

IN THE CROWN COURT IN NORTHERN IRELAND

THE QUEEN

v

FRANCISCO ANTONIO NOTARANTONIO, CHRISTOPHER
NOTARANTONIO, WILLIAM NOTARANTONIO, PAUL OLIVER
BURNS AND ANTHONY NOTARANTONIO

STEPHENS J

The pleas of guilty

[1] Francisco Antonio Notarantonio on 24 September 2008 you pleaded guilty to four offences as follows:-

- (a) Manslaughter of Gerard Devlin on 3 February 2006.
- (b) Making an affray on 3 February 2006.
- (c) Malicious wounding of Anthony McCabe with intent to cause him grievous bodily harm contrary to Section 18 of the Offences Against the Persons Act 1861.
- (d) Attempted malicious wounding of Thomas Loughran with intent to cause him grievous harm contrary to Section 18 of the Offences Against the Persons Act 1861.

[2] A summary of the offences that you committed is that during the course of a brutal street fight on a Sunday afternoon involving a significant number of people you armed yourself with a chef's knife which had an 8 ½ inch blade and you then proceeded, within a very short period of time, to viciously swipe with the knife at one person, stab another in the chest and fatally stab a third person. That fatal stabbing was carried out when your victim's partner

and their children were present so that they all witnessed, whilst they comforted him as he died, your complete inhumanity, your destruction of their partner, their father and their family. Ferocious attacks of this nature, particularly with a knife, warrant deserved and appropriately severe punishment to mark society's utter rejection of such callous and brutal offences and to send a clear signal to those who might engage in this type of violence as to the consequences that will be visited upon them. The sentences that I will impose will eventually come to an end but it is obvious that the consequences for the family of Gerard Devlin will remain with them for life.

[3] During the oral submissions on 14 November 2008 Mr Mooney QC stated that the prosecution have accepted your plea of guilty to manslaughter on the basis "that it cannot be proved that (you) had the necessary intent for murder." In that regard you accept that you must have made contact with Gerard Devlin though you have no recollection of doing so. You do not accept that you had any intention to kill or cause really serious harm to Gerard Devlin. That has been accepted by the prosecution. I sentence you for that offence on the basis of a plea of guilty to manslaughter and on that basis alone.

[4] I should also record at this stage that your trial and indeed the trial of the other defendants had been due to commence in April 2008. It was adjourned to 15 September 2008. Again the start of the trial was delayed for a period until 24 September 2008. Your pleas of guilty to these offences were entered before the case was opened but as is apparent they were not made at the earliest opportunity.

[5] On 24 September 2008, you Christopher Charles Notarantonio, William Notarantonio, Paul Anthony Burns and Anthony Notarantonio all pleaded guilty to the offence of affray which offence was committed on 3 February 2006. Again your pleas of guilty were not made at the earliest opportunity.

Factual background

[6] The factual background has been outlined to this court by Mr Terence Mooney QC on behalf of the prosecution. The incident which gave rise to all of the offences occurred in Whitecliff Parade, Ballymurphy, Belfast. Two families were involved in the incident. All of the defendants are related to each other and are part of the extended Notarantonio family. Gerard Devlin, Thomas Loughran and Anthony McCabe, who were all victims of these offences, were a part of the extended Devlin family. There is a deep and enduring animosity between the Devlin family and the Notarantonio family that has continued since in or about 2002. The genesis of that dispute is unclear. It has been marked by numerous incidents involving the two families some of which have been reported to the police. The enmity between the two extended families appears to have permeated every generation of those families as is evident from the age of all the defendants in this case and

from the fact that there was a confrontation involving children which in this instance lead to a violent confrontation between willing participants who were adults. All the main participants, except one, on behalf of the extended Notarantonio family and all the main participants on behalf of the Devlin family were residents of or lived close to Whitecliff Parade. William Notarantonio and Christopher Notarantonio lived at 4 Whitecliff Parade. Francisco Notarantonio lived at 21 Whitecliff Parade. Anthony Notarantonio lived at 18 Whitecliff Parade. Paul Burns, related to the Notarantonio family, lived at 1A Dermothill Park, but was in his car parked in Whitecliff Parade at the time of the offences. Thomas Loughran, a victim and an uncle of Gerard Devlin lived at 4 Glenalina Pass in the Ballymurphy estate. Anthony McCabe, a victim and a cousin of Gerard Devlin, lived at 14 Glenalina Road.

[7] Gerard Devlin had lived at 27 Whitecliff Parade together with his partner, Aine McMahan and their 6 children. However for some time he had resided in a house in Glenavy, Co Antrim, where it was intended that his partner and their family would live once the house had been renovated. On the afternoon of 3 February 2006 Gerard Devlin had visited his family at 27 Whitecliff Parade with the intention of bringing his partner and their children to the house under renovation in Glenavy. His car was already packed and departure imminent when he became involved in a confrontation with you, William Notarantonio, outside his home. This confrontation arose from some altercation between two young children of the opposing family factions, but evidence evinces a willingness by you, William Notarantonio, and by Gerard Devlin to be involved in a physical violent street fight. It is clear that both factions were violent towards the other. I form no view as to which faction was responsible for the commencement of the street fight. It is extremely difficult to get an entirely coherent and consistent picture of what took place. Nevertheless and subject to what I say later as to the roles each of you played, the following seems to have occurred:-

- (a) A verbal confrontation arose during the afternoon of 3 February between the son of Gerard Devlin ("Gerard Devlin Jr") and William Notarantonio. Gerard Devlin Jr then alerted his father who was inside the house at 27 Whitecliff Parade. Gerard Devlin then confronted you William Notarantonio in the street.
- (b) It is worthy of emphasis that when this confrontation developed into a fight, Victor Notarantonio, the father of you Francisco Notarantonio, the brother of you Christopher Notarantonio, and the uncle of you William Notarantonio, tried to intervene to stop the fight, but was unable to do so. It is to the credit of Victor Notarantonio that he responded positively. His

actions graphically demonstrate what each of you should have done. You William Notarantonio then made your way towards 4 Whitecliff Parade and further members of the Notarantonio family, including the remaining four defendants joined in the affray the focus of which was an attack on Gerard Devlin. Weapons, such as cudgels improvised from pieces of wood and brushes were used in the affray. You Francisco Notarantonio were observed with a knife.

