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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-

ROBERT JOHN STEWART AND DAVID IAN STEWART

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HART J

[1] Robert Stewart was born on 28 December 1973 and is now 36, and his brother David Ian Stewart was born on 1 May 1970 and is now 39. On 4 August 2008 they unexpectedly came to Antrim police station, and stated that they wished to confess to their part in the murder of Thomas English on 31 December 2000. They were interviewed and made statements of admission in relation to those events, and were charged with aiding and abetting the murder of Thomas English and related offences. On 19 December 2008 they were arraigned upon those charges and pleaded guilty and were sentenced to life imprisonment. It now remains for the court to fix the minimum term which the defendants must serve before they can be considered for release by the Parole Commission, and to pass sentence on the remaining counts on that indictment. I shall refer to that as the first indictment.

[2] The defendants indicated their willingness to admit other offences to the police, and have been interviewed in relation to those matters over a period of 12 months following their pleas of guilty in December 2008. In the course of those interviews the defendants have admitted not only the part which they played in a very large number of other offences, but they have indicated their willingness to give evidence against those involved in those offences and in the murder of Thomas English. The other offences which the defendants have admitted have been considered by the police, and a voluntary bill of indictment was lodged containing a large number of charges against the defendants, either jointly or individually. I shall refer to the charges dealt with by the voluntary bill as the second indictment. I granted leave to the prosecution to prefer the second indictment by way of voluntary bill on 12 February 2010.

[3] It is unnecessary to deal with the circumstances of each of the offences contained in the second indictment, other than to say that they cover the period between 1994 and 2008. However, a number of those offences are of sufficient gravity to merit individual mention at this stage. Many of the offences relate to assaults, some of which were of a very serious nature indeed. Count 20 relates to the attack on Alan Webster on 19 December 1996 when he was struck on the leg, ribs and head with a sledgehammer, resulting in an open wound and a contusion to the head, as well as a rib fracture. Count 72 relates to the attempted murder of Keith Caskey on 30 December 1996. This charge is against Robert Stewart only. Such was the ferocity of the attack upon Caskey that both his legs and arms were broken, and a blow to the head with a hammer left him unconscious. As a result of the attack he was in hospital for several weeks. Counts 29 to 31 relate to the kidnapping and wounding of an individual referred to by the pseudonym "John Major" which occurred near York Road police station on 5 September 2003. He was walking along near the police station when a blanket was placed over his head, he was bundled into a car and taken to somewhere in the New Mossley area where he was shot in both knees. Counts 32 to 36 relate to an attack on the family home of the girlfriend of Trevor Gowdy who was a witness in a forthcoming trial. A pipe bomb was placed at the house in order to intimidate Gowdy.

[4] Both defendants have also admitted a large number of other offences which they have asked the court to take into consideration (TICs). Robert Stewart has admitted to 96 TICs: these include affray, burglary, thefts of motor vehicles, arson of vehicles, numerous assaults of various types, including assault with intent to inflict grievous bodily harm, and intending to pervert the course of justice. These offences were committed between 1990 and 2008. Ian Stewart has admitted 24 TICs including theft, extortion, arson of a car used in a barricade, arson of a house, affray, robberies of bus drivers, and assault with a spade upon a man at Kilwaughter House Hotel in 1995. These offences were committed between 1994 and 2008.

[5] Section 4 of the Criminal Justice Act (Northern Ireland) 1953 provides that an accused may admit an offence and ask the court to take it into consideration. No sentence is passed upon the offence as such, although they can be taken into account when considering the seriousness of an offence which is the subject of a charge and in respect of which the defendant is to be sentenced. When sentencing the defendant "the court can . . . give a longer sentence than it would if it were dealing with him only on the charge mentioned in the indictment", see R v Batchelor (1952) 36 Cr App R 64.

[6] However, it is unusual in practice for the sentence on a substantive count to be increased because of the gravity of charges which an accused has asked to be taken into consideration, and in such circumstances one would

expect the more serious charges to be the subject of substantive charges themselves and not taken into consideration.

[7] From their admissions it is clear that both defendants were deeply involved in terrorist crime for many years. During that time they committed a veritable litany of crimes, many of which were of a very serious nature indeed, and culminated in their role in the murder of Thomas English during a vicious feud between two terrorist organisations. This case provides a chilling reminder of the way in which for so many years terrorist organisations – loyalist and republican alike – who sought to portray themselves as defenders and protectors of the communities from which they came were nothing more than gangs who robbed, stole, destroyed property and assaulted people who crossed them, or who they considered were guilty of real or imagined "anti-social crimes", and enforced their reign of terror by threats, violence and murder.

