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(subject to editorial corrections)

IN THE CROWN COURT OF NORTHERN IRELAND

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THE QUEEN

-v-

THOMAS GRAHAM

_____

STEPHENS J

Introduction

[1] Thomas Graham you have been found guilty of the murder of Geraldine Kane after a trial which lasted some 3 ½ weeks. You committed that offence on 19 July 2004 at 1A Cavendish Square, Belfast. You inflicted a gruesome death on your victim who trusted you and had formed a close personal friendship with you. You perpetrated an appalling attack which involved cruelty and callousness. You killed and I find that you did so without remorse. I also do not accept as genuine your subsequent expressions of remorse for reasons that I will expand on later in these sentencing remarks.

[2] The defence you put forward to the jury of diminished responsibility was rejected and you have been convicted of murder by a majority verdict of ten to one. I have already sentenced you to life imprisonment.

[3] I now propose to set the minimum term pursuant to Article 5 of the Life Sentences (Northern Ireland) Order 2001. Article 5 of the Life Sentences (Northern Ireland) Order 2001 is in part III of that Order. Part III is headed "Determination of Tariffs" but I prefer the expression "minimum term" for which also see *R v McKeown* [2003] NICC 5 at paragraph [2]. The minimum term conveys the concept that this is the minimum period of time to be served by you before you are considered for release. It does not mean that after you have served the minimum term that you will then be released. You have already been sentenced to life imprisonment. The minimum term represents the appropriate sentence for retribution and deterrence and is the length of

time that you will serve before your case is sent to the Life Sentence Review Commissioners, who will assess suitability for release on the basis of risk. You will not be released by the Life Sentence Review Commissioners unless they consider, on the basis of risk, that you are suitable for release. You should also bear in mind that there is no remission in respect of the minimum term. Ordinarily when passing a determinate sentence there is 50% remission. This is not a determinate sentence. The sentence is life imprisonment. You will be in prison throughout the whole of the minimum term without any remission and thereafter you will only be released on licence if it is considered on the basis of risk that you are suitable for release.

[4] First I intend to set out the details of the killing and how you came to kill a pleasant and lively woman.

The facts in relation to the offence

[5] On 18 July 2004 you met Geraldine Kane by chance in the Glenowen Bar, Belfast. She was there on a night out with her friend Lorraine McAllister. You had known Geraldine Kane for a period of approximately 4 months and had formed a relationship with her. She approached you that evening and it is clear that far from attempting to leave her company during the course of the evening you remained with her, leaving the Glenowen Bar together to drop her friend Lorraine McAllister home and then to go together to your flat at 1A Cavendish Square, Belfast. Whilst in the Glenowen Bar you were seen by the bar man Eamon Faloon to be having what appeared to be a heated argument with Geraldine Kane. You consistently failed to tell the police and the psychiatrists, who subsequently examined you, about that argument. I am satisfied that such an argument did take place and that subsequently at 1A Cavendish Square another argument took place. That your response was to kill. You stabbed Geraldine Kane five times with a bread knife. One of the blows was to her back and may have been inflicted after she had collapsed on the floor. One of the blows dissected both her carotid artery and jugular vein. You had just slept with Geraldine Kane and after she had given you her love and affection you killed her and then in a relatively calm way to made good your escape. You went downstairs and got your cigarettes. You partially covered her body with a duvet. You collected your car keys and the key to the room. You changed out of the bloodstained clothing. You took the bloodstained clothes with you as you left the room. You locked the door behind you and then drove off in your car. You stopped on three occasions on that day to take money from various automatic till machines. You booked into a hotel under a false name in County Cavan. You stayed in that hotel for one or two nights and then you hid in a remote part of the countryside. You were eventually detected and arrested.

[6] At your trial you contested the charge of murder on the basis that you suffered from a mental abnormality which diminished your responsibility for

killing Geraldine Kane. You contended on that basis that you should only be convicted of manslaughter rather than murder. You contended that you had a compulsion to kill Geraldine Kane as a result of mental abnormality. That you had been hearing voices. That those voices were urging you to kill her. That you killed as a result of those voices or those urges. It is correct that you had been receiving psychiatric treatment for severe depression over the period from 1995 to 2004. That this involved at least seven admissions to psychiatric hospitals prior to this fatal attack on Geraldine Kane. However it is apparent from the medical notes and records that you had not been describing these urges or these alleged auditory hallucinations to your treating doctors. The only occasion on which you mentioned voices over that nine year period from 1995 to 2004 was on 5 and 6 November 1997. On that occasion you considered that it was your own voice or your own thoughts that you heard. To overcome this lack of any mention of auditory hallucinations in your medical notes and records you attempted to blame your treating doctors by creating the impression that you had in fact told them. After these tragic events took place you wrote:

> "I done what I told psychiatrists and they ignored me.
> I told everyone".

