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*(subject to editorial corrections)**

IN THE CROWN COURT IN NORTHERN IRELAND

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BELFAST CROWN COURT

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THE QUEEN

-v-

MARK ANDERSON WARWICK

_____

STEPHENS J

Plea of guilty to manslaughter

[1] Mark Anderson Warwick on Sunday 19 August 2007 in your flat at 12 The Mount, Belfast, you killed William David McClatchey ("the deceased"). You then proceeded to dismember the body of your victim and to place his remains in a large communal bin outside your block of flats. You were charged with the murder of your victim and arraigned on 4 April 2008. At that stage you pleaded not guilty. Your trial was due to commence on 27 October 2008. On that date you asked to be rearraigned and pleaded guilty to the offence of manslaughter on the basis of your diminished responsibility.

Acceptance of your plea by the prosecution

[2] The prosecution had received medical reports from Dr F W A Browne, BSc, FRCPsych, Consultant Forensic Psychiatrist, as to your mental condition. Dr Browne had concluded that at the time of the killing you were suffering from a mental abnormality, namely paranoid schizophrenia, which substantially impaired your mental responsibility for the killing. That there was clear evidence to show that your illness had profound and adverse effects on your thinking and on your mood and level of arousal. The prosecution also considered the medical reports of Dr Ian T Bownes, MD MRCPsych, Consultant Forensic Psychiatrist, which reports had been obtained on your behalf by your legal representatives. Dr Bownes also concluded that you were suffering from an abnormality of mind at the time due to relapse of paranoid schizophrenia and that your mental responsibility was substantially impaired.

[3] The prosecution had access to your medical notes and records and also had the ability to consult in detail with Dr Browne. In the light of the evidence in relation to your mental state at the time of the killing the prosecution decided to accept your plea of guilty to manslaughter on the grounds of diminished responsibility.

The factual background

[4] The factual background to this case has been set out by Mr Mateer QC on behalf of the prosecution. The deceased was 34 years of age at the date of his death having been born on 15 September 1972. He had been living in Everton, Merseyside but in the middle of June 2007 he returned to stay for a period with his mother. On Sunday 19 August 2007 his mother spoke to him and he said that he was going to Bangor to watch a football match. You had known the deceased for some two years as at one stage he lived in a flat at The Mount, Belfast at a time when you also lived there. On that Sunday the deceased did not go to Bangor but instead went to your flat. At about 1.00 pm you both left the flat and went to a bar on the Woodstock Road where you watched a game of football on television. You were both still in the bar at 6.00 pm. At 7.30 pm a witness in the vicinity of your flat heard a noise that he described as someone using a power tool like a chainsaw. The deceased was not seen alive again but you were seen in the doorway of your flat acting in what was described as a very strange way. At about 9.30 pm you went to a nearby off licence to purchase some beer. You were seen to have blood on your left hand around your little finger. You passed off this blood by saying that:-

"Its terrible what a cheese knife does to you."

At midnight another witness heard a large bin being dragged across the yard. This was is in fact seen by another witness. You attempted to bring the bin to your front door. You even tried to pull it into your flat. You were unsuccessful in this attempt and thereafter pushed the bin back over to its position in the yard.

[5] The next day, Monday 20 August 2007, you were seen at 9.15 am and at midday you purchased a blue rug. At 2.30 pm you are seen placing a bag in the large communal bin outside your premises. As a result of information received from a member of the public as to suspicious activity and at 6.05 pm on Monday 20 August 2007 Police Constable Rosemary Thompson and Sergeant Joanne McKinney were tasked to the rear courtyard at Mountpottinger House. They discovered the remains of the deceased in the large communal bin. Acting on suspicions expressed to them by others in the area you were arrested at 7.05 pm and you have remained in custody since that time.

[6] The communal bin was seized and conveyed to Ballynafeigh police station where under secure conditions the contents were searched. Within the bin was a quantity of cleaning materials – a mop head heavily bloodstained, a blue and white striped cleaning cloth heavily bloodstained and a bleach bottle. There was also a pair of Lacoste trainers bearing drops of projected blood on the uppers and smears on the inner back edge and insole which blood was found on later analysis to match that of the deceased. Your flat was searched. It is a ground floor flat and there is an external door to the courtyard area where the communal bins for the 20 flat complex are kept. Blood was detected in the living room area. Two main sources of distribution were identified within this room. One close to the far corner of the settee at a height above that of the settee squab, and the other at a lower level, in front of the settee close to the far wall. A large blood stain was revealed on the underlying carpet, when the living room mat was removed. On later analysis these samples from within the flat gave results that matched that of the deceased. A machete knife was recovered under a bed within the flat and on analysis there was a positive reaction for blood from the blade; and blood matching the deceased was recovered from the handle area. Also a set of 3 saws was found. Blood matching the deceased was found on the smallest of these saws.

[7] After your arrest you were initially taken to Antrim Police Station but in the event the police were unable to interview you. Accordingly you have never given an account to the police as to the events that occurred. In addition to refusing to give an account to the police you also initially refused to discuss the circumstances of the death of the deceased with the various doctors who saw you. Some insight can now be gleaned into the circumstances of the death of the deceased from the interviews conducted by Dr Browne some 9 months after the killing on 29 and 30 May 2008 and from the interviews conducted by Dr Bownes on 1 April 2008 and 5 and 6 May 2008.