[8] At about 6.30 pm on the evening of 31 October 2000 Thomas English was at his home at 9 Ballyfore Gardens, Ballyduff with his wife and three children. Four masked and armed men entered the house through an unlocked rear door. One of the attackers was carrying a hand gun and shot him several times. His wife was assaulted when she tried to intervene to protect her husband. Thomas English was taken to hospital but later pronounced dead as a result of the wounds inflicted during the attack. The attackers left the scene in a hijacked taxi which was later recovered. The defendants describe a meeting of members of the UVF earlier that afternoon at which the murder of English was planned and prepared. He was targeted because he was a prominent member of the UDA. Both the Stewarts were present at that meeting and were a party to the plan to murder English. The part which they were to play in the operation was to hijack a taxi which was to be used to transport the murder team to and from the scene and they did so. They held the driver of the hijacked taxi at gunpoint using an imitation firearm. They were to destroy the taxi after the murder, and also dispose of refreshment packaging left by those who had attended the meeting at which the murder was planned. The vehicle was not in fact destroyed because the accelerant which was to be used to destroy the vehicle was mislaid, but the defendants did dispose of the replica weapon and their clothing.

[9] It is an unusual feature of this case that the prosecution accept that the police had no intelligence or evidence to indicate that either of the Stewart brothers had been involved in the murder of Thomas English before they arrived at Antrim police station and admitted their crimes. Both said that they could no longer live with their consciences, and wished to admit what they had done. It is not unusual for defendants to come to a police station when they know that the police want to question them in relation to specific offences, but it is highly unusual, though not altogether unknown, for a defendant to come unexpectedly to the police to confess.

[10] Section 73(2) of the Serious Organised Crime and Police Act 2005 (SOCPA) now establishes a statutory regime providing for the procedures to be adopted by courts when an accused confesses to crimes, and indicates his willingness to give evidence against those with whom he was involved in serious crime. As a result of this process the court is required to take the assistance being given by the criminal into account when passing sentence. As Sir Igor Judge P (now Lord Judge CJ) observed in R v. P, R v. Blackburn [2007] EWCA Crim 2290:

> "There never has been, and never will be, much enthusiasm about a process by which criminals receive lower sentences than they otherwise deserve because they have informed on or given evidence against those who participated in the same or linked crimes, or in relation to crimes in which they had no personal involvement, but about which they have provided useful information to the investigating authorities. However, like the process which provides for a reduced sentence following a guilty plea, this is a longstanding and entirely pragmatic convention. The stark reality is that without it major criminals who should be convicted and sentenced for offences of the utmost seriousness might, and in many cases, certainly would escape justice. Moreover the very existence of this process, and the risk that an individual for his own selfish motives may provide incriminating evidence, provides something of a check against the belief, deliberately fostered to increase their power, that gangs of criminals, and in particular the leaders of such gangs, are untouchable and beyond the reach of justice. The greatest disincentive to the provision of assistance to the authorities is an understandable fear of consequent reprisals. Those who do assist the prosecution are liable to violent ill-treatment by fellow prisoners generally, but quite apart from the inevitable pressures on them while they are serving their sentences, the stark reality is that those who betray major criminals face torture and execution. The solitary incentive to encourage co-operation is provided by a reduced sentence, and the common law, and now statute, have accepted that this is a price worth paying to achieve the overwhelming and recurring public interest that major criminals, in

particular, should be caught and prosecuted to conviction."

[11] The law now requires a defendant who wishes to gain a benefit from giving evidence to the police to enter into an agreement with the prosecution to give assistance. If an agreement is made a defendant has to –

(1) fully admit his own crimes to the police after caution; and

(2) plead guilty to, and/or ask for other offences to be taken into consideration; and

(3) completely co-operate with the prosecution and give truthful evidence in court if required.

(4) The prosecution will then provide the court before which the defendant appears to be sentenced with full details of the assistance that he has provided;

(5) the court will take that assistance into account when sentencing the defendant and reduce the defendant's sentence as appropriate; and

(6) in addition the defendant will receive such further reduction in his sentence as is appropriate for his plea of guilty and any other mitigating factors that there may be.