[7] That was just untrue. You had not told the psychiatrists who had been treating you prior to July 2004. Indeed another part of your case was completely contradictory in so far as you asserted that you had not told the psychiatrists because if you had told them then they would have locked you up in hospital. However the cruellest of your allegations to attempt to avoid some of the responsibility for this killing was that, knowing of your thoughts of killing other people that evening, you asserted that you had tried to "shake off" Geraldine Kane. That in some way she persisted in coming to your flat despite your attempts to shake her off. There was no credible evidence at the trial that supported the proposition that during the evening prior to this savage attack that you attempted to leave Geraldine Kane's company. There was plenty of opportunity for you to do so. I have no doubt that it was by agreement that she came to your flat and she trusted you. In view of your attempts to place blame on the psychiatrists and to reduce your level of responsibility by falsely suggesting that you had attempted to shake off Geraldine Kane, I have concluded that any expressions of remorse made by you in relation to the death of Geraldine Kane have equally been made with a view to a calculated end, namely to reduce your level of responsibility. I do not accept any expression of remorse that you have made.

The impact of the killing on the family of the victim

[8] I consider it important to give a voice in these sentencing remarks to the members of Geraldine Kane's family. The impact on them and their lives has been devastating. Not only did you deprive Geraldine Kane of her life

and her opportunity to enjoy her family, but you also deprived a close knit and loving family of a much loved member. A family impact statement has been provided by Maria Kane on behalf of Geraldine Kane's family. I now set out part of the statement:-

> "I am Maria Kane, the eldest daughter of Geraldine Kane. When Mr Graham took my mother out of our lives, he left a huge big hole which will never again be filled. He left my dad, Laurence Kane, without a wife. A woman he had loved for more than 30 years. Yes they had some difficulties in their marriage, but what couple doesn't at some stage or other. My dad hasn't been the same man since mum died, yes he tries to be strong for my brothers, my sister and me, but I can physically see the sadness in his eyes, I sometimes hear him crying at night when he thinks we are asleep. He's talked to me from time to time about recurring nightmares he has about mum's brutal murder. He misses her so much, but he has to try to suppress his own feelings because now he has to be father and mother to a teenage daughter."

The next section of the statement refers to a daughter of Maria Kane who is still a minor. The impact of this crime on her is clear and it is heartrending. Because she is a minor I do not set out that part of the statement in this judgment. I do take it into account on the same basis as the rest of the statement. The whole statement has been made available to all the parties in this case. The statement continues:

> "For me things have also been very tough. Mum was quite young when she had me, so we were more like sisters than mother and daughter. She was my mummy, my best friend and my confidant. Now she's gone. I suffered from depression for a very long time afterwards, taking leave from work for 3 months initially and have had several other periods of absence from work since, and have also received counselling and been prescribed antidepressants. I still don't feel that I have had the chance to grieve properly for my mum yet, because being the oldest I felt I had to be strong for the rest of my family.
>
> Mr Thomas Graham did not only murder my mummy, but he shattered my family's world. He brought on us pain and suffering that no words could come close to describing, grief that we will have to

> live with for the rest of our lives. We sat in your courtroom and we listened to the horrific chain of events that led to mummy's death."

