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*(subject to editorial corrections)**

IN THE CROWN COURT IN NORTHERN IRELAND

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ANTRIM CROWN COURT

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THE QUEEN

-v-

JEFF COLIN LEWIS, MERVYN WILSON MOON, CHRISTOPHER FRANCIS KERR, AARON CAVANA WALLACE, CHRISTOPHER ANDREW McLEISTER, PETER GAVIN McMULLAN AND PAUL EDWARD DAVID HENSON

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TREACY J

[1] Mervyn Wilson Moon you have pleaded guilty to the murder of Michael McIlveen. Jeff Colin Lewis, Christopher Francis Kerr and Aaron Cavana Wallace you have all previously been found guilty by unanimous jury verdict of the murder of Michael McIlveen. And in the case of Lewis he at a late stage of the trial pleaded guilty to criminal damage. Christopher Andrew McLeister you have been found guilty of the manslaughter of Michael McIlveen. Peter Gavin McMullan you have pleaded guilty to one count criminal damage. Paul Edward David Henson you have previously been found guilty by unanimous jury verdict of criminal damage and affray.

[2] In the cases of those who have been convicted of murder – namely Moon, Lewis, Kerr and Wallace – in accordance with the provisions of Article 5 of the Life Sentences (Northern Ireland) Order 2001 ("the 2001 Order") I must now determine the minimum term that you will each be required to serve before you will first become eligible to have your case referred to the Life Sentence Review Commissions ("LSRC") for consideration by them as to whether and, if so, when you are to be released on licence. If you are in the future released on licence you will for the remainder of your life be liable to be recalled to prison if at any time you do not comply with the terms of that licence.

[3] The minimum term to which I will now sentence you is the actual term you must serve before becoming eligible to have your case referred to the

LSRC. You will receive no remission for any part of your minimum term that I shall impose.

Background

[4] During one of the lengthiest jury trials to take place in Northern Ireland the evidence of the brutal and sectarian murder of 15 year old Catholic Michael McIlveen was presented to the jury in public. Since the evidence has exposed in great detail over many days indeed months this desperately sad tragedy I consider that it is sufficient for present purposes to briefly recall the central facts.

[5]Late on Saturday night 6 May 2006 Michael McIlveen and two friends namely D and P went to an area adjacent to Ballymena Leisure Centre with the intention of meeting up with a friend K. At the leisure centre there was a substantial group of people already gathered which included the defendants. The arrival of these three young Catholics from the "top of the town" (as it has been referred to) inspired some hostility and unpleasantness and remarks of a sectarian nature particularly from Jeff Lewis. The atmosphere, notwithstanding the original hostility, appears to have improved somewhat and the three Catholics remained in and around the vicinity of the leisure centre for a period of time. Following a phone call from his father P said that he had to go home and his walking away appears to have reignited some sectarian hostility. As a result of what he saw and heard D feared some form of attack on P might be imminent. He went and got Michael McIlveen and as the three tried to extricate themselves by walking away they realised that they were being followed. When Michael McIlveen and P started to run the group of Protestants who had been following gave chase. The pursuit ended in the alleyway at the back of number 11 Granville Drive.

[6] Whilst the deceased and his friend P were fleeing the pursuing crowd the accused Kerr went into his own home and obtained a baseball bat. Kerr made his way to the alleyway with the baseball bat which ended up in the possession of Mervyn Moon. Armed with the baseball bat Moon, accompanied by his associates, advanced up the alleyway towards Michael McIlveen and Jeff Lewis who were at the opposite end of the alleyway. In the alleyway Michael McIlveen was attacked by Moon who felled him with the baseball bat and whilst incapacitated on the ground he was struck a number of times with the baseball bat and surrounded by a crowd which kicked him while he lay defenceless. Those who were involved in the kicking included Kerr, Lewis, and Wallace. The deceased was struck with at least one blow on either side of the skull with the baseball bat causing severe injury and damage which ultimately but not immediately led to his death.

