Neutral Citation no. [2003] NICC 5 | *Ref:* **WEAC3898**

Judgment: approved by the Court for handing down | *Delivered:* **09/04/2003**
(subject to editorial corrections)

IN THE CROWN COURT IN NORTHERN IRELAND

THE QUEEN

V

CLIFFORD GEORGE McKEOWN

WEATHERUP J

[1] Clifford George McKeown, on 20 March 2003 you were convicted of the murder of Michael John McGoldrick on 8 July 1996. On a conviction for murder the sentence is prescribed as being life imprisonment.

[2] I must now determine whether to impose a minimum term of imprisonment to be served before you can be considered for release. The present procedure was introduced by the Life Sentences (Northern Ireland) Order 2001, which came into force on 8 October 2001. Article 5 of the 2001 Order provides that where a Court passes a life sentence the Court may specify a part of the sentence to be served before the prisoner can be considered for release. This procedure is described in the 2001 Order as determination of "tariffs" but I prefer the expression "minimum term."

[3] It should be emphasised that the Court, in specifying part of the sentence, is not setting a release date. The procedure under the 2001 Order is that –

> (i) The Court may specify the part of the sentence to be served before the release provisions apply. The Court has the option of not specifying any part of the sentence. (Article 5)
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> (ii) The part of the sentence specified by the Court "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." The minimum term is intended to reflect the seriousness of the offence, rather than the risk posed by the offender.

(iii) After the specified part of the sentence has been served the Life Sentence Review Commissioners will direct your release if "satisfied that it is no longer necessary for the protection of the public from serious harm that the prisoner should be confined". Accordingly, future risk to the public determines the release date after completion of the period served for retribution and deterrence.

(iv) The Secretary of State orders release on licence for the remainder of your life, and you can be recalled to prison if you do not comply with the terms of the licence.

[4] In addition reference should be made to the Northern Ireland (Sentences) Act 1998, which was introduced as part of the Belfast Agreement and provides a separate regime in relation to certain offences committed before 10 April 1998,. Certain prisoners may apply to Sentence Review Commissioners for a declaration of eligibility for release under the provisions of the 1998 Act. Nothing in this decision bears on whether or in what manner the provisions of the 1998 Act may apply to this case.

[5] In England and Wales the treatment of sentences of life imprisonment has proceeded in a different manner to that which has developed in Northern Ireland but nevertheless minimum terms are fixed for life sentence prisoners. That exercise has given rise to two particular issues that impact on the operation of the statutory scheme in Northern Ireland. The first issue is whether the basic starting point for life sentences, before consideration of aggravation and mitigation, should be 12 years or 14 years. The second issue concerns the framework for dealing with such sentences and is whether there should be a single starting point or whether there should be a two or three-tier system of cases with different starting points.

[6] In England and Wales the above issues have developed as follows -

(i) On 27 July 2000 Lord Woolf issued a Practice Statement, "Life Sentences For Murder", confirming the starting point of 14 years in England and Wales. In addition a single starting point was applied, to be increased or reduced to allow for aggravating and mitigating features.

(ii) Shortly after the 2001 Order came into force in Northern Ireland the Sentencing Advisory Panel in England and Wales published a Consultation Paper on 13 November 2001, "Tariffs In Murder Cases". The approach of the Consultation Paper was to propose three groups of murder cases and involved identifying a central group and then other groups of cases that lay in a bracket significantly above or below that central group. Comparisons with

sentencing levels for other offences suggested a basic starting point of 12 years. Accordingly, the proposal involved a middle tariff of 12 years, a lower tariff of 8 or 9 years and a higher tariff of 15 or 16 years, to which in each case the aggravating and mitigating features would be applied.

(iii) The Sentencing Advisory Panel published their advice to the Court of Appeal in England and Wales on 15 March 2002, " Minimum Terms in Murder Cases". It is apparent that, on the issue of the adoption of a single starting point or a framework involving groups of cases, different views had emerged during the consultation process. The Sentencing Advisory Panel preferred the approach taken in its Consultation Paper and advised the Court of Appeal to adopt three groups of cases described as a middle starting point, a lower point and a higher starting point. Each starting point would then be varied up or down according to the aggravating and mitigating factors.

On the issue of the basic starting point there were also differences that were reflected in the membership of the Panel. The majority view on the Panel, based on comparisons with sentencing levels for other offences, was that 12 years was the appropriate figure for the middle starting point, with a lower starting point of 8 or 9 years and a higher starting point of 15 or 16 years. The minority view on the Panel, based on retaining public confidence in the criminal justice system, was that 14 years should be the middle starting point with a lower starting point of 10 or 11 years and a higher starting point of 17 or 18 years.