- (c) Thomas Loughran and Anthony McCabe both of whom are related to Gerard Devlin and who were in separate houses at the time, were made aware of the developing brawl and went to the assistance of Gerard Devlin.
- (d) When Thomas Loughran arrived, he alleges that he saw Gerard Devlin fighting with you William Notarantonio, and also involved were you Christopher Notarantonio, you Anthony Notarantonio, you Francisco Notarantonio and you Paul Burns. Thomas Loughran alleges that he intervened to help Gerard Devlin and as he did so you Francisco Notarantonio came at him with a knife. You Francisco Notarantonio made a swipe at him with the knife, but missed. You state, and for the purpose of sentencing I accept, that you picked up the knife that was lying on the ground and that your intentions were formed a very short time before the knife was used. However once armed you were quite deliberate in its use against three individuals all of whom were unarmed. Thomas Loughran alleges that he was struck on the head by you Paul Burns, who he alleges was wielding what appeared to be a wooden stair spindle.
- (e) Anthony McCabe seems to have become involved at the same time as Thomas Loughran. He admits that he threw a brick at the Notarantonio faction in an attempt to help Gerard Devlin. While involved in the melee, he saw you Francisco Notarantonio running at him carrying a knife. You Francisco Notarantonio swung the knife at him and stabbed him in the chest.

- (f) It is not precisely clear when Gerard Devlin suffered the fatal stab wound. None of the witnesses on the papers before the Court actually witnessed the actual moment of the stabbing. However, you Francisco Notarantonio admit that you had a knife during the brawl and while you did not admit stabbing anyone, you were observed by one witness to have a knife in your possession after the stabbing of Anthony McCabe and Gerard Devlin.
- (g) A knife discovered afterwards in the garden of 110 Ballymurphy Road on 6th February was found to be smeared with blood. On forensic examination, the blood matched the DNA of both Gerard Devlin and Anthony McCabe. The knife, described as a chef's knife, was approximately 13" in length and had a blade of 8 1/2".

[8] After Gerard Devlin and the other victims had been removed from the scene by ambulance, a large scale disturbance occurred in the street. It was some time before the police were able to restore calm and establish a crime scene. During the disturbance, some properties were attacked and damaged, notably the residence of Victor Notarantonio, the father of you Francisco Notarantonio.

The role in the affray played by each of the defendants

[9] In respect of you, Francisco Notarantonio, you were an active and central participant in the affray.

[10] In respect of you Christopher Notarantonio it is accepted by the prosecution that you played a lesser role than the other defendants in this affray. You were not present when any knife was used to fatally wound Gerard Devlin. You were in the kitchen at the rear of your home when you were alerted to what was happening outside. You reacted spontaneously to a situation that was not of your making. Your intention was to protect your son. It is common case that the incident began with an altercation on the street between Gerard Devlin and your son William Notarantonio. Words were exchanged between Gerard Devlin and your son. Victor Notarantonio tried to separate them. Blows were exchanged.. William Notarantonio was left with a bruised face. This occurred outside no.18 Whitecliff Parade. You Christopher Notarantonio had no involvement in this. At this stage there is evidence that Gerard Devlin was getting the better of the fight. Soon after this fight began, your son William Notarantonio ran down towards his home at No.4 Whitecliff Parade, and was followed by Gerard Devlin. You then moved towards Gerard Devlin and blocked his path as he ran after your son William Notarantonio. You tripped Gerard Devlin, and you and he fell to the ground,

in the vicinity of No. 4. You then tried to get back onto your feet and as you did so, you were struck by a brick thrown by one of the younger Devlins and then another brick thrown almost immediately by Anthony McCabe. As a result you sustained a hand injury. Your hand bled profusely, and you immediately went back to the front yard area of your home where your hand was tended to by a neighbour. You took no further part in the incident. The injury to your hand involved the tendon. The edges of the tendon were visible. The distribution of blood at the scene supports your account.

[11] In arriving at the appropriate sentence to impose on you Christopher Notarantonio I will proceed on the basis that –

- (a) You had no role in initiating the incident.
- (b) Your involvement was spontaneous.
- (c) You emerged from your home at a time when Gerard Devlin was pursuing your son William Notarantonio down the street towards No.4
- (d) You tripped Gerard Devlin with your leg.
- (e) Very quickly thereafter, as you were getting up from the ground, bricks were thrown at you.
- (f) You were struck with a brick or those bricks.
- (g) You sustained a hand injury and immediately retreated to the front of No.4 where your wound was bandaged.
- (h) This was at an early stage of the incident.
- (i) You had no further contact with any of the protagonists.
(This is confirmed by the blood evidence)

[12] In respect of you, William Notarantonio, I consider that you were an active and central participant in the affray. You were there at the start and participated until the end. Victor Notarantonio attempted to persuade you and Gerard Devlin to desist. You continued to fight. There is some evidence that at one stage Gerard Devlin was getting the better of you. That you then ran off towards your own home at 4 Whitecliffe Parade with Gerard Devlin in pursuit. However I consider that this was a tactical retreat rather than being substantially motivated by a recognition that you should not be participating in an affray.

[13] In respect of you, Paul Anthony Burns, you were an active and central participant in the affray. You had just driven into Whitecliffe Parade to see a relative. There is no suggestion that you were called to the scene or telephoned or anything of that nature. When you arrived the fight between Gerard Devlin and William Notarantonio was already beginning to unfold. There was an initial reluctance on your behalf to be involved but thereafter you were a willing and active participant. You were directly involved with Anthony McCabe and Thomas Loughran. You were definitely holding a weapon. I accept that this was found at the scene rather than being brought by you to the affray. I also consider that I cannot be satisfied to the requisite

criminal standard that you directly attacked Gerard Devlin but you were in close physical proximity to that attack and you willingly participated in an affray whose focus was an attack on Gerard Devlin. I do not accept that you were on the periphery of the affray.

[14] In respect of you, Anthony Notarantonio, you were an active and central participant in the affray. At the start of the affray you were in your wife's house and saw the altercation involving Gerard Devlin and William Notarantonio with your brother Victor Notarantonio standing between the two of them. You ran out of the house and thereafter became involved in the affray. I could not conclude to the requisite criminal standard that you yourself were armed but you did participate in an affray when others were armed.

Injuries to victims

[15] Gerard Devlin was aged 39 at the time of his death. The post mortem examination showed that he died from a single stab wound to the chest. The entry wound was on his back. The blade of the weapon used to inflict injury had penetrated the body between the 9th and 10th ribs, nicking the 10th rib and passed upwards and forward to the lungs penetrating the lower lobe of the right lung and then to the hilum or root of the right lung. This resulted in massive bleeding that was responsible for his collapse and rapid death. The post mortem examination also revealed Gerard Devlin to be "a muscular middle aged man who weighed 14 stone 3 lbs. He was almost 5'11" tall."

[16] It was noted by the Deputy State Pathologist that Gerard Devlin had other injuries, including abrasions and bruising to the right side of the head and abrasions and bruises to his arms and legs. None of these injuries were serious and had probably been sustained as the result of contact with a hard surface, such as the ground.

[17] The Pathologist further noted that Gerard Devlin had bruises to the knuckles of the left hand that were consistent with him having punched someone or something before death.

[18] Thomas Loughran suffered a laceration to his head that required stitches. He also suffered bruising to his neck, legs, back and the back of his hands.

[19] Anthony McCabe suffered a three inch stab wound to the left side of his chest. It was repaired with stitches.

