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

Delivered: **21/12/10**

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

V

EAMONN COYLE

MORGAN LCJ, HIGGINS LJ and GIRVAN LJ

MORGAN LCJ (delivering the judgment of the court)

[1] This is an application by the Director of Public Prosecutions for leave to refer a determinate sentence of 3 years detention (comprising a 1 year custodial period and 2 years licence period) imposed on the offender, Eamonn Coyle, by McLaughlin J sitting in the Crown Court for the offence of manslaughter, on the grounds that it is unduly lenient pursuant to Section 36 of the Criminal Justice Act 1988 (as amended by Section 41 of the Justice (NI) Act 2002).

Background facts

[2] On 4 December 2009 the offender who was born on 10 October 1992 was committed to the Crown Court for trial on a single count of murdering Francis O'Neill, his grandfather, aged 78, on 11 April 2009. At his arraignment on 8 January 2010 the offender pleaded not guilty. His trial commenced on 1 June 2010 before McLaughlin J sitting with a jury. However, the jury had to be discharged for legal reasons in the late stages of the trial during the offender's cross-examination by the prosecution. On 15 September 2010, at his new trial, the offender asked to be re-arraigned. On this occasion, he pleaded not guilty to murder but guilty to the lesser offence of manslaughter. That plea was accepted by the prosecution. McLaughlin J duly sentenced the offender on 1 November 2010.

[3] The factual basis upon which the plea was entered was not agreed between the prosecution and defence. The offender contended that he did not physically touch or harm his grandfather. He claimed that he entered his grandfather's house through a window (which it was common for him to do).

He went to the toilet after which he found his grandfather lying in the chair in the living room. His grandfather was not moving and not speaking and his wallet and keys were lying in front of him on the floor. The offender claims he panicked and left the house. He accepts the manslaughter of his grandfather on the grounds that death occurred by his failure to summons an ambulance when he found his grandfather.

[4] The prosecution accepted that the offender and his grandfather had a good relationship and therefore it was difficult to envisage a jury concluding that the offender had gone to the house with premeditation to murder. The pathology evidence indicated that death had probably occurred by reason of the deceased being grabbed by the crook of an arm around his neck from behind. One fairly quick movement could have caused death quite rapidly because of the deceased's age. It was also submitted that the offender had used a knife in the attack as there was a wound in the deceased's neck which had penetrated 9 cms to the pharynx, although fortunately causing no significant damage, and a further small puncture wound just below it. The prosecution accepted that these injuries may well have been unintended and accidental. The evidence against the accused also showed that he had taken his grandfather's wallet and a sum of money of at least £80 with which to pay his rent.

[5] Since he had heard virtually the entirety of the case at the first trial the learned trial judge was invited to treat that hearing as a Newton hearing for the purpose of determining the factual basis for the plea. He was satisfied beyond reasonable doubt that the prosecution account was correct. The offender had been under pressure to pay his rent for the accommodation that he was then using. He went to his grandfather's house to get the money he needed. It is accepted that in the course of this crime he also robbed his grandfather using a knife which he may have obtained in his grandfather's premises. He then left him without trying to get assistance for him. These events occurred sometime before 7 pm on 10 April 2009. About 1 am the next morning the offender told one of his friends with whom he was drinking that his grandfather was dead as a result of which they returned to the premises and the alarm was raised. He contended that he had attended at the grandfather's house because of a premonition.

[6] The pre-sentence report described how the offender was the middle child of three and had had a stressful childhood. His father relied heavily on alcohol and the offender frequently observed domestic violence in the family home. At the age of 10 his parents separated and the offender lived with his mother in the Omagh area but continued to have ad hoc contact with his father. He left school at the age of 15 and commenced a joinery course at college but did not complete it. He admitted to, in the past, using cannabis on a daily basis and binge drinking.

[7] The offender said he had good relationships with his close family and claimed to have a close relationship with the victim, having almost daily contact. However, the offender admitted to having problems during the six months preceding the index offence when he moved out of home and contact with his family broke down. At the time of the offence, the offender's peer group had a lifestyle characterised by occasional periods of work, limited financial means and excessive use of alcohol and illegal drugs. The offender said that his time on remand in custody was a positive experience and the probation officer reported that during this time the offender made positive inroads with regards to his educational needs. He was assessed as not posing a significant risk of serious harm.

[8] The Youth Justice Agency stated that when the offender was released on bail in February 2010 both he and his family agreed to work with it on a voluntary basis. The offender attended on a weekly basis during which time he showed a willingness to discuss and be challenged on his previous negative behaviours. A shift in his attitude towards anti social behaviour and an increased understanding of how direct victims and communities are impacted by offending was noted. He performed well on a Training for Skills programme and attended 10 sessions on a drugs programme.

[9] It was an unusual feature of the case that his mother and an aunt who were both daughters of the deceased gave evidence on his behalf during the sentencing hearing. The offender's mother described how she first saw a major change in the offender's behaviour when he starting going to Omagh Technical College at the age of 15 or 16. She put this down to the offender being controlled by older boys at the college who got him involved in drink and drugs. Despite being the victim's daughter, she said she stood by her son and from February 2010 to September 2010 he was granted bail on the condition that he lived with her. She stated that during this time she had seen a change in his maturity. He tidied his room, he changed and washed his bedclothes on a weekly basis and he helped clean the house. She also stated that he had made a new circle of friends through the Strabane Training Service. The offender's aunt said she too felt he had matured in recent months. She said he was now willing to do what was asked of him and was no longer "stroppy." She said the person the offender loved most in the world was his mother and that he realised he was going to have to live knowing the hurt he has caused her.