[8] You suffer from paranoid schizophrenia and it is a component of that illness that you had disturbed paranoid and persecutory themes involving the deceased. You harboured grievances against the deceased. You constructed an animus against him and his friendship. I do not consider there to be any credible evidence that you ever told him of or indicated to him that you had those grievances. You had been to the pub and had consumed about 7 pints of beer to try and control the voices in your head. Upon your return to your flat you were sweating through hearing all the voices in your head. You couldn't switch them off. Your body and your mind were finding them hard to handle. You were trying to keep control of your wits. You were wound up and agitated. The unfortunate Mr McClatchey was present and he was talking to you. You have stated that, "It was very stressful having to focus on two things at once" by which you meant that it was very stressful concentrating on the voices in your head and on Mr McClatchey speaking to you. Accordingly you wanted to be rid of him so you could have some peace. You thought that he was making the voices worse. That you couldn't trust him. That he was

harassing you. You then lost control, pulled out a machete and struck him over the head with it. There were defence wounds to the deceased's hands. You struck him several times further on his neck with downward blows and you cut off his head. You then cut up his body with a machete and a saw so that the lower part of his trunk would fit into a bag. You dismembered his body into three pieces. You put the body into the communal bin. There were vast quantities of blood in your flat which you cleaned up. Thereafter you did not try to leave but rather stayed in your flat except as I indicated to go to the off licence and to purchase a rug to replace the one destroyed as a result of the incident.

Your initial presentation to the doctors after your arrest

[9] On 21 August 2007 Dr Thompson, MB, BCH MRCP GP, attended the serious crime facility at Antrim police station. He first saw you at 2.00 am and was of the opinion that he was not able to fully assess you at that time. He saw you again at 10.30 am. He considered that you were suffering from schizophrenia and that you were acutely psychotic. He decided that you were unfit to be interviewed. He decided that you should be detained under the Mental Health Order due to "frank psychosis".

[10] On 23 August 2007 you were seen by Dr MacSorley, Forensic Medical Officer, in Maghaberry Prison,. He initially considered that you were unfit to be detained in prison and that you should be transferred to a psychiatric hospital for assessment and treatment. Detective Constable E Wheeldon, made in the event unsuccessful efforts, to arrange your transfer from police custody to a hospital. However there were then currently no secure beds in Northern Ireland to which you could be admitted. You were reassessed by Dr MacSorley and stayed in Maghaberry Prison.

[11] On 24 August 2007 you were assessed at Maghaberry Prison by Dr S Heal, Staff Grade Psychiatrist. You believed that:-

> "They put a chip in my head. If you want me to get better take the . . . chip out. That is all you have to do."

You were verbally abusive and described voices.

[12] You were also seen on 24 August 2007 by Dr P McGucken, Consultant Psychiatrist. You talked about hearing a big clicking noise in your back. You were hearing voices that were arguing and at times you admitted joining in. You were irritable and agitated. You looked aroused and stared intently. You shouted and used verbal obscenities. You were just about able to sit in a chair. Your thoughts were disordered and your train of thought was very difficult to follow. You were very aroused and hostile.

The lack of a high security hospital in Northern Ireland

[13] It is a matter of considerable regret that there are no high security hospital facilities available for mentally ill prisoners awaiting trial in Northern Ireland. I was informed that the only hospital that can be used is the State Hospital, Carstairs, Glasgow but that it cannot be used for prisoners on remand.

(a) The lack of a high security hospital can lead to extremely ill prisoners having to endure the most distressing and debilitating mental illnesses without receiving adequate treatment which humanity requires that they should receive. This could amount to a breach of Article 3 of the European Convention depending on the facts of each individual case.

(b) It places pressures on prison staff in that they have to deal with extremely ill prisoners in prison accommodation. In that respect I note that Maghaberry Prison does not have a psychiatric ward nor is there a full time doctor resident in the prison.

(c) It can lead to the public being exposed to risks which should be avoided. In essence in this case there is a choice between a hospital order with restrictions and a discretionary life sentence. If a prisoner suffers from a dangerous personality disorder then that is one of the factors that I should take into account in deciding which order to impose. If I impose a hospital order with restrictions then the Mental Health Review Tribunal could well be obliged to release the offender into the community even if he had a personality disorder and that personality disorder created a substantial likelihood of serious physical harm to others. In some cases, though in the event not in this case, such a dangerous personality disorder could be completely hidden by a mental disorder and remain hidden throughout the period leading up to sentence by virtue of a lack of treatment of the mental disorder. If appropriate treatment had been given then it would not have remained hidden. Lack of treatment prior to sentence could result in an inappropriate sentence being imposed with increased risks to the public.

(d) The inability in practise to use an interim hospital order under article 45 of the Mental Health (Northern Ireland) Order 1986 and the inability to remand to a hospital under article 43 of the Mental Health (Northern Ireland) Order 1986. These are

> valuable powers utilised in England and Wales. The statutory powers are available in Northern Ireland but due to the lack of a high security hospital they cannot be used in this case and in similar cases.

