

**Neutral Citation no. [2008] NICC 22**

Ref: **HAR7175**

*Judgment: approved by the Court for handing down  
(subject to editorial corrections)\**

Delivered: **6/6/2008**

**IN THE CROWN COURT IN NORTHERN IRELAND**

**BELFAST CROWN COURT**

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**THE QUEEN**

**v**

**SIU CHING WONG**

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**HART J**

[1] The defendant has been convicted of the murder of Mi Yi Ho, commonly known as Candy Ho. He now is to be sentenced to a minimum term of imprisonment which he must serve before he can be considered for release by the Life Sentence Review Commissioners.

[2] Candy Ho was a native of Hong Kong who had been living in Northern Ireland for several years. She had been married but was divorced, and the evidence before the jury was that she was the lover of Wing Cheun Yeun, a man originally from Hong Kong who was known as Jimmy Yeun. He was married and ran a Chinese takeaway in Dundonald. At the time of her death she was carrying his child and was 18 weeks pregnant.

[3] She worked in a Chinese restaurant in Carrickfergus and left her work at or around midnight on the night of Sunday 7th/ Monday 8th June 1998, and therefore probably returned to her home at 70 Isoline Street in East Belfast in the early hours of Monday 8<sup>th</sup> June. By its verdict the jury has accepted that she was strangled in her home by the defendant using a ligature.

[4] The defendant is also a native of Hong Kong and he is now 44 years of age. He knew Candy Ho well, and following the death of her father in 1997 he agreed to move into her publicly-owned flat in Hong Kong so that she could preserve the tenancy of that flat. He kept in touch with her and from

time to time forwarded correspondence sent to her at that address to her in Northern Ireland.

[5] The prosecution case, which the jury has accepted, is that the murder of Candy Ho was arranged by Jimmy Yeun, although he was acquitted of procuring her murder at a trial in 2001. The defendant was extradited from Hong Kong to stand trial for this murder in June 2007.

[6] The prosecution case was that at the request of Jimmy Yeun the defendant travelled from Hong Kong to murder Candy Ho. The evidence was that he flew from Hong Kong to Northern Ireland via Heathrow and arrived on Friday 5 June 1998. In order to ensure that he was admitted to the United Kingdom he had prepared a cover story which he related to the immigration officers at Heathrow to the effect that he knew no one in the United Kingdom and was merely coming for a short holiday.

[7] He admitted that he was met by Jimmy Yeun at Aldergrove on Friday 5 June, and the jury must have accepted that the defendant was the man who was described by a number of witnesses as being seen in Isoline Street on the afternoon of Saturday 6 June, again in the late afternoon or evening of Sunday 7 June, and then entering Candy Ho's house at about 10.00 pm on Sunday night. After the murder the defendant returned to Hong Kong via Heathrow on Monday 8 June. It was part of the prosecution case that the murder had originally been planned for Wednesday 10 June because that was normally Candy Ho's day off, but at the request of her employer she agreed to take Monday 8 June off.

[8] This was therefore a carefully-planned murder by the defendant at the request of his close friend Yeun. Whether he received some form of payment or other reward for carrying out the murder is unknown, but all of the other aspects of the murder place it in the same category of case as a professional or contract killing.

[9] The defendant has two previous convictions in Hong Kong. On 28 January 1980 he was sentenced to 18 months imprisonment for possession of an offensive weapon in a public place. On 10 August 1990 he was sentenced to 4 ½ years imprisonment for his part in a robbery.

[10] In R v. McCandless and Others [2004] NI 269 the Court of Appeal directed judges in Northern Ireland to apply the Practice Statement promulgated by Lord Woolf CJ when fixing the minimum term of imprisonment to be served by a defendant convicted of murder. I am satisfied that this is a case where the higher point of 15/16 years should be adopted because the killing of Candy Ho by the defendant was effectively a professional or contract killing, one of the features which places a murder in that category. In addition I consider the defendant's record to be an

aggravating feature, as is the careful planning which clearly was devoted to the execution of this crime in which the victim was killed by a man who she knew who travelled from Hong Kong to carry out the murder.

