have caused considerable bleeding into the left chest cavity which was the main cause of death. Professor Crane also noted a number of rib fractures consistent with the defendant having stamped or knelt on the chest of the deceased whilst he was lying on the floor.

[10] It was noted that the deceased was quite heavily intoxicated by the time of his death with a blood reading of 186 mg per 100 ml.

The relevant legal principles

[11] As indicated earlier, the task for the court is to fix the minimum term the defendant must serve before the Parole Commissioners will consider whether it is safe to release him on licence.

[12] Article 5(2) of the Life Sentences (Northern Ireland) Order 2001 provides that the minimum term:

“... shall be such part as the court considers appropriate to satisfy the requirements of retribution and deterrence having regard to the seriousness of the offence, or of the combination of the offence and one or more offences associated with it.”

[13] The legal principles that the court should apply in fixing the minimum term are well settled.

[14] In **R v McCandless & Ors** [2004] NICA 1 the Court of Appeal held that the Practice Statement issued by Lord Woolf CJ and reported at [2002] 3 All ER 412 should be applied by sentencers in this jurisdiction who are required to fix tariffs under the 2001 Order. The relevant parts of the Practice Statement for the purposes of this case are as follows:-

“The normal starting point of 12 years ...

10. *Cases falling within this starting point will normally involve the killing of an adult victim, arising from a quarrel or loss of temper between two people known to each other. It will not have the characteristics referred to in paragraph 12. Exceptionally, the starting point may be reduced because of the sort of circumstances described in the next paragraph.*
11. *The normal starting point can be reduced because the murder is one where the offender's culpability is significantly reduced, for example, because:*
 - (a) *the case came close to the borderline between murder and manslaughter; or*
 - (b) *the offender suffered from mental disorder, or from a mental disability which lowered the degree of his criminal responsibility for the killing, although not affording a defence of diminished responsibility; or*

- (c) *the offender was provoked (in a non-technical sense) such as by prolonged and eventually unsupportable stress; or*
- (d) *the case involved an overreaction in self-defence; or*
- (e) *the offence was a mercy killing.*

These factors could justify a reduction to 8/9 years (equivalent to 16/18 years).

The higher starting point of 15/16 years

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 a 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) *that extensive and/or multiple injuries were inflicted on the victim before death;*
- (k) *the offender committed multiple murders.*

Variation of the starting points

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 features 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 combination 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.*

16. *Mitigating factors relating to the offence will include –*

- (a) an intention to cause grievous bodily harm, rather than to kill; or*
- (b) spontaneity and lack of premeditation.*

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."*

[15] In considering the appropriate tariff I should impose I am grateful for the helpful written and oral submissions I have received from counsel in this case.

[16] Mr Neil Connor QC led Ms Fiona O'Kane on behalf of the prosecution. Mr Patrick Lyttle QC appeared with Mr Jonathan Browne on behalf of the defendant. Mr Connor presented the case on behalf of the prosecution comprehensively and fairly. Mr Lyttle entered an able plea on behalf of the defendant whilst demonstrating sensitivity to the plight of the deceased's friends and relatives.

[17] Before determining the appropriate tariff it is essential that I highlight what the court has been told about Gerard Scullion. In particular the court has received a moving testimonial from Gerard's mother, Margaret Scullion dated 25 February 2019. Whilst she acknowledges the difficulties her son encountered and his efforts to overcome them what emerges is a generous, friendly and popular man. He was clearly loved by his mother, his sisters and all of their families. He kept in contact with the next generation, in particular his son Gerard, the daughter of his step-

daughter and his many nephews and nieces. Many of his neighbours and friends have expressed their sympathies to the Scullion family.

[18] It is clear that Gerard was a man of great compassion and kindness towards others, particularly the homeless. Indeed tragically it was this feature of his personality which endeared him to the defendant Mr Boyd and was the basis for their friendship. All needless and senseless losses of life are tragic. Gerard's death was particularly tragic as it was caused by someone he befriended and helped, something the defendant himself acknowledges.

[19] I recognise that the loss of Mr Scullion's life cannot be measured by the length of a prison sentence. There is no minimum tariff that I can impose that will cure the anguish and sense of loss endured by Mr Scullion's friends and family.