Representations of the victim's family

[20] The sentences that I will impose have as one of the principal constituents the element of retribution. In that respect the statements and representations made by the victim's family are an important factor to be taken into account. In doing so I bear in mind the decision of the Court of Appeal in Northern Ireland in *Attorney General's Northern Ireland Reference (No. 3 of 2000) (Rogan)*

[2001] NI 366. The Court of Appeal in that case quoted with approval the principle enunciated by Judge J in *R v Nunn* [1996] 2 Cr. App. R (S) 136 at 140 as follows:

“... the opinions of the victim, or the surviving members of the family, about *the appropriate level of sentence* (emphasis added) do not provide any sound basis for reassessing a sentence. If the victim feels utterly merciful towards the criminal, and some do, the crime has still been committed and must be punished as it deserves. If the victim is obsessed with vengeance, which can in reality only be assuaged by a very long sentence, as also happens, the punishment cannot be made longer by the court than otherwise would be appropriate. Otherwise cases with identical features would be dealt with in widely differing ways leading to improper and unfair disparity ...”

I also refer to another passage in *R v Nunn* which is as follows:-

“It is an elementary principle that the damaging and distressing effects of a crime on the victim represent an important factor in the sentencing decision, and those distressing consequences may include the anguish and emotional suffering of the victim, or where there has been a death, as here, his surviving close family.”

[21] I make it clear that I take into account the statements only in relation to the damaging and distressing effects of the crime on the victim's family and on Thomas Loughran. The statements are from:-

- (a) Patricia Largey (nee Devlin) who is a sister of Gerard Devlin.
- (b) Aine McMahan, who was Gerard Devlin's partner for a period of 16 years.
- (c) Mr P J Devlin, the father of Gerard Devlin.
- (d) Thomas Loughran, the uncle of Gerard Devlin. Thomas Loughran was also injured in the affray and is the victim of an attempted malicious wounding with intent to cause him grievous harm.

[22] All the statements contain graphic evidence of the effects of the killing of Gerard Devlin. I take all of the statements into account on that basis. The statement from Aine McMahon, Gerard Devlin's partner for 16 years, sets out that they have had six children, five boys and one girl. That they were planning to marry. That they were also planning to move their family away from Ballymurphy and give them a new start in the country at Glenavy. She continues:-

"We had our dreams and plans for our future and our children's future. On 3 February our world turned upside down. I watched as Gerard was brutally killed in front of my eyes. Worse than that our children witnessed his death too. To the day I die I will never forget Gerard stumbling up the street struggling to breath. I caught him as he fell over a car and held him as he died. Initially I had ...(one of my children) in my arms but someone took him off me and I grabbed a cardigan to try and stop Gerard bleeding to death. Gerard spoke to me as he died, he told me that he was dying, he turned grey, our son ... was in front of him and talking with him. ... (our son) was terrified and crying, he was telling Gerard to hold on but he could not. Gerard tried to talk ... but it came out only as a mutter. ... When they took my Gerard they also took my dreams and plans for our future together as a family."

Sentencing guidelines in relation to the offence of manslaughter

[23] In fixing the sentence to impose in relation to the offence of manslaughter I have sought to follow the guidelines contained in the decisions of the Court of Appeal in the case of *R v Stephen Magee* [2007] NICA 21 and *R v Glenn Paul Harwood* [2007] NICA 49. In *R v Stephen Magee* Kerr LCJ set out the approach to be adopted at paragraphs [22]-[27] of his judgment as follows:

"[22] It is not surprising that there are relatively few decisions in this jurisdiction which could properly be described as guideline cases for sentencing for manslaughter. Offences of manslaughter typically cover a very wide factual spectrum. It is not easy in these circumstances to prescribe a sentencing range that will be meaningful. Certain common characteristics of many offences of violence committed by young men on other young men are readily detectable, however, and, for reasons that we will discuss, these call for a consistent sentencing approach.

[23] It is the experience of this court that offences of wanton violence among young males (while by no means a new problem in our society) are becoming even more prevalent in recent years. Unfortunately, the use of a weapon – often a knife, sometimes a bottle or baseball bat – is all too frequently a feature of these cases. Shocking instances of gratuitous violence by kicking defenceless victims while they are on the ground are also common in the criminal courts. These offences are typically committed when the perpetrator is under the influence of drink or drugs or both. The level of violence meted out goes well beyond that which might have been prompted by the initial dispute. Those who inflict the violence display a chilling indifference to the severity of the injury that their victims will suffer. Typically, great regret is expressed when the offender has to confront the consequences of his behaviour but, as this court observed in *R v Ryan Quinn* [2006] NICA 27 “it is frequently difficult to distinguish authentic regret for one’s actions from unhappiness and distress for one’s plight as a result of those actions”.

[24] The courts must react to these circumstances by the imposition of sentences that sufficiently mark society’s utter rejection of such offences and send a clear signal to those who might engage in this type of violence that the consequence of conviction of these crimes will be condign punishment. We put it thus in *Ryan Quinn*: -

“... it is now, sadly, common experience that serious assaults involving young men leading to grave injury and, far too often, death occur after offenders and victims have been drinking heavily. The courts must respond to this experience by the imposition of penalties not only for the purpose of deterrence but also to mark our society’s abhorrence and rejection of the phenomenon. Those sentences must also reflect the devastation wrought by the death of a young man ...”

[25] The case of *Ryan Quinn* involved the manslaughter of a young man by the delivery of a single blow by a closed fist. This court concluded that the starting point in Northern Ireland for that type of offence was two years' imprisonment and that this should rise, where there were significant aggravating factors, to six years. That was a very different case from the present. In that case there could be no doubt that the applicant did not intend serious injury to his victim although the court was of the view that he should have been aware that this might occur. In the present case the applicant deliberately stabbed his victim with a long knife. He must have known that this would inflict a significant injury. The attack took place because the deceased man took objection to the earlier entirely unprovoked attack on him by the applicant.

[26] We consider that the time has now arrived where, in the case of manslaughter where the charge has been preferred or a plea has been accepted on the basis that it cannot be proved that the offender intended to kill or cause really serious harm to the victim and where deliberate, substantial injury has been inflicted, the range of sentence after a not guilty plea should be between eight and fifteen years' imprisonment. This is, perforce, the most general of guidelines. Because of the potentially limitless variety of factual situations where manslaughter is committed, it is necessary to recognise that some deviation from this range may be required. Indeed, in some cases an indeterminate sentence will be appropriate. Notwithstanding the difficulty in arriving at a precise range for sentencing in this area, we have concluded that some guidance is now required for sentencers and, particularly because of the prevalence of this type of offence, a more substantial range of penalty than was perhaps hitherto applied is now required.