[9] When fixing a minimum term that has as one of its principal constituents the element of retribution, this statement from Maria Kane is an important factor to be taken into account. I do take it into account. I bear in mind that the exact consequences suffered by surviving members of a victim's family will vary from case to case. That accordingly the exact weight to attach is always a matter of discretion in each individual case. I also bear in mind the decision of the Court of Appeal in Northern Ireland in *Attorney General for Northern Ireland's Reference (No.3 of 2000) (Rogan)* [2001] NI 366. The Court of Appeal in that case quoted with approval the principle enunciated by Judge J in *R v Nunn* [1996] 2 Cr App R (S) 136 at 140 as follows:

> "... the opinions of the victim, or the surviving members of the family, about *the appropriate level of sentence* (emphasis added) do not provide any sound basis for reassessing a sentence. If the victim feels utterly merciful towards the criminal, and some do, the crime has still been committed and must be punished as it deserves. If the victim is obsessed with vengeance, which can in reality only be assuaged by a very long sentence, as also happens, the punishment cannot be made longer by the court than otherwise would be appropriate. Otherwise cases with identical features would be dealt with in widely differing ways leading to improper and unfair disparity ..."

I also refer to another passage in *R v Nunn* which is as follows:-

> "It is an elementary principle that the damaging and distressing effects of a crime on the victim represent an important factor in the sentencing decision, and those distressing consequences may include the anguish and emotional suffering of the victim, or where there has been a death, as here, his surviving close family."

In this case views have been expressed by Maria Kane as to the appropriate level of sentence. She hopes that you will be sentenced to prison for a very long time. I disregard that part of her statement and any such views which have been expressed by her. However her statement is graphic evidence of the effects of the killing of Geraldine Kane. I take her statement into account on that basis as showing the damaging and distressing effects of this crime on her surviving close family. I also direct that at the conclusion of this hearing a

copy of these sentencing remarks be sent by the prosecution service to Maria Kane.

Previous attack

[10] You have violently attacked in the past. On 17 March 2002 your relationship with Pauline McGuigan was coming to an end. You accused her of seeing someone else and your response to the argument that ensued was to attempt to strangle her saying at the time that you were going to kill her and that you would not let her be with anyone else. I have no doubt that you had a similar response to Geraldine Kane. That response being that you would kill her rather than let her be with anyone else.

Procedural requirements for custodial sentences

[11] For the purposes of fixing the minimum term Mr Magee S.C., who appeared on your behalf, expressly asserted that he did not consider it a case where it was necessary to obtain a pre-sentence report. He took specific instructions from you and indicated to the court in your presence that it was his instructions that you did not wish to have a pre-sentence report prepared. Article 21 of the Criminal Justice (Northern Ireland) Order 1996 applies where a court passes a custodial sentence other than one fixed by law. If Article 21 applies then under Article 21(1) a court should obtain and consider a pre-sentence report before forming an opinion, for instance, as to the length of a custodial sentence. A sentence of life imprisonment for murder is one fixed by law but the imposition of a minimum term under Article 5 of the Life Sentences (Northern Ireland) Order 2001 is not, see *R v McCandless & others* at paragraph [4], *R v Robinson* [2006] NICA 29 at paragraph [11] and section 8 of the Criminal Appeal (Northern Ireland) Act 1980. Accordingly I consider that Article 21 does apply. However under Article 21(2) there is no need to obtain a pre-sentence report if the court is of the opinion that it is unnecessary in the circumstances to obtain such a report. I consider that it is unnecessary to obtain such a report in this case and the circumstances leading me to that view are:

(a) Experienced counsel on your behalf has asserted that he does not consider that it is necessary to obtain such a report.

(b) You have given specific instructions to your counsel that you did not wish to have a pre-sentence report.

(c) At your trial I had before me medical reports from

(i) Dr Paul O'Connell
(ii) Dr Helen Harbinson
(iii) Dr Bownes

(iv) Dr Browne
(v) Dr Loughrey.

These reports extended in total to some 127 pages. They have exhaustively analysed all relevant aspects of your life. In turn they referred to further extensive documentation in this case including the medical notes and records and the depositions. In addition the doctors had the benefit of interviews with you.

(d) Your trial lasted some 3½ weeks and every aspect of your case that was relevant has been canvassed before me.

(e) I have had the benefit of a further report from Dr Bownes dated 27 June 2007.