[7] Some members of the group then attacked the rear door of No. 11 Granville Drive where a group of young Catholics who had retreated from

the entry when they had seen the advancing group of Protestants in the alleyway were sheltering. This attack, which was undoubtedly terrifying, involved Lewis attacking the rear door with a baseball bat and McMullan and Henson also participating in the attack by kicking the door.

[8] The lethal seriousness of the injuries Michael McIlveen had suffered was not immediately apparent. No ambulance was called and he was able, aided, to make his way home. Whilst at home it became apparent that he was gravely ill and he was taken to hospital where he died as a result of his injuries a short time later on Monday 8th.

[9] As I have said Michael was only 15 at the time of his murder and its devastating impact on his entire family has been set out in a moving victim impact statement signed by his mother which I set out in full:

> "FAMILY IMPACT STATEMENT
>
> BY THE FAMILY OF MICHAEL McILVEEN
>
> Our Michael was a popular young lad and had a wide circle of friends. He was a good looking young man and his sister Jodie would say that he had quite a number of girlfriends but was not involved with a particular girlfriend.
>
> Michael loved living in Ballymena and told me so when I had considered moving elsewhere but he said all his friends were here and wanted to stay.
>
> Michael went to an adventure game centre near Bellaghy and over the last year or so most of his time was taken up by this. The centre was where teams played games like 'paintballing'. Michael's uncle's regularly went here as it was run by a family friend. If not involved in a game Michael also worked there part time, as a Safety Marshal.
>
> Michael talked about joining the British Army when he left school and had sought the advice of his uncles, Francis and Sean about this.
>
> As a mother I had obvious concerns about her son choosing such a career but Michael seemed genuinely interested in pursuing this and I was supportive of his decision.

On the previous weekend before his death Michael attended a family christening where he became Godparent to his sister Jodie's son Paul. As usual he had his distinctive ginger hair spiked up with gel. It was one of the photographs that were taken on this day that we passed to the Police and Press.

On the morning of Michael's death, he went to work at his part time job. He got home late that afternoon and went out to meet his friends. The events of him getting home later that night, us trying to make sense of his condition, Michael being brought to hospital, and being at his bedside are all a bit of a blur for me.

For anyone to have their son taken from them is so suddenly is a horrendous experience. For it to occur in such a violent manner and the public attention that followed, only magnifies this.

I personally, have found Michael's death extremely difficult to deal with. My health has suffered and there have been times when I have not been able to cope.

It has been extremely difficult trying to make any sense of what happened to Michael that night and it has been a huge desire to know what happened to him that has kept me coming back to court for the trial because at times it has been difficult to listen to.

Most of those persons charged in connection with Michaels death chose not to speak in court but I really would have liked to hear what they personally had to say for themselves or for them to apologize or show any sign of remorse for at least being there when Michael was killed, never mind being involved in his death, no matter how small a part they consider that to have been.

Of the person who did give evidence and admitted he told lies to Police on numerous occasions during his interviews, we would find it difficult to believe anything he said.

During the lengthy trial process we heard what the defendants told the police during their interviews. Some of them told of how others attacked Michael.

> We found it very difficult to accept that this could not be treated as admissible evidence. We feel that the law in respect of statements of co-accused not being acceptable in court is wrong and should be changed.
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> We sympathise with the families of those convicted in connection with Michael's murder.
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> We would not wish any other parent or family to experience what our family has gone through over the past three years.
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> We would wish to thank all those who came forward and gave evidence in court. Many of them were young people themselves and from both sides of the community.
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> We would wish to thank many people for their support and kindness over the past three years, from both sides of the community in Ballymena and further afield. The Police, Prosecutors, friends and family.
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> Michael was a brilliant wee fella and we were very close. He was happy go lucky and always had a big smile.
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> He made me so proud to see the young man he grew into and I just hope he realises how much we all love and miss him.
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> He is in our thoughts first thing in the morning and last thing at night."

