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Judgment: approved by the Court for handing down | *Delivered:* **22/10/2004**
(subject to editorial corrections)

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

v

NEIL GORDON GRAHAM

Before Kerr LCJ, Nicholson LJ and Sir Liam McCollum

KERR LCJ

[1] On 9 July 2004 the appeal of Neil Gordon Graham against his conviction for the murder of Paul Gault on 19 May 2000 was dismissed. His application for leave to appeal against the minimum term imposed by the learned trial judge, McLaughlin J, under article 5 (1) of the Life Sentences (NI) Order 2001 was adjourned until 10 September 2004. It was heard on that day but we concluded that we should defer giving judgment on the application until the retrial of Graham's co-accused, Lesley Gault, was completed.

[2] The facts surrounding the murder of Mr Gault were described in detail in the judgment of this court given on 9 July and need not be repeated at length here. In short summary the applicant and Mrs Gault were conducting an affair for some two and half years before Mr Gault was killed. On the day of the murder the applicant entered the Gault house while Mr and Mrs Gault were taking their children to school and lay in wait for Mr Gault's return. He ambushed his victim in a bedroom of the house and beat him to death by a number of savage blows with a hockey stick. He then arranged a number of items in the house to make it appear that there had been a burglary. For the reasons that we have given in the judgment on the appeal against conviction, we are satisfied that this was a meticulously planned murder carried out with painstaking care and deviousness by the applicant. He dealt with the

investigation of the crime with remarkable sang-froid and has never displayed or expressed the slightest remorse.

[3] In fixing the minimum term that the applicant should serve the trial judge expressed the view that periods to be served by prisoners sentenced to life imprisonment in Northern Ireland ought to be longer in Northern Ireland than those recommended for England and Wales. Those terms were based on a *Practice Statement*, issued by Lord Woolf CJ on 31 May 2002 and reported at [2002] 3 All ER 412. Subsequently, the Court of Appeal in this jurisdiction considered the *Practice Statement* in the case of *R v McCandless and others* [2004] NICA 1. In that case the court referred to the fact that most judges in the Crown Court had taken account of the principles espoused by the *Practice Statement* and had fixed terms in accordance with those principles and on a comparable level with the terms suggested in it. The Court of Appeal expressed approval of that course.

[4] Since the *Practice Statement* was issued, the position in England and Wales has changed. Sections 269 and 270 of the Criminal Justice Act 2003 and Schedule 21 to the Act (which sets out the starting points for various cases where a minimum sentence must be imposed) came into force on 18 December 2003. In *McCandless* this court acknowledged that the *Practice Statement* had already been overtaken in England and Wales by the 2003 Act. It did not consider that this should alter the sentencing pattern already established in Northern Ireland, based as it was on the *Practice Statement*. At paragraph [10] of the judgment Carswell LCJ said: -

> "In a number of decisions given when imposing life sentences and fixing minimum terms, including those the subject of the present appeals and applications, judges in the Crown Court have taken account of the principles espoused by the Sentencing Advisory Panel and by Lord Woolf CJ in his *Practice Statement* and have fixed terms in accordance with those principles and on a comparable level with the terms suggested in them. We consider that they were correct to do so. We have given careful consideration to the level of minimum terms which in our view represent a just and fair level of punishment to reflect the elements of retribution and deterrence. We are not unmindful of the mandatory minimum terms prescribed in England and Wales for certain classes of case by the Criminal Justice Act 2003, but we consider that the levels laid down in the *Practice Statement,* which accord broadly with those which have been adopted for many years in

> this jurisdiction, continue to be appropriate for our society."

[5] We do not believe that the provisions of the 2003 Act can be imported and applied in Northern Ireland in the absence of legislation to like effect in this jurisdiction. We consider that the *Practice Statement* should continue to be the touchstone in this jurisdiction for the fixing of minimum terms in life sentence cases. It must be remembered, of course, that the *Practice Statement* did not purport to offer more than a series of guidelines and a suggested range of minimum terms and the court in *McCandless* was careful to recognise this in paragraph [8] of its judgment where it said: -

> "We think it important to emphasise that the process [outlined in the *Practice* Statement] is not to be regarded as one of fixing each case into one of two rigidly defined categories, in respect of which the length of term is firmly fixed. Rather the sentencing framework is, as Weatherup J described it in paragraph 11 of his sentencing remarks in *R v McKeown* [2003] NICC 5, a multi-tier system. Not only is the *Practice Statement* intended to be only guidance, but the starting points are, as the term indicates, points at which the sentencer may start on his journey towards the goal of deciding upon a right and appropriate sentence for the instant case."

[6] In the present case we do not agree with the learned trial judge's view that minimum terms ought, as a matter of general application, to be greater than those in England and Wales. But we do not consider that it necessarily follows that, if one applied the *Practice Statement,* a term of less than twenty years would be appropriate. We agree with the judge that this is a higher starting point case, albeit not for the reasons that he so found. The *Practice Statement* had suggested a higher starting point of 15/16 years where the offender's culpability was exceptionally high or the victim was in a particularly vulnerable position. Various examples were given of such cases including that the killing was done for gain (in the course of a burglary, robbery etc.) and where extensive and/or multiple injuries were inflicted on the victim before death. The judge considered that both features were present in this case. We do not agree. The 'gain' that the judge identified was the "winning" of Lesley Gault but we do not believe that this is what Lord Woolf had in mind. Nor do we consider that there is sufficient evidence to support the judge's conclusion that "Mr Gault was subject to gratuitous violence of the grossest degree and this may be classified also as a series of extensive injuries". We are satisfied, however, that the circumstances in which Mr Gault was callously killed and the meticulous planning of his execution by

Graham fully justify the view that this was indeed a case where the offender's culpability was exceptionally high.

[7] The *Practice Statement* identified the planning of a murder as an aggravating feature that could justify the variation of the starting point upwards. However, where the court chooses the higher starting point because the murder was planned, it should not normally vary the starting point upwards because of the same factor. In the present case the sinister aspects of this murder go well beyond its planning. The killing was professional in its execution. The applicant went to extraordinary lengths to eliminate any trace of his involvement. He coolly placed items in the bedroom where Mr Gault's body lay after the killing in order to make it appear that there had been a burglary. He brazenly resisted the investigation into the crime. All these factors make this a most sinister murder. The applicant is highly intelligent and it is clear that he deployed his considerable ability to substantial effect in the execution of this murder. He might well have escaped prosecution had not the low copy number DNA been detected on the sports bag. We are satisfied that all these matters must be reflected in deciding on the proper minimum term.

[8] Having given careful consideration to all the various aspects of this case we have concluded that the appropriate term is one of eighteen years. We accordingly grant leave to appeal, allow the appeal and vary the minimum term fixed in the applicant's case to eighteen years. This will include the time spent by the applicant in custody on remand.