[14] The need for this facility has been highlighted by Dr Bownes, Consultant Psychiatrist, for 20 years. There are as yet no answers, of which he is aware, to the questions "Why has nothing been done?" "Is it intended to continue to do nothing?" "If something is intended to be done what is it that could be put forward to explain, let alone justify, why 20 years has elapsed?"

[15] Dr Bownes is not alone in asking for a solution to this problem. At paragraph 8.16 of the Forensic Services Report dated October 2006 of the Bamford Review of Mental Health and Learning Disability (Northern Ireland) it was stated:

> "There are substantial obstacles to admission to the State Hospital for service users from Northern Ireland. Currently people who are remanded to prison and who are suffering from mental disorder that warrants transfer to a high secure service cannot be remanded to a hospital outside the Northern Ireland jurisdiction and thus cannot receive appropriate treatment in conditions of high security until their case has been dealt with by the courts. The provision of psychiatric treatment in prison is strictly limited, for example, a prisoner who is so mentally ill that he or she does not appreciate the need for treatment cannot be given treatment in prison under the protection of mental health legislation. Such a prisoner may have to remain on remand in prison for a prolonged period, perhaps a year or more, without receiving adequate treatment. Similarly individuals whose circumstances may warrant an interim hospital order to the State Hospital cannot be transferred outside of the Northern Ireland jurisdiction. Section 81 of the Mental Health (Scotland) Act 1984 (as amended by The Mental Health (Northern Ireland) (Consequential Amendments) Order 1986 specifically excludes people subject to remand for assessment or treatment or to an interim hospital order (Articles 42, 43 and 45 of the Mental Health (Northern Ireland) Order 1986) from the arrangements for removal to Scotland of patients in Northern Ireland. It is a highly unsatisfactory situation that service users from Northern Ireland are unable to have access to treatment

> and care in conditions of high security when their condition requires it."

The report continued:

> "The principles of this Review require that all service users have ready access to high quality care. It is, therefore, essential that all service users have access to assessment, treatment and care in conditions of high security if their condition requires it. However, certain service users are denied this option, namely prisoners on remand and people who may benefit from assessment and treatment in a high secure service while the subject of an interim hospital order. There are substantially fewer admissions to high secure services from Northern Ireland than from other jurisdictions in the United Kingdom. Certain service users in Northern Ireland remain inappropriately placed in prison when they should be in hospital. The Review considers that the current arrangements are highly unsatisfactory. It strongly urges that a solution is found urgently and *as a matter of priority*." (emphasis added)

[16] A *priority solution* remained outstanding on 31 May 2007 when Mr Justice Morgan gave judgment in *R v. Little*. In that case he stated:-

> "All are agreed that the defendant requires treatment with powerful antipsychotic medication which requires monitoring facilities which are not available within the prison health care system in Northern Ireland. I am advised that there is no mechanism for the transfer of a prisoner on remand to the high security psychiatric facility at Carstairs and as a result a prisoner in the position of the defendant cannot be provided with the medication which the clinicians consider appropriate to the treatment of his condition during his remand. *It is clearly in the public interest that prisoners on remand who are suffering from serious psychiatric conditions should receive appropriate medical treatment in order to address those conditions and diminish the extent to which they are a danger to themselves and others. Any administrative obstacles to this course need to be re-examined in order to seek to secure that outcome.*" (emphasis added)

[17] *A priority solution* still remains outstanding and indeed the evidence before me was that there have been no response to the recommendation in the Bamford review though there has been responses to other recommendations. The public remains at risk in the way that I have indicated. If the evidence before me is correct that there has been no response to the recommendation of a *priority solution* then that lack of response or indeed an ineffective response, is to be condemned.

Your criminal and psychiatric history together with difficulties in personal relationships

[18] You were first convicted at the age of 15 on 26 January 1981 for offences of dishonesty. The first conviction for causing damage to property was on 18 January 1982 when you were 16 years of age. On 21 February 1984 you were convicted of using threatening, abusive, insulting words or behaviour and were sent to prison for that offence and two charges of theft for a period of 3 months. You were then 18 years of age. Within a further 4 months you were again convicted of using threatening, abusive, insulting words or behaviour.

[19] On 8 May 1987 when you were 21 years of age, you attacked an individual in a bar with a knife causing a cut to his neck and a serious wound to his chest. You were convicted on 4 February 1988 at Leeds Crown Court of wounding with intent to cause grievous bodily harm contrary to Section 18 of the Offences Against the Persons Act 1861. A 4 year prison sentence was imposed.

[20] In 1990 there was a further conviction for criminal damage.

[21] The first record of mental health problems dates from 1993. On 9 November 1993 the East Hull Adult Mental Health Team wrote to your general practitioner that you had multiple symptoms of anxiety and insomnia. That you admitted to feeling extremely isolated in your flat. That you had few friends. At the time your partner alleged that you were violent. This may have been the start of the prodromal period of your paranoid schizophrenia but I conclude that it is also a reflection of your personality disorder.