[27] Aggravating and mitigating features will be instrumental in fixing the chosen sentence within or – in exceptional cases – beyond this range. Aggravating factors may include (i) the use of a weapon; (ii) that the attack was unprovoked; (iii) that the offender evinced an indifference to the

seriousness of the likely injury; (iv) that there is a substantial criminal record for offences of violence; and (v) more than one blow or stabbing has occurred.”

Sentencing guidelines in relation to an offence under Section 18 of the Offences against the Persons Act 1861

[24] In fixing the sentence to impose in relation to the offences under section 18 of the Offences against the Persons Act 1861 I have sought to follow the guideline contained in the decision of the Court of Appeal in the case of *R v Daniel McArdle* [2008] NICA 29. In that case the Lord Chief Justice having referred to the case of *R v Stephen Magee* and the guideline for manslaughter appropriate in that case after a not guilty plea of 8 - 15 years then stated at paragraph [28] in relation to an offence under section 18 that -

“In cases such as the present where there can be no question that the grievous bodily harm was inflicted deliberately and that the appellant intended that his victim should sustain grievous injury, we do not believe that the range of sentences should be significantly different simply because, fortuitously, a fatal injury was not sustained. This is particularly so because, we are satisfied, if Ms Doherty had not intervened, the appellant would have stabbed Mr Sumner again, quite possibly with fatal consequences. We have concluded, therefore, that for offences of wounding with intent to cause grievous bodily harm the sentencing range should be between *seven and fifteen years’ imprisonment, following conviction after trial*. An appropriate reduction on this range should be made where the offender has pleaded guilty but in the present case that cannot be significant. The appellant maintained his innocence virtually until trial, despite overwhelming evidence against him. Any reduction on this account must be modest.”
(emphasis added)

Sentencing guidelines in relation to the offence of affray

[25] In fixing the sentence to impose in relation to the offence of affray I have sought to follow the guideline contained in the decision of the Court of Appeal in the case of *Attorney General’s Reference (No. 1 of 2006) Gary McDonald, John Keith McDonald and Stephen Gary Maternaghan* [2006] NICA 4. Under the heading “Sentencing for Affray” the Lord Chief Justice stated at paragraphs [22]-[25] as follows:-

[22] There are no local guideline cases on affray and the modern English authorities are of limited value as the statutory offence there is different and the maximum penalty is three years imprisonment whereas in this jurisdiction the maximum possible penalty is imprisonment for life. A guideline case predating the legislative change in Great Britain is *Keys and others* (1986) 8 CAR (S) 444 where the appellants were involved in a large scale disorder at the Broadwater Farm Estate, in which 200 police and fire crew were injured, vehicles were used as barricades and set on fire, and a variety of missiles, including petrol bombs, were thrown. One officer was killed. The appellants were sentenced to 5 and 7 years' imprisonment. In that case it was stated that for premeditated, organised affray ringleaders could expect to be sentenced to 7 years and upwards although it was acknowledged that since there is a very wide spectrum of types of affray, it was not easy to give firm sentencing guidelines. Lord Lane CJ stated: -

“The facts constituting affray and the possible degrees of participation are so variable and cover such a wide area of behaviour that it is very difficult to formulate any helpful sentencing framework.”

[23] In this jurisdiction there is no reported decision that could be described as a guideline case for the offence of affray. In *R v Fullen and Archibald* (2003 – unreported) this court was invited to consider the effect of the amendment of the law in England and Wales brought about by the enactment of the Public Order Act 1986 which abolished the common law offences of riot, rout, unlawful assembly and affray. The 1986 Act introduced a statutory definition of affray and imposed a maximum term of imprisonment of 3 years upon conviction on indictment. The Act has not been extended to Northern Ireland and in this jurisdiction affray remains an offence at common law punishable by life imprisonment. McLaughlin J, delivering the judgment of the court, rejected the argument that

sentences here should be based on the 1986 Act, saying: -

“...we do not consider that courts here should regard themselves as limited by the provisions of the 1986 Act. For the present there remain sufficient differences between the public order problems in Northern Ireland and Great Britain to reserve to these courts a greater degree of flexibility in sentencing than is available under the 1986 Act.”

[24] The decision not to extend the 1986 Act to Northern Ireland must be regarded as deliberate. As a matter of principle, therefore, it would not be correct to adjust sentences for affray in this jurisdiction to reflect the change in the law that was brought about by that Act. *We consider that the range of possible sentences for this offence in Northern Ireland extends well beyond the three year maximum that applies in England and Wales.*

[25] *Because of the infinitely varying circumstances in which affray may occur and the wide diversity of possible participation of those engaged in it, comprehensive rules as to the level of sentencing are impossible to devise. Certain general principles can be recognised, however. Active, central participation will normally attract more condign punishment than peripheral or passive support for the affray. The use of weapons will generally merit the imposition of greater penalties. The extent to which members of the public have been put in fear will also be a factor that will influence the level of sentence and a distinction should be drawn between an affray that has ignited spontaneously and one which has been planned – see R v Anderson and others (1985) 7 Cr App R (S) 210. Heavier sentences should in general be passed where, as in this case, the affray consists of a number of incidents rather than a single self contained episode.”* (emphasis added)

Consecutive or concurrent. Totality

[26] In considering the question as to whether the sentences that I impose on you Francisco Antonio Notarantonio should be consecutive or concurrent I have sought to apply the guidance of the Court of Appeal in *R v Samuel Robinson*. In that case Carswell LCJ quoted with approval a passage from the

judgment of Hutton LCJ In *Attorney-General's Reference (No. 1 of 1991)* [1991] NI 218. Hutton LCJ summarised the matter in this way at page 224G-225A:

“We are of opinion that it would be undesirable in this jurisdiction to limit the discretion of the trial judge as to whether he should impose concurrent or consecutive sentences. The overriding concern must be that the total global sentence, whether made up of concurrent or consecutive sentences, must be appropriate. In some cases a judge may achieve this result more satisfactorily by imposing consecutive sentences. In other cases he may achieve it more satisfactorily by imposing concurrent sentences”.

[27] In your case I have concluded that it is appropriate to impose concurrent sentences. In arriving at that conclusion I have borne in mind that separate punishment for your offences must be by the imposition of concurrent sentences of sufficient length as to ensure that you do not escape punishment entirely by subsuming the sentence for one offence into the penalty imposed for the other. In addition I have considered the totality of your offending behaviour in arriving at the total global sentence so that when I am sentencing you for more than one offence and in fixing the total sentence that I will impose on you I will bear in mind the totality principle to ensure that the total sentence is proportionate to the offending behaviour and properly balanced.

[28] I have also borne in mind the totality principle when considering whether and if so to what extent to order the return to prison of you Anthony Notarantonio in respect of offences for which you were convicted on 20 June 2003. In your case I consider that if I do order your return to prison then that the sentence for affray should be consecutive.

