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IN THE CROWN COURT AT BELFAST

THE QUEEN

-v-

WILLIAM JAMES FULTON AND MURIEL GIBSON

BILL NO. 150/03

HART J

[1] William James Fulton and Muriel Gibson are before the Court to be sentenced on the charges of which they have been convicted as set out in my written judgment of 7 December 2006. When I come to sentence each accused in relation to each offence, or group of offences, I will refer as necessary to the paragraphs in that judgment dealing with that offence, or group of offences, as I do not intend to rehearse the details which can be found in full in the appropriate part of the judgment.

[2] Before dealing with the offences on which Fulton has been convicted, I must first of all refer to the submissions made by Mr Berry QC on his behalf in relation to Fulton's conviction on count 1 of the indictment, the murder of Mary Elizabeth O'Neill in June 1999. Mr Berry pointed out that the offence was committed before the Life Sentences (Northern Ireland) Order 2001 (the 2001 Order) came into effect. Article 5 of the 2001 Order now provides that the trial court must fix the minimum term to be served by a prisoner sentenced to life imprisonment before he can be considered for release from prison by the Life Sentence Review Commissioners. Articles 5(1) and (2) are material for the purposes of the present case.

> "5(1) Where a court passes a life sentence, the court shall, unless it makes an order under paragraph (3), order that the release provisions 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."

[3] Mr Berry's argument is in essence that life sentence prisoners in Northern Ireland generally served a period within the range of 10 to 20 years in the 1980s and 1990s, and therefore the court should not fix a minimum term in the present case in excess of 20 years in order to ensure that Fulton is treated in a consistent and comparable way with offenders convicted for offences during that time. He relied upon the decision in *Flynn and Others v. Her Majesty's Advocate*, an appeal to the Privy Council from Scotland in which the Board considered the equivalent provisions of the Prisoners and Criminal Proceedings (Scotland) Act 1993, as amended by the Convention Rights (Compliance) (Scotland) Act 2001. He argued that the effect of the decision in *Flynn* was that the new system of guidelines for sentencing in murder cases to which I shall refer should not operate to the disadvantage of the defendant.

[4] He also pointed to the decision in *Re Kavanagh's application* [1997] NI 368 at page 376 where the practice of the Secretary of State for Northern Ireland was set out in an affidavit sworn on 23rd September 1996.

> "15. In Northern Ireland life sentence prisoners generally serve a period within the range of 10-20 years. Factors which could result in sentences towards the bottom of the range include the role of the offender (e.g. peripheral involvement, genuine remorse for their offence, disassociation from a paramilitary organisation, etc). Factors that tend the other way include involvement in multiple offences, multiple deaths, lack of remorse and continued support of a paramilitary organisation.
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> 16. In June 1996 no prisoner sentenced to life imprisonment in Northern Ireland for terrorist offences had served more than 20 years imprisonment before being recommended by the Life Sentence Review Board ("the Board") for release. While a Board recommendation to the Secretary of State carries no guarantee of release, it is effective in the vast majority of cases. "

[5] From this passage it may be seen that whilst by 1996 no prisoner sentenced to life imprisonment in Northern Ireland for terrorist offences had served more than 20 years imprisonment before being recommended for release, it was not stated that in appropriate circumstances a prisoner might not serve more than 20 years before being recommended for release. It was stated that prisoners "generally serve a period within the range of 10-20 years", which clearly left open the possibility of a prisoner serving a longer sentence. I am satisfied that the decision in *Flynn* does not apply to the circumstances of the present case. In *Flynn's* case, as can be seen from the opinion of Lady Hale, the effect of the Scottish legislation had been to extend the period for which some, though by no means all, prisoners could be considered for release, and as she explained at paragraph 97, that change "offends against the basic principles of fairness to change the rules in such a way that a serving prisoner will have to spend longer in prison than he would have done under the old rules." That is a consideration which does not apply to Fulton because he had not been convicted of these offences, although he had been charged, when the 2001 Order came into effect.