[22] Some six years later on 10 May 1999 you had an urgent domiciliary visit from Coventry Health Care Trust Mental Health Service. You had been hearing voices. You were agitated and paranoid and seemingly responding to auditory hallucinations. I hold that you were then suffering from paranoid schizophrenia. That there was a prodromal period of approximately 5 years which would account for some of your behaviour over the period 1994 - 1999.

[23] On 2 July 1999 you were convicted of damaging property. This arose out of a row with a former partner and during which you smashed a window in her flat.

[24] On 22 March 2000 you were again convicted of wounding with intent to cause grievous bodily harm. This arose out of an incident in which you threw a plank of wood through a plate glass window and then struck a disabled person over the head with the plank of wood.

[25] On 1 October 2001 you were convicted of destroying or damaging property. You had taken a fencing panel and struck a motor car. You behaved bizarrely after your arrest defecating in your cell and writing words on the wall.

[26] On 30 May 2002 you were convicted of failing to surrender to custody at the appointed time. The circumstances in which you were arrested for this offence have been set out by the prosecution. There was no objection to the description on your behalf. You had been in a bar. You were holding a machete knife which you dropped and it was put behind the bar. You became very agitated and aggressive when your request to return the machete was refused. You were arrested.

[27] On 24 October 2001 you were in prison in Leeds. You were assessed by a psychiatrist on that date. You were transferred to the hospital wing following an incident in which you had become wound up and irritable for no apparent reason. The prison staff had been finding you to be paranoid and easily irritated.

[28] On 1 May 2002 Leeds Community and Mental Health Services noted that you believed that a micro chip had been inserted into your abdomen and as a consequence you had experienced auditory and tactile hallucinations. You had a period of in-patient assessment of your mental state in May 2003. It was recorded that you had been involved in "many violent incidents whilst intoxicated" and that you had "recently smashed a car up at a car park".

[29] On 23 May 2002 it was noted that you had taken your own discharge from Denton Ward, High Royds Hospital after having been admitted via the police for having taken a machete to your neighbour's house. You failed to attend out patients. There was "a possibility" that you had discontinued your anti psychotic medication. An assessment was planned in order to consider detaining you under the Mental Health Acts. However by July 2002 it was noted that you were now residing in Ireland.

[30] On 7 May 2003 you were then living in Northern Ireland and you were referred by a general practitioner to the local mental health services. In the letter of referral it was noted:-

> "He is presently not in communication with any family – mother lives in the West Midlands . . . he says that he is currently not on any treatment . . . the main problem appears to be that he hears voices within his head with which he converses . . . I have started him on a low dose of anti psychotic medication . . . he appears to be fairly typical of mild schizophrenia . . ."

[31] Between 1 April 2003 and 9 July 2003 you were a voluntary in patient. At this time your paranoia had increased and you were harbouring thoughts of attacking a resident in Centenary House who reminded you of a previous acquaintance from Yorkshire whom you believed had spread rumours about you and your children. You suffered from delusions which were only minimally alleviated with medication. You used alcohol, up to 40 units at times to alleviate your psychosis. You had no contact with your family. You were being maintained on Olanzapine 20 milligrams daily.

[32] You continued to be treated at the Mater Hospital in 2003-2004. Your anti psychotic medication in 2004 remained Olanzapine. On 15 March 2004 at an out patients' clinic at the Mater Hospital it was noted that you remained thought disordered. That you had delusions of reference and persecutory delusions.

[33] On 7 October 2004 it was recorded that you had a fight in a pub during the previous week.

[34] On 11 November 2004 it was noted that your care had been transferred from the Mater Hospital to the South and East Belfast Health and Social Services Trust. You stated that in recent years there was no time when you were free from auditory hallucinations. That you had been violent in the past including "it seemed" with more than one incident of attempted murder. You admitted not taking your oral medication regularly. You had probably been drinking excessively. The examining doctor was worried about the situation as you had shown a propensity for violence in the past. You were irritable and psychotic. You were not complying with the treatment package. Detention under the Mental Health Order was considered.

[35] On 16 November 2004 a note in the community psychiatric nursing notes read:-

> "Concerns raised regarding his possible forensic history and his intimidating personality . . . social worker is concerned that we have not been given a full history of possible risk with this man . . . today

> Mark was clearly paranoid – he did talk to us but seemed irritated at times and distracted – he is guarded and suspicious and quite intimidating . . . Mark is resistant to the idea that mental health services have anything to offer him . . . he has seen Dr Bell on 11 November 2004 but this meeting did not go well from Mark's perspective and he has no intention of seeing Dr Bell again . . ."

[36] You were admitted to Knockbracken Health Care Park between 3 February 2005 and 11 February 2005 and despite compliance with anti psychotic medication you continued to have auditory, visual and tactile hallucinations with thought insertion and thought withdrawal. You had paranoid delusions and referential ideas. You felt quite depressed by the voices but had no biological symptoms of depression. You came across as suspicious to nursing staff. You were also quite confrontational.