Additional material

[20] I have received the following additional material:

- (a) A pre-sentence report from the Probation Board for Northern Ireland dated 4 October 2019.
- (b) Medical reports from Dr G Loughrey FRCPsych, consultant psychiatrist dated 5 July 2019 and 26 August 2019 obtained on the instructions of the defendant.
- (c) A copy of the defendant's criminal record.

[21] The pre-sentence report and the medical reports from Dr Loughrey indicate that the defendant is a 29 year old male who has had a difficult background. He never knew his father, he was abandoned by his mother aged one and was reared in his early years by his grandmother. He has abused alcohol and drugs since aged 14/15 and has lived a very transient lifestyle, one where he resided in different care homes and hostels across Northern Ireland, without any family support. As evidenced by his criminal record he became involved in criminal offending and has spent periods of his life in custody.

[22] Prior to the commission of this offence he was in a healthy relationship with a female partner. He had been living in Banbridge for approximately two years and had got to know the deceased, with whom he had become friendly.

[23] He appears before the court today with 49 previous convictions. These evidence an established pattern of violent and aggressive behaviour while under the influence of alcohol or drugs. He was convicted of aggravated assault on a female or boy under 14 x 2 on 2 March 2008. This related to an incident where Mr Boyd pushed his sister and niece during an argument whilst drinking alcohol. He was convicted of possession of an offensive weapon in a public place committed on 20

December 2008 which related to him carrying a baseball bat. Multiple offences were committed on 8 August 2014 (threats to kill, common assault, assault occasioning actual bodily harm) and relates to an assault with his then partner. He committed an assault occasioning actual bodily harm on 6 May 2016 which relates to an unprovoked attack on a homeless man while intoxicated. Possession of an offensive weapon with intent to commit an indictable offence (with scissors) (5 April 2018 – just three months prior to this murder) relates to an incident where the defendant and his current partner were arguing. Other convictions of a violent and aggressive nature include assaults on police x 10 over a number of years.

[24] Dr Loughrey examined the defendant on 5 July 2019 and has had access to the pathology report from Professor Crane, witness statements, including statements of the defendant's partner and transcript of the police interviews with the defendant. He also has had access to the defendant's medical notes and records. Dr Loughrey confirms previous diagnosis's to the effect that the defendant suffers from an enduring unstable personality disorder. Over the years he has had various contacts with mental health services who confirmed a personality disorder, longstanding issues with drugs and alcohol and a history of self-harm. The clinical notes and records also identify a serious problem with anger which is reflected in episodes of self-harm and in his criminal record. There have been regular referrals to the Addictions Team.

[25] A recent relevant entry is that recorded by the defendant's general practitioner Dr McNutt on 3 February 2017 where he wrote of the defendant:

“Request referral to MHT for anger management, anxiety, depression symptoms. Long history of anger issues in and out of jail past five years for assaults and other things. Voices told him to hurt people. A test by forensic psych Dr Bownes and hospital and claims (crop) MIRT 45, Quetiapine 400, Lyrica 600 and Codeine. Feels Preg 75 mgs BD not touching nerve pain in hand, indicates numerous scars on hand and scalp. Other drugs did not help him except Bensir was good for mood in the past. Was diagnosed with anxiety and depression in past then emotionally unstable personality disorder. Request referral for help with thoughts, low mood, anxiety.

Lives with girlfriend presently has self-harmed recently with superficial cuts to arms and stabbed abdomen. Has numbers for Lifeline uses a lot (cropped) and men to men counselling.”

[26] At that stage he was put on Venlafaxine 75 mgs and Pregabalin 100 mgs BD.

[27] Understandably in light of the defendant's history the Probation Board assess the defendant as representing a high likelihood of re-offending and although not

relevant for this sentencing exercise as reaching the threshold for presenting a significant risk of serious harm.

[28] The defendant will be offered opportunities in custody to engage in services within the prison to address the risk factors associated with his offending behaviour. He will not be released from prison by the Parole Commissioners if he is deemed to be a danger to the public. He will also be subject to comprehensive, stringent and robust licence conditions at the point of a decision by PCNI to release him into the community.

[29] In terms of applying the principles set out in **R v McCandless and Others** there was some disagreement between counsel as to the appropriate starting point. Mr Lyttle argues that this is the classic case involving the killing of an adult victim arising from a quarrel or loss of temper between two people known to each other. The prosecution accept that there are some of the characteristics which are present in paragraph 10 which might suggest a normal starting point of 12 years. However, the prosecution submit that the presence of extensive/multiple injuries as found by Professor Crane place this case in the higher starting point category.