Personal background of the offenders

[29] You Francisco Antonio Notarantonio are 21 years of age having been born on 2 April 1987 in Belfast. You were just two months short of your 19th birthday when these offences were committed. You were brought up in an area with high levels of social and economic deprivation as well as political instability and violence related to the civil conflict. You are the youngest of four brothers and prior to your arrest, you lived with your parents at their previous address before it was extensively damaged by fire as a result of an alleged arson attack. You left school at the age of 16 and commenced an NVQ course in electronic engineering which you completed up to Level 1. Thereafter you have worked in the BT call centre, Boucher Road for about nine months up to the date of your arrest. You have been in a continuous relationship with your partner, Ms McDonagh since you were both in your early teens. You now have a thirteenth month old baby boy. You plan to

live abroad upon your release from prison but will remain in Northern Ireland if you are the subject of and until the completion of a probation order at the end of any period in custody. I have considered the reports of Dr Bownes, consultant psychiatrist, Colin McClelland, educational psychologist, together with the references from the Reverend Matthew Wallace, Gerard McMahan and Paul McMahan.

[30] You Christopher Charles Notarantonio are a 56 year old married man having been born on 27 June 1952 in Belfast. You married at the age of 24 years and have five children and eleven grandchildren. Your wife suffers from poor health following a road traffic accident in 1992 in which both she and you sustained significant injuries. You care for your wife on a full-time basis. You yourself suffer from ill-health having high blood pressure and hypertension. As a result of this incident you and your family were forced to leave Belfast, where you had lived all your lives. You and your family have resettled in Bootle where you have been playing a constructive role in the life of the community as is demonstrated by a letter from Joe Benton, Justice of the Peace and Labour MP for Bootle. Since your arrival in Bootle two years ago, you have been working as a chef for the Feel Good Factory, a charity organisation which prepares and delivers meals for vulnerable, elderly residents in the community. This is unpaid voluntary work. Your wife Kathleen is very ill. You are her main carer and she is dependent on you. She is extremely immobile as a result of severe leg injuries sustained many years ago. She suffers from osteoarthritis, hypothyroidism, and depression. Her depression is so severe that she has been receiving counselling. She is benzodiazepine dependent. In that respect I have a report from her GP, Dr Dabhade, North Park Health Centre, Bootle, Liverpool. Your daughter also moved to Bootle. She suffers from depression, and has recently been diagnosed with a serious illness. She is currently in need of constant care and attention. Again in that respect I have been provided with a letter from Ms Slawik, consultant surgeon at Aintree Hospital. Again you are the main carer for your daughter. You intend to make your life in Liverpool. I have considered the report of Dr Maria O'Kane, consultant psychiatrist.

[31] You William Notarantonio are 24 years of age having been born on 21 March 1984 in Belfast. You were the youngest child in a family of six children growing up in a settled family home. You described a contented childhood. You obtained seven GCSE exams. You completed an advanced NVQ in travel and tourism. You have undertaken community work in a local youth club. You have also worked in a call centre on a part-time basis. You have been in a relationship for a number of years and have three children aged 5, 4 and 3. That relationship has subsequently ended but you are currently in a relationship and intend to set up home with your current partner. Since this incident you have been living in Liverpool and you have set up a company which employs a number of people. In effect you have been forced to leave Northern Ireland where you had lived for almost 22 years. The relationship

which you had formed has broken down as a result. You were forced to abandon your academic studies and there has been an effect on your family. I have considered the reference from Gerard McMahon.

[32] You, Paul Burns, are 25 years of age having been born on 2 August 1983. Your parents separated 13 years ago but despite that separation, relationships within the family remained amicable and you enjoyed a happy home environment where you enjoyed regular contact with all family members. You are the eldest of three children, born and brought up in West Belfast. You left school at the age of 16 with four GCSEs to pursue a course in joinery. You only completed two years of a four year apprenticeship. You secured employment with Bass Ireland but an accident at work resulted in a spinal injury which left you unfit for work and consequently you have not worked for the past six years. You suffer from spondylosis which is a degenerative spinal problem linked to a genetic defect. In 2002 you met your partner and you have a three year old daughter. The tension caused by this offence and the pending court appearance led to a breakdown of the relationship with your partner but you continue to have regular contact with your daughter. I have also considered the report of Dr Maria O’Kane, consultant psychiatrist. You have symptoms of Post Traumatic Stress Disorder and symptoms of paranoia. One of her conclusions is that if you were imprisoned for a persistent length of time there is a significant risk that your paranoia may increase to the point of becoming actively psychotic. That in order to remove yourself from what you feel to be a threatening environment you spend extended periods of time in your cell alone which in turn may actually increase the potential for paranoia. In giving consideration to this aspect I have borne in mind the observations of the Court of Appeal in *Gary McDonald, John Keith McDonald and Stephen Gary Maternaghan* [2006] NICA 4 at paragraphs [39] – [41] and the observations of the Court of Appeal in England & Wales in the case of *R v Ali Khelifi* [2006] 2 Cr. App. R (S) 100 at paragraph [10] A risk is not a certainty. If the risk materialises it will be appropriately managed by the prison authorities. Defendants with all kinds of illness have sometimes to be sentenced to prison and there is nothing unique about your condition. Mr. Lyttle, Q.C., your counsel state that you are not presently suffering from a mental disorder. Article 2(2) of the Criminal Justice (Northern Ireland) Order 1996 defines mental disorder by reference to the definition contained in the Mental Health (Northern Ireland) Order 1986. Article 3(1) of the 1986 Order defines “mental disorder” as “mental illness, mental handicap and any other disorder or disability of mind”. Your counsel also states that by virtue of the fact that you are not suffering from a mental disorder I am not obliged to consider the additional procedural requirements specified by Article 22 of the Criminal Justice (Northern Ireland) Order 1996 in the case of a person who is or appears to be mentally disordered. Your welfare whilst relevant cannot be treated as an overriding consideration. I take into account your present symptoms of paranoia together with your symptoms of Post Traumatic Stress Disorder together with the significant risk

that the symptoms of paranoia may increase to the point of becoming actively psychotic. I consider that as you were definitely holding a weapon the sentence in respect of you should have been somewhat higher than that in respect of William Notarantonio but bearing this factor in mind I will impose a comparable sentence on you and William Notarantonio. I make it clear that even if you have a mental disorder within the terms of article 22 I would, upon a consideration of the factors set out in that article, have arrived at exactly the same conclusion as to the sentence to impose on you.

