

**IN THE CROWN COURT IN NORTHERN IRELAND**

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**THE QUEEN**

**v**

**VICTOR KENNEDY**

**Bill No 08/79545**

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**WEIR J**

[1] Mr Kennedy, you have pleaded guilty to the murder of Michael McGinnis and I am therefore obliged to impose upon you the only sentence for that offence permitted by law, namely one of life imprisonment.

[2] It is also my responsibility, in accordance with Article 5 of the Life Sentences (Northern Ireland) Order 2001, to determine the length of the minimum term that you will be required to serve in prison before you will first become eligible to have your case referred to the Parole Commissioners for consideration by them as to whether, and if so when, you are to be released on licence. I make it clear however that if and when you are released on licence you will for the remainder of your life be liable to be recalled to prison if at any time you do not comply with the terms of that licence.

[3] I wish further to make it clear to you and to the public that a minimum term is not the same as a fixed term of imprisonment. A fixed term of imprisonment may, if a prisoner is of good behaviour, attract remission of 50% of the term imposed by the court. You will receive no remission for any part of the minimum term that I am now about to determine and I hope that, should the Press report these sentencing remarks, they will be careful to make this important distinction clear to their viewers and readers.

[4] The facts of this sad case have been comprehensively described to the court by Mr Orr QC for the prosecution and I therefore merely summarise them now. At about 2.00am on 5 July 2007 two men who were walking on a pedestrian route known as the Blackburn Path between Main Street and

Scroggy Road in Limavady came upon a man lying at the foot of a flight of concrete steps. One of the men remained at the scene while the other went for help. When medical assistance arrived the man was found to be dead and he was later identified as Mr Michael McGinnis who lived at Shanreagh Park in the town. He was a man of 37 years of age who had led a varied life, initially in the Royal Navy and later as a teacher of English in Korea. He had returned home in about 2003 and unfortunately had succumbed to the regular excessive consumption of alcohol. Much of his time was spent drinking with friends in public places around Limavady and he is described by those who knew him at that period of his life as a friendly person who would stay clear of any violence and who was generous to his acquaintances.

[5] On this particular night he was seen alive by a man who while walking his dog in a park around midnight encountered the deceased sitting on a seat drinking from a bottle. The man recognised the deceased and exchanged a friendly passing greeting with him.

[6] It would appear that thereafter Mr McGinnis made his way to the vicinity of the steps where he was later found dead and there had the misfortune to encounter you as you made your way along this path. It seems that, with characteristic generosity, he gave you a cigarette and you seemed to have spent some time together before you pushed him down the concrete steps and then appear to have kicked and/or stamped upon him. You have attempted to minimise the extent of your attack but I am satisfied that the findings of Dr Bentley, the Deputy State Pathologist, contradict your minimised account because of the numerous and disparate injuries including multiple fractures of the ribs on both sides, a fracture of the breastbone, multiple injuries to the head indicating stamping to the left side of the face and scalp and a broken nose. The injury that caused death was a rupture of the left atrial appendage which Dr Bentley says would not be expected to be sustained as a consequence of fall downstairs but is far more likely to be due to an injury caused by forceful compression of the chest while Mr McGinnis was on his back on the ground. Toxicology revealed that the deceased had prior to his death consumed alcohol to the extent of more than five times the legal limit for driving so that he was undoubtedly markedly intoxicated and would have been quite unable to defend himself against any violent attack.

[7] When I read the trial papers in this case I could not understand why you launched this attack upon the deceased since you made no complaint of aggression towards you, nor described anything other than kindness by him in your account to the police. The answer has belatedly been revealed by your subsequent account to Dr Christine Kennedy, Consultant Forensic Psychiatrist, that you discovered that Mr McGinnis had a mobile phone when it happened to ring and you thought to yourself "that would give me a drink tomorrow" as you anticipated being able to get £20 for the phone. The idea that someone would launch a violent and sustained attack upon his victim for

the sake of obtaining his next day's drink money is difficult to comprehend even for someone accustomed to accounts of extreme and mindless drunken criminal activity.

