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*(subject to editorial corrections)**

IN THE CROWN COURT IN NORTHERN IRELAND

R

-v-

FRED McCLENAGHAN

COLTON J

[1] On Tuesday 19 September 2017 the defendant, Fred McClenaghan, pleaded guilty to the murder of Marion Millican.

[2] Mrs Millican was from the North Antrim area. She was married to Kenneth and had four children, a daughter Suzanne and three sons Steven, Jamie and Aaron. She had separated from her husband in September 2009 and during her period of separation she had embarked on a relationship with Mr McClenaghan. That relationship broke up permanently in December 2010 following an incident when Mr McClenaghan had grabbed Mrs Millican by the throat after a bout of drinking. There had also been a previous incident when she was rendered unconscious by a blow from McClenaghan. After the termination of the relationship by Mrs Millican she began the process of reconciliation with her husband. They met regularly and were on the threshold of resuming their married life together when the murder occurred.

[3] Mrs Millican had worked in the laundrette at 3a The Promenade, Portstewart for in excess of 11 years. In the course of that employment, shortly after 1pm on Friday 11 March 2011, she and her co-worker and friend Mrs Pamela Henry were in the kitchen of the laundrette intending to have their lunch. At approximately 1.20pm Mr McClenaghan entered the premises through the front door carrying a doubled-barrelled shotgun.

[4] Once inside the building he went into the kitchen area and took hold of Mrs Millican by the arm and told her she was coming with him to talk to him. She told him she would not go outside with him because she did not want bundled into a car. He then fired the gun into the ground close to both women. At that point Pamela Henry ran out of the kitchen area and went into the toilet at the back of the building as the defendant was attempting to pull Mrs Millican through the door. Once inside

the toilet Mrs Henry locked the door and heard the defendant say "… Where the F is she …" He then broke the toilet door in, tried to get Mrs Henry's mobile phone but he failed and she escaped from the laundrette raising the alarm.

[5] Shortly after 1.30pm Mrs Gillian Johnston had been walking her dog and decided to call into the laundrette to see Mrs Millican and Mrs Henry who were her friends. Seeing no one in, she shouted "hello" before entering and as she did she saw Mrs Millican's body lying on the floor. She also saw blood. She backed out of the laundrette and went to the bottom of Harbour Hill where she noticed Mr Henry, who had arrived at the scene having been phoned by Mrs Henry. She and Mr Henry returned to the laundrette. Shortly after the deceased's husband Kenneth arrived and he went to his wife, cradling her in his arms.

[6] Paramedics and police arrived at the scene but it was clear that Mrs Millican was dead having sustained a significant chest wound. Dr Dervla Harley attended the scene and formally pronounced Mrs Millican dead some time later.

[7] Mrs Millican died at the scene as a result of a gunshot wound to the centre of her chest which caused extensive internal injuries outlined in a report from the Assistant State Pathologist Dr Ingram. His evidence was that the discharge from the cartridge had passed virtually horizontally through the centre of the chest although very slightly downwards and to the deceased's left. He concluded there was no contact between the tip of the muzzle and the deceased given the absence of "tattooing" or "scorching". In his opinion it was likely that the gun was being held perpendicular to the deceased at the time of its discharge and that this was less likely to have occurred if discharged in the course of a struggle although he could not rule this out completely. He stated however that it would be unusual for the track of the wound to have been practically horizontal if discharged in this way.

[8] At approximately 2.25pm that day Sheila Donnelly, the older sister of Gladys Donnelly, who formerly had a relationship with the defendant McClenaghan was at work in her office at the Toberdonny Fold, New Row, Kilrea when a knock came to the front door. When she looked out she saw McClenaghan. She went to the door and he asked to use the toilets and she let him in. On his return she noticed him shaking and she asked whether there was a problem. He told her he had shot someone and on further inquiries said "I shot a girl in Portstewart". He went on to tell her he had gone to the laundrette in Portstewart and fired a shot in the air, that the other lady ran and hid in the toilet and that he had kicked the door and said something like "you are as bad as she is". He went on to say that he had the gun in his hand and just wanted to talk to her. He said she grabbed the gun and they both struggled falling to the floor. They both got up and still struggling he then told her to let go of the gun but she didn't. He then said that the gun went off. Concerned about the gun Sheila Donnelly asked him where it was and he told her he had thrown it in a ditch somewhere.