[11] There are no mitigating features of this case. Mr Magee submitted that I should take into account in favour of the defendant what he suggested was an unjustifiable delay on the part of the authorities in Northern Ireland in seeking the defendant's extradition. The chronology provided by the prosecution indicates that although a direction to prosecute the defendant and seek his extradition was taken by the PPS on 2 May 2002, a warrant for his arrest was not issued until 10 November 2005. Mr Kerr conceded that he had no instructions that could justify what appears to be a period of delay between those dates.

[12] It is well established that a sentence can reflect any unjustified or lengthy period before a defendant is brought to trial, whether under Article 6 of the ECHR or at common law. However, that applies where proceedings have been instituted, or at least the accused has been questioned and realises that he may be prosecuted. The defendant in the present case was at liberty and had not been questioned, and in those circumstances I see no justification for reducing the minimum term.

[13] In view of the lengthy period which will pass before he can be considered for release I do not consider it necessary to make any recommendation as to whether the defendant should be deported upon the expiry of the minimum term because that date will be so far in the future that any recommendation made now could be of no value to the authorities who have to consider this matter when it arises.

[14] The minimum term will include the time spent by the defendant on remand in this jurisdiction following his extradition from Hong Kong, and the prosecution have stated that he arrived in this jurisdiction on 22 June 2007. He was arrested in Hong Kong on 31 August 2006 on foot of an extradition warrant issued in Northern Ireland on 10 November 2005 and therefore spent nine months and three weeks in custody in Hong Kong prior to his extradition, and Mr Magee on behalf of the defendant submits that I should make an order that takes into account the time spent on remand in Hong Kong.

[15] Counsel are agreed that there appears to be no statutory provision in force in this jurisdiction that provides for this situation. The Extradition Act 2003 implemented the requirements of the European Arrest Warrant procedure created by the European Framework Decision of 13 June 2002 in the domestic law of the United Kingdom, and at the same time changed the extradition procedures between the United Kingdom and non-EU

jurisdictions, including Hong Kong. Article 26(1) of the Framework Decision provides that

“The issuing state shall deduct all periods of detention from the execution of a European arrest warrant from the total period of detention to be served in the issuing Member State as a result of a custodial sentence or detention order being passed.”

Despite this there is no provision to this effect in the Extradition Act, whether in the part dealing with the European arrest warrant procedure, or in the remainder of the statute. Provision has now been made in England and Wales by s. 243(1)(b) of The Criminal Justice Act, 2003 that in extradition cases time spent in custody on remand in the state from which a prisoner is extradited shall be deducted from a sentence imposed in England and Wales, but there appears to be no equivalent provision in Northern Ireland. However, even if there were, as Mr Kerr QC pointed out, this provision has not yet been brought into force and in any event only applies where the offence was committed after 4 April 2005. See Archbold 2008 at 5-371 and 5-364d where the relevant statutory provisions are set out.

[16] I was referred by Mr Magee to In the matter of Kiriakos [1996] EWHC Admin 205, R v Henderson [1997] 2 Cr. App. R. (S.) 266; R v Thomas Graham (unreported, Stephens J), and Re Joseph Doherty’s application (unreported, Pringle J). The circumstances of each of these cases are each quite different from those of the present case and are of little assistance.

[17] Mr Magee also drew my attention to s. 26 of the Treatment of Offenders Act (NI) 1968. This provides that

26 .- (2) The length of any sentence of imprisonment or term of detention in a young offenders centre imposed on or ordered in relation to an offender by a court shall be treated as reduced by any relevant period, but where he was previously subject to a probation order, a community service order, an order for conditional discharge or a suspended sentence or order for detention in respect of that offence, any such period falling before the order was made or the suspended sentence or order for detention was passed or made shall be disregarded for the purposes of this section.

(2A) In subsection (2) “relevant period” means-

(a) any period during which the offender was in police detention in connection with the offence for which the sentence was passed; or

(b) any period during which he was in custody-

(i) by reason only of having been committed to custody by an order of a court made in connection with any proceedings relating to that sentence or the offence for which it was passed or any proceedings from which those proceedings arose; or

(ii) by reason of his having been so committed and having been concurrently detained otherwise than by order of a court.