Aggravating and mitigating factors

[10] We consider that there are a number of aggravating factors in this case. The victim was a frail and elderly man who on that account was vulnerable. He was attacked within the confines of his home where he lived alone. A knife was used in connection with the attack. Although the learned trial judge found that the offender did not intend to harm his grandfather the offender

must have used the knife for the purpose of instilling fear in his grandfather that it would be used. The learned trial judge found that he did not intend to harm his grandfather but the fact that the knife penetrated 9 cms into the neck shows at least a lack of care in the control of the knife. Since the underlying purpose behind all of this was the determination to get money it is accepted that the offender committed the crime of robbery at the same time as this offence. Despite his tender years the offender had a caution for theft committed in October 2008 and subsequent to this offence underwent youth conferencing in respect of attempted theft and criminal damage of a car committed some 3 weeks before this offence. Finally but by no means least we recognise the lasting effect that this crime has had on the deceased's sister who has prepared a most moving victim impact statement.

[11] There are some mitigating factors. This is a case in which the learned trial judge who had an opportunity to see and hear the offender concluded that he did not intend to harm his grandfather. He did not realise that the hold he exercised on the neck would have such disastrous consequences. Part of the explanation for that is the youth of the offender which itself is a mitigating factor. It follows therefore that the offender did not go to the house intending to attack or injure the deceased. The offender has participated effectively in rehabilitative programmes while on bail. He had been living a chaotic lifestyle without parental support at the time. Finally the offender seeks credit for his guilty plea. In our view this must be very modest indeed. The offender denied his guilt during interview and his first trial was almost complete before it was abandoned. It would in any event have been necessary to conduct a Newton hearing and the learned trial judge decided that he should reject the version of events advanced by the offender.

Consideration

[12] Despite the finding that there was no intention to harm the deceased and that his death was therefore unintended we consider that this attack on a frail elderly man in his own home in the course of a robbery would have required a sentence of imprisonment of the order of 8 to 10 years in the case of an adult and more if there had been a relevant criminal record. This offender was 16 at the time of the offence and by virtue of section 53 (6) of the Justice Act 2002 (the 2002 Act) is to be treated as a child. The principal aim of the youth justice system is the protection of the public by the prevention of offending. There is a specific requirement, however, in relation to the welfare of children in section 53(3) of the 2002 Act.

> "(3) But all such persons and bodies must also have regard to the welfare of children affected by the exercise of their functions (and to the general principle that any delay in dealing with children is likely to prejudice their welfare), with a view (in

> particular) to furthering their personal, social and educational development.”

[13] The application of this requirement was addressed by this court in R v CK [2009] NICA 17 where the international principles on the treatment of children by the criminal justice system were reviewed. The court noted the influence which the United Nations Convention on the Rights of the Child had exercised on the jurisprudence of the ECHR. Essentially the UNCRC suggested that a sentence of detention should be a last resort and for the minimum period necessary. That ought not, however, prevent a court imposing an appropriately severe sentence where necessary.

[14] The difference in approach to the sentencing of children is also reflected in our local jurisprudence. Section 1(1) of the Treatment of Offenders Act (Northern Ireland) 1968 (the 1968 Act) states that, subject to subsection (2), a court shall not pass a sentence of imprisonment on a person who has not attained the age of 21. Section 5(1) of the 1968 Act provides that in respect of persons between 16 and 21 a court may pass a sentence of detention for a period of up to 4 years. Section 1(2), however, retains the right for a court to pass a sentence of imprisonment for a period in excess of 4 years.

[15] The purpose of these provisions is clearly to ensure that young people who must be detained are generally placed in detention in circumstances where there can be a focus on rehabilitation away from the influences of recidivist offenders. Consistently with the principles we have referred to earlier a court will, therefore, conscientiously seek to establish whether in accordance with sentencing principles such an outcome can be achieved.

[16] In our view having regard to the aggravating factors in this case we consider that the appropriate sentence for this offender was somewhere between 5 and 6 years imprisonment. We note that his view is consistent with that expressed in this court in AG Ref (No 1 of 2008) (McGinn) [2008] NICA 40.

> "[22] The judge was right to have regard to the effect that a sentence of imprisonment which required the incarceration of the offender in an adult prison would have. But we are constrained to agree with Mr McCloskey’s submission that disproportionate weight was given to this consideration. Allowing for the mitigating features present in the case, we consider that the sentence range probably lay between eight and nine years. Making every allowance for the laudable aim of protecting the offender from the influence of older criminals, we do not believe that the adjustment required to achieve that objective could be justified on that account alone."

[17] Accordingly we consider that the sentence in this case was unduly lenient and for that reason we gave leave at the hearing. That does not, however, end the matter. We are obliged to take into account the principle of double jeopardy which arises because the offender has now had to undergo a further examination of his liability to punishment. Taking that principle into account in accordance with the authorities we consider that the appropriate outcome in this case is the imposition of a period of detention of 4 years.

[18] The maximum period which an offender must serve in custody in respect of such a sentence of detention is now fixed by article 8(3) of the Criminal Justice (Northern Ireland) Order 2008 which provides that the maximum period of custody must not exceed one half of the sentence. The maximum period of custody in this case, therefore, is 2 years detention with a further 2 years on licence. That is the sentence which we impose. The sentence runs from the time that it would have run if passed in the lower court.