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(subject to editorial corrections)

IN THE CROWN COURT IN NORTHERN IRELAND

NEWRY CROWN COURT
(SITTING AT BELFAST)

THE QUEEN

v

MICHAEL JASON SMITH

HART J

[1] Michael Jason Smith is before the court to be sentenced upon his plea of guilty to the murder of Stiofan Loughran. The only sentence which it is open to this court to pass is one of life imprisonment, but it is necessary for the court to fix the minimum term of imprisonment which the defendant must serve before he can be considered for release by the Life Sentence Review Commissioners.

[2] The facts of the case, so far as they can be established, are the subject of an agreed statement of core facts agreed by the prosecution and the defence prior to the defendant being re-arraigned on 5 September 2008 and pleading guilty. The following account takes that statement of core facts into account.

[3] The chain of events that resulted in the death of Stiofan Loughran, to whom I shall refer as the deceased, was initiated about tea-time on the evening of 8 February 2007 when his youngest son (to whom I shall refer only as C) returned to the family home in Third Avenue in the Derrybeg estate in Newry claiming that he had been assaulted. Although C was unable to identify his assailant, the deceased then accompanied his son to 18 Fourth Avenue, Derrybeg expecting to find the person responsible for the alleged assault on his son at that address. The first visit did not result in the alleged assailant of C being identified.

[4] A few minutes later the deceased returned to 18 Fourth Avenue, and on this occasion he was again accompanied by C and by his father Francis

Loughran who played an active role in the Derrybeg Community Watch. On this occasion it was the defendant who opened the door. It is common case that the deceased then asked him whether he had struck his son. It is also common case that the defendant denied doing so, and indeed he has continued to deny doing so. The prosecution have not proceeded with the charge against the defendant of assaulting C and therefore I must deal with the case upon the basis that the defendant was not responsible for the initial assault. The deceased did not accept the defendant's denials of assaulting C and an argument ensued. At this point it is accepted by the prosecution that the defendant remained on the doorstep of the house and inside the house. The deceased then advanced towards the defendant and a physical struggle ensued between the two men. The deceased was a tall, well-built man. According to the post-mortem report he was 189cm (6ft 2½ inches) in height, 99kgs (15 stone 9lbs) in weight, and larger than the defendant. In this initial struggle it appears that he got the upper hand over the defendant, and the prosecution accept the defendant's assertion that during that first altercation the defendant was dealt a blow to the groin area by the deceased.

[5] It was dark at the time and the sequence of events is somewhat confused. A number of individuals were present other than the deceased and the defendant. The deceased's father Francis Loughran was trying to shield C and the children who accompanied C to the scene. The defendant's mother and her partner were also present, and there was a good deal of noise. Nevertheless, it is clear that the initial physical altercation which I have described had ended and the deceased walked away from the door. At this point the defendant ran back into the house and armed himself with a knife which he took from a knife block in the kitchen. He then emerged from the house and confronted the deceased in an area at the front of the house. A second physical altercation then ensued. It was during the second physical altercation that the defendant stabbed the deceased twice, first to the chest and then to the back. The knife remained lodged in the deceased's back and remained there until it was removed later by the surgical team at Daisy Hill Hospital where the deceased died later that evening.

[6] The post-mortem examination was conducted by the Assistant State Pathologist, Dr Peter Ingram, and in his post-mortem report he described the cause of death in the following passage.

> "Death was due to stab wounds of the chest. One wound was situated on the front of the chest just to the left of the midline and overlying the lower margin of the ribcage. The blade of the weapon passed backwards, upwards and to the right nicking the cartilage of the lower margin of the ribcage. It had then penetrated the heart sac and one of the major pumping chambers of the heart,

> the right ventricle. The other wound was located on the right side of the back just to the right of the mid line and slightly below the lower borders of the shoulder blades. The track of this wound passed forwards, upwards and to the right, between the 8th and 9th right ribs, to penetrate the back of the right lung and continuing close to its root, or Hilum. As a result of these wounds there had been massive bleeding into the chest cavities, particularly the right, and into the sac surrounding the heart. It was this haemorrhage that which was responsible for his death in hospital about an hour after the assault.
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> The stab wound on the front of the chest had clearly been caused by a bladed weapon, such as a knife. On admission to hospital a knife was protruding from the wound on his back. No more than moderate force would have been required for the infliction of either of the stab wounds particularly if the blade of the weapon was sharp and pointed."