[9] As police were searching for McClenaghan they made telephone contact with him and established his whereabouts. He was arrested at the Fold and he took the police to the location where he had disposed of the shotgun where it was retrieved. He was then conveyed to Antrim Police Station and subsequently interviewed. On route to the station he made the unsolicited comment that "it should be me lying there". He made a further unsolicited comment in reference to the forensic suit he was wearing "There is no need for this. I'm saying it was me."

[10] During interview he declined to reply to questions but his solicitor read a statement on his behalf as follows:-

> "… It was my intention to kill myself on Friday 11 March and that Marion would witness my suicide. I did not intend to kill Marion. I did not intend to harm Marion. Marion's death was accidental. I am truly sorry …"

History of the Criminal Proceedings

[11] The defendant was charged with two counts on the Bill of Indictment.

> Count 1 charged him with the offence of the murder of Marion Millican contrary to common law.
>
> Count 2 charged him with the possession of a firearm with intent to endanger life contrary to Article 58(1) of the Firearms (Northern Ireland) Order 2004.

[12] He pleaded not guilty to both counts and was convicted after a trial at Antrim Crown Court on 3 July 2012 on both counts.

[13] He appealed his convictions. On 29 January 2014 the Court of Appeal allowed his appeal in respect of the murder conviction and came to the conclusion that the verdict was unsafe because the trial judge had wrongly excluded expert evidence which the defendant sought to introduce on the issue of diminished responsibility. The Court of Appeal ordered a retrial in relation to the murder count.

[14] A retrial in relation to the charge of murder commenced on 15 September 2014. That trial had to be abandoned on 29 September 2014 when it emerged that the jury had been irregularly separated in the course of the trial. On 5 November 2014 following a third trial, the defendant was again found guilty by a jury of the murder of Marion Millican.

[15] This conviction was also appealed. On 7 December 2016 the Court of Appeal allowed his appeal on the grounds that the verdict was unsafe because of a failure by the trial judge to permit the jury to consider the defences of unlawful act manslaughter and manslaughter by gross negligence. The Court of Appeal ordered a retrial.

[16] This retrial commenced before me on 14 September. On 19 September, after three days of evidence, the defendant applied to be re-arraigned at which stage he pleaded guilty to the offence of murder.

Determination of Sentence

[17] After the defendant's plea I passed the only sentence open to the court, namely one of life imprisonment.

[18] I emphasise that the defendant will remain subject to the sentence for the rest of his life. The decision whether to release him from custody during the sentence will be taken by the Parole Commissioners who will consider whether it is safe to release him on licence. If he is released from custody the licence continues for the rest of his life and a recall to prison is possible at any time.

[19] Under Article 5 of the Life Sentences (Northern Ireland) Order 2001 this court must fix the minimum term that he must serve before the Parole Commissioners will consider whether it is safe to release him on licence.

[20] It is important to understand that a minimum term is not the same as a determinate or fixed term of imprisonment. There is no remission available for any part of the minimum term unlike the 50% remission available for a determinate sentence. Thus a minimum term of 10 years is usually equivalent to a determinate sentence of 20 years imprisonment.

The Relevant Legal Principles

[21] Article 5(2) of the Life Sentences (Northern Ireland) Order 2001 provides that the minimum term:

> "… 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 the combination of the offence and one or more offences associated with it."

[22] The legal principles that the court should apply in fixing the minimum term are well settled.

[23] In *R v McCandless & Ors* [2004] NICA 1 the Court of Appeal held that the *practice statement* issued by Lord Woolf CJ and reported at [2002] 3 All ER 412 should be applied by sentencers in this jurisdiction who are required to fix tariffs under the 2001 Order. The relevant parts of the *practice statement* for the purposes of this case are 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 paragraph 12. Exceptionally, the starting point may be reduced because of the sort of circumstances described in the next paragraph.