[30] The prosecution also point to the fact that a weapon was used in this case as something which would justify varying the starting point upwards.

[31] The prosecution further submit that the defendant's previous convictions for offences of violence are an aggravating factor. As already outlined the defendant was also awaiting sentence for an assault at the time of the commission of the index offence. In addition he was subject to a suspended sentence imposed on 29 March 2018 for an assault on police.

[32] In mitigation Mr Lyttle points to genuine remorse, the defendant's plea of guilty, the fact that he admitted killing the deceased during interview and the fact that at the time of the murder he suffered from a mental disorder which lowered the degree of his criminal responsibility for the murder, although not affording a defence of diminished responsibility.

[33] The prosecution took no issue that these were relevant mitigating factors.

The appropriate tariff

[34] In applying the practice statement endorsed in **McCandless** I bear in mind that it is not to be interpreted as a straightjacket designed to create a rigid, compartmentalised structure into which each case must be shoe-horned. As the Court of Appeal said in **McCandless**

"The sentencing framework is, as Weatherup J described it in paragraph 11 of his sentencing remarks in R v McKeown [2003] NICC 5, a multi-tier system. Not only

is the Practice Statement intended to be only guidance, but the starting points are, as the term indicates, points at which the sentencer may start on his journey towards the goal of deciding upon a right and appropriate sentence for the instant case."

[35] Selecting a starting point is not a mechanistic or formulaic exercise. The guidelines are there to assist the court to proceed to, what in the circumstances of the case, it considers is a just and proportionate sentence having regard to the guidelines.

[36] Ultimately not much may turn on the debate as to the appropriate starting point. The particular circumstances of this case may not easily fall into the specific categories identified in the guidelines.

[37] The matters referred to by counsel can be taken into account by way of aggravating or mitigating factors. Thus the features identified by Mr Connor in his submissions if treated as aggravating factors will have the effect of adjusting the appropriate tariff upwards from a starting point of 12 years before any allowance for the mitigating factors identified by Mr Lyttle on behalf of the defendant.

[38] What then is the appropriate tariff? I propose to approach this determination in the following way.

[39] On the face of it the starting point is the normal starting point of 12 years as this case involves the killing of an adult victim, arising from a quarrel or loss of temper between two people known to each other. We only have the defendant's account of what happened. However, even on that account the offence is significantly aggravated by the conduct of the defendant in the killing of Mr Scullion. He struck the deceased with a frying pan which caused him to fall face down on the kitchen floor. Whilst on the ground the defendant punched and kicked the deceased and when the deceased said "*I've had enough*" the defendant knelt on his back, grabbed a knife and stabbed the deceased. The report from Professor Crane suggests six separate wounds caused by a knife. The punching, kicking and stabbing of the deceased whilst he lay prone and defenceless on the ground clearly brings into play the characteristics referred to in paragraph 12 of the guidelines, namely the infliction of extensive and/or multiple injuries, in this case by the use inter alia of a knife by the defendant. Nor is it to the defendant's credit that he left the deceased after the infliction of the fatal injuries. Rather than ring an ambulance, as he conceded he ought to have done in his police interviews, he in fact sought to destroy potential incriminating evidence.

[40] Thus in terms of the offence itself I consider that the appropriate starting point is one of 15 years, which can be achieved either by a starting point of 12 years together with aggravating features or a starting point of 15 years.

[41] In terms of the defendant's personal circumstances I consider that his criminal record is clearly an aggravating factor. The record clearly demonstrates a history and propensity to violence and a failure to respond to previous sentences. Taking this factor into account I consider that the appropriate tariff will be one of 17 years before consideration of mitigation.

[42] In terms of mitigation this was a spontaneous offence committed with a lack of premeditation. It was not a case of being armed with a weapon in advance. That really is all that can be said in mitigation of the offence itself.