(7) If the defendant fails to comply with the agreement he may then be brought back before the court on the charges for which he has been sentenced and the court may review his sentence, sentencing him as if he had not given any assistance, in other words he can be re-sentenced as appropriate.

[12] It is clear from R v P that the sentence should be determined by the court adopting a three stage process.

(1) The appropriate sentence for the crime had the accused been convicted should be decided.

(2) That sentence should then be reduced to reflect the nature and extent of the assistance given by the defendant.

(3) That sentence should then be further reduced to take into account the defendant's plea of guilty and any other mitigating factors there may be.

[13] This process may result in a very substantial reduction in the sentence which the defendant might have otherwise received. However, as Sir Igor Judge P made clear in R v P at [41] the defendant should not escape punishment altogether:

> "We were asked to consider the possibility of a discount in an exceptional case which, in effect, was that the defendant would not serve any sentence at all. We cannot envisage any circumstances in which a defendant who has committed and for these purposes admitted serious crimes can or should escape punishment altogether. The process under sections 73 and 74 does not provide immunity from punishment, and, subject to appropriate discounts, an effective sentence remains a basic characteristic of the process. Issues of immunity are addressed in section 71. What the defendant has earned by participating in the written agreement system is an appropriate reward for the assistance provided to the administration of justice, and to encourage others to do the same, the reward takes the form of a discount from the sentence which would otherwise be appropriate. It is only in the most exceptional case that the appropriate level of reduction would exceed three quarters of the total sentence which would otherwise be passed, and the normal level will continue, as before, to be a reduction of somewhere between one half and two thirds of that sentence."

[14] The murder of Thomas English was a premeditated, carefully planned, terrorist execution of a prominent member of a rival terrorist group. The defendants' role was to provide a hijacked vehicle to take the murder squad to and from the scene. Many, if not virtually all, terrorist attacks of this nature require a number of people to play different but essential roles in order that the crime can be successfully carried out. The defendants therefore played an essential and significant part in the murder, even though the actual killing was carried out by one of the four men who went into the house.

[15] Because the Stewarts aided and abetted the murder they are liable to be sentenced as if they were the actual killers, although some small reduction in sentence is usually given to accomplices, as compared to the actual killers

themselves, depending upon the actual role that they played. Because the Stewarts' role was very important any reduction in the sentence must be small.

[16] In R v. McCandless & others [2004] NI 264 the Court of Appeal directed judges in this jurisdiction to apply the principles laid down by Lord Woolf CJ in the *Practice Statement* reported at [2002] 3 All ER 412. This provides for a normal starting point of a minimum term of 12 years, and a higher starting point of 15/16 years, as well as indicating that a substantial upward adjustment may be appropriate in the most serious cases. Paragraph 19 of the *Practice Statement* recognises that some offences may be especially grave, including a terrorist murder, and in such case a term of 20 years and upwards could be appropriate.

[17] The *Practice Statement* refers to a number of relevant factors, several of which are present in this case:

(1) The killing was planned.

(2) The killers were armed with a firearm in advance.

(3) The firearm was used to commit the murder.

(4) The murder had all the hallmarks of a carefully planned and executed killing.

(5) It was a terrorist crime.

(6) The murder was perpetrated in front of Mrs English and their children.

[18] I am satisfied that the appropriate sentence for those who entered the house and took part in the murder would be a minimum term of 25 years imprisonment, and that the Stewarts would have received a minimum term of 22 years imprisonment to reflect the important subsidiary part they played in the murder.

[19] I now have to consider the extent of the assistance which they have provided to the police and prosecution in relation to these and other offences. First of all they have admitted their part in a very large number of offences, many of a very serious nature. I have been informed that as a result of their evidence ten individuals have been charged with the murder of Thomas English, and three more reported to the PPS for related offences. Three men had been charged with the grievous bodily harm with intent of Keith Caskey to which I have already referred. Others are being considered for prosecution for the grievous bodily harm of Alan Webster to which I have also referred. In addition I have been provided with details of a number of other serious

offences where investigations are continuing and arrests may be made. It is therefore inappropriate to give any details of the extent of the assistance which each of the accused has provided, other than to say that the prosecution regard it as evidence which will greatly assist in those investigations and any prosecutions that flow from them. I am also satisfied that the defendants will each face great risks as a result of what they have agreed to do, risks which are not confined to them alone but may well extend to their families.