[12] There are additional procedural requirements specified by Article 22 of the Criminal Justice (Northern Ireland) Order 1996 in the case of a person who is or appears to be mentally disordered. Article 2(2) of the 1996 Order defines mentally disordered by reference to the definition contained in the Mental Health (Northern Ireland) Order 1986. Article 3 (1) of the 1986 Order defines "mental disorder" as "mental illness, mental handicap and any other disorder or disability of mind". I consider that you are mentally disordered within that definition. Accordingly before passing a custodial sentence other than one fixed by law the court, unless it considers it unnecessary to do so, shall obtain and consider a medical report. The imposition of a minimum term under Article 5 of the Life Sentences (Northern Ireland) Order 2001 is not a custodial sentence fixed by law. Accordingly Article 22 of the Criminal Justice (Northern Ireland) Order 1996 applies in your case. A medical report was obtained from Dr Bownes dated 27 June 2007. I have considered that report and indeed all the other extensive medical reports in your case. I hold that you suffer from a depressive disorder and a personality disorder. The vicissitudes and stressors inherent in prison life is likely to impact on your capacity to cope and without adequate treatment I consider that prison will have an adverse impact on your mental health. However it is clear that you have been receiving treatment whilst you have been on remand and that the treatment has been successful in improving your condition but not to the extent of a complete cure. I consider that suitable treatment will be available to you in the future whilst you are detained. However even with appropriate and proper treatment I consider that detention will result in some small adverse impact on your mental health. I will return to this factor when considering the mitigating factors in relation to the offender.

Principles relating to setting the appropriate minimum term

[13] In fixing the minimum term I bear in mind the material portions of the Life Sentences (Northern Ireland) Order 2001 which are to be found in Articles 5(1) and 5(2), as follows:

> "5-(1) When a court passes a life sentence, the court shall, unless it makes an order under paragraph (3), order that the release provision shall apply to the offender in relation to whom the sentence has been passed as soon as he has served the part of his sentence which is specified in the order.
>
> (2) The part of a sentence specified in an order under paragraph (1) 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."

I emphasise that in fixing the minimum term I do not take into account the risk posed by you. That is a matter for the Life Sentence Review Commissioners.

[14] The Court of Appeal in Northern Ireland has ruled in two cases that the practise statement issued by Lord Woolf CJ on 31 May 2002 should be taken into account when fixing the minimum term. The decisions of the Court of Appeal in Northern Ireland are *R v McCandless and Others* [2004] NICA 1 and *Attorney General's Reference Number 6 of 2004 (Conor Gerard Doyle)* [2004] NICA 33. The practise statement is reported at [2002] 3 All ER 412. That statement replaced the previous normal starting point of 14 years by substituting a higher and a normal starting point of respectively 15/16 years and 12 years. It also makes provision for:

> (a) a substantial upward adjustment of the higher starting point in very serious cases, for which see paragraph 18 and
>
> (b) a reduction of the normal starting point where the offender's culpability is significantly reduced, for which see paragraph 11.

In effect this is a multi tier system. These starting points then have to be varied upwards or downwards by taking account of aggravating or mitigating factors. *Attorney General's Reference Number 6 of 2004 (Conor Gerard Doyle)* makes it clear that this is the correct approach to adopt notwithstanding the subsequent implementation in England & Wales of Sections 269 and 270 of the Criminal Justice Act 2003 and Schedule 21 to that Act.

[15] I have approached this case on the basis advocated by Carswell LCJ in *R v McCandless & others* who said at paragraph [8]:

> "We think it important to emphasis that the process is not to be regarded as one of fixing each case into one or 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* (emphasis added). Not only is the practice statement intended to be only guidance, but the starting points are, as the term indicates, points to which this sentencer may start on his journey towards the goal of deciding upon a right appropriate sentence for the instance case."

[16] I set out the practice statement in order to indicate the approach that I have adopted in respect of you, Thomas Graham. I quote paragraphs 10-19:

> *"The normal starting point of 12 years*
>
> 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 para 12. Exceptionally, the starting point may be reduced because of the sort of circumstances described in the next paragraph.
>
> 11. The normal starting point can be reduced because the murder is one where the offender's culpability is significantly reduced, for example, because: (a) the case came close to the borderline between murder and manslaughter; or (b) the offender suffered from mental disorder, or from a mental disability which lowered the degree of his criminal responsibility for the killing, although not affording a defence of diminished responsibility; or (c) the offender was provoked (in a non-technical sense), such as by prolonged and eventually unsupportable stress; or (d) the case involved an overreaction in self-defence; or (e) the offence was a mercy

killing. These factors could justify a reduction to eight/nine years (equivalent to 16/18 years).

