Neutral Citation: [2017] NICC 2 | *Ref:* **TRE10173**

Judgment: approved by the Court for handing down | *Delivered:* **17/01/2017**
*(subject to editorial corrections)**

THE CROWN COURT IN NORTHERN IRELAND

SITTING AT LAGANSIDE CROWN COURT

REGINA

v

VIKTORS ARUSTAMOVS

TREACY J

Introduction

[1] The defendant was arraigned and pleaded not guilty to murder but guilty to manslaughter on 9 September 2016. This plea was not immediately accepted by the Prosecution. However, following the completion of medical evidence on behalf of both the prosecution and the defendant, the prosecution formally accepted the plea of guilty to manslaughter on the grounds of diminished responsibility on 9 November 2016.

[2] I heard the plea and sentence on Friday last, 13 January 2017, and reserved my judgment until today, Tuesday 17 January 2017.

[3] The facts of the case were opened in some detail at the hearing and are helpfully summarised in the agreed statement of facts which was furnished to the court. Accordingly, I consider the background rather more briefly than might otherwise be required.

Background

[4] Shortly after 1am on Saturday 12 December 2015, the defendant made a 999 call to say that he thought he had killed his mother, Leja Arustamovs, and requesting the police to come to the house at 23 Main Road, Portavogie.

[5] The first responders arrived not long after the 999 call. The defendant came to the door, walked with the first responder, Mr Smith, to the doorway of a first-floor bedroom and said: 'In there.' Mr Smith entered the bedroom where there was a TV blaring and a female lying in the bed. There was blood on both sides of her head and the bedclothes were smooth and neatly arranged up to her chin. The defendant identified the deceased female as his mother and gave her correct date of birth, namely 12 August 1963.

[6] At the scene the defendant identified himself to police and said: 'I strangled her', and made a motion with his hand as if he was strangling something. The defendant also said: 'I said to the doctor about my mental health.' The defendant was arrested and taken to Musgrave police station.

[7] A post-mortem examination was carried out by Dr Marjorie Turner on 13 December 2015. She noted that the deceased was 5'3" in height, of thin build and weighing under 9 stone. Injuries were noted, which included a fracture of the larynx on the left side with associated bruising and bruising overlying the thyroid and the cricoid cartilage on both sides. Dr Turner concluded that the findings are indicative of pressure having been applied to the neck and are entirely in keeping with death caused by manual strangulation. Toxicology identified a moderately high alcohol level in the deceased's blood, but which had no direct role in her death.

[8] During police interviews the defendant admitted strangling his mother. He said he came up and sat next to her in the bed and strangled her. He then sat there for an hour, or thereabouts, smoking cigarettes and then called the police. During a second interview he said that he and his mother always argued when he was drunk because he took drugs. He said she had a drinking problem and that they argued all their lives.

[9] In later interviews he was asked about his feelings at the time of the killing. He said he wanted her to fall asleep. He did not want her to wind him up because he was tired. He was asked to explain how he killed her and if he wanted to kill her. He said he did not want to kill anybody: 'I couldn't even kill a cockroach.' Asked how long he squeezed her throat, he said: 'It seemed quite long.' Asked when he finished, he said: 'After I felt the cold going through my hands. I just covered her with the blankets, placed her hands on her chest and said: 'Forgive me', to her.

[10] The court was provided with detailed and helpful reports from Dr Bunn, Consultant Forensic Psychiatrist on behalf of the defence, and also a report from Dr Brown, also a Consultant Forensic Psychiatrist on behalf of the prosecution. They also each provided an illuminating addendum to their original reports. Dr Bunn in his report of 19 July 2016 said that the defendant was mentally unwell at the time he killed his mother. This, he said, was evident from his mental state examination within 24 hours of the killing, but also evident in the content of his police interviews and ongoing psychotic symptoms, despite compliance with medication.

[11] In the Summary and Opinion section of the 40-page report, dated 21 November 2016, Dr Brown stated as follows at para14.14:

> "I consider that during the period leading up to and at the time of the killing, Mr Arustamovs was suffering from a psychotic illness. It seems likely that this illness was precipitated by use of a psychoactive drug. I consider, it seems most likely that this psychotic illness is schizophrenia."