[7] The deceased's wife, Theresa Loughran, and his mother, Phyllis Loughran, as well as the deceased's elder son (to whom I shall refer as R), went to the scene having heard that the deceased had been stabbed. They witnessed him in a mortally wounded condition before he was removed to hospital. Therefore the infliction of the wounds which led to his death, and his condition before he was removed to hospital, were witnessed by several members of his immediate family.

[8] As will be apparent from the description of the events which I have given it is accepted by the prosecution that the deceased not only went to the house where the defendant was 18 Fourth Avenue, Derrybeg, but he advanced on the defendant and thereby initiated the first physical altercation that ensued on the second visit he made to the house. The prosecution also accept that during that first physical altercation the deceased dealt the defendant a blow to the groin. To that extent it must be recognised that the deceased behaved in a manner which the defendant perceived as provocative.

[9] Nevertheless, that first physical altercation had come to an end and the deceased had moved away from the front of the house and from the defendant when the defendant introduced a new and tragically fatal element into the events by going into the kitchen and equipping himself with a knife, and then emerging from the house and again confronting the deceased. The defendant therefore initiated the second physical altercation and deliberately

equipped himself with a weapon in order to confront and attack the deceased. During that attack the deceased was stabbed twice, the first blow being to the chest and the second blow to the back. He was struck the second blow with sufficient force to ensure that the knife lodged in his back.

[10] When questioned by the police the defendant maintained that he had simply kept his head down and was swinging the knife for a minute or two. Later, in the fifth interview, when the police put to the defendant that the knife had been left embedded in the deceased's back and that this was consistent with a thrusting motion the defendant said:

> "It must have happened when I swinging the knife round then it was, it's all that I can think of like."

The police then suggested to him that the position of the knife also supported the conclusion that the deceased was turned away from him when he was struck, and the defendant replied:

> "Maybe he turned round or something but as I said my head was down and I just kept swinging the knife could a just stuck in him and then I just run into the house."

[11] The defendant denied having taken drink or drugs on that day to such an extent whereby his judgment might have been impaired, saying that the last time he had taken drugs was maybe the day before, and that was cannabis. He denied taking any drugs on the day of the altercation, and said that by that time the effects of the cannabis he had taken the day before were long gone.

[12] However, it is clear from the account which the defendant subsequently gave to Dr Maria O'Kane, a consultant psychiatrist who examined him on behalf of the defence, that the defendant had taken cannabis earlier on that day. At page 8 of her report she records him as saying that he had gone up to his mother where he had some drinks and then:

> "I had been using cannabis in the house on my own before I went up. I had had two or three pipes and had been using cannabis the day before – I had two or three pipes the night before as well. I went up to my mother's house at about 12 o'clock and we were drinking all afternoon – I had a few glasses of cider [Old English Cider]. I hadn't been drinking all day before but I was using cannabis the night before. I took a few pipes and then the

> next morning two or three pipes before I went down."

In a further brief report dated 23 June 2008 Dr O'Kane says:

> "…he smoked `6 pipes' of cannabis and in the few hours before the event he states that he drank 3 glasses of cider. He admits that he was drinking alcohol the day before the incident and these amounts are not clearly remembered by him.
>
> I have not seen any record of alcohol or cannabis, blood or urine levels take (sic) at the time of his arrest. Based on the history available I believe that Mr Smith is very likely to have been intoxicated at the time of Mr Loughlin's (sic) killing."

[13] It is clear that the defendant was not only under the influence of the cannabis which he had taken earlier that day, but he had consumed substantially more alcohol than his accounts to Dr O'Kane and to Dr Pickering, the Forensic Medical Officer who examined him on behalf of the police and took a blood sample at 10 minutes past midnight on 9 February 2007, would suggest. An analysis of that blood showed that it contained 79mgs of alcohol per 100ml of blood. Given that this was taken approximately 6 hours after the events which I have described, and that the defendant denied taking any alcohol after the stabbing and before he was arrested, it suggests that the defendant's blood alcohol level must have been significantly higher when he stabbed the deceased.

[14] The defendant has a modest record I do not regard his record as an aggravating factor. However, it is clear from the account he gave to Dr O'Kane, and to the compiler of the pre-sentence report, that from the age of 15 he had been drinking very heavily at weekends, and by the age of 16-17 his use of alcohol had increased to such an extent that he was drinking from Thursday night until Sunday and was spending more than £100 a weekend on alcohol. In addition he had been smoking cannabis, and eventually taking cocaine, and for a while also consumed ecstasy. He told Dr O'Kane that he had been using cocaine from the age of 16 or 17, and that prior to his arrest was buying a couple of grammes for approximately £100 or more which he then consumed, plainly with alcohol, during Friday, Saturday and Sunday morning. He then used cannabis to help manage the withdrawal effects of cocaine and alcohol. The defendant, who was 18½ at the time of the murder, had therefore been abusing alcohol and illicit drugs for about 3 years or more on a very substantial scale and cannot therefore be regarded as a person of good character.