[8] The effect of Mr McGinnis' death on his mother, sister, brothers and wider family circle has been movingly explained by Mrs Gertrude McGinnis in her dignified letter to the court. This was plainly a closely-knit family that had cooperated in trying to help Michael with his addiction and to ensure that he was brought home safely on those occasions when an excess of drink got the better of him. Sadly, on this occasion he had the extreme misfortune to fall in with you before they could find and arrange for him to be brought home as they so often had done in the past.

[9] As for you Kennedy, you are now 31½ years of age and were 30 at the time of this murder. You too became addicted to alcohol which seems to have led you into a pattern of criminal behaviour that became your way of life. The probation report points out that you had 91 previous convictions between 1994 and February 2007 which are for road traffic, dishonesty and, significantly, violent offending. Most significant to my mind was an attack not unlike the present upon a drinking companion in 2004 when, for no apparent reason, you hit him with a brick. I have already explained that my task is to fix the minimum term required to satisfy the requirements of retribution and deterrence and that the question of when you are ultimately to be released is one for the Parole Commissioners who will take account of all the factors that appear relevant to them. I cannot however forbear to draw attention in these remarks to the similarity between these two mindless attacks, the conclusion of the Probation Service that you are assessed as being a high risk of serious harm to the public and highly likely to re-offend and the observation by Dr Kennedy that you did not display much in the way of regret or remorse for your behaviour. No doubt the Parole Commission will, when the time comes, have regard to these matters amongst all others in deciding when it is appropriate to release you on licence.

[10] Frequently in these cases I hear a sad tale of the accused's deprived upbringing. That is not your case because Dr Kennedy records that you told her that you developed quite normally with a happy home life and a feeling of being nurtured and cared for by your parents. It is unfortunate that no assessment has been obtained of your intellectual capacity but I am prepared to infer in your favour that you seem to be somewhat limited intellectually as judged by your self report of educational difficulties, especially problems with reading and writing. After school you worked for less than a year in a skip business and thereafter at delivering coal for a similar period. You have never worked again but rather have lived by your wits and the proceeds of your extensive criminality. Your life and that of Michael McGinnis have each, in their different ways, been effectively destroyed by drink.

[11] How are these facts and personal circumstances to be reflected in the minimum term I must set? I am bound to, and do, follow the guidance of the Court of Appeal in *R v McCandless* [2004] NI 269. There was broad agreement between counsel for the prosecution and your counsel, Mr McCrory QC, that the correct result is to be arrived at either by taking the lower starting point and aggravating it or by taking the higher starting point and mitigating it. In my view this is plainly a case for the higher starting point as the killing was done for gain and the victim, by reason of his high level of intoxication, was in a particularly vulnerable position. In aggravation the salient factor is your extremely bad criminal record including offences of violence, one of which as I have said was strikingly like the present. In mitigation are your reduced intellectual ability, the absence of premeditation and the fact of your plea of guilty. This came late in the day but it did spare Michael's family the ordeal of a trial at which distressing details would have had to be rehearsed. I cannot give you the full credit that an early plea would have attracted and legal advisers would be wise to explain to clients the effect of delaying their pleas of guilty for what they may wrongly suppose to be good tactical reasons.

[12] Having regard to all the factors that I have discussed and all that has been most effectively argued on your behalf by Mr McCrory in his realistic submissions, during the course of which he was most properly at pains to emphasise that no blame whatever could be laid at the door of Michael McGinnis, I have concluded that the least period of imprisonment that I can properly impose upon you before the release provisions will apply to you is one of 14 years to date from the day upon which you were taken into custody for this offence. What happens to you thereafter will be for the Parole Commission to determine. I direct that it is to receive a copy of these sentencing remarks.