[37] On 24 March 2005 a further note reads:-

> "Informed by social worker that Mark has been taken into custody following a fire at his flat."

[38] On 15 April 2005 a letter was written to your solicitor in which it was stated that:-

> "This gentleman has quite florid psychosis – he has schizophrenia and is quite agitated and volatile – he behaves strangely, hears voices and believes that there is someone out there going to do him in . . . He has ideas of reference with regards to television and radio which he believes are passing messages on to him . . . He also has very little insight into his problems and can deny that he has any problems."

[39] On 26 May 2005 it was noted in the community psychiatric notes:-

> "Informed by social services that Mark's case has been closed as he is in prison . . ."

[40] On 12 June 2005 a note in the mental health social work records reads:-

> "Mark turns up at Woodstock Lodge today – he has been released from prison on charges of arson as the Northern Ireland Housing Executive state that the fire was due to an electrical fault . . ."

However 4 days later on 16 June 2005 the South East Belfast Health and Social Services psychiatric services wrote to your general practitioner discharging you from the clinic on the basis that you were in prison in Maghaberry. It appears that you were then lost to consultant referral until 5 December 2006 when you were re-referred by your general practitioner, but did not attend.

[41] After you were arrested following this incident you reported that you had not been taking anti psychotic medication for 4 months and that you had no contact with local mental health services for 18 months. This appears to be correct.

Personal background of the offender

[42] You were born in Belfast on 14 October 1965. You are 43 years of age. Your parents separated when you were about 4 years old and you and your mother left Belfast and moved to Coventry. Your father remained in Belfast and you have given a history to Dr Browne that you have not seen your father since then and that he has died. Your mother re-married and you state that your step father has also died. You attended Woodend Primary School in Coventry until you were expelled for general disobedience. You then attended a boarding school Dulwich College Preparatory School in London until you were thirteen years old after which you went to Caludon Castle School in Coventry until you were sixteen years of age. You left with four GCSE's and attended a catering college for a year but did not complete the course. After you left school you lived in Leeds with your then girlfriend. You were in Leeds for five years and you worked making double glazing. As I have indicated you were sentenced to imprisonment for four years in 1988 and upon your release from prison you moved to Hull where you worked in several temporary jobs as a labourer in joinery, building work and warehouse work. In 2002 you returned to Northern Ireland in an attempt you say to see your father. However I consider that this move from England to Northern Ireland was primarily motivated by the steps that you envisaged were going to be taken to detain you under the mental health legislation in England. When you returned to Northern Ireland you discovered that your father had already passed away. You have since been unemployed living a solitary life in hostels or in a flat on your own. Your mother lives in Coventry. You have three sisters one of whom is a full sister and the others are half sisters. You state that you maintain some contact with your sisters by telephone. They also live in Coventry. Your father's family reside in Northern Ireland however you never have had contact with them. You have had a number of relationships over the years, including two that lasted about five years. You have three children, a son aged 23, another son aged 16 and a daughter aged 14. You told Dr Browne that you have no contact with your children. Prior to your arrest you lived alone. You have no ties with the community in Northern Ireland or elsewhere in the United Kingdom. You have no support. You have no friends.

Representations of behalf of the victim's family

[43] I have been provided with a letter dated 31 October 2008 from Dr M S McIver, the General Practitioner for Karen McClatchey a sister of the deceased. It is apparent from that report that she suffers from insomnia, poor concentration and panic attacks. That the manner of his death has been a source of great distress to her. That it will take a long time for her to recover from this traumatic event.

[44] I also have a victim impact report from Mary McClatchey the mother of the deceased. Parts of her statement are as follows:-

> "There are two aspects of this terrible journey I had no wish to go on. Firstly, the loss of my son, secondly the manner in which he was taken. The loss is unbearable but the manner in which he was taken is much more than unbearable. My heart has been broken and my very soul has been torn apart. . . . My son adored his children; they were his pride and joy and they have lost a loving father . . . I relive what I imagine to be my son's last moments every day. I was caring for my elderly mother when my son was dying. Was he in pain? Did he call for me? I wish my brain would stop thinking as I cannot stand the thoughts. My mother did not get out of her bed after this and died shortly after; William's death hastened her death. My life has been devastated, I have isolated myself and avoid meeting concerned neighbours and friends as they ask me how I am and I cannot answer them for crying.
> . . . I was told my son died quickly and now realise that he did not, the more about the incident I find out, the more it hurts. Finally, I am a mother whose son has been murdered in the most brutal way, he was not given any comfort or dignity when he died and as a mother I find this, and the loss, just too much to bear."

[45] I have also read and considered the victim impact statement from the deceased's sister.

Sentencing options. Whether a determinate custodial sentence appropriate. Whether you meet the criteria for the imposition of a discretionary life sentence.

[46] The sentencing options in this case include a determinate sentence, a discretionary life sentence, a hospital order, or a hospital order with restrictions. You have been convicted of a very serious offence and I consider that you are and will remain a serious danger to the public indefinitely and therefore for a period which cannot be reliably estimated. I consider that in the circumstances of your case it is inappropriate to pass a determinate sentence and that you satisfy the criteria for the imposition of a discretionary life sentence, see *R v. William Desmond Gallagher* [2004] NICA 11 at paragraphs [21]–[24]. It is appropriate to record that your counsel agreed that a determinate sentence was inappropriate.