[15] In the second police interview the defendant emphasised that he just wanted to scare the deceased with the knife and that he was sorry for what had happened, saying "it was not meant to happen." In the fifth interview he again said "it wasn't meant to happen."

[16] Dr O'Kane records in her report at page 10 that the defendant said:

> "I panicked. I have never been accused of anything like this before and I felt very threatened because of the size of that big man. I didn't think he would attack me and I just wanted to scare him."

She also records that

> "he states that he feels very sorry for Mr Loughran's family especially for his children."

At page 12 she said:

> "His insight into his situation is that he feels very guilty and sad about what has happened. He believes that if he had not been drinking alcohol and using cannabis earlier in the day and had not felt frightened by the threats made against him that this episode would not have occurred."

[17] I have been provided with statements from the deceased's mother, Mrs Phyllis Loughran who is now 68, from her husband Francis Loughran who was present at the scene as I have described. I have also been provided with a statement from the widow of the deceased, Theresa Loughran, who has described the effects which these events have had upon her and upon the four children of the family. I have carefully considered the eloquent and moving accounts which each has given of the devastating effects of these events upon themselves, and the four children of the family. I do not propose to recount these matters in detail because this would only cause further distress and sadness to them. It is however abundantly clear that the members of the Loughran family have been gravely affected by these events. Mr and Mrs Loughran have lost their son, and Mrs Loughran and their children have lost a much-loved husband and father, and now have to face the future and the many problems which his death has created for their family without his presence, help and financial support.

[18] Some extracts from their statements must suffice to convey the effect these events have had upon them. Mrs Phyllis Loughran said:

> "I have been devastated since his death. My life has changed forever. I have an inner sadness that I can't explain. I have nothing to smile about anymore. My life just turned all around."

She concluded her statement by saying that:

> "All I do know is life has completely changed for me and Francey. We are not the same people at all. Stiofan was my first born and he will never leave my memory."

[19] Mr Loughran said:

> "Stiofan's death has affected every part of my life".

And he describes in a moving fashion just what that means.

[20] In her statement Mrs Theresa Loughran describes in great detail the emotional hardships and deprivation which she and her children have suffered as the result of her husband's death. Perhaps the effect on herself and her children can be encapsulated in her statement that:

> "What people don't realise is that Stiofan's murder has had a domino effect within our family. Everyone has been affected yet we worry about each other."

[21] It is appropriate that at this stage I should refer briefly to the statutory framework within which the court decides the appropriate minimum term that a defendant convicted of murder has to serve before the Life Sentence Review Commissioners can consider whether he should be released. It is not always appreciated that a defendant who is sentenced to serve a minimum period of life imprisonment is not eligible for remission for good behaviour as would be the case if he were sentenced to a determinate sentence of a number of years imprisonment. As a prisoner sentenced to a determinate period of imprisonment is eligible for remission after he has served one half of his sentence if he has been of good behaviour, a minimum term for a life sentence prisoner therefore effectively equates to a determinate sentence of twice the length of the minimum term. See R v McCandless and Others [2004] NI 269 at [51].

[22] Article 5(2) of the Life Sentences (Northern Ireland) Order (the 2001 Order) provides that the minimum term:

> "..shall be such part as the court considers appropriate to satisfy the requirements of retribution and deterrence having regard to the seriousness of the offence, or of the combination of the offence and one or more offences associated with it."

The Court of Appeal in McCandless held that judges in Northern Ireland should fix minimum terms in accordance with the principles laid down by Lord Woolf CJ in his Practice Statement of 31 May 2002, reported at [2002] 3 All ER 412. As Carswell LCJ pointed out at paragraph [8] of McCandless, the sentencing framework is a multi-tier system of starting points at which the sentencer may start off his journey towards the goal of deciding upon a right and appropriate sentence for the instant case.

[23] The relevant portions of the Practice Statement that apply to this case are:

> "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 paragraph 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 (c) the offender was provoked (in a non-technical sense),
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> … These factors could justify a reduction to 8/9 years (equivalent to 16/18 years).
>
> Variation of the starting point.
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> 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:

(b) The use of a firearm;

(c) Arming with a weapon in advance;

15. Aggravating factors relating to the offender will include the offender's previous record in failures to respond to previous sentences, to the extent that this 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 premeditation.