[10] With the exception of Lewis who made a partial admission to kicking the deceased during police interviews the accused, whilst admitting their presence in the entry, denied participating in the attack. A common feature of the interviews was that the accused sought to exculpate themselves by denying their own participation but implicating their co accused. They were effectively blaming each other but not themselves. Save for Kerr, who had admitted to police that he had obtained the bat; none of the accused gave evidence in their own defence. This was despite the fact that the two critical issues for the jury in respect of those contesting the murder charge were whether the accused participated in the attack and, if so, whether they had the requisite intent to be guilty of murder on a joint enterprise basis. Kerr was a thoroughly dishonest witness who having, like his co-accused, given what the jury must have regarded as a mendacious account to the police denying

participation then proceeded to give evidence which the jury plainly and unsurprisingly rejected as equally and obviously mendacious. D who was present in the alley and very close to what was taking place gave evidence that Lewis, Kerr and Wallace participated in the attack surrounding and kicking Michael McIlveen whilst he was prone and defenceless on the ground. He also gave evidence regarding the role of McLeister.

[11] I have been referred to the practice statement issued by Lord Woolf CJ on 31 May 2002 adopted in R v McCandless and Others. The practice statement sets out the approach to be adopted in fixing the minimum term to be served by those convicted of murder. This practice directive provides detailed guidance for judges in sentencing persons guilty of murder and operates to ensure that people who are similarly culpable are comparably treated whoever sentences them and wherever they are sentenced. Paragraphs 10-19 of the practice direction are in the following terms:

> "*The normal starting point of 12 years*
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> 10. Cases falling within this starting point will normally involve the killing of an adult victim, arising from a quarrel or loss of temper between two people known to each other. It will not have the characteristics referred to in para 12. Exceptionally, the starting point may be reduced because of the sort of circumstances described in the next paragraph.
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> 11. The normal starting point can be reduced because the murder is one where the offender's culpability is significantly reduced, for example, because: (a) the case came close to the borderline between murder and manslaughter; or (b) the offender suffered from mental disorder, or from a mental disability which lowered the degree of his criminal responsibility for the killing, although not affording a defence of diminished responsibility; or (c) the offender was provoked (in a non-technical sense), such as by prolonged and eventually unsupportable stress; or (d) the case involved an overreaction in self-defence; or (e) the offence was a mercy killing. These factors could justify a reduction to eight/nine years (equivalent to 16/18 years).
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> *The higher starting point of 15/16 years*
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> 12. The higher starting point will apply to cases where the offender's culpability was exceptionally

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

Variation of the starting point

13. Whichever starting point is selected in a particular case, it may be appropriate for the trial judge to vary the starting point upwards or downwards, to take account of aggravating or mitigating factors, which relate to either the offence or the offender, in the particular case.

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

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

16. Mitigating factors relating to the offence will include: (a) an intention to cause grievous bodily

harm, rather than to kill; (b) spontaneity and lack of pre-meditation.

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

Very serious cases

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

19. Among the categories of case referred to in para 12, some offences may be especially grave. These include cases in which the victim was performing his duties as a prison officer at the time of the crime or the offence was a terrorist or sexual or sadistic murder or involved a young child. In such a case, a term of 20 years and upwards could be appropriate."

[12]In relation to the application of the guidelines to the defendants in this case the Crown contended and counsel for Moon accepted that the higher starting point was appropriate in this case because of the sectarian nature of the crime. Whilst the other accused were guilty as secondary parties on a joint enterprise basis the Crown contended and I accept that this places them in the same starting point as Moon. I, accordingly, propose to apply the higher starting point as set out in the practice statement in respect of all those convicted of murder. The families of the deceased and those of the accused convicted of murder, as well as the press, will understand that this higher starting point is mandated in Lord Woolf's practice statement adopted in this jurisdiction by our Court of Appeal. Some commentators may feel that the sentences I propose to impose are too high and others that they are too low. Sentencing, however, is a nuanced art not the application of some mechanistic formula.