[6] As Lady Hale pointed out at paragraph 100, the objectionable features of the change to the existing system did "not cast doubt upon the validity of sentencing guidelines which may indicate that the existing applicable sentence is to be applied in a more severe way than had been the previous practice." I am satisfied that the sentencing guidelines which should be applied to cases of murder under the 2001 Order are not affected by the actual length of sentence which life sentence prisoners may have served in Northern Ireland prior to the 2001 Order. This is not a case where the sentence itself has been increased since the offence was committed, because the only sentence that can be imposed upon a conviction for murder was and remains one of life imprisonment. Nor is it a case where the sentence is being increased for a prisoner who had been sentenced prior to the 2001 Order, the situation which applied to the appellants in *Flynn*.

[7] I therefore propose to sentence Fulton in relation to Count 1 on the basis of the principles laid down by the Northern Ireland Court of Appeal in *The Queen against McCandless and others* [2004] NICA 1. In *McCandless and others* the Court of Appeal adopted the approach to fixing the minimum period to be served by the accused as set out by Lord Woolf CJ in the *Practice Statement* of 31 May 2002 reported at [2002] 3 All ER 412. As Sir Robert Carswell LCJ [as he then was] observed at paragraph 8, the policy statement –

> "replaced the previous normal starting point of 14 years by substituting a higher and a normal starting point of respectively 16 and 12 years . . . These starting points then have to be varied upwards or downwards by taking account of aggravating or

> mitigating factors. We think it important to emphasise that the process is not to be regarded as one of fixing each case into one of two rigidly defined categories, in respect of which the length of term is firmly fixed. . . . Not only is the *Practice Statement* intended to be only guidance, but the starting points are, as the term indicates, points at which the sentencer may start on his journey towards the goal of deciding upon a right and appropriate sentence for the instant case."

[8] The *Practice Statement* deals with very serious cases at paragraphs 18 and 19.

> "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 paragraph 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, the term of 20 years and upwards could be appropriate."

The reference to a minimum term being equivalent to 60 years in this passage is because a prisoner sentenced to a life sentence is not eligible for 50% remission, and therefore a minimum term has to be doubled in order to be compared with the sentence imposed in cases other than life sentence cases.

[9] Fulton was born on 20th November 1968 and is now 38 years of age. He has a number of previous convictions for minor motoring offences, public order offences and one conviction for possession of a Class A drug. These offences were all dealt with at the Magistrates' Court and are of a minor

nature and I do not regard them as an aggravating feature of the present case. An aggravating feature of his record, however, is that at Belfast Crown Court on 15th March 1993 he was sentenced to two and a half years imprisonment for possessing items for terrorist purposes on 26th March 1992. A second aggravating feature of the case is that Fulton has been convicted of a substantial number of offences, and a third is that these offences were committed over a period of some seven and a half years. A fourth is that these were terrorist offences. These aggravating factors are factors which are common to each of the offences in respect of which he is to be sentenced. In addition there are aggravating factors which have to be taken into account in the circumstances of the individual incidents.

[10] On behalf of Fulton Mr Berry indicated that he had instructions that his client maintained his innocence and that he was not to go beyond that position as his client intends to appeal. There are therefore no mitigating factors.

[11] The murder of Mrs O'Neill was the most serious of the three attacks carried out at Fulton's direction on the night of 4th and 5th June 1999, the first in point of time being the attack on Mr Murnin's house in which he himself took part, and the third being the attack on the home of Janelle Woods. See paragraphs 112 to 115. Fulton planned all three attacks, and as he said on 18th May 2003, see paragraph 155.