[33] You, Anthony Notarantonio, are 50 years of age having been born on 28 July 1958. You are originally from the Whitecliff area of Ballymurphy. You attended St Thomas's Secondary School but did not attain any formal qualifications and on leaving school immediately enrolled in a youth training programme. You have only worked briefly as a labourer in your teenage years and you have claimed benefits throughout your adult life. You have informed the probation officer, Oonagh O'Neill that you "would like to work but that you could not find work in your local area." You are a married man with four children. The difficulties associated with this incident have caused you and your family to be re-housed in the Falls area. This was due to your house being attacked. You have indicated that when your home is renovated you wish to return to the Ballymurphy area. I have considered the report of Dr Maria O'Kane, consultant psychiatrist. Dr O'Kane describes that you suffer from "complex Post Traumatic Stress Disorder and enduring personality change following various traumas in your life, namely your family members' internment, the effects of the troubles and deaths of family members by violent means, and the numerous attacks and intimidation on you and the other family members." In so far as you have a personality change that is not a mental disorder within the meaning of article 22 of the Criminal Justice (NI) Order 1996. Your counsel also stated that the Post Traumatic Stress Disorder was not a mental disorder. I make it clear that even if you have a mental disorder within the terms of article 22 I would, upon a consideration of the factors set out in that article, have arrived at exactly the same conclusion as to the sentence to impose on you.

Attitude of the offenders to the offences, assessment of the risk of further offending and assessment of suitability for custody probation

[34] You, Francisco Antonio Notarantonio, state that you "had no intention of hurting anyone" and that you "never wished Mr Devlin any harm". Further that you deeply regret the consequences of your actions for which you take full responsibility. I accept a significant degree of regret on your part particularly in view of the admissions that you made to the police, but I cannot accept your assertion that you "had no intention of hurting anyone" in view of your pleas of guilty to the Section 18 offences which require an intention to cause grievous bodily harm. Accordingly I consider that I should treat some of your expressions of regret with a degree of caution. The probation officer concludes and I accept that the likelihood of you re-

offending has been assessed as low and that currently you do not pose a high risk of harm to others. The probation officer also considers and I accept that you will need considerable support and guidance at the end of any prison sentence to assist the process of resettlement such support and guidance thereby assisting in further reducing the risk of re-offending. I also form that view on the basis of the length of the sentence that will be imposed upon you and accordingly the need for your re integration into the community.

[35] You, Christopher Notarantonio, have expressed remorse and regret for your involvement in this offence. I am minded to accept those expressions of remorse in view of the fact that you had made attempts prior to this incident through your MLA and Councillor Alban Maginness, to resolve the feud with the extended Devlin family. In that respect I have evidence from Mr Maginness. I am also inclined to accept those expressions of remorse because you have decided to make your life elsewhere than in Northern Ireland and in respect of you, I consider that this was in part motivated by a realisation that given the tragic circumstances such a move was appropriate rather than purely a practical response to the difficulties that present for you living in West Belfast. You have been assessed by the Probation Service as a low likelihood of re-offending and of not posing a high risk of harm to the public. You intend to reside in Liverpool and therefore a custody probation order is not appropriate as it is not possible to transfer such an order outside Northern Ireland.

[36] You, William Notarantonio, have expressed remorse and regret for your involvement in this offence and acknowledge how this incident will have impacted upon the victim's family, the community and your own family. You thereby display a degree of victim awareness. You have moved to Liverpool and intend to remain there. You are at low risk of re-offending and you are not assessed as posing a risk of harm to others. Again it is not possible to transfer a custody probation order outside the jurisdiction and therefore a custody probation order is not appropriate.

[37] You, Paul Burns, have expressed regret for the loss of life and the lasting impact for everybody involved. Your risk of re-offending has been assessed as low and you have been assessed as not representing a high risk of harm to members of the public. The Probation Service has not positively recommended custody probation as no lifestyle issues have been identified as problematic. I do not consider custody probation to be appropriate.

[38] You, Anthony Notarantonio, did not express any regret to the Probation Service nor did you evidence any significant victim awareness. You did state that Gerard Devlin should never have died but I consider this to be a self evident proposition rather than a genuine expression of regret. You are intent on returning to the very area of west Belfast in which this tragic incident occurred. You expressed your deep regret for the death of

Gerard Devlin to Dr Maria O’Kane. However I do not accept any genuine remorse on your part. You have been assessed as a medium risk of re-offending. Given your record for violence and your lack of insight and regret I consider that the risk is greater than that. You have been assessed as suitable for supervision by the probation service post custody and I accept that assessment.

Procedural requirements for custodial sentences

[39] Pre sentence reports have been made available to me in respect of each of you. The report in respect of you, Francisco Antonio Notarantonio was prepared by Alan Darnbrook, probation officer. The report in respect of you, Christopher Charles Notarantonio was prepared by Briege McKee. The report in respect of you, William Notarantonio was prepared by P. Nash, probation officer. The report in respect of you, Paul Anthony Burns was prepared by Siobhan Taylor, probation officer. The report in respect of you, Anthony Notarantonio was prepared by Oonagh O’Neill, probation officer. I have considered all of them in accordance with the provisions of Article 21 of the Criminal Justice Order (Northern Ireland) 1996.

[40] In determining your sentences I have borne in mind the provisions of Article 19(2)(a) and (b) and Article 19(4) of the Criminal Justice (Northern Ireland) Order 1996. I consider that all of the offences before me now are so serious in their content that only a custodial sentence is justified. I am of that opinion for the reasons I have set out in this judgment. All of you have committed most serious offences. You all have demonstrated a significant degree of lawlessness and as a consequence you have caused intimidation, fear and a considerable exacerbation of a feud and thereby a considerable exacerbation of difficulties in West Belfast for the wider community.

[41] As you each must receive a substantial period of imprisonment in excess of 12 months I am required by statute to consider whether I should impose a Custody Probation Order. Such an order is considered in the pre-sentence reports. The Court of Appeal pointed out in *R v Quinn* [2006] NICA 27 at paragraph 29 that:-

“A Custody/Probation Order should only be made where it is considered that the offender would benefit from probation at the conclusion of a period of custody and that it is deemed necessary to enable him to reintegrate into society or because of the risk that he would otherwise pose”.

I have already noted the views expressed by the probation service as to whether custody probation is appropriate. I have taken those reports into account and have concluded that you Francisco Antonio Notarantonio and

you Anthony Notarantonio would benefit from probation at the conclusion of a period of custody.

Aggravating Features Relating to the Offenders

[42] You Francisco Antonio Notarantonio have a previous conviction in 2004 for a minor drugs offence. You received a conditional discharge. In the context of these offences I do not treat that previous conviction as an aggravating feature.

[43] All of you Christopher Notarantonio, William Notarantonio, and Paul Oliver Burns have clear criminal records.

[44] You, Anthony Notarantonio, have a considerable record, including convictions for terrorist offences. At Belfast Crown Court on 20 June 2003, you were convicted of two offences of possession of firearms with intent and possession of documents likely to be useful to terrorists. You were sentenced to an effective sentence of 8 years imprisonment. You were released from prison on 23 October 2005, but subject to license until 23 October 2009. The offence of affray occurred within 4 months of your release from prison. I treat your criminal record as a serious aggravating factor in relation to the offence of affray. In addition to dealing with you in respect of the offence of affray I will also give consideration, under *Article 3 of the Treatment of Offenders (NI) Order 1976*, as to whether I should order your return to prison in respect of the offences of which you were convicted on 20 June 2003 and if so for what period. The effect of any such order would be that you would have to serve that period before the commencement of any sentence that I will impose for the offence of affray.