[13]The Crown also contended that an aggravating factor was the arming with a weapon, the baseball bat, in advance of the attack.

[14] In respect of Moon the Crown accepted that mitigating factors in his case were his timely plea, although not at the earliest opportunity, and his genuine remorse. In the case of all of those convicted of the murder their youth at the time was accepted by the Crown as being a mitigating factor.

[15] On behalf of Moon Mr Fowler QC said he was instructed to publicly and unreservedly apologise to the McIlveen family. I am quite satisfied from the circumstances in Mr Moon's case from the combination of his timely plea, the content of the various reports and from his conduct during interview that his expression of remorse was clear and genuine. The accused has a clear record. He had been drinking and taking drugs from the age of 12 and it appears that on the day in question he had taken by the end of evening five cannabis joints, three WKD and half a bottle of vodka. It thus appears that this lethal cocktail of drugs, drink, youth and sectarianism provided the context in which this murder occurred. With the exception of drugs this combination appears to have been common to all those convicted of the murder. Indulgence in drink and drugs are choices people make, especially young people, which may be tolerated by those whom we might expect to encourage healthier pursuits. But when those choices are made the individuals are emphatically responsible for the actions that flow from such unwise choices. Although well known to lawyers I think there is a popular myth that consumption of drink or drugs {or both} can either provide a defence or mitigate the crime. It does neither. Indeed given the experience of our courts, and this case is a telling example, excessive consumption with its predictable disinhibition is an aggravating factor. If the reach of the law in terms of joint enterprise and the aggravating feature of alcohol and or drug consumption were more widely appreciated it might have a beneficial effect.

[16] To be guilty of murder it is sufficient that an accused intended to cause really serious harm even if he did not intend to kill. Counsel for Moon contended and the prosecution did not dispute that this defendant should be dealt with on the basis that whilst he had an intention to cause really serious harm he did not have an intention to kill. I accept that that is an appropriate basis on which to sentence this accused and I intend to approach the case in that way in respect of Moon and indeed the others who have been convicted of murder.

[17] I do not accept Mr Fowler's submission that the arming of Moon with the baseball bat was not an aggravating feature. Whilst it may have happened quickly he was in fact armed in advance with a lethal weapon and when so armed he made his way down the entry accompanied by his sectarian cohort intending to and in fact causing really serious harm resulting in death,

[18] But I accept that there are significant mitigating factors in his case which are as follows:

- An intention to cause grievous bodily harm rather than to kill (see para. 16(a) of the practice statement).

- Spontaneity and lack of premeditation (see para. 16(b)).

- His age, he being 17 at the time (see para. 17(a) of the practice statement).

- Clear evidence of remorse (see para. 17(b)).

- His timely plea of guilty (see para. 17(c)). I also of course take into account his clear record and his good family background, although his personal circumstances and family background are of very limited assistance in a case of such gravity.

Taking all of the above matters into account, everything that has been said on his behalf and the various reports and testimonials furnished to the court I consider that the appropriate tariff is one of 10 years. Since this does not attract remission it should be borne in mind by the family and those reporting the case that this represents the equivalent of a fixed sentence of 20 years imprisonment.

[19]In the case of **Kerr** I have, of course, taken into account, everything said on his behalf including the pre-sentence report. The psr however indicates a lack of remorse and little awareness for the impact of his crime, not just on the victim's family or his own family, but also within the wider community in Ballymena. He accepts no responsibility whatsoever for the murder. For the reasons already given I consider that this is a high starting point case. In his case there is the aggravating feature that he went to considerable trouble to procure the murder weapon of his own volition. I accept in his case that the following mitigating factors are present namely:

- An intention to cause grievous bodily harm rather than to kill (para. 16(a)).

[I do not accept spontaneity and lack of premeditation per para 16(b) in view of his determined effort to secure the baseball bat even in the teeth of opposition from his wise grandmother]

- His age (para. 17(a)).

