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*Judgment: approved by the Court for handing down (subject to editorial corrections)** | *Delivered:* **15/02/2013**

IN THE CROWN COURT IN NORTHERN IRELAND

SITTING IN BELFAST

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THE QUEEN

-v-

ROBERT SCOTT

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McCLOSKEY J

[1] The indictment herein comprises a single count of murder. The Defendant made a plea of guilty on the first day of trial, 9 January 2013. The basis upon which he is to be sentenced in consequence is agreed between the prosecution and defence and is set out in paragraphs [2]-[8] below.

[2] The murdered man, Richard Hicking (hereinafter "the deceased") was born on 17 August 1979, and on 28 April 2011, when he was murdered, he was aged 31 years. The Defendant was born on 13 February 1976 and in April 2011 was aged 35 years. In April 2011 each of these men lived in adjoining flats. On the night of 28th April 2011, the deceased stayed overnight at his girlfriend's house, and left the next morning to go to work. He and the Defendant spent the evening drinking in a bar. They were neighbours and also friends. They had been friendly since childhood and as adults they socialised together and drank and listened to music in each other's flats. At around 10.00 pm they travelled home in a taxi and were seen in the vicinity of their homes.

[3] The next day, 29 April, the deceased was found, lying on his back, on the floor of the hallway of his flat. There was a great deal of dried blood on and around him. He was dead. Ambulance personnel and police arrived at the scene. The paramedics confirmed that life was extinct. They cut away his shirt, which was saturated with blood, and observed a large number of puncture wounds on his chest. On 1st May, Professor Crane conducted a post mortem examination of the body. He found that there was no natural disease to cause or accelerate the death of the deceased. His death was due to stab wounds of the chest. He had been stabbed 21 times by a sharp-bladed

weapon, such as a knife, probably with a single-edged blade. There were 14 stab wounds on the front of the chest, 6 stab wounds on the right side of the chest and a single stab wound on the centre of the back of the chest. Ten of the wounds had penetrated as far as, or through, the chest cage. One of these, on the centre of the front of the chest, had penetrated into the heart and bleeding into the heart from this wound had interfered with the pumping action of the heart. This would have caused his fairly rapid, but not immediate, death. Seven of the chest wounds had also gone through the diaphragm into the liver and, had he not succumbed to the heart wound, would almost certainly have caused his death.

[4] Police found blood in a number of places. There was blood on the body and clothing of the deceased. There were light smears of blood on the floor of the hall of his flat, Flat 18, to the left of the body as viewed from the front door. There were bloodstains on the floor of the communal landing in a line between the doors of the two adjoining flats. 17 and 18. In the Defendant's flat, the kitchen was examined. The linoleum floor of the kitchen appeared to have been recently cleaned. However, bloodstains were found in the kitchen, in particular on the door frame, on the floor close to a freezer, in front of the cooker and beneath a clothes horse, on a leg of the clothes horse and on the front of a drawer. In a bedroom, a bloodstained rug was found, rolled up behind the door. In a subsequent search, a tracksuit top and bottoms were found - the top hanging on a door, and the pair of blue tracksuit bottoms separately in a wardrobe, with spots and smears of blood on the right leg.

[5] Samples of all of this blood were taken and sent for scientific analysis. DNA samples were taken from the body of the deceased. The ensuing scientific evidence established that the blood on the floor of the communal landing between the two flats, in the kitchen of the Defendant's flat, on the rug and on the tracksuit bottoms was that of the deceased. Blood found on the jeans of the deceased was also found to match that identified in the fibres of the rug. The forensic scientist concluded that the deceased man had been upright for a period of time whilst bleeding, that his body had been deposited in the hallway of his flat and that the stabbing incident had occurred elsewhere.

[6] On 29 April, the shaft and head of a mop and, beside them, some burnt debris, including a can of lighter fuel, were discovered nearby. The shaft of the mop was largely burnt and the mop head was partially burned. Some weeks previously, the deceased's mother had bought two mops and had given one to the deceased. During the police search and examination of the Defendant's flat, there was also recovered "Twistamop" plastic packaging, containing the fingerprints of the deceased. Later, the Defendant told police that he had mopped the floor of his flat. The burnt mop found on the pathway was subjected to forensic analysis. It had crusted blood, assessed to be that of the deceased.

[7] The Defendant was arrested and interviewed extensively by police. He denied any involvement in the killing of the deceased. In brief, he said that they had consumed a drink in his flat, after arriving there on the evening of 28 April, that the deceased had left his flat shortly thereafter and that that was the last time he had seen him alive. These denials persisted through his arraignment until re-arraignment on the first day of his trial, 8th January 2013.