The higher starting point of 15/16 years

12. The higher starting point will apply to cases where the offender's culpability was exceptionally high or the victim was in a particularly vulnerable position. Such cases will be characterised by a feature which makes the crime especially serious, such as: (a) the killing was 'professional' or a contract killing; (b) the killing was politically motivated; (c) the killing was done for gain (in the course of a burglary, robbery etc.); (d) the killing was intended to defeat the ends of justice (as in the killing of a witness or potential witness); (e) the victim was providing a public service; (f) the victim was a child or was otherwise vulnerable; (g) the killing was racially aggravated; (h) the victim was deliberately targeted because of his or her religion or sexual orientation; (i) there was evidence of sadism, gratuitous violence or sexual maltreatment, humiliation or degradation of the victim before the killing; (j) extensive and/or multiple injuries were inflicted on the victim before death; (k) the offender committed multiple murders.

Variation of the starting point

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: (a) the fact that the killing was planned; (b) the use of a firearm; (c) arming with a weapon in advance; (d) concealment of the body, destruction of the crime scene and/or dismemberment of the

body; (e) particularly in domestic violence cases, the fact that the murder was the culmination of cruel and violent behaviour by the offender over a period of time.

15. Aggravating factors relating to the offender will include the offender's previous record and failures to respond to previous sentences, to the extent that this is 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 pre-meditation.

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.

Very serious cases

18. A substantial upward adjustment may be appropriate in the most serious cases, for example, those involving a substantial number of murders, or if there are several factors identified as attracting the higher starting point present. In suitable cases, the result might even be a minimum term of 30 years (equivalent to 60 years) which would offer little or no hope of the offender's eventual release. In cases of exceptional gravity, the judge, rather than setting a whole life minimum term, can state that there is no minimum period which could properly be set in that particular case.

19. Among the categories of case referred to in para 12, some offences may be especially grave. These include cases in which the victim was performing his duties as a prison officer at the time of the crime or the offence was a terrorist or sexual or sadistic murder or involved a young child. In such a case, a term of 20 years and upwards could be appropriate."

The starting point

[17] This is a case which does not sit easily within any particular starting point. It has a number of features which indicate different starting points. I will expand on those features in these sentencing remarks but I illustrate some of them at this stage. Under paragraph 11 of the guidelines you suffered from a mental disability which lowered your degree of criminal responsibility for the killing although not affording a defence of diminished responsibility. This feature would suggest a lower than normal starting point on the basis of a reduction of your culpability. However there a two features which indicate a higher than normal starting point within paragraph 12 of the guidelines. The first is that Geraldine Kane was in a vulnerable position when you attacked her. She was in bed having just woken up. She was accordingly in a defenceless position. The second is that you inflicted multiple injuries on her. I have considered whether those two features in paragraph 12 of the guidelines are in fact functions of the mental disability from which you suffered. I do not consider that they are. I consider them to be separate and distinct features which increase your culpability. Furthermore I do not consider that this case falls within the illustration of the normal starting point given in paragraph 10 of the guidelines. I bear in mind that the illustration in paragraph 10 of the guidelines is an illustration in a guideline.

[18] For the reasons set out in the preceding paragraph and in paragraphs [19] to [34] and balancing the features which indicate different starting points, I have concluded that I should fix the starting point in this case at 12 years.

The lower starting point

[19] It was urged upon me by counsel on your behalf that this was a case suitable for the lower starting point on the basis that you suffered from mental disorder or from a mental disability which lowered the degree of your criminal responsibility for the killing, although not affording a defence of diminished responsibility. That accordingly your case came close to the borderline between murder and manslaughter. The guidelines indicate that if I considered that your responsibility was reduced in that way then a starting point of 8-9 years could be justified.

[20] At your trial it was accepted by all the medical witnesses that on 19 July 2004 you suffered from a mental abnormality. I directed the jury to find that you suffered from a mental abnormality at the time of the killing on 19 July 2004. I also directed the jury to find that the abnormality of mind arose from disease or an inherent cause. However at your trial the degree of the mental abnormality from which you suffered at the time of the killing was a matter of dispute. I now have to decide the degree of mental abnormality from which you suffered on 19 July 2004. I also have to decide whether that mental

abnormality lowered your degree of criminal responsibility for killing Geraldine Kane and if so to what extent.