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 8/9 years equivalent to 16/18 years.

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 where 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 a potential witness);

(e) the victim was providing a public 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 religious 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 points

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 failures 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, willing to kill; or

(b) spontaneity and lack of premeditation.

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.

Very serious cases

18. A substantial upwards adjustment may be appropriate in the most serious cases, for example, those involved in 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 should 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."

The Appropriate Tariff

[24] In considering the appropriate tariff I am extremely grateful to the written and oral submissions I have received from counsel in this case. Mr Weir QC

appeared with Ms Rosemary Walsh on behalf of the prosecution. Mr McCrudden QC appeared with Mr Michael Duffy on behalf of the defendant, instructed by Mr Atherton of John J McNally & Co, solicitors.

[25] Before discussing the appropriate tariff it is important that I highlight the Victim Impact Statements I have received in this case. I received moving written statements from Marion Millican's husband Ken, her daughter Suzanne, her sons Steven, Jamie and Aaron, her nephew and godson Kyle and her close friend Pamela Henry who also was a victim of the defendant's criminality.

[26] Each of these statements in their own individual and eloquent way demonstrate the profound personal grief of each of the authors. They have brought home to me the impact the tragic and traumatic death of Mrs Millican has had on her next of kin and friends. This has been particularly acute for her beloved husband and children. In coming to a determination of the appropriate tariff I bear these statements fully in mind. For me a number of particular matters stand out from the victim impact statements. The first is the very close relationship between Mrs Millican and her children. The second is the commitment and devotion of Mr Millican to his deceased wife. A particularly tragic feature of Mrs Millican's murder is the fact that she had just reconciled with her husband and they were on the cusp of resuming their married life together. Thirdly and most importantly of all the statements bring home to me the fact that the impact of Mrs Millican's death will resonate with her family and friends for the rest of their lives. I recognise that the loss of Mrs Millican's life cannot be measured by the length of a prison sentence. There is no term of imprisonment that I can impose that will reconcile Mrs Millican's family and friends to their loss, nor will it cure their anguish.

Pre-Sentence report

[27] I have received a pre-sentence report from Mr Terry McLaughlin, probation officer. The report confirms that the defendant is aged 55 years old and that he has been in custody since the commission of this offence on 11 March 2011. During his time in custody the defendant has presented with no behavioural issues and has been on the enhanced regime since 3 July 2011. The records indicate that he has engaged in various educational programmes during his time in prison. The defendant came from a well-known and respected family, but despite this he engaged in criminal offending from the age of 16 years and has served several periods of custody over his adult life. Of significance he has been convicted of two assaults occasioning actual bodily harm in 1984 and 1998.

[28] Since coming into custody the defendant has been diagnosed with type 2 diabetes and he also has an on-going heart condition. He has started a course of cognitive behavioural therapy in prison.

[29] Prior to the commission of these offences he was suffering from emotional distress and was being treated for depression which he attributes to his inability to

deal effectively with the emotional distress caused by childhood sexual abuse. The report assesses the defendant as being someone with a high likelihood of re-offending but not someone who presents as a risk of serious harm. The latter assessment is a significant change from the opinion expressed in the previous pre-sentence reports which did assess him as a risk of serious harm. Of significance the defendant accepted in his interview with Mr McLaughlin that he did intentionally fatally shoot Marion Millican on 11 March 2011. The defendant felt that his poor mental health was the reason for this. I take the contents of the probation report fully into account in determining the appropriate tariff.