Aggravating Features Relating to the Offences

[45] I consider that the following aggravating features are present in respect of you Francisco Notarantonio:

- (a) You used a knife and this is a serious aggravating feature in respect of all the offences. I will impose on you a longer sentence in respect of affray than on the other defendants in the main as a result of your use of a knife in the course of that crime. In doing so I keep in mind that the sentences that I impose will be concurrent and the totality principle.
- (b) In relation to the offence of manslaughter you evinced an indifference to the seriousness of the likely injury. I treat this as an aggravating feature in respect of that offence and only that offence. An intention to cause really serious harm is a constituent element of the section 18 offences accordingly indifference to the

seriousness of likely injury is not relevant in relation to those offences.

- (c) In view of the fact that I am passing concurrent sentences in relation to all the offences then in relation to the offence of manslaughter I will treat as a serious aggravating feature the attacks on Thomas Loughran and Anthony McCabe and your participation in the affray.
- (d) I accept that your conduct was unplanned. That it was spontaneous and impulsive however such conduct has to be seen in the context of a long standing feud where the obvious consequence of your actions was to seriously exacerbate by intensifying and stirring up an already dangerous situation. Any spark was to be avoided and your despicable crimes added to the conflagration with serious effects on the wider community with ongoing lawless incidents in the area. I consider this to be an aggravating feature of all the offences. I have already taken into account in relation to retribution the effects on the Devlin family.
- (e) The offence of manslaughter and the section 18 offences were committed in a public place and that is an aggravating feature of those offences. It is a constituent element of the offence of affray that it occurred in public and accordingly I do not consider that to be an aggravating feature of that offence.
- (f) You were a major willing participant in the offence of affray and I consider that to be an aggravating feature of that offence.

[46] I consider that the following aggravating features are present in respect of you Christopher Notarantonio, William Notarantonio, Paul Oliver Burns and Anthony Notarantonio -

- (a) In respect of each of you I accept that your conduct was unplanned. That it was spontaneous and impulsive however again such conduct has to be seen in the context of a long standing feud where the obvious consequence of your actions was to seriously exacerbate by intensifying and stirring up an already dangerous situation. I repeat that any spark was to be

avoided and the crime that each of you committed added to the conflagration with serious effects on the wider community with ongoing lawless incidents in the area. I consider this to be an aggravating feature in respect of each of you.

- (b) In respect of you William Notarantonio, you Paul Burns and you Anthony Notarantonio weapons were being used in this affray at a time when you were participating in it. You Paul Burns used a weapon.
- (c) In respect of you William Notarantonio, you Paul Burns and you Anthony Notarantonio really serious injuries were being attempted or caused and a death occurred at a time when you were participating in the affray.
- (d) In respect of you William Notarantonio, you Paul Burns and you Anthony Notarantonio I consider that you were active central participants.

Mitigating Features in Relation to the Offences

[47] As I have indicated none of the offences were planned. The role played by Christopher Notarantonio in the affray was peripheral.

Mitigating Features in Relation to the Offenders

[48] None of you, except you Anthony Notarantonio, has any or any relevant previous convictions. You all have clear records and good characters except you Anthony Notarantonio. In respect of you Christopher Notarantonio I take into account your attempts prior to this incident to resolve this feud. I have taken each of your personal circumstances into account and those personal circumstances include the subsequent events that have occurred to you or your extended families homes and the impact that has had on your respective lives. I have also taken into account the responses of each of you whilst on bail and that the bail conditions were honoured.

[49] I bear in mind the distinction between genuine remorse and concern as to the position in which each of you see yourself, see *R v Ryan Quinn* [2006] NICA 27 and *Attorney General's Reference (No. 6 of 2004) (Conor Gerard Doyle)* [2004] NICA 33 at [38]. I have set out earlier in this judgment my conclusions in relation to remorse

[50] In respect of you Francisco Notarantonio I take into account as a mitigating factor your age at the time that these offences were committed. In

Gilberts Case at paragraph [25] the Lord Chief Justice stated that the Court of Appeal

“has not given significant discount on the basis that the offender was young – see, for instance, *Murdock* and *Molloy*. It appears to us that the youth of the offender will have a variable effect on the sentence according to the nature of the crime and the awareness of the individual defendant of the nature of the offending behaviour.”

I consider that you were aware of the nature of the offending behaviour but I do consider that your age at the time of the commission of these offences has to be seen in the context that from your teenage years you were exposed to and poisoned by this ongoing feud. On that basis I attach significance to your age as a mitigating feature so that it will have increased effect on sentence. I also take into account the ages of William Notarantonio and Paul Burns.

[51] I take into account that you have all pleaded guilty though I have not given the full element of discount which I would accord to an earlier plea of guilty. In arriving at that discount I have considered the strengths of the defences that were available to you. I allow a somewhat lesser discount in respect of the plea of guilty by you Anthony Notarantonio. You are presently at risk of being returned to prison in relation to your earlier offences for a period of 11 months. If you had pleaded guilty at an earlier stage you would have been at risk of returning to prison for a longer period of time. Your delay has accordingly potentially impacted on the total period of time for which you should be imprisoned.

Sentence in respect of you Francisco Antonio Notarantonio

[52] If you do not consent to Custody Probation I will sentence you to 12 years imprisonment in relation to the offence of manslaughter, 4 years imprisonment for making an affray, 5 years imprisonment for the offence of attempted malicious wounding of Anthony McCabe with intent to cause him grievous bodily harm contrary to Section 18 of the Offences Against the Persons Act 1861, 6 years imprisonment for the offence of attempted malicious wounding of Thomas Loughran with intent to cause him grievous harm contrary to Section 18 of the Offences Against the Persons Act 1861. All of those sentences to be concurrent.

[53] If you consent to a Custody Probation Order I will sentence you as follows 11 years imprisonment followed by one years probation in relation to the offence of manslaughter, 4 years imprisonment for making an affray, 5 years imprisonment for the offence of attempted malicious wounding of Anthony McCabe with intent to cause him grievous bodily harm contrary to Section 18 of the Offences Against the Persons Act 1861, 6 years imprisonment

for the offence of attempted malicious wounding of Thomas Loughran with intent to cause him grievous harm contrary to Section 18 of the Offences Against the Persons Act 1861. All of those sentences to be concurrent.

[54] I make it clear that in respect of the probation element of the Custody Probation order it will be a requirement that

- (a) You will reside in the petty sessions district set out in the order of this court throughout the whole period of probation.
- (b) You will reside at such accommodation as is specified by your probation officer and at no other address. If there are any rules that apply in relation to that accommodation then you will comply with those rules.
- (c) You will develop an involvement in such constructive and purposeful activity as is directed by your supervising probation officer.
- (d) You examine the consequences of your behaviour both on yourself and in particular on victims as directed by your supervising probation officer and you will attend such course or courses for counselling as directed by your supervising probation officer.
- (e) You will keep all appointments with the probation officer as are notified to you.