[21] I have had the advantage of hearing the detailed medical evidence that was presented to the jury at your trial. Dr O'Connell and Dr Harbinson, Consultant Psychiatrists, were called on your behalf. They diagnosed respectively paranoid schizophrenia and schizoaffective psychosis. Dr Brown and Dr Loughry, Consultant Psychiatrists, were called on behalf of the prosecution and they respectively diagnosed a mixed personality disorder with depressive features and a recurrent depressive disorder with a personality disorder.

[22] I have concluded on the basis of all the evidence that was presented in this case that the mental abnormality from which you suffered on 19th July 2004 was a combination of a depressive disorder and a personality disorder and that this did occasion some lowering of your mental responsibility for the acts and omissions in killing Geraldine Kane. I have arrived at those conclusions for a number of reasons which I will now set out.

[23] After 19 July 2004 you recounted to the treating doctors that before that date you had auditory hallucinations with voices urging you to kill. That you had what is termed "thought broadcasting" so that others could read your thoughts. There is almost a complete lack of any contemporaneous corroboration of these symptoms in your medical notes and records. Indeed you made the case to Dr Harbinson and to Dr Brown that you did not tell your treating doctors about these voices because a nurse in one of the psychiatric hospitals told you not to do so otherwise you would never get out of there. The account that you gave in relation to this explanation materially differs on the different occasions that you gave it. On one occasion you said that you were told not to tell your treating doctors by a nurse in Knockbracken Health Care Park and on another that it was by a nurse in the Mater Hospital. That was one inconsistency. The other inconsistency was the approximate time at which this conversation is alleged to have occurred. This was either in 1995 when your relationship with Geraldine McGrady was coming to an end or in 2001 when you were first treated in the Mater Hospital. I take into account those inconsistencies when rejecting that explanation. In addition I consider that it is improbable that a male nurse in a psychiatric hospital would act in that way in such dereliction of his duty to you as a patient and to the public. I totally reject that explanation and indeed any other explanation that you gave at the trial as to why you did not tell the treating doctors' prior to 19 July 2004 that you were hearing voices urging you to kill.

[24] I also take into account the medical notes and records for the period just prior to 19 July 2004 in none of which is there any reference to psychotic features.

[25] I reject the evidence of both Dr O'Connell and Dr Harbinson. After the events of 19 July 2004 you were no doubt under considerable mental and physical pressure. Physically you had been living rough and mentally you were no doubt in turmoil as to what would be the consequences of your actions. At that stage you were expressing paranoid ideas as a result of that stress but those paranoid ideas were not true hallucinations. Your condition after 19 July 2004 is a factor to be taken into account when determining your condition at the time of the killing. However allowance has to be made for the mental and physical pressures that occurred after 19 July 2004 and I hold that those pressures caused a subsequent deterioration in your condition after 19 July 2004.

[26] I also reject the evidence of Dr O'Connell and Dr Harbinson on the basis of the manner in which their evidence was presented in Court. In addition at the time that Dr O'Connell arrived at his diagnosis he did not have your extensive medical notes and records from Northern Ireland. It was apparent from those medical notes and records that you had never been diagnosed as schizophrenic in Northern Ireland throughout your period of treatment from 1995-2004. I consider that Dr O'Connell was not prepared to give proper weight to the extensive information contained within those medical notes and records. Furthermore Dr. O'Connell visited you in Magheraberry prison in Northern Ireland in September 2006. In evidence Dr O'Connell said that during his visit he did not discuss lines of defence with you, that he was not there to advise you and that he formed no conclusion as to whether you were a danger to society. The medical notes and records reveal that all three of those assertions were incorrect. I also hold that Dr Harbinson formed an overall opinion and that she was not sufficiently prepared to critically analyse the details of your medical history.