> "I had ordered the fucking two houses hit, with Catholics in them in our area"
>
> On 16th August 2000 he said
>
> ". . . the one we all got arrested for fucking O'Neill Rose O'Neill . . . that silly old bat fucking it was the night I fucking planned three of them"
>
> and
>
> "So the night I had planned the three of them, three different units going out three different places I went out with the grenade but I went into Provie country right into where the Provies live"
>
> Later in that conversation he said
>
> "She was a Prod (laughs) well it was a mixed family"

[12] It is clear from these remarks that there was a sectarian motive to these offences and the reason why Mrs O'Neill in particular was singled out was

because she was a Protestant in a mixed family. Not only that but he decided that she was to be attacked. See paragraph 158. He said on 16th November 2000 that the attack on her

> "Went strictly against Billy Wright's wishes that she was not to be touched. An order was given that she was not to be touched.
>
> Muriel: Billy was already dead. (laughing).
>
> Jim: That she had not to be touched, only I made sure she was . . . "

[13] Fulton was charged as having aided and abetted, counselled and procured the attack on Mrs O'Neill because it was he who ordered and planned the attack on her home. That being the case, his culpability for what happened is greater than any one else involved in this episode and I propose to sentence him accordingly. In addition to the general aggravating factors to which I have already referred, there are the further aggravating factors that she was targeted because of her religion, that he planned the attack and directed that it be carried out, that a weapon in the form of an anti-personnel device was used, thereby potentially endangering others in the house, and finally that this was one of three such attacks that night. That being the case, I consider that it falls within that portion of Article 5(2) of the 2001 Order which requires the court to have "regard to the seriousness of the offence, or the combination of the offence and one or more offences associated with it". The attacks on Mr Murnin's home and the home of Janelle Woods were clearly associated with the attack on Mrs O'Neill's home because they were part and parcel of the overall operation instigated and planned in detail by Fulton, and in which he took part when he attacked Mr Murnin's house. This was a very grave crime with many aggravating features and I fix the minimum period necessary to satisfy the requirements of retribution and deterrence before he can be considered for release as 25 years imprisonment. On count 2, aiding and abetting the causing of an explosion, the sentence will be 20 years imprisonment.

[14] Incident 2 relates to the attempted murder of Janelle Woods and Stephen Black who was in her house at the time. Fulton is charged with these offences and those associated with it on the basis that he aided and abetted because he planned and directed the attack. Although no one was injured, the aggravating factors in the case are the same as those in the case of the murder of Mrs O'Neill. I impose sentences of 20 years imprisonment on counts 3, 4, 5, 6 and 7.

[15] Incident 3 was the attack on the home of Mr Murnin in which Fulton played a very active part indeed. See paragraphs 117 and 118. Again fortunately no one was injured despite the determined attempts of Fulton to ensure that this Russian-made hand grenade went through the window into

the room where Mr Murnin was sitting. The aggravating factors present in the case of Mrs O'Neill's murder are present in this case also. On counts 8, 9, 10, 11, 12 and 13 I impose sentences of 20 years imprisonment.

[16] Incident 4 relates to the attempted murder of RUC officers at Drumcree on 9th July 1998. Counts 14, 15, 16 and 17 are counts of attempted murder of the four officers who were injured when the blast bomb thrown by Fulton exploded amongst them, see paragraphs 197 to 202. The four officers concerned suffered very serious injuries. Chief Inspector Barr received injuries to his lower left leg and to his right leg, and such was the severity of his injuries that it was two and a half years before he was able to resume any duties. Reserve Constable Irvine also received serious leg injuries and suffered a collapsed lung whilst being treated for his injuries. The effect of his injuries was that he was unable to resume his duties as a full time Reserve Constable. Constable Harkness also received very serious injuries to his lower left leg, was in hospital for several weeks and has been unable to resume his duties as a serving officer. Constable McBrien had to have a piece of metal removed from his left thigh. These are only brief descriptions of the very serious injuries suffered by these officers in this explosion. In *The Queen v. Kevin McCann, Northern Ireland Sentencing Guideline Cases*, Volume 2, at 6.1.114 Sir Brian Hutton LCJ (as he then was), having reviewed the appropriate levels of sentencing for cases of attempted murder of members of the security forces, concluded –

> "Therefore we consider it to be clear that the normal level of sentence for the attempted murder of a member of the security forces is in the region of 25 years imprisonment, and in some cases a sentence in excess of 25 years may well be proper."