[20] Such is the extent of the assistance which they have given to the police and have undertaken to give by giving evidence against those whom they have implicated in these crimes that I am satisfied that there should be a very substantial reduction in the sentence which they would otherwise have received, and I propose to reduce the minimum term in the first instance by 75% from 22 years to 5 ½ years.

[21] I am then required to make a further reduction in the sentence to take into account their pleas of guilty and their personal circumstances. I have already stated that they confessed of their own violation and that the police had no reason to suspect their involvement in these matters until they did so. It is clear from the psychiatric report upon Robert Stewart prepared by Dr Bownes that for a number of years he has been suffering from considerable psychiatric problems including post traumatic tress disorder, as well as engaging in the extensive and systematic abuse of illicit drugs and alcohol. David Ian Stewart has been accepted into the Roman Catholic Church and the references placed before me indicate that he has impressed those who have had to evaluate his spiritual journey as being someone who sincerely repents the wrongs he perpetrated in the past. The actions of both defendants in going to the police and confessing to all their crimes, and indicating their willingness to give evidence against others involved in those crimes, represents the most compelling and potent evidence of their remorse for their crimes, and I approach their case on that basis.

[22] Taking these matters into account I propose to further reduce the minimum term to one of 3 years imprisonment. This will include the time spent on remand on the murder charge from the defendants being charged in August 2008 with the murder of Thomas English.

[23] I am also required to sentence the accused in relation to those other offences on the first indictment which were associated with the murder, and also the offences to which they have admitted on the second indictment. In relation to all of those charges on both indictments it is appropriate to reduce the sentences in the same fashion and to the same extent as I have reduced the minimum term and for the same reasons. However, a technical issue which has to be addressed at this stage is that any determinate sentence imposed on the remaining counts on the first indictment must be such as not to extend the period either accused would spend in custody as a result of the minimum term

of imprisonment. I therefore sentence the accused to 3 years imprisonment in relation to counts 2 to 10 of the first indictment and the sentences will be concurrent. I understand that the effect of this will be that the sentences will run from the date of the remand of the accused in custody in August 2008, but if there is any doubt about that I direct that this should be the case.

[24] The same issue arises in a more acute form in relation to those offences which are the subject of the second indictment which was preferred as the result of an application for a voluntary bill, because the accused were not on remand on those charges until the voluntary bill was granted on 12 February 2010. Any sentences I impose in relation to those offences will therefore only take effect from that date. I consider that it is appropriate that the period of detention which the accused will serve as a result of the minimum term I have imposed should not be extended because of the offences which they have subsequently admitted, and which it has been necessary to investigate and bring before the court later. It is in any event well established that any determinate sentences imposed where a person has also been made the subject of a life sentence cannot be consecutive to the life sentence and must be concurrent. It has been established since Jones v The DPP (1962) 46 Cr App R at page 149 that although a judge has power to make a life sentence consecutive to an earlier determinate sentence, that is undesirable. In the same year in R v Foy (1962) 46 Cr App R at page 290 it was held that any consecutive determinate sentence passed to take effect upon the release from custody on licence of someone sentenced to life imprisonment is invalid. Therefore, I consider that I should adjust the sentences which I impose upon the second indictment in order to ensure that the accused each receive the same degree of reduction in their sentence as they have received in the minimum term, and therefore do not spend any longer in prison than they would otherwise have done.

[25] It may well be that in some circumstances determinate sentences imposed in this type of situation could result in a defendant being kept in custody for longer than otherwise would be the case where they are made subject to a minimum term imposed for a life sentence, but whether that is so or not I am satisfied that such result would be unjust in the present case for the following reasons. First of all, whilst several of the charges on the second indictment are themselves very serious, none is as grave as the defendants' admitted role in the murder of Thomas English. Secondly, none of the additional charges could have been brought against either defendant on the second indictment without their confessions. I therefore propose to impose such a sentence on each count that will not extend the period of time that they may be liable to be detained in custody. This means that in many cases the sentences, which in any event would have had to have been reduced in the same way as the minimum term as I have described, may appear to be very short. This is something of an anomaly, but it has to be remembered that were the defendants not to fulfil the agreements which they have made with the

prosecution in relation to these offences these sentences can also be reviewed. I therefore impose sentences of 15 months imprisonment concurrent on each of the counts on the second indictment.

[26] The practical effect of this is that both defendants will serve a minimum term of 3 years imprisonment before they can be considered for release on licence, and that will take into account the time they have spent on remand since 4 August 2008.