[27] In arriving at the conclusions set out in paragraph [22] I have considered the evidence of all the witnesses who saw you on the evening of 18 July 2004. I have also considered the exact sequence of events in your room leading up to the death of Geraldine Kane. We only have your account for what took place in that room. Differing accounts have been given to all four psychiatrists who gave evidence in this case. I hold that those differences are material and that they indicate that you have not been prepared to describe exactly what occurred. In coming to that conclusion I record that when you gave those differing accounts you did not appear to be suffering from any difficulties in memory. I set out some of the inconsistencies contained in those differing accounts:

(i) To one psychiatrist you said that you had thoughts of killing, to another that you heard voices urging you to kill, to another that there were muffled voices but you could not make out the content, to the fourth psychiatrist there was no reference to voices;

(ii) To one psychiatrist you said that you did not sleep that evening, to another that you slept between approximately 3.30am and 8.15am;

(iii) To one psychiatrist you said that you believed Geraldine Kane was asleep, to another you recounted that you had asked her whether she wanted a cup of tea, to another that she was asleep and snoring;

(iv) To one psychiatrist you recounted that after getting up in the morning you went downstairs before you killed Geraldine Kane. To others you made no reference to this;

(v) Your account differed to all four psychiatrists as to what Geraldine Kane said when she saw you with the knife with which you then killed her;

(vi) To one psychiatrist you made no reference to Geraldine Kane crouching and then lunging at you. To others you did.

[28] I consider that the mental disorder from which you suffered at the time lowered your degree of criminal responsibility for killing Geraldine Kane. I do not consider that your culpability is significantly reduced in this respect but I take the reduction of your responsibility into account when fixing the starting point.

The normal starting point

[29] The next matter I turn to consider is whether this case falls within the normal starting point of 12 years. I remind myself that 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 and will not have the characteristics referred to in paragraph 12 of the guidelines.

[30] You and Geraldine Kane were both adults and both known to each other. I consider that there was an argument between you but only in a strictly limited sense. You had failed in every aspect of your life but one and that is that you were considered by your friends to be lucky with girls. That was an aspect of your life which you prized and therefore any suggestion of a break-up of a relationship would be met by you with force. In the case of Pauline McGuigan that force was an attempt to strangle her. In the case of Geraldine Kane with lethal force. You told Pauline McGuigan you would not let her be with anyone else. You ensured that Geraldine Kane could not be. I do not consider that this one sided assault, verbal and physical, is the type of argument contemplated by the guidelines. It is not in the same category as an

incident where a disagreement suddenly ignites leading to an exchange of blows but rather it is a form of coercion and subjugation of another to your will in circumstances where the other person had trusted you. At all times during this attack Geraldine Kane was entirely at your mercy and she was utterly helpless. I do not consider that this case sits easily within the normal starting point of 12 years but rather as I set out below it has two characteristics which are referred to in paragraph 12 of the guidelines.

The higher starting point

[31] In arriving at the appropriate starting point I take into account that when you attacked Geraldine Kane she was vulnerable. You had just slept with her. She had just woken up and was still in bed. She was defenceless.

[32] Also in arriving at the appropriate starting point I take into account that you did not just stab Geraldine Kane once but five times. This amounts to "extensive and/or multiple injuries being inflicted on your victim" within paragraph 12 of the guidelines. The guidelines refer to the extensive and/or multiple injuries being inflicted before death (emphasis added) but I note the decision in *R v Ryan* [2004] NICC 21. In that case Mr Justice McLaughlin considered the interpretation of the guidelines when considering whether it had to be established that multiple injuries had to be sustained before death before the case fell within paragraph 12 (j) of the guidelines. At paragraph [11] of his judgment he said:-

> "Whilst the practice statement appears to limit this category to injuries inflicted before death I am satisfied that it is appropriate to interpret that apparent limitation more widely. It is impossible in a case of this kind to establish the moment of death and many of these injuries may have been inflicted after death ensued. It seems to me to be abundantly clear that they were all inflicted in or about the same time. It is not possible to isolate one blow, or even part of the series of blows as having been inflicted at a particular time, or in a particular sequence. Whether the deceased was killed by a very early blow and the Defendant continued to rain blows down on him, or he kept hitting him until he was sure he had killed him, appears to make little difference. The net result is that he suffered extensive and multiple injuries at the time of death."

[33] That is the interpretation that I apply to paragraph 12(j) of the guidelines. In this case either the last thing that Geraldine Kane would have seen and appreciated in her life were a series of knife attacks on her or if some

of the blows were afflicted on her after her death you degraded and abused her body by your further assault on it. You also clearly demonstrated your intention that she was going to die. There is justifiable revulsion aroused by an attack such as you engaged in upon Geraldine Kane.

[34] Having fixed the starting point at 12 years I now propose to consider what if any adjustment I should make to it.