[47] The three remaining sentencing options are –

(a) *A discretionary life sentence*. In passing such a sentence I would fix a tariff period to represent the elements of retribution and deterrence. After the expiry of the tariff period you would only be released into the community if it was no longer necessary for the protection of the public to detain you. That decision will be taken by the Parole Commissioners. Your release would be a release on licence and if you breached any conditions of your licence you could be returned to prison. The Parole Commissioners in arriving at any decision in your case would have the benefit of the views of the Probation Service, psychiatrists, psychologists, the Prison Service the Police Service of Northern Ireland and any other group or individual deemed to be appropriate given the particular circumstances of your individual case.

(b) *A hospital order*. Article 44 of the Mental Health (Northern Ireland) Order 1986 enables the Crown Court to make a hospital order where, as here, the offender has been convicted of an offence punishable with imprisonment provided that two conditions are met. The first condition is that the court is satisfied on the oral evidence of an appointed medical practitioner and on the written or oral evidence of one other medical practitioner that the offender is suffering from mental illness or severe mental impairment of a nature or degree which warrants his detention in hospital for medical treatment. The second condition is that the court is of the opinion, having regard to all the circumstances, including the nature of the offence and the character and antecedents of the offender, and to the other available methods of dealing with him, that the most suitable means of dealing with the case is by means of a hospital order. If a

hospital order is imposed then "Once the offender is admitted to hospital pursuant to a hospital order or transfer order without restriction on discharge his position is almost exactly the same as if he were a civil patient. In effect he passes out of the penal system and within the hospital regime." see *R v. Birch* [1989] 11 Cr App R(S) 202 at 210. Accordingly the offender can be discharged from hospital in the same way as a civil patient.

(c) *A hospital order and a restriction order*. The court has power under Article 47 to restrict discharge from hospital. A restriction order "fundamentally affects the circumstances in which the patient is detained. No longer is the offender regarded simply as a patient whose interests are paramount. No longer is the control of him handed over unconditionally to the hospital authorities. Instead the interests of public safety are regarded by transferring the responsibility for discharge from the responsible medical officer and the hospital to the Secretary of State alone (before September 30, 1983) and now to the Secretary of State and the Mental Health Review Tribunal. A patient who has been subject to a restriction order is likely to be detained for much longer in hospital than one who is not, and will have fewer opportunities for leave of absence,"see *R v. Birch* [1989] 11 Cr App R(S) 202.

[48] If I impose a life sentence then the Secretary of State can direct your transfer to hospital under Article 53 of the Mental Health (Northern Ireland) Order 1986. A transfer direction has the same effect as a hospital order and accordingly you in effect pass out of the penal system. However in addition to a transfer direction the Secretary of State can also further direct restrictions on discharge, under Article 55. The transfer direction with restrictions is then in effect the equivalent of a hospital order with restrictions but with the addition that under Article 56 if you are serving a life sentence and you no longer require treatment in hospital for mental disorder then the Secretary of State may direct that you be remitted to prison. At the expiry of your tariff period your release would then be a matter for the parole commissioners. In exercising his power to transfer you from prison to hospital the Secretary of State is obliged to act compatibly with the European Convention on Human Rights. To subject an offender requiring admission to hospital to unnecessary suffering, humiliation and distress in prison could properly be regarded as inhumane or degrading treatment or punishment, see paragraph [18] of *R v. Drew* [2003] UK HL 25.

Further consideration of the statutory scheme in respect of a hospital order and a discretionary life sentence

[49] If a hospital order is imposed together with a restriction order then the Mental Health Review Tribunal is required to direct the absolute discharge of an offender if either it:-

> (a) is not satisfied that he is suffering from mental illness or severe mental impairment of a nature or degree which warrants his detention in hospital for medical treatment; or
>
> (b) it is not satisfied that his discharge would create a substantial likelihood of serious physical harm to himself or to other persons.

[50] Thus for instance in this case the Tribunal would be obliged to direct your absolute discharge if it was satisfied that you were not then suffering from mental illness or severe mental impairment even though it was satisfied that your discharge would create a substantial likelihood of serious physical harm to others. In that respect a personality disorder or dependence on alcohol or drugs is not a mental disorder. Thus the Tribunal would be obliged to direct your absolute discharge even if you still had a personality disorder that created a substantial likelihood of serious physical harm to other persons. The Tribunal could only defer that discharge or impose conditions on it if it was satisfied that you remained liable to be recalled to hospital for further treatment in relation to a mental disorder but not if the further treatment was in relation to a personality disorder.

[51] I am satisfied that if the risks posed by you are associated with your mental disorder then the Mental Health Review Tribunal are adequately empowered to deal with those risks. However if you remain a risk to the public by virtue of some other factor apart from mental impairment and if the Mental Health Review Tribunal are not empowered to deal with the risks associated with that other factor then I am obliged to consider that factor and those risks in deciding whether to impose a hospital order with restriction or to impose a life sentence. In short I am required to give appropriate weight to such differences as there are between the two regimes, see paragraph [37] of *R v. IA* [2005] EWCA Crim 2077 and paragraph [22] *R v. Drew* [2003] UK HL 25.