Application of the principles

[30] At the sentencing hearing there was an intense forensic focus on what was the appropriate starting point to be applied in this case. Mr McCrudden argued strongly that the normal starting point of 12 years should apply. He submitted that this case involved the killing of an adult victim arising from a quarrel or loss of temper between two people known to each other. He accepted that the defendant was completely in the wrong in relation to that quarrel and that the loss of temper was solely that of his client. He argued that the characteristics which would justify the higher starting point of 15/16 years were absent in this case. This debate focused on whether Mrs Millican was "in a particularly vulnerable position" or "otherwise vulnerable". His argument was that the focus of the guidelines was on particular characteristics of a victim which rendered him/her inherently vulnerable, such as a child or a person with a disability. Mr Weir relied on Mrs Millican's vulnerability as an aggravating factor. She was, in his words, a completely defenceless victim, taken by surprise at her place of work. This was not a case of quarrel or loss of temper between two people – his emphasis.

[31] The two previous sentencing judges who dealt with this matter took the view that on this issue the circumstances of the case did not easily fall into the specific categories identified in the guidelines.

[32] In applying the legal principles I bear in mind that they are not to be interpreted as a straitjacket designed to create a rigid compartmentalised structure into which each case must be shoe-horned. As the Court of Appeal said in *McCandless*:

> "… The sentencing framework is, as Weatherup J described it in paragraph 11 of his sentencing remarks in *R v McKeown* [2003] NICC 5, a multi-tier system. 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."

[33] The dicta from Weatherup J to which I have referred make it clear that selecting a starting point is not a mechanistic or formulaic exercise. The guidelines are there to assist the court to proceed to, what in the circumstances of this case, it considers is a just and proportionate sentence having regard to the guidelines.

[34] I agree with the opinion of the previous judges to which I have referred that the case does not easily fall into the specific categories identified in the guidelines. In reaching a just and proportionate sentence I take the view that the defendant's culpability is high and that Mrs Millican was in a vulnerable position.

[35] There are a number of aggravating features in the case. The defendant used a firearm with which he had armed himself in advance. I have already taken this into account in assessing the defendant's culpability as high which demonstrates the difficulty in designating a specific category to this case. It should not be forgotten that there was another victim in this matter namely the deceased's friend Pamela Henry who was present when the weapon was discharged into the ground in close proximity to where she and Mrs Millican were standing. The defendant has relevant, albeit not recent, previous convictions and had been violent to Mrs Millican in the past.

[36] In mitigation I take into account that the defendant was suffering from a depressive illness characterised by homicidal and suicidal ideation from which he had sought treatment in the weeks and months leading up to the murder.

- In March 2008 he was treated for a cardiac condition with a stent implant and prescription of Bisopropal (which he took until October 2010), a recognised side effect of which was the onset of very bad nightmares which had triggered dormant memories of sexual abuse to which he had been subjected as a six year old boy.

- On 22 December 2010 his general practitioner diagnosed him as suffering from depression and prescribed Venlafaxine as an anti-depressant and Chlorpromazine, a mood stabilizing drug. The medication was increased in dosage and consumption to twice a day in February 2011.

- On 24 December 2010 the defendant contacted a suicide helpline "Lifeline" stating, inter alia, that his plan was to kill both his girlfriend and himself. The Lifeline representative Ms Sherrard contacted the appellant's GP with active consideration being given to having him "sectioned" to a mental health facility. The GP expressed the view that his condition had significantly deteriorated. As a result the police were informed and a personal safety warning was given to the deceased.

- The Area Crisis Response Team was dispatched to the defendant's house to counsel and assess him. He stated to them that he had strong thoughts of

killing himself and his girlfriend and was continuing to ruminate about the sexual abuse experiencing thoughts of overdosing and stabbing his girlfriend.

- In January 2011 counsellors recorded him experiencing unsettling dreams and he talked of sending a letter to Mrs Millican telling her about his childhood sexual abuse.

- On 4 March 2011 the defendant alerted a former girlfriend to collect a letter from his flat in Magherafelt, the letter being suicidal in tone and content.

- By March 2011, Mr Trevor Curran, a counsellor from Lifeline, Mr Park from the Community Mental Health Team and Ms Cecilia Murchan from Nexus, a Sexual Abuse Victims Agency, were all voicing concerns for his welfare and care. On 8 March 2011 Ms Murchan felt he was actively suicidal and on 9 March 2011 she alerted his general practitioner and fixed an appointment for him on Monday 14 March 2011.