Aggravating factors relating to the offence

[35] For the avoidance of doubt I do not consider that this murder was pre-meditated in advance. This case did not involve you enticing Geraldine Kane back to your flat with the intention of killing her but rather was a response to what I hold was her desire to terminate her relationship with you. You had a knife in your bedroom but I do not consider that this was part of a pre meditated plan to kill Geraldine Kane.

Aggravating factors relating to the offender

[36] Your overall criminal record is not in the context of this case significant apart from the conviction that resulted from your attack on Pauline McGuigan on 17 May 2004. You have previously demonstrated a capacity to violence in the context of a break-up of a relationship. I do take that factor into account as an aggravating factor.

Mitigating factors relating to the offence

[37] The injuries that you inflicted fully demonstrated that you intended to kill Geraldine Kane. I consider that there was spontaneity and a lack of pre-meditation and I take that into account as a mitigating factor.

Mitigating factors relating to the offender

[38] There was no plea of guilty. The family of your victim were not saved the harrowing evidence in this Court as to how you slaughtered Geraldine Kane. You are not entitled to mitigation to the mitigation to which you would have been if you had pleaded guilty. For the avoidance of doubt the failure to plead guilty is not an aggravating factor.

[39] Through your counsel you have asked that it be known that you beg the forgiveness of your victim's family. I am assured by your counsel that at all times during the course of the trial you wished it to be known that Geraldine Kane was totally innocent. I have already stated that I do not accept your expressions of remorse as genuine. In my evaluation any expression of remorse has been made with a view to a calculated end namely to diminish your level of responsibility. I also bear in mind what the Court of Appeal said

in *R v Ryan Quinn* [2006] NICA 27 that it is frequently difficult to distinguish authentic regret for one's actions from unhappiness and distress for one's plight as a result of those actions. I also refer to *Attorney General's Reference Number 6 of 2004 (Conor Gerard Doyle)* [2004] NICA 33 in which case at paragraph [38] the Court of Appeal stated:-

> "one must be careful to distinguish between on the one hand, genuine repentance, and on the other, regret at the situation that one has created, which may include a strong element of sorrow for one's own plight."

I also bear in mind that paragraph 17(c) of the guidelines qualifies evidence of remorse or contrition by the word "clear". There has to be "clear evidence" of remorse or contrition before this feature is full square within the guideline. I bear in mind that these are of course guidelines not to be applied in a formulistic way.

[40] I have carefully read the report from Dr Bownes dated 27 June 2007 and I have heard evidence as to your personal circumstances. I have all the medical reports which were presented at your trial. I take into account your personal circumstances however in doing so I emphasise that this does not weigh heavily in reduction of penalty where the offence is, as in this case, extremely serious. There is ample judicial pronouncement on this aspect of sentencing. In *Attorney General's Reference (No 7 of 2004) (Gary Edward Holmes)* [2004] NICA 42 the Court of Appeal said: -

> "[15] The personal circumstances of the offender, while of some importance in this particular instance, could not have removed the case from the category of normal disposal … Such factors will always be of limited effect in the choice of appropriate sentence".

And in *Attorney General's Reference (No 6 of 2004) (Conor Gerard Doyle)* [2004] NICA 33 the Court of Appeal said: -

> "[37]… as this court has frequently observed, the personal circumstances of an offender will not normally rank high in terms of mitigation, particularly where the offence is as serious as that in the present case".

On that limited basis I take into account your personal circumstances. I give somewhat greater weight to two particular factors. The first is that it is apparent from the report from Dr Bownes dated 27 June 2007 that there is a likelihood of you being treated in the State Hospital Carstairs which is situated

in Scotland. This will take you some distance away from your family. This is a greater deprivation than would be the case if you were detained in this jurisdiction. The second is that prison is likely to impact adversely on your mental health to some small degree despite adequate and appropriate treatment and this is an additional deprivation greater than that which would be sustained by a person who was not mentally disordered.

Conclusion

[41] Having regard to all the circumstances in this case outlined by me earlier in this judgment I have decided that the mitigating and aggravating factors result in a reduction in the minimum term. Having fixed the starting point at 12 years I make a reduction of 1 year. Accordingly I fix the minimum term at 11 years.

[42] For the avoidance of doubt I make it clear that the minimum term which I have fixed in your case will include the time spent by you in custody on remand in this jurisdiction.