

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

Delivered: 21.01.2009

IN THE CROWN COURT IN NORTHERN IRELAND

THE QUEEN

-v-

FRANCISCO ANTONIO O'BRIEN

BILL NO. 08/059236

WEIR J

[1] Francisco O'Brien, you have pleaded guilty to wounding Desmond McCausland with intent to do him grievous bodily harm. Your pleas of not guilty to the two other counts on the indictment, attempted murder and unlawful wounding, have been accepted by the prosecution.

[2] On the morning of 10 June 2007 you and the injured party, Mr McCausland, were drinking with others in City Cemetery at Whiterock Road in Belfast. Although you and he were not friends you did know each other, you being like him one of those who habitually used the cemetery to drink. After a period Mr McCausland left the group.

[3] On the early evening of the same day Mr McCausland was again in the cemetery in the vicinity of the Whiterock gates which are kept chained shut. You hailed him from outside the gates, accusing him of having robbed you that morning. When he approached you from inside the gates to deny your suggestion you stuck a knife through the bars of the gates and stabbed him in the upper left chest. Mr McCausland ran off to seek help and was in due course admitted to the Royal Victoria Hospital where he was treated for a left haemothorax. Fortunately he made a full recovery and was discharged from hospital after 11 days. He has declined the opportunity to have a victim impact assessment carried out.

[4] At the time of the offence you were less than 19 years old having been born on 7 October 1988. You are now just over 20. Your childhood life had not been happy with a father who, until he left when you were about five, had exhibited violence within the home. He has since maintained no contact with

the family of which you were the eldest of six children until the death of your youngest sister in around 2003. Your mother abuses alcohol and you followed her example from an early age and then commenced also to abuse cannabis. By the age of 13 you had dropped out of school and spent the period of years from then until the commission of this offence in an aimless, drug and alcohol-fuelled existence in which, according to your own account to Dr Hanley, Clinical Psychologist, you often sat up at nights drinking and smoking cannabis and then slept by day. Dr Hanley reports that you are of low average intellectual ability but with a reasonable level of social skills and that, although you are shy, there is nothing to indicate any more significant personality problems.

[5] Why you committed this unprovoked attack is not at all clear. There seems to have been no history of ill-feeling between you and your victim. The most that can be said is that you believed that Mr McCausland had had something to do with the theft of your mobile phone and money which you also believed occurred while you were asleep in the cemetery that day due, as again you believed, to your drink having been "spiked". There is nothing whatever to confirm these beliefs on your part but I am prepared to accept in your favour that, probably due to the effects of alcohol and perhaps drugs, you genuinely held them at the time. Nevertheless, even had they been true, they could not have begun to justify the stabbing of Mr McCausland which might so easily have ended in his death had your blow landed elsewhere. Your explanation as to how you came to be armed with the knife, namely that you had found it in your grandmother's rear yard and were returning it to her house when you spotted Mr McFarland across the road in the cemetery and approached him is most unconvincing.

[6] Mr Murphy QC for the prosecution, in the course of his characteristically measured submissions, has said in your favour that he does not submit that this is a case in which an additional sentence for the protection of the public is required and this is confirmed by the probation report which assesses you as at high risk of re-offending and harm but considers that you could be managed in the community if you complied with the probation supervision plan, a subject to which I will later return. Moreover, Dr McDonald, Consultant Psychiatrist, expresses the view in his final report that you are showing evidence of gaining a degree of emotional maturity, that there is a significant chance of you being able to address your addiction problems in years to come and that he does not regard you as suffering from any other psychiatric disorder that would increase the risk of offending behaviour in the future. In those circumstances, despite the apprehension created in me by the quite disproportionate nature of this violent response to what you believed had earlier happened to you in the cemetery, I am now persuaded that a protective element need not be added to your sentence.

[7] What commensurate sentence should I therefore impose for this disgraceful attack upon Mr McCausland? There is agreement between senior prosecuting counsel and your counsel, Mr O'Rourke, that the range of sentence for an offence of this nature is between 4½ or 5 years and 10 years with a mid-point of 7 years on a plea of guilty with full credit for a timely plea. It is also agreed between counsel, they having provided the court with a helpful analysis of the authorities, that the facts of this case place it below the mid-point of the range. I accept their analysis. In this case you did not plead guilty at arraignment to this charge but I was informed by Mr O'Rourke that at the next following review before Hart J it was indicated that you accepted responsibility for wounding Mr McCausland and that the only remaining issue was whether you had the requisite intent when doing so. That issue was not clarified until Dr McDonald's report of 24 November 2008 whereupon you pleaded guilty to the present count on the first day of your trial which was the same day as that upon which the report was received by your solicitors. In those particular circumstances I propose to treat you as having pleaded guilty at the first opportunity although I am bound to say that the resolution of that vital issue does seem to have been left rather late in the day. If it was I do not think that you should suffer as a result of any delay on the part of your advisers.

[8] I take account of your youth at the time of the offence and of the fact that, as your criminal record is slight and only for motoring matters, you may be treated as having effectively a clear record. In all the circumstances I have concluded that the least sentence that I could impose would be one of six years imprisonment.

[9] I now turn to consider whether it would be appropriate instead to offer you as an alternative to that a shorter sentence of detention in the YOC followed by a period of probation. As I said earlier, the probation report indicates that you are at a high risk of re-offending and present a high risk of harm however the view is expressed that you could be managed in the community if you complied with the supervision plan which, in summary, would involve helping you to understand the consequences of your anti-social behaviour, helping you to get employment and, most importantly, helping you to deal with your alcohol and drug abuse which are the crux of your problem. I have noted that while you were on remand in YOC Hydebank you were able to secure temporary release on five occasions to attend appointments with the Northern Ireland Community Addiction Service. The helpful and detailed report provided by their Senior Counsellor, Mr Kennedy, indicates that abstinence from cannabis and controlled social drinking should be within your grasp and the Probation Service therefore considers that you should be obliged as a condition of any probation order to attend the RATSDAM project and any other treatment directed by the supervising probation officer. It also considers that to continue to live with your mother is not likely to be helpful by reason of her own entrenched

addiction to alcohol and it is therefore recommended that you live in other accommodation approved by the supervising probation officer.

[10] In the light of these reports, whose conclusions are confirmed by those of Dr McDonald and Dr Hanley, I intend to offer you the opportunity to have a custody/probation order made in your case. Such an order will require you to first serve the custodial sentence which I am satisfied is required in your case and then, upon your release from custody, to be under the supervision of a probation officer for a further period. During that period of supervision there will be three additional conditions attached to the probation order that you would have to keep namely:

- (1) You would have to present yourself in accordance with instructions given by your supervising probation officer to participate on the RATSDAM programme and while there comply with any instructions give by or under the authority of the person in charge.
- (2) You would have to attend for any other drug or alcohol treatment as directed by your supervising officer.
- (3) You would have to reside in accommodation approved by your supervising probation officer.

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

[12] Do you agree to the making of a custody/probation order? Very well as you do agree I sentence you to four years detention in the YOC together with two years probation supervision to commence upon your release, the probation order to contain the three additional conditions that I mentioned earlier.