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Judgment: approved by the Court for handing down | *Delivered:* **25/3/2010**
*(subject to editorial corrections)**

IN THE CROWN COURT IN NORTHERN IRELAND

BELFAST CROWN COURT

THE QUEEN

-v-

THOMAS VALLIDAY

HART J

[1] The defendant is before the court to be sentenced to a minimum term of imprisonment upon his conviction for murder of Francis McGreevy who died as a result of injuries inflicted by the defendant on the evening of Saturday 15 March 2008; and upon his pleas of guilty to a number of other charges, which were offences he committed a few minutes after he attacked Mr McGreevy. The remaining count relates to his being unlawfully at large from the Young Offenders' Centre from which he had been released on pre-release parole and had failed to return, and was therefore unlawfully at large at the time he murdered Mr McGreevy.

[2] It is unnecessary to rehearse in detail the events of that night as they have been extensively explored in the course of the trial. However, it is necessary to say something about the nature and extent of the injuries inflicted upon Mr McGreevy. There is no doubt that he was struck repeatedly with a weapon or weapons, because Dr Ingram, the Assistant State Pathologist for Northern Ireland, found evidence of at least seven blows to the face, scalp and forehead. He found a further three blows had been struck to the chest and abdomen, and two to Mr McGreevy's right leg and right thigh.

[3] So far as the head injuries were concerned, they resulted in fractures to the skull, and further fractures of the bony structure surrounding the right eye socket and forming part of the right cheekbone. The fractures to the right eye socket and right cheekbone meant that a bony area approximately 3-4 inches square centred on the right eye became detached from the surrounding structure of the face.

[4] The blows to Mr McGreevy's head were described in the post-mortem report as "severe contusional injuries", and the view of the consultant neuropathologist was that "these have led to brain swelling and cerebral perfusion failure. The brain injuries in themselves would be sufficient to cause death". Dr Ingram's conclusion was that the injury to the brain, and its secondary effects which were caused by the blows to Mr Greevy's head, was responsible for his death.

[5] Forensic examination showed that about the time he was assaulted Mr McGreevy's blood alcohol reading was 223 mgs of alcohol per 100 mls of blood, almost three times the legal limit for driving of 80 mgs. Dr Ingram's opinion was that as a result Mr McGreevy would have been less able to defend himself.

[6] Dr Ingram also said that the blows to the right side of the head would have caused Mr McGreevy's immediate collapse, and whilst it was impossible to establish whether Mr McGreevy was upright or not when each blow was struck, he did think that it would not be possible for Mr McGreevy to have remained upright when all of the blows were struck.

[7] It is therefore clear that Mr McGreevy was subjected to a number of severe blows which resulted not only in the serious head injuries which led to his death, but also resulted in bruising and other injuries, including a fracture of the 8th rib on the right hand side.

[8] I have been provided with a dignified and heartfelt account by members of his family of the effect of Mr McGreevy's death upon them. I do not wish to add to the family's grief by repeating everything that is contained in this statement, but two passages in particular merit quotation.

> "On the 15th March 2008 our lives changed forever. Those of us who saw Frank in his own flat will never forget the scene. Francis will never forget the events of that night and the terrible times in the hospital that followed. Collectively we felt shocked, numb and angry. We were filled with a sense of disbelief that this had happened and also a sense of frustration while waiting in the hospital and not being able to do anything."

> "The circumstances we have found ourselves in have had an untold effect on all of us. Some of us are suffering from depression and are taking medication to try to counter the effects of this. We have a void in our lives which will never be filled. Francis and Tairan will never be the same. The events have impacted on all areas of

> their lives, socialising, school, sport and work. They have also had to attend anger management courses. We also have the added difficulty of living in the same community that Frank's murderer came from. We see his family every day and are reminded of what happened every time we see them when we are out shopping and socialising."

Francis is the son of the deceased and it was he who discovered his father's body. The evidence at the trial suggested that because of confusion about the correct address it was some time before the ambulance and then the police arrived at the scene, and local people had gathered at the scene by the time the police arrived.