I am obliged by statute to explain to you that if you fail to comply with any of the requirements of the probation element of the Custody Probation order then the court has power to deal with any such failure by for instance revoking the probation element and imposing a further period of imprisonment or fining you and requiring your future compliance with the probation order or imposing a further community service order upon you and requiring your compliance with that order. I am also obliged by statute to explain to you that the court has power to review the probation element of the Custody Probation order on your application or on the application of your supervising probation officer.

[55] I must now enquire from you as to whether you consent to a Custody Probation Order. Do you consent to a Custody Probation Order being made?

[56] I understand that you consent. Accordingly I sentence you as I have indicated.

Sentence in respect of you Christopher Charles Notarantonio

[57] I will sentence you to 1 year's imprisonment in relation to the offence of making an affray but due to the exceptional circumstances which I have outlined I will suspend that sentence for a period of 2 years.

Sentence in respect of you William Notarantonio

[58] I sentence you to 2 years imprisonment in relation to the offence of making an affray.

Sentence in respect of you Paul Anthony Burns

[59] I sentence you I sentence you to 2 years imprisonment in relation to the offence of making an affray.

Sentence in respect of you Anthony Notarantonio

[60] If you do not consent to Custody Probation I will sentence you to 2 ½ years imprisonment in relation to the offence of making an affray.

[61] If you consent to a Custody Probation Order I will sentence you to 2 years imprisonment followed by 18 months probation.

[62] I make it clear that in respect of the probation element of the Custody Probation order it will be a requirement that

(a) You will reside in the petty sessions district set out in the order of this court throughout the whole period of probation.

(b) You will reside at such accommodation as is specified by your probation officer and at no other address. If there are any rules that apply in relation to that accommodation then you will comply with those rules.

(c) You will develop an involvement in such constructive and purposeful activity as is directed by your supervising probation officer.

(d) You examine the consequences of your behaviour both on yourself and in particular on victims as directed by your supervising probation officer and you will attend such course or courses for counselling as directed by your supervising probation officer.

(e) You will keep all appointments with the probation officer as are notified to you.

I am obliged by statute to explain to you that if you fail to comply with any of the requirements of the probation element of the Custody Probation order then the court has power to deal with any such failure by for instance revoking the probation element and imposing a further period of imprisonment or fining you and requiring your future compliance with the probation order or imposing a further community service order upon you and requiring your compliance with that order. I am also obliged by statute to explain to you that the court has power to review the probation element of the Custody Probation order on your application or on the application of your supervising probation officer.

[63] I make it clear that the 18 months probation period does not equate to the reduction in the period that you will spend in custody for the offence of affray. I consider that you require 18 months probation in view of the factors set out in this judgment and in particular your stated intention to return to the area where this incident occurred and the increased risks associated with that course of action.

[64] I must now enquire from you as to whether you consent to a Custody Probation Order. Do you consent to a Custody Probation Order being made?

[65] I understand that you consent. Accordingly I sentence you as I have indicated.

Return to prison in respect of the earlier offence

[66] There is then the question in respect of you Anthony Notarantonio as to whether, and if so for how long to order your return to prison in respect of the offences of which you were convicted on 20 June 2003. The discretion to order that you be returned to prison is contained in article 3 of Treatment of Offenders (Northern Ireland) Order 1976. The relevant parts of article 3 are as follows:

“Conviction within certain period after discharge from prison, etc

3.—(1) ... , where —

- (a) after a person is discharged from prison ... in pursuance of prison rules, but before any sentence of imprisonment . . . to which he was subject immediately before his discharge would (but for that discharge) have expired, he commits, and is convicted of, an offence in Northern Ireland; and

(b) the offence is punishable with imprisonment in the case of a person aged twenty-one years or over,

the court may, without prejudice to its powers to deal with him in respect of the offence, order that he be returned to prison ... for such period, not exceeding that referred to in paragraph (3), as it thinks fit

(3) The period referred to in paragraph (1) is -

- (a) ... (i)...
(ii)the period between the date of the order referred to in paragraph (1) and the date on which any sentence of imprisonment . . . detention so referred to would have expired in his case but for his discharge in pursuance of prison rules;”

[67] I accordingly can either decline to order your return to prison or alternatively order your return for any period up to 23 October 2009. In exercising my discretion under article 3 I am enjoined to act in a way similar to the way in which I would decide whether, and if so to what extent, to activate a suspended sentence. I should look at such matters as the nature of the original offence, the nature and gravity of the subsequent offence, the un served time of the original sentence and the length of time from your release to the commission of the subsequent offence see *R v Ferguson* [1988] NI 113. Since the decision in *R v Ferguson* the Court of Appeal has given further consideration to the principles to be applied when a court is considering whether and if so the extent to which a suspended sentence should be activated. In so far as I am enjoined to act in a way similar to the way in which I would decide whether, and if so to what extent to activate a suspended sentence, I also propose to apply the principles set out in those later decisions of the Court of Appeal. Those cases include *R v Andrew Larmour* 19/04/1991, *R v Samuel Brown Lendrum* (1993) 7 NIJB 78, *Re Price's Application* [1997] NI 33 and *R v Colin Hughes* [2003] NICA 17. In *R v Alan Alfred Price* Carswell LCJ stated:-

“... I want to make it clear from this Court that suspended sentences are meant to have effect.”

and went on to state that -

“... suspended sentences should be generally applied in full, unless there are circumstances which indicate that there should be a reduction.”

In *R v Samuel Brown Lendrum Hutton* LCJ stated that –

“The fact that an offence committed during the operational period of a suspended sentence is of a different character from the offence for which the suspended sentence was imposed is not in itself a ground for not activating the suspended sentence”

In *R v Colin Hughes Carswell* LCJ when considering the totality principle stated that –

“If the sum of the two sentences makes for a total which would have been unjustifiable as punishment for the original offence plus the instant offence, then the suspended sentence could properly be put into operation for a shorter period.”

[68] In your case the “breach offence” or “trigger offence,” that is the offence of affray of 3 February 2006 was a serious offence and as I have ruled it was an offence sufficiently serious to warrant a significant custodial sentence. The breach or trigger offence and the original offences for which you were convicted on 20 June 2003 were offences of violence. The original offences were grave offences. The unexpired portion of the original sentence is some 11 months. I have considered the totality principle and order that you be returned to prison until 23 October 2009 and that term of imprisonment shall be consecutive to the sentence which I have already imposed so that you will not commence to serve the sentence of custody probation of 2 years imprisonment and 18 months probation until after the new termination date consequent upon your return to prison.