[52] I emphasise that the differences that there are between the two regimes is but one of the factors that I take into account. It is not necessarily determinative. The other types of factors, though not an exhaustive list of them, are set out at paragraph [41] of *R v. IA* [2005] EWCA Crim 2077.

[53] In approaching the decision as to the appropriate order to make in your case both counsel for the prosecution and for you submitted that the test was contained in the statutory provision namely that the court has to be of the opinion that a hospital order is the most suitable means of dealing with your case. That after having heard and assessed all the evidence, I should apply that statutory test. Accordingly that it is inappropriate to approach the facts relevant to that test by reference to whether they have been proved beyond all reasonable doubt by the prosecution. I accept that proposition but I also make it clear that on the basis of all the evidence in this case I am sure that you have a personality disorder which presents a substantial likelihood of serious physical harm to others in the future.

[54] I also accept that as a matter of practice if the real and only risks in a particular case are associated with mental disorder within the definition of the Mental Health (Northern Ireland) Order 1986 then that the appropriate treatment is by way of a hospital order with restrictions.

The psychiatric evidence and the conclusion as to whether you have a dangerous personality disorder

[55] Both Dr Browne and Dr Bownes gave evidence before me. In relation to a question as to whether the earlier incidents in your life were attributable to early evidence of psychosis or to underlying personality disorder Dr Browne replied:-

> "It seems more likely to be attributable to underlying personality problems, given that he was in contact with psychiatric services in 1993 and 1994 and was not, at that stage, noted to be psychotic. It seems unlikely that he was overtly psychotic at those earlier dates."

Though he did go on to say

> "one wouldn't want to diagnose personality disorder on the basis of offence behaviour alone, this would be quite a detailed assessment that would be required."

[56] Dr Bownes considered and I accept that there is a significant contribution of risk coming from your inherent personality structure. I set out below some of the answers that Dr Bownes gave during the course of his evidence.

A. I think the risk of Mr Warwick engaging in bad tempered, impulsive, aggressive behaviour, a substantial proportion of that risk in that type of scenario does come from his inherent personality structure.

A. What anti-psychotic drugs will not treat will be hostile attitudes, anti-social attitudes, denigratory attitudes, they will require psychological interventions as part of the overall treatment package.

Q. …do you consider that his personality presents a serious risk of significant harm to the public?
A. I think his personality, when one looks at the medical evidence that we have, the descriptions of disfunctioning, the descriptions of his behaviours from the date of those papers, I think his behaviour has not been normal and I think his behaviour has been violent, and excessively violent and anti-social. Certainly his very early offences are more than likely attributable only to negative attitudes and to anti-social traits. As one approaches 1999 one has to take into consideration that schizophrenia could have been emerging at that time. It is widely accepted that from the time of the first admission you can count back five years and you can say within that five year period that there would be a contribution of mental illness to the offending, but going back beyond the five year period it is more than likely that that is a manifestation of anti-social personality disorder. And we have to assume because personality, robust personality normally does not change with time, if it is not treated and it's not effectively addressed then it will re-emerge whenever the mental illness has been treated.

Q. … do you consider that there is a serious risk of serious physical harm to the public through his personality?
A. Untreated yes, there is. I consider that that is a significant factor. The difficulty is that we don't know whether his personality is treatable or not treatable. Certainly there are elements of the personality that I have alluded to that will be treated in a secondary fashion by anti-psychotic medication but he will require, in a

therapeutic setting, a full assessment of his personality and treatment of that personality. Unfortunately I haven't any evidence to date to say that his personality is treatable, or that it isn't treatable.

A. There's a personality aspect, there is also the possibility of abusing substances. There is also the possibility of a residuum of mental illness symptoms that do not distress the individual immensely but cause difficulties in his thinking and interactions that are left behind and one really doesn't know, until perhaps four, five, six, maybe eight years of treatment in a high secure setting, what we are going to be left with in the case of Mr Anderson Warwick.

A. … Alcohol tends not necessarily to badly affect mental illness symptoms, such as delusions and hallucinations but does tend to affect the underlying personality, it has a disinhibiting effect. So alcohol is unwelcome in a case such as this. Illicit drugs are an absolute contra-indication and are a very very potent risk factor.