[9] It is now for the court to fix the minimum term of imprisonment which the defendant must serve before he can be considered for release by the Parole Commissioners. In R v McCandless and Others the Court of Appeal pointed out that Article 5(2) of the Life Sentences (Northern Ireland) Order 2001 (the 2001 Order) provides that the minimum term:

> "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."

[10] In McCandless the Court of Appeal directed judges in Northern Ireland to apply the approach expounded by Lord Woolf CJ in the *Practice Statement*, the relevant portions of which are as follows:

> "*The higher starting point of 15/16 years*
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> 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.

[11] I am satisfied that the circumstances of this case are such as to place this case in the 15-16 year category of offences for the following reasons. First of all at the time he was attacked Mr McGreevy was in a vulnerable position in two respects. He was less able to defend himself because of the amount of alcohol he had consumed, and it appears clear from Dr Ingram's opinion that

he must have been lying on the ground when at least some of the severe blows were struck. The second reason why the case falls within the 15/16 year category is because the accused inflicted extensive and multiple injuries on Mr McGreevy before he died.

[12] There are a number of aggravating factors in the case. The first is that the defendant has a previous conviction for robbery, an offence of violence. Secondly he was unlawfully at large at the time, and thirdly he attacked Mr Lewis, Mr McAnoy and two vehicles a few minutes after the attack upon Mr McGreevy. Article 5(2) of the 2001 Order refers to "the combination of the offence and one or more offences associated with it", and these offences were all part and parcel of the defendant's criminal behaviour that day, and so should be regarded as being associated with Mr McGreevy's murder. It has been established since Jones v The DPP (1962) 46 Cr App R at p. 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 p. 290 it was held that any consecutive determinate sentence to take effect upon the release from custody on licence of someone sentenced to life imprisonment is invalid.

[13] The effect of these decisions is that it is not open to this court to impose consecutive sentences to the life sentence on the charges to which the accused pleaded guilty. Nevertheless, it is appropriate that these should be the subject of particular sentences in their own right, even though they cannot be put into effect. The defendant's conduct in relation to these matters can also be taken into account when fixing the minimum term that he must serve, because Article 5(2) of the 2001 Order refers to offences associated with the murder charge which requires the imposition of a life sentence. Because the offences which the accused committed in relation to Mr Lewis and Mr McAnoy and the vehicles were committed a few minutes after the attack upon Mr McGreevy, I am satisfied that they should be regarded as being part of the same set of circumstances, and therefore should be taken into account under Article 5(2).

[14] I regard these offences as aggravating factors when fixing the minimum term, although in increasing that term to take account of these matters I must take into account that the accused does not qualify for remission when serving a minimum term, and that so any addition to the minimum term should recognise that the extra sentence will represent actual time served without remission.

[15] The attacks on Mr Lewis, Mr McAnoy and the damage to property were significant, and I consider that they justify a sentence of 12 months imprisonment on each count concurrent with each other. In addition the appropriate sentence for being at large is one of 12 months imprisonment consecutive to the sentences on Counts 2-6, a total of two years

imprisonment, and I impose these sentences on these counts. So far as their effect on the minimum term is concerned I propose to take half this period, that is one year, and add it to the minimum term for murder.

[16] The accused was aged 20 at the time. As Mr Magee (who appears for the defence with Mr Denis Boyd) reminded me he undoubtedly had a harrowing and unhappy upbringing in many respects as the psychiatric and psychological evidence showed at the trial, and as the pre-sentence report confirms. Nevertheless the defendant had accumulated a significant criminal record, and in addition to the robbery conviction which resulted in the sentence of detention that he was serving when these offences were committed, he had numerous convictions for other offences of dishonesty, and had received a suspended sentence of eight months detention suspended for two years for assault occasioning actual bodily harm committed in March 2007. As the evidence at the trial revealed, he had been abusing drugs and alcohol on a very substantial scale for a long time, particularly in the period when he was unlawfully at large leading up to this attack upon Mr McGreevy. As Mr Magee correctly observed, he was on a "bender" of drink and drugs when he attacked Mr McGreevy. He has shown no remorse whatever for his crime and I am satisfied that there are no mitigating factors in the case.

