

IN THE CROWN COURT IN NORTHERN IRELAND

DOWNPATRICK CROWN COURT  
(AT BELFAST)

---

THE QUEEN

v

WILLIAM GEORGE ANDERSON, GARETH COLIN ANDERSON  
and MARK FREDERICK KINCAID

ICOS No: 06/081417

---

**HART J**

[1] The defendants have been convicted of the murder of David Hamilton at 26H Gleneagles Gardens in the Ballybeen estate at Dundonald in the early hours of 29 November 2004, and have therefore been sentenced to life imprisonment. They are before the court today to be sentenced to the minimum terms of imprisonment which each is required to serve before they can be considered for release from prison by the Life Sentence Review Commissioners under the provisions of the Life Sentences (Northern Ireland) Order 2001, (the 2001 Order).

[2] The evidence during the trial established that David Hamilton was last seen alive some time around, or shortly, after midnight on Sunday 28 November 2004 when he left a party in a flat at Beaully Drive, Ballybeen. Exactly when he was murdered is unclear. Dr Peter Ingram, the Assistant State Pathologist, formed the view that it was likely that Mr Hamilton had been dead for some 6 to 8 hours when he saw the body on the afternoon of 29 November 2004, when he found that the torso was very slightly warm to the touch. When he performed the post mortem Dr Ingram formed the opinion that it was likely that Mr Hamilton had survived at least four to five hours before he died, although there is no suggestion that he was conscious during that period. These estimates would therefore suggest that he had been attacked somewhere between 10 to 13 hours before he was found, and in turn

this would suggest that on Dr Ingram's calculation that death occurred between 6.00 and 8.00 am the attack occurred between 1.00 and 3.00 am. However Dr Ingram emphasised that these timings were highly variable and it was not possible to say what was the exact time of death. The prosecution case at the trial was therefore that the attack on Mr Hamilton was carried out sometime in the early hours of 29 November, and the most that can be said is that the evidence suggests that the attack could have been as early as 1.00 am or as late as 3.00 am.

[3] Why Mr Hamilton was attacked has never been established. No motive was suggested by the prosecution during the trial. Each of the defendants denied that they had taken part in his murder, or that they were in his flat that night.

[4] Mr Hamilton died as the result of a brutal and sustained attack which resulted in many injuries being inflicted upon him. These involved a fractured skull which in turn led to bleeding and swelling of the brain, the effects of which were responsible for his death. In Dr Ingram's view the laceration to his scalp and the fracture of the skull underneath were consistent with Mr Hamilton having been struck at least twice with a heavy blunt object or objects, and Dr Ingram thought it was likely that these blows were inflicted whilst he was lying on the floor. Whilst the head injuries led to his death, they were not the only serious injuries.

[5] In addition to these injuries Dr Ingram found that Mr Hamilton had suffered bruising of his left testis, an injury which he described as very serious, and which, if it had been inflicted first, could have caused Mr Hamilton to collapse with pain, although whether it was inflicted first would depend upon the sequence in which the injuries were inflicted. However, it seems highly probable that what happened was that he was brought to the floor by a severe kick to the genitals, and then repeatedly attacked as he lay on the floor. Dr Ingram also found a fractured cheek bone, numerous irregular abrasions and punctate bruises on the outer side of Mr Hamilton's back, and bruises in the underlying muscles of the back which were consistent with Mr Hamilton having been kicked, or stamped upon, as he lay on the floor. As a result he suffered no fewer than eight fractured ribs, some of which brought about tears to his lungs.

[6] Apart from the most serious injuries that I have so far described, Dr Ingram found a very large number of bruises, lacerations and abrasions all over Mr Hamilton's body. These ranged from two areas of injury on his nose and ten areas of injury on his right upper arm, to no fewer than twenty-three areas of injury on his left upper arm, and twenty-eight on his back. As can be seen from the photographs a bloodstained brick was close to Mr Hamilton's head, and the television set had been overturned beside the body.

[7] There can be no doubt from the nature and distribution of the injuries inflicted upon him that Mr Hamilton was the victim of an exceptionally brutal and prolonged attack. As Mr McCollum QC for the Crown indicated, it appears to be the case that the position in which he was found was where he ended up at the end of the attack. It also appears that he survived for some hours after this attack.

[8] In R v. McCandless and other cases [2004] NI 269 the Court of Appeal indicated that judges in this jurisdiction should follow the sentencing advice contained in the *Practice Statement* issued by Lord Woolf CJ on 31 May 2002 in which the appropriate minimum terms for adult and young offenders were laid down. The *Practice Statement* lays down a normal starting point of 12 years and a higher starting point of 15 to 16 years. These starting points then have to be varied upwards or downwards by taking into account whatever aggravating or mitigating factors there may be.

[9] The relevant portions of the *Practice Statement* are as follows:-

*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:

- (f) the victim was a child or was otherwise vulnerable;
- (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;

[10] In my opinion Mr McCollum correctly conceded that in this case the second and third of these characteristics overlap to a considerable degree. Mr Hamilton was in his house and considerably intoxicated and therefore might be considered to have been vulnerable. As against that, there was no evidence of a forced entry, and in the absence of any explanation to explain why he was attacked I do not consider that I can regard him as being vulnerable in that sense, because that characteristic is directed towards those who are vulnerable because of age or some other factor, such as being disabled in some way. Nevertheless I consider that the circumstances of this case require the court to impose a sentence which reflects the higher starting point of 15 to 16 years laid down by the Practice Statement. The very extensive multiple injuries inflicted

on Mr Hamilton before he died, and the way in which his attackers left him to die, require a severe sentence.

[11] I have to consider whether I can draw any distinction between each of the defendants. As I have already pointed out each has denied being present when Mr Hamilton was attacked and the evidence linking them to his death was in large measure the forensic evidence. Whilst this was most substantial in relation to William George Anderson, and on one view might indicate that he took a greater role in the attack than his co-accused, as against that there was evidence of efforts by himself and Gareth Anderson to remove signs of the attack from their respective flats, and therefore the extent of the forensic evidence may not be a true indicator of the role each played. In any event, I have no doubt that the nature and extent of this exceptionally brutal attack on this unfortunate man was such that anyone present with a spark of humanity would have tried to dissuade his companions from the attack, or at the very least tried to notify the emergency services afterwards in the hope that Mr Hamilton's life might still be saved. I have no doubt that everyone present in that room bears the same degree of guilt for the death of Mr Hamilton, and I do not therefore propose to distinguish between the defendants on that ground.

[12] William Anderson is the only one of the three with a substantial criminal record, but it is for minor offences, and I do not consider that any of them can be regarded as being of such a nature as to constitute an aggravating factor in the case.

[13] Gareth Anderson was 16 when he was bound over for 2 years in the sum of £100. That was 8 years ago and more than 5 years before these events. It appears to have been a minor offence, I directed the jury that they should treat him as a person of good character, and I consider that I should sentence him on that basis.

[14] Mark Kinkaid has a number of minor convictions which have resulted in fines and orders disqualifying him from driving. The offences of disorderly behaviour involved him singing outside a public house in Newtownards. I do not consider that his record can be regarded as constituting an aggravating factor in the case.

[15] However, such was the brutality of these events that I do not consider that previous good character, or the absence of any convictions for violence, can properly be regarded as a mitigating factor so far as any of the accused is concerned.

[16] I have taken into account everything that has been said on behalf of each of the accused and has been set out in the various pre sentence reports. I consider the minimum term to be served by each of the defendants before they can be considered for release is one of 16 years imprisonment and I so order.

The minimum period to be served will take account of any time spent in custody prior to trial by each of the defendants.