[17] Given the circumstances in which these injuries were inflicted and the gravity of the injuries to the officers concerned I consider that the appropriate sentence on the four counts of attempted murder, counts 14, 15, 16 and 17, is one of 28 years imprisonment. On counts 18, 19, 20, 21, 22 and 23 I impose sentences of 25 years imprisonment.

[18] Incident No 5 is the attempted robbery of Connor McAleavey on 25th October 1999 and relates to counts 24 and 25. As can be seen from paragraph 221 and following Fulton was responsible for the planning of this determined attempt to hold the bank manager hostage in order to rob the bank of a very large amount of money. Fortunately it was foiled due to the determined resistance of Mr McAleavey which caused the intruders to panic and flee. I sentence the defendant to 15 years imprisonment on count 24 and 10 years imprisonment on count 25.

[19] Counts 26 and 28 relate to Incident No 6, the shooting at the home of William Samuel Fletcher described at paragraph 235. Fulton went to this house intending to murder Derek Wray but when Wray was not there decided to fire several shots at Mr Fletcher, who suffered gun shot wounds to his left knee and right foot. There is no evidence before me to suggest that Mr Fletcher has not made a full recovery from his injuries, nevertheless this was a determined attack and Fulton's primary objective was to bring about the death of Mr Wray. I sentence the accused to 20 years imprisonment on count 26 and on count 28. On count 29, possession of a firearm and ammunition with intent, I sentence him to 15 years imprisonment.

[20] Counts 30, 31, 32 and 33 relate to Incident No 7, the punishment shootings of Buchanan, Birney and Doran at Edenderry Primary School on 3rd January 1997. See paragraph 255 and following. Each of the injured men had been ordered to go to this site and Fulton shot each of them in the leg. I have no information to suggest that they have been left with permanent injuries other than some scarring. On counts 30, 31, and 32 I sentence the accused to 10 years imprisonment, and on count 33 to 15 years imprisonment.

[21] Incident 8 relates to counts 34 and 35, the hijacking of a post office van on 10th July 1998 so that it could be used to carry a hoax bomb. I sentence the accused to 12 years imprisonment on count 34 and count 35.

[22] Count 36 relates to Incident No 9, Fulton's possession of a star . 22 pistol. See paragraphs 293 to 297. As can be seen from the admissions set out at paragraph 285 Fulton had possession of this weapon on two occasions, once while he took it out into the country to test fire it and then hid it in a hedge, the other being when he got his wife to bring it to him at Drumcree. Although this was the weapon which was used in the murder of Michael McGoldrick, there is no evidence to show that Fulton was in any way implicated in that matter nor is he charged with any offence in relation to Mr McGoldrick's death and I must sentence him on the basis that his culpability was limited to possession of this weapon. I sentence him to 12 years imprisonment on count 36.

[23] Incident 12 relates to count 41, directing terrorism contrary to Section 29 of the Northern Ireland (Emergency Provisions) Act 1996 and count 42 belonging to a prescribed organisation, namely the Loyalist Volunteer Force, contrary to Section 30(1) of the same Act. As can been seen from paragraph 360 Fulton was a member of the LVF throughout the period of 28 months covered by these charges and was the leader of the LVF in Portadown at that time. He therefore occupied a very prominent position in this terrorist organisation and actively directed its activities in the Portadown area. On count 41 I sentence him to 25 years imprisonment. On count 42, belonging to the Loyalist Volunteer Force, the maximum sentence for this offence is 10 years imprisonment. Given Fulton's prominent position within this terrorist organisation I sentence him to 10 years imprisonment on count 42.