Then at 14.15:

> "A possible alternative diagnosis to schizophrenia is a drug-induced psychosis. It seems clear that Mr Arustamovs has taken an extensive range of psychoactive drugs from an early age and that he has experienced many bizarre symptoms while under the influence of drugs. I consider it is possible that Mr Arustamovs experienced a drug-induced psychosis at the time of the killing; that his psychotic symptoms subsequently subsided and that he continued to report psychotic symptoms in the hope of receiving medication and other treatments.
>
> On balance, however, I am inclined towards the view that the diagnosis of schizophrenia is more likely."

Applicable Principles

[12] In a case with some striking similarities with the present one, R v Evans 2016 NICC 22, I summarised at paras 37-52 the relevant principles to be applied when sentencing in cases of diminished responsibility:

> "Legal Principles
>
> [37] Manslaughter is a 'specified offence' and a 'serious offence' for the purposes of Chapter 3 of the Criminal Justice (NI) Order 2008 Chapter 3 Schedules 1 & 2.
>
> [38] Where a Defendant is convicted of manslaughter on the ground of diminished responsibility, if the psychiatric reports recommend and justify it, and there are no contrary indications, a hospital order is the likely disposal [see R v Chambers 5 Cr App R (S) 190 CA (applied by R v Crolly [2011] NICA 58); Archbold para19-

97; Sir Anthony Hart 'sentencing in cases of manslaughter, attempted murder and wounding with intent' September 2013 JSBNI para12].

[39] Lord Lane stated in R v Chambers:

> "There will however be cases in which there is no proper basis for a hospital order; but in which the accused's degree of responsibility is not minimal. In such case the Judge should pass an indeterminate sentence of imprisonment, the length of which will depend on two factors: his assessment of the degree of the accused's responsibility and his view as to the period of time, if any, for which the accused will continue to be a danger to the public."

[40] Based on the available medical evidence the Prosecution and the Defence both agree that the Defendant does not satisfy the conditions set out in Article 44 of the Mental Health (NI) Order 1986 and therefore a hospital order with or without restriction would not be an appropriate disposal. In light of the medical evidence in this case I agree with the parties that a hospital order with or without restriction would not be an appropriate disposal.

[41] The law gives guidance as to what factors must be considered when arriving at a sentence. Among these factors are the seriousness of the offence and the level of risk to the public of a repeat of such offences by the same offender. The Criminal Justice (NI) Order 2008 requires me to consider both these things. As regards the application of the Criminal Justice (NI) Order 2008 it is common case that the offence of manslaughter is both a "serious" offence for the purpose of Schedule 1 Part 1 of the Order and is a "specified violent offence" for the purpose of Schedule 2. The court is therefore required to determine whether the 'dangerousness test' is satisfied. This test is found at Article 13 (1)(b) of the 2008 Order and it is met where a person is convicted on indictment [as here] and ...

> "(b) the court is of the opinion that there is a significant risk to members of the public of serious

harm by the commission by the offender of further specified offences".

[44] In the present case both the Prosecution and the Defence are agreed that the dangerousness test is satisfied. In light of the contents of the medical evidence I accept that the test set out in Art13(1)(b) of the 2008 Order is satisfied. The court is of the opinion that there is a significant risk to members of the public of serious harm by the commission by the offender of further specified offences.

[45] In R v Kehoe (2008) 1 Cr App R(S) 41 para17 the Court stated:

> 'When … an offender meets the criteria of dangerousness, there is no longer any need to protect the public by passing a sentence of life imprisonment for the public are now properly protected by the imposition of the sentence of imprisonment for public protection. In such cases, therefore, the cases decided before the Criminal Justice Act 2003 came into effect no longer offer guidance on when a life sentence should be imposed. We think that now, when the court finds that the defendant satisfies the criteria for dangerousness, a life sentence should be reserved for those cases where the culpability of the offender is particularly high or the offence itself particularly grave'.

[46] The above passage was cited with approval by our Court of Appeal in R v Sean Hackett (2015) NICA 57 para52. At para53 the Court cited a passage from the judgment of Lord Judge CJ in R v Wilkinson (Grant) (2009) 1 Cr App R(S) 628 at para19:

> 'In our judgment it is clear that as a matter of principle the discretionary life sentence under section 225 should continue to be reserved for offences of the utmost gravity. Without being prescriptive, we suggest that the sentence should come into contemplation when the judgment of the court is that the seriousness is such that a life sentence would have what Lord Bingham observed in R v Lichniak (2003) 1 AC 903 would be a

> 'denunciatory' value, reflective of public abhorrence of the offence, and where, because of its seriousness, the notional determinate sentence would be very long, measured in very many years'.