[57] I conclude from those answers and from the rest of the evidence in the case including the evidence contained in your medical notes and records and in your criminal record that you have a personality structure or disorder, which for the purposes of risk I treat as the same, which is a robust entity and will present a risk of a substantial likelihood of serious physical harm to others in the future. That if I impose a hospital order with restrictions that the Mental Health Review Tribunal in Northern Ireland would be unable to deal with those risks if you have recovered from your mental disorder, as defined in Northern Ireland. Thus they could be required to release you into the community at a time when because of your personality disorder you did in fact present a substantial risk of serious physical harm to members of the public. Furthermore that they might not be able to impose any conditions on your release into the community, which would co-incidentally reduce the risks associated with your personality disorder, unless it was satisfied that you remained liable to be recalled to hospital for further treatment in relation to your mental disorder as opposed to your personality disorder. I have considered your personality disorder in isolation in coming to that conclusion. However in your case your personality disorder could be dangerously exacerbated by alcohol abuse and again the Mental Health Review Tribunal would not have the powers to deal with that additional risk factor in your case if you had recovered sufficiently from your mental illness and if you did not remain liable to be recalled to hospital for further treatment in relation to your mental disorder. The Mental Health Review Tribunal can

only impose conditions on your release if it is satisfied that you remain liable to be recalled to hospital for further treatment in relation to your mental disorder as opposed to your personality disorder and this does not allow for a situation where your mental illness has recovered but your personality disorder continues. Thus they might well be unable to impose conditions in relation for instance to your abstinence from alcohol in circumstances where the consumption of alcohol by you would increase risks associated with your personality disorder. They would be unable to test for your compliance with alcohol abstinence.

[58] In light of the risk factors in your case which cannot be dealt with by the Mental Health Review Tribunal Dr Bownes stated in relation to the system of a hospital order that:

> "There are holes in the current mechanism, I have to concede that. I'm also aware that there is, there are plans to try and plug those gaps but I have no control over any of those and cannot give the court any certainty in those aspects of the future."

[59] I have to pass sentence in this case on the law as it presently stands. Dr Bownes stated that "as a doctor" he would wish to recommend a hospital order with restrictions even though the treatment that you will receive is the same. But that as an informed lay person and to cover all eventualities in your case the most appropriate route was a discretionary life sentence. I recognise and accept the particular risks which you present cannot be dealt with appropriately by a hospital order with restrictions. However before arriving at a final conclusion in your case I also take into account the various factors in your case some of which I discuss below.

Discussion

[60] A bed in a high security hospital is available for you. You clearly have a mental illness namely paranoid schizophrenia. A hospital order with restriction will guarantee that you will receive treatment and the prevailing practice in those circumstances is to make a hospital order.

[61] On the evidence in this case there is no equivocation about the fact that you will also receive the self same treatment in the same hospital or hospitals regardless as to which order I make. An issue has arisen as to the risk of your mental state being adversely affected if after a period in hospital you are returned to prison. In that respect I note that your mental condition has responded positively during your remand in Maghaberry Prison. It was also suggested in a general way that for persons in your position that the imposition of a life sentence would impact adversely on your mental condition in that you would perceive yourself to be subject to an order appropriate for an offender

rather than an order appropriate for a person who is undoubtedly ill. This was a general suggestion and there was no particular evidence in respect of you that would raise this as having any or any particular adverse consequence for you. Furthermore you have by your plea accepted culpability and that you are an offender.

[62] This was a very serious offence with the infliction of a gruesome death on your victim and a very serious impact on the victim's family. Your responsibility is diminished though not extinguished. Your illness had a major impact on your level of culpability. You had been living alone without support of family or friends. You were not receiving medical treatment. You failed to take anti-psychotic medication. You abused alcohol. All these factors lead to me to the view that your mental state at the time of the killing was particularly florid substantially diminishing your responsibility. Against that to an extent you acted purposely after the event cleaning up your flat and going shopping. Again I consider that your actions after the event were predominantly referable to your illness. I do not consider that your residual culpability was at a high level.

[63] I consider that you have a personality disorder which creates a substantial likelihood of serious physical harm to other persons in the future. Your paranoid schizophrenia presently overlays and distorts your personality disorder. The investigation into whether you have a personality disorder has been hampered by the lack of treatment for your paranoid schizophrenia. It is also hampered by the fact that Dr Bownes and Dr Browne have not been able to carry out for instance interviews with persons who know you intimately. However as I have indicated you have no family and no friends who could have responded to such interviews. I form a view on the basis of the evidence which is presented to me. As I have indicated I have concluded that you have a personality disorder and that it creates a substantial likelihood of serious physical harm to other persons.

[64] The risks associated with your personality disorder cannot be dealt with by the Mental Health Review Tribunal in certain circumstances. Furthermore such risks when combined with the abuse of alcohol also cannot be dealt with by the Mental Health Review Tribunal system.

Conclusion

[65] I have concluded that it is appropriate in your case to impose a discretionary life sentence. Accordingly I sentence you to prison for life.

[66] Finally I must fix the minimum period of time which must be served before the parole commissioners may consider your eligibility for release. I take into account that your culpability is reduced by virtue of your illness. In fixing the tariff I have approached the question by reference to a determinate

sentence for the offence of manslaughter and then divided that sentence by two in view of the fact that there is no remission in respect of a tariff period. I fix the minimum period that must be served at 5 years and the period of remand should count towards that period. You must realise however that it may be much longer before you are considered suitable for release and if you are released you will be subject to license conditions, breach of which may lead to your return to custody. This order now enables a transfer order to be made no doubt with restrictions to ensure that you can receive appropriate treatment in Carstairs. In the light of the evidence which I have heard it is clearly appropriate that the order should be made as soon as practicable.