[43] In terms of personal mitigation the defendant has expressed genuine remorse for his actions. This was evident in the police station where in the course of the interviews the defendant made repeated references to the deceased being kind to the defendant and kind to everyone. He acknowledged that he would help anyone out and give you his last penny if he had it. The interviews do support the contention that the applicant was remorseful for what he had done. This is echoed in the presentence report where Mr Boyd presented as being "*overwhelmed*" in recalling the attack. The report expressly records his regret at his actions and confirms that he does present with a deep sense of regret and guilt. Given the serious nature of this offence any reduction in the tariff for remorse must be relatively minor.

[44] It is clear from the psychiatric evidence served in this case together with the extensive medical notes and records that the defendant did suffer from a mental disorder at the time of the killing which lowered the degree of his criminal responsibility for that killing. Whilst this does not afford a defence of diminished responsibility it is recognised in the guidelines as a factor which can be used to reduce the normal starting point - see 11(b).

[45] This disorder must be seen in context. As Dr Loughrey said in his opinion of 26 August 2019 there is no evidence that the defendant suffers from psychosis and in his opinion there was no compelling evidence of dependence on alcohol or drugs. He accepted the proposition that the defendant's behaviour at the time of the alleged offence was linked to the interaction of alcohol intoxication and his psychological difficulties, but that at the time of the offence he did not lack the capacity for criminal intent.

[46] Taking these mitigating factors into account I consider that the appropriate tariff before any discount for the plea in this case would be one of 15 years.

Discount for guilty plea

[47] What then is the appropriate reduction, if any, for the guilty plea in this case?

[48] It is a long and firmly established practice in sentencing law in this jurisdiction that where an accused pleads guilty the sentencer should recognise that

fact by imposing a lesser sentence than would otherwise be appropriate. The defendant is clearly entitled to a reduction for his guilty plea in this case.

[49] In considering the appropriate discount for a plea of guilty in a murder case it is necessary to take into account the guidance issued by the Court of Appeal in the case of **R v Turner and Turner** [2017] NICA 52.

[50] In that case the Court of Appeal considered the discount which was appropriate in tariffs in murder cases and came to the conclusion, at paragraph [40]:

“We consider, therefore, that there are likely to be very few cases indeed which would be capable of attracting a discount close to one-third for a guilty plea in a murder case. The circumstances of a mercy killing for example might possibly achieve that outcome. Each case clearly needs to be considered on its own facts but it seems to us that an offender who enters a not guilty plea at the first arraignment is unlikely to receive a discount for a plea on re-arraignment greater than one-sixth and that a discount for a plea in excess of 5 years would be wholly exceptional even in the case of a substantial tariff.”

[51] The court however did go on state that:

“We have concluded, however, that it would be inappropriate to give any more prescriptive guidance in this area of highly fact sensitive discretionary judgement. Where, however, a discount of greater than one-sixth has been given for a plea in a murder case the judge should carefully set out the factors which justify it in such a case.”

[52] In determining what the lesser sentence should be the court should look at all the circumstances in which the plea was entered.

[53] In my view notwithstanding the fact that the defendant pleaded not guilty at first arraignment this is a case in which a discount of greater than one sixth should be given. The factors which justify it in this case are as follows. Although in his initial interview he did not accept his role in the deceased’s death in subsequent interviews he admitted killing the deceased and disposing of the murder weapon. At first arraignment, Mr Lytle assured prosecution counsel that the plea was entered pending the receipt of psychiatric evidence and it was accepted the defendant had killed the deceased. Whilst that psychiatric evidence did not afford a defence of diminished responsibility it did provide basis for mitigation. After receipt of the medical evidence arrangements were made for the re-arraignment of the defendant which ensured that the trial date was vacated and no witnesses were required to attend at court. The defendant’s plea is also a factor supporting his remorse for his actions.

[54] Having regard to these factors I consider that the defendant is entitled to substantial discount, in excess of the one sixth referred to in **Turner**.

[55] I therefore propose to reduce the tariff from 15 years to 12 years.

[56] Taking account of all the factors in this case I consider that this is the right and appropriate sentence for the instant case.

[57] A sentence of life imprisonment has already been imposed on Mr Boyd. Pursuant to Article 5 of the Life Sentences (Northern Ireland) Order 2001 I determine the minimum term that he must serve in prison before he will first become eligible to have his case referred to the Parole Commissioners for consideration by them as to whether he is released on licence will be one of 12 years. That tariff shall include a period of 287 days being the time served in custody by the defendant from 9 July 2018 to the imposition of the life sentence on 5 September 2019.