[47] In R v Hackett a son who killed his father was charged with murder but convicted of manslaughter on the grounds of diminished responsibility. He was found to be dangerous within the meaning of the 2008 Order. He was found to be suffering from a delusional disorder at the time of the offence and a hospital order was considered as a disposal but rejected through fear that he may be released by a Tribunal while still dangerous. Nevertheless it was found that his culpability was low but not minimal and a discretionary life sentence with a minimum term of ten years was replaced on appeal by an indeterminate custodial sentence with a specified minimum term of 7 years.

[48] As was highlighted by Lord Taylor CJ in R v Stubbs:

> "It has to be remembered that diminished responsibility does not mean – and this has been said before in this Court – totally extinguished responsibility. It is not a defence which necessarily involves that there is no blame, no culpability deserving of punishment and indeed of custody in the person who has committed the offence."

Indeterminate Custodial Sentence or Extended Custodial Sentence

[49] In R v Pollins [2014] NICA 62 it was recognised that the imposition of an indeterminate custodial sentence is a sentence of last resort and that the Court must have regard to whether alternative and cumulative methods might provide the necessary public protection against the risk posed by the offender.

Conclusion

[50] The only debate between the Prosecution and the Defence so far as the sentencing in this case is concerned was whether, as the Defence contended, an extended custodial sentence was appropriate or whether, as the

Prosecution contended, an ICS was required. It was agreed that this is not a Hospital Order case.

[51] The conclusion of Dr Christine Kennedy in her addendum report are such that it is likely particularly in combination with any other information, to lead to the conclusion that the defendant is dangerous within the meaning of the Criminal Justice(NI) Order 2008.

[52] By virtue of Article 13(1) if the Court considers and is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences, then under 13 (2) a and b, if the court considers that the seriousness of the offence and associated offences justify a life sentence the court shall impose a life sentence; if in a case not within paragraph (2) and under sub paragraph (3) the Court considers that an extended custodial sentence ("ECS") would not be adequate for the purpose of protecting the public from serious harm occasioned by the commission by the offender of a further specified offence, the Court shall –

(a) impose an indeterminate custodial sentence; and
(b) specify the minimum period.

Findings

[13] Arising from the medical evidence and the pre-sentence report, the parties are agreed, and I find it established, as follows:

(i) That the defendant does not satisfy the conditions set out in Article 44 of the Mental Health Northern Ireland Order 1986 and that a hospital order, with or without restrictions, would not be an appropriate disposal.

(ii) The dangerousness test is satisfied. The court is of the opinion, as per Article 13(1)(b) of the Criminal Justice (NI) Order 2008, that there is a significant risk to members of the public of serious harm by the commission by the offender of further specified offences.

(iii) That in light of the relevant authorities a discretionary life sentence would not be appropriate; in that respect I refer to paragraphs 43 to 45 of the judgment in Evans.

(iv) Finally, an extended custodial sentence would not be adequate for the purposes of protecting the public from serious harm. Accordingly, the court, in accordance with Article 13 of the 2008 Order, must impose an indeterminate custodial sentence and specify the minimum period.

[14] I do not, in light of the authorities to which the court was referred, dissent from the agreement of the parties that the tariff range is five to seven years. At the time of the killing the defendant, whose date of birth is 30 September 1990, was unfortunately suffering from an untreated psychotic illness. The attack appears to have been lacking in any premeditation. There is clear evidence of remorse. He immediately accepted that he had killed his mother and, indeed, it was he who made the 999 call reporting it to the relevant authorities. He has no record of violence. He pleaded guilty to manslaughter on the grounds of diminished responsibility at the earliest opportunity and this, as I have already observed, was a plea which was eventually accepted by the prosecution.

Conclusion

[15] In all of these circumstances I consider that the appropriate tariff is one of five years. It is anticipated that in prison the defendant will continue to receive such ongoing treatment, medication and supervision as is required to maintain the progress that allowed the defendant to be discharged from Shannon Clinic to Maghaberry Prison.