[8] The prosecution case is that the Defendant, for whatever reason, mounted a savage attack with a knife on the deceased, stabbing him many times, and killing him by the stab wound which penetrated his heart. The deceased bled copiously and his blood was projected on to the Defendant's tracksuit bottoms. The Defendant then dragged the body into the hallway of the deceased's flat, deposited it there and left it prone on the floor. The next morning, he sought to remove all traces of the dead man's blood with the mop, which he then attempted to destroy by burning.

[9] On behalf of the prosecution, Mr Hunter QC (appearing with Mr Magill, of counsel) drew attention to three factors. These are, respectively, the evident savagery of the attack perpetrated against the deceased and the multiplicity of his injuries; the Defendant's attempts at destruction of the crime scene and physical evidence in the aftermath of his attack upon the deceased; and his criminal record.

[10] The submissions of Mr Harvey QC (appearing with Mr Turkington, of counsel) on behalf of the Defendant had six central themes. The first was that the Defendant's belated plea of guilty can be explained by his admission to hospital during most of the period September to December 2012 and his impaired state of mind and judgement. The second reflected upon the lifetime of alcohol and drug misuse and dependency which has been the Defendant's lot and is well documented in the various reports. The third, related to the second, emphasised the Defendant's frail psyche at the material time, evidenced by the content of medical records generated during the three days prior to the murder. The fourth entailed the Defendant's acceptance of full and exclusive responsibility for the death. Fifthly, Mr Harvey submitted that the Defendant's attempted destruction of evidence was inept, consistent with his weakened state of mind. Finally, the Defendant's remorse for the killing, coupled with a sincere apology proffered to the family circle concerned, was emphasised.

[11] For the purpose of sentencing, the Defendant has been assessed by a consultant clinical psychologist, a consultant psychiatrist and a probation officer. The reports thereby generated are models of professional expertise and objectivity and I commend their authors accordingly. When the first two

of these reports were prepared, the Defendant's stance was one of professed innocence. As recorded in the psychologist's report:

> "At the time of the index offence Robert Scott was in a poor emotional state and was drinking alcohol and taking prescribed medication for anxiety, depression and panic attacks."

He had been the subject of referral to psychiatric services from an early age and there were documented incidents of self-harm and attempted suicide. He was considered to be alcohol dependent and suffering from mental health problems, albeit in the absence of any diagnosis of a specific mental illness. Substance abuse was also recorded. His mental health problems were particularly acute during the period immediately preceding the murder. The consultant psychiatrist made a diagnosis of "emotionally unstable personality disorder accompanied by dependence on alcohol and drugs". She considered that the Defendant had been prone to periodic episodes of depression and had poor coping strategies, seeking refuge in alcohol and drugs.

[12] The only available account of how the death occurred is that contained in the pre-sentence report, provided by the Defendant for the first time following his plea of guilty. He claimed that, following an episode of heavy drinking, the deceased had confronted him brandishing a knife and lunged at him. The report continues:

> "The Defendant claims that a physical struggle ensued between him and the victim and during this altercation he managed to take hold of the knife. Having done so, Mr Scott states that he proceeded to stab the victim a number of times. A short while later, the Defendant indicates that he realised he had killed Mr Hicking. Having carried the victim to his own flat, he then decided to clean his property and the communal hallway of the flat complex of the victim's blood using various cleaning agents and a mop [which he] then attempted to destroy."

In a later passage, the probation officer states:

> "With the benefit of sobriety and hindsight, Mr Scott now expresses his remorse for the death of Mr Hicking."

The report also quotes from the prison chaplain who had interviewed the Defendant:

> "I asked him when he decided to plead guilty. He said it was after his period of hospitalisation and that this period had given much time to think. I also asked him what motivated him to plead guilty. He said he wished to spare two families (his own and the victim's) a great deal of pain that would result from any trial."

[13] The approach to be adopted in sentencing for murder is well-trodden ground. I had occasion to review this topic *in extenso* in R v Meehan and Others [2009] NICC 59. I refer particularly to paragraphs [15]-[21]. I accept the submission that this is a paradigm example of "a quarrel or loss of temper between two people known to each other". However, cases of this nature do not automatically attract the "normal" starting point of twelve years. Rather, exceptionally, they may involve a lower starting point. Similarly, where the killing has certain features, the normal starting point will generally [but not invariably] be substituted by the "higher" point of departure of 15/16 years. The dominant qualifying condition for membership of this category is that of exceptionally high culpability or some special vulnerability on the part of the victim. The transition from the lower category to the upper one is a significant step, requiring anxious reflection in borderline cases such as the present. Bearing in mind that these categories are not separated by bright luminous lines and are not hermetically sealed, I am satisfied that the murder of the deceased belongs to a level a little below the upper category, thereby attracting the 'normal' starting point of twelve years