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."

[24] It will be apparent from the wording of paragraph 14 that this does not purport to be a prescriptive list of the aggravating factors that may be relevant in every case. There is no material difference between a firearm and a knife of this type as a murder weapon in circumstances such as these, each is a potentially lethal weapon, and the courts in recent years have repeatedly stated that the use of a knife to inflict serious injury is a very grave aspect of any crime. Again and again in recent years one finds death resulting from the readiness of individuals in a quarrel or fight to arm themselves with a kitchen knife and then stab an unarmed opponent. In the present case I am satisfied that the defendant's arming himself with the knife from the kitchen, and then emerging from the house when the first altercation was finished in order to confront the defendant are both aggravating factors in this case.

[25] It is self evident that in almost every murder case the deceased will be survived by relatives who will be greatly affected by his death and the manner of his death. The Practice Statement does not refer to this as an

aggravating factor, but in principle where the circumstances surrounding the death of a loved one have had a particularly severe effect on a significant number of people, I can see no reason why that should not be regarded as an aggravating feature of the case. There are no authorities directly in point, but the principles governing sentences in cases of causing death by dangerous driving provide an appropriate analogy. In Attorney General for Northern Ireland's Reference (Nos 2, 6, 7 and 8 of 2003) [2004] NI 50 at [9] the Court of Appeal referred to the advice given by the sentencing advisory panel in such cases and stated that

> "The synthesis adopted by the panel is that the outcome of the offence, including the number of people killed, is relevant to the sentence."

[26] The Court then referred to the seminal judgement of the Court of Appeal in England in R v Cooksley, part of which is in the following terms.

> "Where death does result, often the effects of the offence will cause grave distress to the family of the deceased. The impact on the family is a matter which the courts can and should take into account. However, as was pointed out by Lord Taylor CJ in R v Shepherd [1994] 2 All ER 242 at 245,
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> "We wish to stress that human life cannot be restored, nor can its loss be measured by the length of a prison sentence. We recognise that no term of months or years imposed on the offender can reconcile the family of a deceased victim to their loss, nor will it cure their anguish".

[27] I consider that the grave effect which the death of Stiofan Loughran has had upon his mother, his father, his widow and the four children of the family, remembering that several of his immediate family witnessed the attack on him, or what were to all intents his death throes, should be taken into account and treated as an aggravating factor.

[28] As this was a case where there was a degree of provocation on the part of the deceased I consider that it is appropriate, as is conceded by the prosecution, to treat this as a case where a lower starting point than 12 years should be adopted and I take a starting point of 9 years. As far as the aggravating factors in the case are concerned I consider that the deliberate arming of himself with a knife and stabbing the deceased twice, the second time in the back, are significant aggravating features in themselves, and these, together with the effect upon the deceased's family, require the court to

increase the minimum term, before taking into account any mitigating factors, to 15 years.

[29] So far as the mitigating factors are concerned the most significant is that the defendant pleaded guilty, thereby recognising his guilt and demonstrating his regret for his actions. In addition, that saved the members of the deceased's family who witnessed the altercation, or its aftermath, from having to give evidence. It also avoided the need for a lengthy trial. The plea of guilty was not entered at the first opportunity, although I accept Mr Berry's explanation as to why it was not possible to finally advise the defendant at an earlier stage. Nevertheless the defendant is entitled to appropriate credit for his plea of guilty. It is suggested that there is clear evidence of remorse and I accept that that is the case.

[30] The defendant was a young man at the time, and it is clear from the report of Kate O'Hanlon, an educational psychologist, that the defendant is borderline special needs. Dr Philip Pollock, a consultant forensic clinical psychologist retained by the defence, concluded that the defendant's behaviour on other occasions in the past "has manifested in the context of an emotionally immature personality rather than reflective of a personality disorder." As Mr Berry QC for the defendant emphasised, the various reports disclose that he had a very dysfunctional upbringing. However, such sympathy as one might have for these factors is dissipated by the defendant's heavy consumption of alcohol and illicit drugs for a substantial number of years prior to these offences, and I do not consider that he can be given any credit for his relative youth at the time.

[31] To allow for the mitigating factors I consider that the minimum term of 15 years should be reduced to one of 12 years, the equivalent to a determinate sentence of 24 years. I therefore sentence the defendant to life imprisonment, and direct that he will serve a minimum period of twelve years imprisonment before he can be considered for release. The minimum term will include the time spent in custody on remand.