(iv) On 31 May 2002 Lord Woolf issued Practice Statement (Crime – Life Sentences) [2002] 3 All ER 412 to replace the Practice Statement of 27 July 2000. The former normal period of 14 year was replaced by a normal starting point of 12 years. However Lord Wolff did not adopt the three groups of cases advised by the Sentencing Advisory Panel, but rather he replaced the single normal starting point provided for by the 2000 Practice Statement, by substituting a two-tier system with a normal starting point of 12 years and a higher starting point of 15 or 16 years.

[7] Prior to Lord Wolff's Practice Statement of 31 May 2002 the approach to setting minimum terms in Northern Ireland was broadly to follow the approach of the Sentencing Advisory Panel and adopt three groups of cases with a basic starting point of 12 years. In each of the decisions the court applied the higher starting point. R v Shaw [2001] NICC 8 (14 December 2001) Sheil J; R v McCandless (21 December 2001) McCollum LJ; R v Hayes [2002] NICC 1 (8 March 2002) Weatherup J; R v S; R v P [2002] NIJB 192 Higgins J; R v McCrory [2002 NICC 5 (1 May 2002) Higgins J.

[8] After the introduction of Lord Woolf's Practice Statement of 31 May 2002 an issue arose about the imposition of higher levels of minimum terms in Northern Ireland compared to England and Wales.

(i) In R v Graham [2002] NICC 13 (11 December 2002) McLaughlin J expressed the view that Northern Ireland should set minimum periods that were significantly higher than those suggested in England and Wales and he preferred the minority view on the Sentencing Advisory Panel that the basic starting point should be 14 years and not 12 years. The particular case fell into the higher category and McLaughlin J accepted the starting point of 16 years out of deference to the approach of others. On the minority view on the Sentencing Advisory Panel the starting point would have been 17 or 18 years. The specified period was 20 years.

(ii) In R v McGinley & Monaghan [2003] NICC 1 (12 February 2003) Kerr J did not accept McLaughlin J's approach in R v Graham that courts in Northern Ireland should adopt significantly higher minimum periods than those applied in England and Wales. He considered the particular cases with reference to Lord Woolf's Practice Statement of 31 May 2002 and found that, by reason of the particular circumstances, the two cases did not fit comfortably into either of the categories. The specified period was 15 years.

(iii) In R v Giles (21 November 2002) Coghlin J adopted the three-teir approach of the Sentencing Advisory Panel, and applying the lower starting point the specified period was 10 years.

(iv) In R v Sheppard (2003) Gillen J referred to R v Graham and preferred to adopt the guidelines set out in the Practice Statement. He placed the case at the higher starting point and by reason of certain mitigating factors the specified period was 14 years.

[9] My approach to the present case is as follows –

(a) I propose to apply the approach of the Practice Statement of 31 May 2002. There should be consistency in the approach to the setting of minimum terms and this can be achieved by the adoption of a standard framework and the Practice Statement of 31 May 2002 provides that framework and has been relied on in other cases decided in Northern Ireland.

(b) That approach does not lay down *rules* to be applied. The Sentencing Advisory Panel paper of 15 March 2002 offered *advice* to the Court of Appeal in England and Wales and Lord Woolf's Practice Statement of 31 May 2002 offers *guidance* to the judges in England and Wales. The judges have discretion to depart from the guidance if that is considered necessary in the circumstances of an individual case.

(c) It would be desirable if the approach in Northern Ireland to the setting of minimum terms were broadly similar to that which operates in England and Wales. I do not accept that circumstances in Northern Ireland require a higher starting point for minimum terms than that which applies in England and Wales. The Judges who have imposed minimum terms in Northern Ireland since 8 October 2001 have applied the 12 year basic starting point

proposed by the Sentencing Advisory Panel rather than the 14 year basic starting point applied in England and Wales under the Practice Statement of 27 July 2000. I have no reason to believe that any demand for longer detention of life sentence prisoners is greater in Northern Ireland than in England and Wales.