[14] Having fixed the point of embarkation, I am enjoined to consider the issues of aggravating and mitigating factors. In my view, the killing of the deceased was clearly aggravated by the multiple injuries inflicted on him by the knife. While I have concluded that this does not project the present case into the higher category, I have determined to treat this as an aggravating factor: a failure to do so would be wrong in principle. While I accept Mr Harvey's submission that the killing probably occurred in a single transaction, I consider that this does not contraindicate the evaluation of this as an aggravating factor. The second aggravating factor which I have identified is that of the Defendant's attempts to extinguish and destroy evidence. For reasons which are self-evident, these efforts were inept and were, in consequence, unlikely to succeed. I consider that this qualifies as an aggravating factor nonetheless, as the Defendant made conscious and elaborate efforts to defeat the ends of justice. The third aggravating factor which I have identified is that of the Defendant's criminal record. While I cannot overlook this, I shall treat it as an aggravation of moderate weight, having regard to its contents.

[15] I now turn to consider possible mitigating factors. While the Defendant's profession of remorse was unquestionably belated, its sincerity

has not been questioned and I consider that it qualifies as a mitigating factor. To this I add the observation that society rightly expects those who perpetrate grave crimes to be remorseful, to humbly and sincerely plead for forgiveness, redemption and the opportunity for rehabilitation. This is the essence of true remorse. As a result, as a general rule, remorse is unlikely to attract substantial weight in the sentencing exercise. I consider this to be such a case. Secondly, while the Defendant is, indisputably, criminally culpable for the murder of Richard Hicking, I consider his culpability to be diluted somewhat on the ground of his mental state, as documented in the consultant psychiatrist's report (*supra*) and, significantly, reinforced by the medical records generated during the three days preceding the murder. In particular, less than 48 hours before the perpetration of the offence, it is documented that the Defendant attended his general medical practitioner, was prescribed antidepressant and other medication and, evidently, was scheduled to re-engage with psychiatric professionals. Furthermore, a recent episode of deliberate self-harm was documented. To this one adds the record of attempted hanging less than one year previously, ongoing anxiety and panic attacks. I consider that the Defendant's culpability and the seriousness of his murderous conduct qualify for some mitigation accordingly. However, I must balance this with the Defendant's elaborate efforts to cover his tracks and his emergence from his encounter with the deceased entirely unscathed, from which one can properly infer that, psychologically, he was far from overwhelmed or crippled.

[16] At this juncture, I must address the question of the timing of the Defendant's plea of guilty. This plea was made virtually at the latest stage conceivable, on the date when a jury was to be sworn to begin the trial. I do not doubt senior counsel's assertion that during the period of September to December 2012 access by the Defendant's legal representatives to their client was not feasible for medical reasons. However, by this stage, the first opportunity for the Defendant to acknowledge his guilt had long passed. He had been arrested by the police very quickly after the killing and, during the sixteen months preceding his admission to hospital, had chosen to maintain the myth of his innocence. I must also take into account the indications that the Defendant's belated decision to plead guilty was unrelated to the reception of legal advice or delayed by any temporary unavailability thereof: see the quotation from the prison chaplain above. Finally, I must observe, realistically, that if the Defendant had seriously wished to communicate a plea of guilty or a request for advice to his legal representatives during the period of three months under scrutiny, a method of doing so would have been found – for example, through a family member or some other third party such as a chaplain or even a member of the prison corps. I find that the Defendant has no legitimate justification for not pleading guilty until the first day of his trial. He still qualifies for some credit for adopting this course. This credit is intertwined with the Defendant's professed motivation for doing so, which I accept. However, the conclusion that he would have qualified for a

substantially greater measure of credit had he pleaded guilty sooner is irresistible. Given the timing of his guilty plea, I consider that this qualifies for a measure of credit belonging to the lower end of the notional scale.

[17] I repeat what I said at the hearing. Sentencing in murder cases presents the court with a notoriously difficult challenge, one in which arithmetical tools are to be firmly resisted. My point of departure was twelve years. In the notional journey which has followed, I have identified and evaluated aggravating and mitigating features. I remind myself that retribution and deterrence are the two considerations in play. Following careful reflection, I consider that in the balance of the various aggravating and mitigating factors, the pendulum swings towards a point between the first and second categories. The factor which, ultimately, tips the balance in this way is, taking the Defendant's account at its zenith, the repeated stabbing of a defenceless man. Giving due effect to the legal rules and principles which govern this exercise and the discretion available to the court, I conclude that the appropriate minimum term of imprisonment in this case is thirteen years. Relevant remand custody will, in the usual way, be credited. I reiterate that having served this period the Defendant will not qualify to be released from prison unless and until the Life Sentence Commissioners conclude (in the words of the legislation) that it is no longer necessary for the protection of the public from serious harm that he should be confined in prison. I exclude this factor from the measurement of the minimum term.

[18] I commend the obvious decorum and self - restraint of the two family circles concerned and sincerely trust that they will achieve some form of reconciliation in the wake of this waste of an innocent person's life.