(3) For the purpose of this section a suspended sentence or order for detention shall be treated as a sentence of imprisonment or, as the case may be, an order for detention in a young offenders centre when it takes effect under section 19 and as being imposed or made by the order under which it takes effect.

(4) No period of custody shall be taken into account for the purpose of reducing a term of imprisonment under this section unless the whole of that period begins after the commencement of this Act.

(5) Any reference in this Act or any other enactment (whether passed before or after the commencement of this Act) to the length of any sentence of imprisonment or order for detention in a young offenders centre shall, unless the context otherwise requires, be construed as a reference to the sentence or order pronounced by the court and not the sentence or order as reduced by this section.

[18] On its face s. 26 (2A)(b)(ii) would appear not to prevent this court from taking into account a period of time spent in custody by a foreign court before a defendant was extradited to stand trial in respect of the offence for which he was extradited to Northern Ireland. Attractive although such an interpretation would be, I doubt whether one can properly interpret "court" as meaning a court outside Northern Ireland in the absence of a specific interpretation clause to that effect, because to do so would be to attribute to Parliament a meaning that was almost certainly never within its contemplation. Indeed, were "court" to be interpreted as including a foreign court, then there would be no need for a provision such as s. 243(1)(b) of The Criminal Justice Act, 2003.

[19] In paragraphs 21 and 22 of the Practice Statement Lord Woolf CJ referred to s. 82 A(3) of the Powers of the Criminal Courts (Sentencing) Act 2000, which requires the court to take account of the effect which s. 67 of the Criminal Justice Act 1967 would have had if the defendant had been sentenced to a term of imprisonment, and stated that s. 67 of the 1967 Act

“..requires the sentencer to make adjustment for any period which had been spent in custody, since that period is not automatically deducted from the minimum period by s.67 of the 1967 Act. The period spent by the offender in local authority secure accommodation should be deducted from the minimum term (see R v Secretary of State for the Home Dept, ex p. A, [2000] 2 AC 276.”

[20] It appears that the position in England and Wales with regard to the relevance of previous periods on remand when calculating the minimum term is now that provided for at paragraph IV.49.12 of the Practice Direction (Criminal Proceedings: Consolidation), (as substituted by Practice Direction (Crime: Mandatory Life sentences( (No.2 ) [2004] 1 W.L.R. 2551. This refers to various statutory provisions before stating

“Where the offender has been remanded in custody in connection with the offence or a related offence, the court should have in mind that no credit will otherwise be given for this time when the prisoner will be considered for early release. The appropriate time to take it into account is when setting the minimum term. The court should normally subtract the time for which the offender was remanded in custody in connection with the offence or a related offence from the punitive period it would otherwise impose in order to reach the minimum term.”

[21] This review of the relevant statutes and Practice Directions indicates that whilst there is clear judicial authority that when the court fixes a minimum term it should give the defendant credit for time spent in custody in relation to the charge which would not otherwise be taken into account, there is no statutory provision in Northern Ireland that applies to the situation where, as here, the defendant has been held in custody before being extradited to this jurisdiction in respect of the charge on which he is ultimately convicted.

[22] If it were the case that there was nothing to indicate how Parliament viewed such a situation, then there is an argument for taking a course which

would enable the period spent in custody before extradition to be deducted from the minimum term in the same way as time spent in custody after extradition has to be deducted. However, against that is the fact that although Parliament has made provision for this situation in England and Wales by s. 243 of the Criminal Justice Act, 2003 as already noted, when that provision comes into effect it will only apply to offences committed after 4 April 2005. Here the murder was committed in June 1998 and so were the defendant to be given credit for the period spent on remand before his extradition he would be given credit for a period in custody which Parliament has expressly stated should not be given in England and Wales. Whilst it is possible that Parliament might make different provision for Northern Ireland, I consider that in an area such as this it is for Parliament and not the courts to address any gap in the law it considers might exist. I therefore conclude that in the absence of a statutory power permitting me to do so I cannot make any order requiring the time spent by the defendant in custody in Hong Kong to be allowed against the minimum term to be served before the defendant can be considered for release.

[23] I therefore sentence the defendant to a minimum term of 18 years imprisonment. The minimum term will only include the time spent on remand by the defendant in this jurisdiction.