The defendant's mental turmoil is reflected in three letters he wrote which were seen by the court. Two of these were to the deceased, but not read by her and another to the defendant's sister.

[37] Dr Tanya Kane, consultant psychologist retained by the defendant was of the opinion that the defendant's symptoms were in keeping with a "moderate depressive episode" at the time of the offence. Her view was that he was at "a high risk of suicide" and that he was actively suicidal on 11 March 2011.

[38] Dr Loughrey, a consultant psychiatrist retained on behalf of the defendant provided a diagnosis in relation to the defendant of a "moderate depressive episode with features of complex post-traumatic stress disorder".

[39] Dr Bunn, consultant psychiatrist, who was retained on behalf of the Prosecution Service agreed with another opinion of Dr Bownes, consultant psychiatrist that the defendant was suffering from a depressive disorder.

[40] By his plea the defendant accepts that his illness was insufficient to lower the degree of his criminal responsibility for the killing sufficient to afford a defence of diminished responsibility although there was a disagreement between the psychiatrists on this issue. However I am entitled to take his illness into account by way of mitigation and I accept that it has a mitigating effect on his culpability.

[41] The defendant has always accepted that he was responsible for the killing of Mrs Millican and he co-operated with the police including showing them where he had discarded the firearm. From the outset of the criminal proceedings he indicated to the prosecution that he was willing to plead to manslaughter. This offer was properly rejected by Mr Weir on behalf of the Crown as evidenced by the defendant's ultimate plea of guilty. Whilst I make some allowance for this by way of

mitigation it must be qualified by the fact that the defendant maintained a plea of not guilty to murder throughout two full trials albeit that the verdicts in those trials were deemed to be unsafe by the Court of Appeal.

[42] Mr McCrudden further argues that I should take into account the defendant's remorse by way of mitigation. In this regard I have already referred to the defendant's comments in the aftermath of the murder and to his expression of remorse in his written statement to the police. There is a reference in a psychiatric report prepared by Dr Bownes where he is recorded as saying that he thinks about the deceased every day. Mr McCrudden informed the court and I accept that the defendant had wished to write a letter of condolence and apology to the deceased's family but was understandably advised against doing so by a probation officer.

[43] At the sentencing hearing defence counsel on the express instructions of the defendant asserted in open court his complete remorse in respect of Mrs Millican's death and to apologise to her family who were present in court. He had taken a similar course on the two previous sentencing occasions. In my view these expressions of remorse must be qualified by the late plea in this case. I also have regard to the opinion of the probation officer who refers to the defendant's tendency to portray himself as a victim of his own life circumstances in the context of this murder. On the issue of mitigation for remorse I have regard to the judgment of Kerr LCJ in the case of *R v Conway* [2004] NILST 23. In that case the court did not leave remorse "entirely out of account" by way of mitigation because of Conway's continued assertion that the murder of which he was convicted was an accident. This defendant is clearly in a stronger position than Conway in relation to remorse. In this case I do take the defendant's expressions of remorse into account by way of mitigation but only to a limited extent. I discuss the issue of remorse further in the context of the defendant's plea which of course was not a factor in the previous sentencing exercises.

[44] Mr McCrudden also urged me to take into account the impact of the prolonged nature of these proceedings on the defendant. This had given rise to great uncertainty for the defendant and he was in fact compelled to threaten judicial review proceedings against the Prison Service because of its approach on the issue as to whether or not his time in custody constituted time on remand in relation to this particular offence. He referred me to the judgment of Weatherup J in the case of *R v Wallace and Kerr* [2013] NICC 13. In that case counsel relied on delays as a mitigating factor. The defendants were originally convicted in 2009 and the convictions were quashed on appeal in 2012. At a subsequent retrial the defendants pleaded guilty on 10 April 2013 and so seven years had passed since the commission of the offences. Weatherup J referred to the well-known case of **Attorney General's Reference (No. 2 of 2001)** [2004] which considers the reasonable time requirement under Article 6 of the European Conviction on Human Rights in relation to the determination of a criminal charge.