[10] The approach of the Practice Statement of 31 May 2002 to adult offenders is as follows -

> *"The normal starting point of 12 years*
> 10. Cases falling within this starting point will normally involve the killing of an adult victim, arising from a quarrel or loss of temper between two people known to each other. It will not have the characteristics referred to in para 12. Exceptionally, the starting point may be reduced because of the sort of circumstances described in the next paragraph.
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> 11. The normal starting point can be reduced because the murder is one where the offender's culpability is significantly reduced, for example, because: (a) the case came close to the borderline between murder and manslaughter; or (b) the offender suffered from mental disorder, or from a mental disability which lowered the degree of his criminal responsibility for the killing, although not affording a defence of diminished responsibility; or (c) the offender was provoked (in a non-technical sense), such as by prolonged and eventually unsupportable stress; or (d) the case involved an overreaction in self-defence; or (e) the offence was a mercy killing. These factors could justify a reduction to eight/nine years (equivalent to 16/18 years).
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> *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: (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 pubic 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 failure 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.
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> *Very serious cases*
> 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.
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> 19. Among the categories of case referred to in para 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, a term of 20 years and upwards could be appropriate."

[11] The Sentencing Advisory Panel recognised the gradations of seriousness within the crime of murder. This led the Panel to identify a "central" group of murder cases and then a higher and lower group. The Practice Statement may be described as a two-tier system but it has been designed as a multi tier system. The normal starting point, exceptionally, may be reduced in the circumstances set out in paragraph 11. The higher starting point may be increased in very serious cases as set out in paragraphs 18 and 19. This reflects the gradations in the seriousness of the crime of murder and admits of the flexibility that is necessary in completing this exercise.

[12] The details of this offence are set out in the decision of 20 March 2003 in R v McKeown, neutral citation [2003] NICC 3. In outline, you McKeown, with three others, arranged for a telephone call to be made to a taxi firm for a taxi driver to take members of the gang to a particular location. The expectation of the gang was that the driver would be a Roman Catholic. At a point where it had been arranged that the taxi would come to a halt, you were present in another vehicle and you opened the rear door of the taxi and shot the victim in the back of the head.

[13] The murder of Michael McGoldrick was a chilling execution. It was arranged to secure a random death based on religious persuasion. The identity of the victim was determined by the chance of a taxi firm rota. It was carried out in a cowardly manner in dark roadways. The life of a young family man was stolen away in a manner designed to terrorise the community.

[14] Counsel have informed the Court that this is the first terrorist murder in respect of which the minimum term comes to be specified since the introduction of the 2001 Order. This case undoubtedly falls into the higher category set out in paragraph 12 of the Practice Statement, where the starting point is 15 to 16 years. Your culpability is exceptionally high and the victim was in a particularly vulnerable position. There are a number of features that make the crime especially serious.

First of all I consider the killing to have been professional in the sense intended in the Practice Statement, as it was a premeditated execution by firearm.

Secondly, the killing was politically motivated. I hesitate to use the expression political motivation because it is often used to seek to minimise appalling criminal conduct and also to seek to include motives that have little acquaintance with political thought. However the commission of murder, for what may be perceived by the offender to be political purposes, is regarded in our society, quite properly, as particularly reprehensible. In the Practice Statement the expression is used to convey that the commission of murder for what purports to be a political purpose is a feature that maximises the degree of culpability of the offender.

Thirdly, the victim was providing a public service.

Fourthly, as stated above, the victim was particularly vulnerable.

Fifthly, the victim was deliberately targeted because of his religion.

[15] Paragraph 18 of the Practice Statement indicates that a substantial upward adjustment may be appropriate in the most serious cases, where several of the features rendering the crime especially serious are found to be present. That applies in the present case, as demonstrated by the number of especially serious features outlined above.

[16] In addition, paragraph 19 of the Practice Statement indicates that there are higher category cases that are especially grave. Such cases include terrorist murder where a term of 20 years and upwards could be appropriate.

[17] Any starting point may be varied upwards or downwards to take account of aggravating or mitigating factors that relate to the offence or the offender.

Aggravating factors in relation to the offence are included in the matters set out above as rendering the crime especially serious, so I would propose not to take them into account a second time.

Aggravating factors in relation to an offender can arise from a criminal record. You are 43 years old and have a significant criminal record that includes offences of a terrorist nature. You have received sentences of imprisonment for firearms offences, membership of a proscribed organisation and attempted intimidation. At present you are serving a sentence of 12 years imprisonment for firearms offences.

I consider there to be no mitigating factors in relation to the offence or arising from your personal circumstances.

[18] Clifford George McKeown, I sentence you to life imprisonment. In all the circumstances of this offence I specify, for the purposes of Article 5(1) of the 2001 Order, a minimum term of 24 years before you will be considered for release. Any period spent on remand in respect of this charge is to be included in the minimum term.