[17] I consider that the appropriate minimum term is one of 17 years imprisonment, being 16 years for the attack upon Mr McGreevy, and a further year for the other offences to which I have referred, making a total period of 17 years imprisonment before he can be considered for release by the Parole Commissioners. As is customary in these cases, the minimum term will date from the date upon which he was taken into custody on these charges.

[18] Before leaving this case I wish to say something about the way in which information about the effect of serious crimes is made known to the courts. In the course of this judgment I have referred to the victim impact statement made by members of the McGreevy family. For some twenty years in this jurisdiction it has been the practice for evidence to be given as to the effect of serious offences, usually of a violent or sexual nature, upon the victim and/or the victim's family before sentence is passed. This evidence usually takes the form of reports on the victim by specialists in the relevant medical discipline, or other suitably qualified professionals, setting out the effect of injuries or psychiatric or psychological trauma upon the victim, and the prognosis for their recovery. These are commonly referred to as "victim impact reports". Such reports often incorporate the victim's own perception of the effect of the offences upon them. Sometimes in addition to, or in place of, these reports, statements from the victim or the victim's immediate family are also given to the court. To distinguish these from reports by qualified professionals these are usually referred to as "victim impact statements".

[19] Victim impact reports, and most, but not all, victim impact statements, are prepared at the request of the prosecution, and their use in Northern Ireland came about at the request of Crown Court judges in the late 1980s because the judges were anxious to have as much information as possible from and about victims in serious crimes, so that when passing sentence the court would have a comprehensive picture of the effect on the victim based upon evidence from the victim and suitably qualified professionals. This practice is well-established, and is an essential part of the sentencing process in serious cases, as can be seen from countless decisions in the Crown Court and the Court of Appeal during the last twenty years. One recent example where the Court of Appeal had before it both victim impact reports and a victim impact statement is R v McArdle [2009] NIJB at p. 214 where the Lord Chief Justice referred to an ophthalmologist's report and a statement from the victim himself who had suffered very serious injuries resulting in the loss of one eye, and a sentence of thirteen year's detention to be followed by one year's probation was upheld.

[20] In the present case the victim impact statement from the McGreevy family falls within the accepted and valuable practice which I have described. However, the prosecution also placed before the court a document which Mr Kerr QC said had been given to the police who passed it to the prosecution. This is headed "West Belfast Community Safety Forum Community Impact Statement". In it the author describes the Forum as "a partnership organisation made up of statutory and non-statutory organisations", although none of these organisations are identified. In this document it is said that "..the Forum is now engaged in providing Community Impact Statements for sentencing hearings with regards to serious crime in the area." It also contains the following passage.

> "It is the community's view that Mr Valliday, who has no regard for his respective neighbourhood, should be dealt with in the manner that sends out a message to other individuals who may be involved in serious crime. Failure to receive serious custodial sentences will send the wrong signals within our community and thus make all our efforts harder. "

[21] This document was a misconceived and improper attempt to influence the sentence of the court, and I have not taken it into account in arriving at the sentence in this case. It was misconceived because it is for the prosecution and the defence alone to make representations to the court about the proper level of sentence in a particular case. As I have sought to show, the courts try to ensure that they are as fully informed as possible about the effect of particular offences upon an individual, and with their experience of the criminal law and the multitude of crimes of different types that are dealt with

day and daily at all levels of the criminal justice system the courts are fully aware of the impact of such crimes upon the community as a whole. It was improper because it is not for any other individual or group, whatever their function or motives, to seek to intervene in that process and thereby influence the court. If permitted such efforts would result in pressure being exerted in individual cases to achieve a particular outcome, and would gravely imperil the independence of the courts. I hope that no more documents of this type will be placed before the courts, and in future the prosecution should refuse to be a party to such a process.