[45] I consider that the case of *Wallace and Kerr* provides no assistance to the defendant. In that case the delay in the plea of guilty arose from the dispute by the defendants as to the nature of their involvement and their legal responsibility for the death. According to Weatherup J at paragraph [28]:

> "Eventually an agreed basis for the acceptance of culpability was reached. The pleas of guilty were dependant on that stage being reached."

[46] In this case the prosecution have always maintained that the defendant was guilty of murder as a result of the deliberate killing of Mrs Millican and there was no basis for accepting a plea to manslaughter. Whilst the defendant was not to blame for the decisions to order retrials in this case the fact remains that the primary reason for any delay in this case was his belated plea to murder. It was always open to the defendant to plead guilty to murder and I do not consider that the delay in this case, regrettable though it is, is a mitigating factor.

[47] In relation to this case two experienced Crown Court judges who previously dealt with sentencing came to the conclusion that the appropriate tariff after a conviction on a trial was one of 16 years. This figure is properly in the range for a starting point close to the higher starting point, after making adjustments for aggravating and mitigating factors. I agree with this conclusion. I do so having regard to the principles set out above and the aggravating and mitigating factors to which I have referred. In this regard I note that when the 16 year tariff was imposed in the two previous trials the defendant did not seek to appeal the sentence as excessive nor did the prosecution seek to refer the matter to the Court of Appeal as being unduly lenient. I do not consider that there are any changes in circumstances other than the defendant's plea which would justify the imposition of a different tariff than one of 16 years.

[48] The remaining issue therefore relates to what discount, if any, should be applied to the tariff having regard to the defendant's plea of guilty.

What then is the appropriate reduction, if any, for the guilty plea in this case?

[49] It is a long and firmly established practice in sentencing law in this jurisdiction that where an accused pleads guilty the sentencer should recognise that fact by imposing a lesser sentence than would otherwise be appropriate.

[50] In determining what that lesser sentence should be the court should look at all the circumstances in which the plea was entered.

[51] An important aspect of all the circumstances is the stage in the proceedings at which the defendant has pleaded guilty. Maximum credit is reserved for those defendants who plead guilty at the earliest opportunity. Conventionally in this jurisdiction a defendant could expect a reduction in the range of one-third of his

sentence for a guilty plea entered at the first available opportunity – although this could be influenced by the attitude adopted in the police station when first interviewed and on whether or not there was an overwhelming case against the defendant. Those who enter guilty pleas at later stages in the proceedings will obviously not be entitled to maximum credit. As a general principle the later the plea in the course of the proceedings, then the less the discount will be.

[52] Before considering the particular circumstances of this case it is important to understand the rationale behind allowing discounts for guilty pleas. A plea of guilty is an indication of remorse. A plea of guilty and an acknowledgement of guilt by a defendant can provide a sense of justice and relief for the relatives and friends of the victim. A plea can lead to significant saving of time and public expense which is in the public interest. It can convenience witnesses who would otherwise have to attend court.

[53] The Court of Appeal in the case of *R v Turner and Turner* [2017] NICA 52 reviewed how the court should approach a reduction in the tariff for a guilty plea to the offence of murder. (This judgment was delivered just after the defendant had pleaded guilty in this case.)

[54] In the judgment, delivered by the Lord Chief Justice, the court reviewed the sentencing practices in England and Wales and in Scotland in this area. In particular the court noted the limitations on the reductions allowed for guilty pleas in murder cases in England and Wales. The court did not accept all of the rationale for the limitations and recognised some of the differences in practice in the jurisdictions. Nonetheless the court expressly recognised that the sentence prescribed for murder is different from every other offence and is intended to reflect the seriousness with which society regards this crime.

[55] In paragraph 40 of the judgment Morgan LCJ went on to say:-

> "We consider, therefore, that there are likely to be very few cases indeed which would be capable of attracting a discount close to one-third for a guilty plea in a murder case."