There are therefore several very material and significant differences emerging between this accused and Moon namely; (1) the absence of remorse or

contrition; (2) the fact that he contested the case and indeed lied repeatedly for days on end; (3) the fact that he went to such determined lengths to secure the baseball bat; (4) he does not have a clear record and whilst it is not substantial neither do I think it can be disregarded altogether. Having regard to the material differences between Kerr and Moon in these respects I consider that the tariff in his case should be one of 13 years. That is the equivalent of a fixed sentence of 26 years bearing in mind that the sentence attracts no remission and must be served in full.

In the case of **Lewis** and **Wallace** they, as it seems to me, are in a similar position to Kerr because they contested the matter and in their cases I am equally not satisfied that there is any clear evidence of remorse or contrition particularly given the absence of a plea and their continued disavowal of or down playing of any participation in the actual attack. They did not however procure the bat or actually themselves use it although I acknowledge they have nonetheless been convicted on a joint enterprise basis. They had clear records at the time of this offence and the flavour of the psrs is notably more favourable than in the case of Kerr. Accordingly taking everything that has been said on their behalf in each of their cases the minimum term should be one of 11 years. As I have previously mentioned this is the actual term they must serve before becoming eligible for release. They will receive no remission in respect of the minimum term that I have imposed which means in effect that in their cases they have received a sentence which is the equivalent of a determinative sentence of 22 years. In the case of Lewis I sentence him to 1 month's imprisonment in respect of the criminal damage to rear door which for the avoidance of any doubt is intended to be concurrent.

McLeister

[20] McLeister was acquitted of murder but convicted of manslaughter which means that the jury must have convicted him on the basis that he participated in the attack. On the evidence the jury could not in my view have been satisfied beyond reasonable doubt that he kicked the deceased and therefore they must have convicted him on the basis of one of the lesser forms of participation short of kicking, namely taking part in the attack by surrounding the deceased to enable others to use violence or by being present intending that his presence should encourage others to attack the victim. The jury were also plainly satisfied that he, unlike the others charged with the killing, had neither an intention to kill nor an intention to cause grievous bodily harm. McLeister was the youngest of the accused – a 15 year old schoolboy at the time. The jury were plainly satisfied that he performed, by contrast with his co-accused, a peripheral role albeit one which attracted criminal liability. Having regard to the pre-sentence report and all the other material available to the court I consider that a sentence of imprisonment is inevitable. However I consider that in the exceptional if not indeed unique

circumstances of his case that the public interest would not be served in an immediate custodial penalty and I therefore propose to send you to prison for 3 years but to suspend it for 2 years. His family have now relocated outside the jurisdiction and I infer from everything I have read and heard that this young man with a clear record and exemplary family background will not trouble the courts in the future.

McMullan

[21] McMullan was originally charged with murder but at a late stage the Crown decided not to proceed on the murder charge and he was acquitted by direction of the court. Had he been charged with criminal damage simpliciter from the outset this matter would have been dealt with in the Magistrates' Court. Having regard to the various points urged upon the court by Ms McDermott including the lengthy period of time he has already spent in prison (in excess of any penalty that the court could impose for the offence to which he has pleaded guilty),the fact that he had a murder charge hanging over his head for years before being acquitted by direction of the court, his onerous bail conditions and the resultant dislocation from his family and the devastating effect this has had on his family referred to in the expert reports provided , the comments in the pre-sentence report and the extremely limited involvement established against McMullan I am satisfied that the appropriate course is a conditional discharge.

Henson

[22] As far as Henson is concerned he has been found guilty of affray and criminal damage. He was never charged with murder and his involvement relates to the late stages of the incident after the deceased had been attacked. Given his exemplary background and family, his clear record, the length of time he has already spent in custody on remand, the contents of the pre-sentence report and the various matters urged upon me by the defence I will impose a sentence which will not result in him being returned to prison. In the circumstances on the count of affray he is sentenced to 9 months' imprisonment. In respect of the count of criminal damage he is sentenced to 1 month's imprisonment concurrent.