[24] Incident 13 concerns counts 43 and 44. Count 43 relates to the letter Fulton wrote to his wife giving details of a false explanation she was to put forward if questioned by the police about bringing the gun to Drumcree. I sentence the accused to 5 years imprisonment on count 43. Count 44 relates to his admission that he sent a message to his wife to instruct her to bring a loaded Webley .45 revolver to him at Drumcree. See paragraph 294. I sentence him to 10 years imprisonment on count 44.

[25] Incident 15 relates to the hijacking and false imprisonment of Mr McCallum in March 1992. The circumstances of these offences are set out at paragraphs 312 to 315. The maximum sentence on count 50, hijacking contrary to Section 2(1)(a) of the Criminal Jurisdiction Act 1975 is 15 years imprisonment. This was a prolonged and I am sure terrifying experience for Mr McCallum and members of his family. A particularly serious aspect of the case is that Mr McCallum's two young children were in the car throughout. They saw a gunman point a gun at their father's face. I sentence the accused to 15 years imprisonment on count 50, 12 years on count 51 and 10 years imprisonment on count 52.

[26] Incident 16, the conspiracy to murder by bombing the Sinn Fein office in Newry in May 1994, relates to counts 53, 54 and 55. As can be seen from the admissions described at paragraphs 324 and 325, Fulton joined a conspiracy to bomb the Sinn Fein offices in Newry, an attack which was unsuccessful. It was however a determined attempt to attack these premises and Fulton played a full part in the conspiracy once he had joined it, in particular attempting to get the bomb to work. I sentence him to 20 years imprisonment on counts 53, 54 and 55.

[27] Incident 18 is the importation and supply of Class B drugs in 1998 and 1999. As can be seen from paragraphs 336 and 337 Fulton admitted importing cannabis at the rate of 40 to 50 kilograms a week. He was importing drugs on a very large scale and thus comes within the category of those who are liable to be sentenced to up to the maximum of 14 years imprisonment. See *The Queen v. McIlwaine* [1998] NI 136. On count 59 I sentence the accused to 14 years imprisonment, and on count 60 to 10 years imprisonment.

[28] Incident 19 relates to the staged attack on Mark Fulton on 10th February 1999. The purpose and circumstances of this episode are described at paragraph 343. As described at paragraph 339 this was suggested and carried out by Fulton with the intention of removing threats to his brother Swinger and their cousin Gary. This was a characteristically lawless action on the part of the accused, the maximum sentence for this offence is one of 10 years imprisonment and I sentence him to 10 years imprisonment on count 62.

[29] All of these sentences will be concurrent and the minimum term will include the time spent by the defendant on remand in custody.

[30] Muriel Gibson is 57 and is to be sentenced in relation to a number of offences committed between 6th January 1997 and 30th September 1999, a period of almost 34 months. That period includes the 28 month period during which she has been convicted of membership of the LVF. In addition a number of the offences relate to the possession of firearms or explosives. Mr McDonald QC on her behalf argued that these were offences under the second limb of the respective statutes, that is she had possession of the items in question to enable others to commit offences. I accept that is the case, nevertheless it is clear from the accounts which she gave of her activities that she was throughout the period covered by the offences an enthusiastic supporter of the LVF in Portadown, anxious to help the leaders and other members of that terrorist organisation to commit crimes and further their aims in whatever way she could.

[31] I have been provided with a number of references on her behalf, mostly from members of her family and from friends and neighbours. These speak well of her personal qualities as a mother and grandmother, but matters of that sort carry little weight when the court has to decide the appropriate sentence for offences of this nature. She has a modest record for possession of drugs in this jurisdiction, having been conditionally discharged on a charge of possession of a controlled drug in 1969, a matter that is of no significance today. In January 1996 sentences of 3 months imprisonment suspended for 2 years for possession of a Class B drug were affirmed by Craigavon County Court. In the United States of America in June 1990 she was sentenced to 16 months imprisonment for possession of what is described as a "control" substance for sale. This conviction presumably relates to an incident I referred to at paragraph 385 of the judgment. In addition, as the evidence placed before the court on her behalf in the voir dire indicated, she has abused alcohol, prescription drugs and illicit drugs on a frequent basis over the years. A medical report dated 11th January 2007 describes how she has suffered from "chronic anxiety, phobic anxiety, depression and post traumatic stress for many years. Her condition has been exacerbated over the past few years due to stress and various threats. She has been treated for her condition as far [back] as 1992". The report also refers to her taking analgesics for chronic shoulder and back pain, and to her having undergone various forms of diagnostic treatment for other conditions in recent years, although she does not appear to have developed any particular condition.