He went on to say:-

> "Each case clearly needs to be considered on its own facts but it seems to us that an offender who enters a not guilty plea at the first arraignment is unlikely to receive a discount for a plea on re-arraignment greater than one-sixth and that a discount for a plea in excess of 5 years would be wholly exceptional even in the case of a substantial tariff. We have concluded, however, that it would be inappropriate to give any more prescriptive

> guidance in this area of highly fact sensitive discretionary judgement. Where, however, a discount of greater than one-sixth is being given for a plea in a murder case the judge should carefully set out the factors which justify it in such a case."

I turn now to the specific circumstances of the case bearing in mind the principles which I have set out.

[56] The defendant's plea provides some further evidence of remorse. It is right to say that the defendant has at last acknowledged his guilt which gives weight to his contention that he was "truly sorry" for Mrs Millican's death. Of more significance in my view is the fact that the defendant's plea provides a sense of justice and relief to the victim's family. At the sentencing hearing Mr Weir informed me that the family expressly instructed him that in all the circumstances of this case the defendant's plea was "of considerably more value" than would normally be the case. They have been spared the ordeal of a further trial. In this context it must be acknowledged that the legal issues arising in the case concerning directions to the jury on murder and manslaughter were potentially complex. This is demonstrated by the fact that on two previous occasions the Court of Appeal found verdicts of guilty in the case to be unsafe. As I have pointed out earlier two respected medical experts in this case provided support for a potential defence to murder of diminished responsibility which could have resulted in a manslaughter conviction, an offence to which the defendant was willing to plead. The victim's family have been spared the risk that a further trial would result in such a verdict, or even worse, another unsafe verdict. In addition to the issue arising from the conflict in the medical evidence it is also clear that there were some difficulties with the forensic evidence in the trial. In particular there were failures to adhere to governing protocols and international standards in the examination of the weapon. Further it emerged that evidence given by one expert in the first trial had been unreliable. These matters were subject to adverse judicial comment in directions to the jury. It was the Court of Appeal's assessment that these failings on the part of the prosecution witnesses were not the result of bad faith but rather were in the realm of incompetence. All of these factors weigh heavily with me in determining what might be an appropriate discount for the plea of guilty in this case.

[57] There is no doubt that the plea has prevented the need for a lengthy trial. At the time the plea was entered the court had only heard from a number of witnesses. The trial had not reached the stage at which evidence was given on the contentious issues. Had the trial proceeded it would probably have lasted for another 2-3 weeks. A large number of witnesses have been convenienced. There clearly has been a significant saving in public money as a result of the plea.

[58] Prior to the Court of Appeal judgment in *Turner*, subject to hearing counsel, I would have considered a reduction in the tariff greater than the one I propose to allow. In my view the judgment is a salutary warning to sentencing judges to

exercise great care when considering the appropriate discount for a plea of guilty in a case of murder. The Court of Appeal however did recognise that this is an area of highly fact-sensitive discretionary judgment.

[59] A one-sixth reduction on a guilty plea in this case on a tariff of 16 years would result in a final tariff of 13 years 4 months.

[60] I have come to the conclusion that the appropriate reduction for the plea in this case would result in a tariff of 13 years. This is marginally greater than one-sixth. In my view such a discount is justified in the particular circumstances of this case which I have set out in paragraph [56] above. In particular I have regard to the impact of the plea for the victim's family and the undoubted public interest in the saving of public money and the convenience of witnesses. The history of the criminal proceedings in this case has been difficult and protracted. There can be no happy outcome but the defendant's belated plea is a welcome recognition of his wrongdoing and a relief for all concerned in this tragic case. The uncertainty that has haunted this case is now at an end.

[61] Accordingly, I impose a tariff period of 13 years before the defendant shall be considered eligible for release. This includes the time the defendant has already spent in custody. In accordance with the original sentence imposed after the first trial, this sentence is to run concurrently to the sentence imposed in respect of count 2 on the original indictment.