[32] I do not regard her record as an aggravating feature of the case, but I do not regard her state of health as being of such a nature as to justify it being regarded as a positive mitigating factor. Mr McDonald on her behalf said that he was constrained in what he could say by his client's continued assertion that she was not guilty of these offences. During the investigations and whilst she

was questioned Gibson displayed no evidence of remorse for her actions, other than to say when being interviewed in relation to the murder of Adrian Lamph that she was sorry for the loss of the Lamph family.

[33] This attitude, and her present stance, is at variance with the description of her attitude contained in the pre sentence report. The writer describes Gibson's attitude in the following paragraph –

> "Ms Gibson now reflects on this period with deep regret. She considers that she became "infatuated" with her role and the sense of belonging which she experienced at the time. With hindsight, the defendant views these feelings as "illusions and delusions" and claims that her lifestyle, at that time, stood in marked contrast to her own personal values system".

[34] Whilst this "deep regret" may well be genuine, it falls short of an expression of remorse, or of acceptance of responsibility for her actions. Nevertheless, albeit with some hesitation, I propose to take a somewhat more lenient course in Gibson's case than the charges might otherwise justify in the belief that she is still under the influence of Fulton and were she free to do so she may be prepared to recognise, although perhaps not wholeheartedly, that her actions were wrong.

[35] Incident 20 relates to withholding information about the shooting of William Fletcher. Gibson knew perfectly well what had occurred and it is an indication of her support for Fulton and the LVF that she did not report these matters to the police as she was obliged to do. On count 65 I sentence her to 5 years imprisonment.

[36] Whilst Gibson has been found not guilty of the murder of Adrian Lamph on 21st April 1998, she has been found guilty of doing an act without lawful authority or reasonable excuse with intent to impede the apprehension or prosecution of his murderer. Her role has been described at paragraph 415 of my judgment and I do not propose to repeat what I said there. As I said at paragraph 419 she played a major role in what happened after the shooting, she did everything she could to ensure that all evidence would be destroyed or removed by asking for the clothes, and then taking the gun away for it to be hidden. When she learnt that the bike had not been removed she arranged for someone to throw it in the river. The maximum sentence for an offence under Section 4(3)(a) of the Criminal Law Act (Northern Ireland) 1967 for an offence of this type is 10 years imprisonment. I sentence Gibson to 8 years imprisonment on count 66. On count 67 I also sentence her to 8 years imprisonment.

[37] Count 72 relates to the possession of detonators which Gibson knew and intended would be used to initiate a bomb on some occasion. I sentence her to 8 years imprisonment on count 72.

[38] Incident 24 relates to the possession of pipe bombs at Drumcree. As I indicated at paragraph 435, the nature of the case against her was that she was assisting others who had physical possession of the blast bombs by creating a diversion to enable the blast bombers to get closer to the security forces so that they could throw their blast bombs at the security forces. I sentence her to 5 years imprisonment on count 73.

[39] Incident 25 relates to possession of assault rifles which she said she had had possession of, apparently on the floor of her house. I sentence her to 8 years imprisonment on count 74.

[40] Incident 26 relates to membership of the LVF. As I have already stated Gibson was an enthusiastic member of the LVF in Portadown over a period of some 28 months before she left to live in Cornwall. It is to her credit that she appears to have decided to distance herself from this organisation by going to Cornwall, but her role in the LVF was nonetheless an active one and I sentence her to 7 years imprisonment on count 75.

[41] All of these sentences will be concurrent.