

IN THE CROWN COURT IN NORTHERN IRELAND

SITTING AT BELFAST

THE QUEEN

-v-

HUGH McCORMICK
AND
JAMES MARTIN McCORMICK

SENTENCING REMARKS

COLTON J

[1] Each of the defendants in this case has been convicted of the attempted murder of Joseph Henry.

[2] The offence took place on the morning of 2 July 2011 at 12 Eliza Street Terrace, Belfast, where Mr Henry resided at that time.

[3] Sometime around 9.00 am Mr Henry was outside the front of that address when he was approached by both of the defendants who were known to him. Hugh McCormick pulled a crow bar from under a zipped up jacket and struck Mr Henry. Thereafter he was the victim of a vicious assault in which both defendants participated. Mr Henry alleged that he was stabbed in the back of the neck by Hugh McCormick. In the course of the attack the defendant James Martin McCormick pulled a butcher style knife from his jacket and lunged at Mr Henry stabbing him in the neck. The defendants then left the scene and Mr Henry received assistance from a passer-by and shortly thereafter by ambulance staff.

[4] As a result of these assaults Mr Henry suffered severe life threatening injuries. He had a wound to the left side of his neck and to his right lower leg. He had extensive bruising to his left lower rib cage. At the scene he was coughing up a lot of blood. He was brought by ambulance to the Royal Victoria Hospital where he was admitted to the Regional Intensive Care Unit, after receiving surgery for a

penetrating wound to the neck. He required a blood transfusion. A CT scan of the neck and chest showed clots and swelling within the neck displacing the airway to the right. He required mechanical ventilation and intravenous antibiotics. He received respiratory support until 21 July 2011 when he was transferred to the general ward for nursing care, physiotherapy and rehabilitation. He was ultimately discharged from hospital on 22 July 2011. In physical terms he appears to have made a good recovery. No doubt this was due to the skill and expertise of the surgeons and medical staff who treated him at the Royal Victoria Hospital and to his own resolve. I have received a medical report in relation to Mr Henry from Maria Shannon, a trauma therapist employed by the BHSCT. It was her opinion that the trauma he experienced as a result of the assault has had a significantly negative impact upon his psychological and emotional well-being. Now that the court case had been dealt with it was her view that Mr Henry would benefit from assistance from the trauma therapy team.

[5] Both of the defendants pleaded not guilty to the offence and were unanimously convicted by a jury after a trial.

[6] They continue to deny their guilt.

[7] I am grateful to all of the counsel involved in this case namely Ms McKay for the Crown, Ms McDermott QC and Mr Brolly for Hugh McCormick and Kieran Mallon QC and Mr Fox for James Martin McCormick for their helpful and perceptive written and oral submissions as to the appropriate approach for the court in relation to sentencing.

[8] It would be trite to say that this is a serious offence. As has been recognised by all counsel in the case a lengthy custodial sentence is inevitable for each defendant. In deciding the appropriate level of sentence I have regard to the following facts in relation to the offence itself.

[9] The assault was serious and was carried out with the intent to kill. Each of the defendants was armed and used a weapon in the course of the assault. Ms McDermott QC correctly points out that there must be a doubt about whether Hugh McCormick actually used a knife given that the medical evidence did not support the allegation that Mr Henry was stabbed in the back of the neck by her client but it is clear that he used a crowbar and was part of an assault in which a knife was used by his co-accused.

[10] There is an issue as to the extent to which this assault was pre-planned. It does appear that the defendants were actually looking for someone else rather than Mr Henry, but for whatever reason they engaged in a vicious, unprovoked and cowardly attack on him. Even accepting that the defendants did not intend to assault Mr Henry when they set out that morning it is clear that they went to Eliza Street armed with weapons which they were prepared to and did in fact use.

[11] It is particularly chilling that the defendants carried out this assault in broad daylight, on a person whom they knew, and at a place where the other occupants in the house also knew them. It appears that they felt they could carry out such an assault immune from being held accountable for their crime.

[12] Whilst there might be some debate about the extent to who was the primary participant in the assault I take the view that both were equally involved and equally to blame.

[13] The only scrap of mitigation that I could find arising from the facts are that the defendants did desist from continuing the attack with Hugh McCormick saying "come on that's enough" before leaving. However any credit for this must be minuscule given their conduct up to that point.

[14] Overall I consider that the level of culpability for both defendants in this matter is high and that the harm to the victim has been significant.

Personal Circumstances

[15] I turn now to each of the defendants' personal circumstances. Hugh McCormick was born on 21 February 1965 and is now aged 50. He has a significant history of criminal convictions, mostly relating to the period from his teenage years to his late thirties. Much of his past offending concerns burglaries and thefts, public disorder and illegal vehicle use. He has a number of previous convictions for AOABH and assault. The most significant matter of violence which is of particular concern to the court relates to an incident in November 2003 which resulted in a conviction in 2006 for wounding with intent, wounding and affray. The offences related to the defendant and an associate attacking two male doormen outside the Venue Bar in Belfast. The pre-sentence report which was prepared for the purposes of this hearing indicated that when he committed that offence he was heavily intoxicated and used a steak knife to attack the two door staff. One victim was stabbed in the arm and knee and another in the leg and lower back. He received a 54 months custody probation order for that offence.

[16] Of significance in relation to that sentence when he completed the custody element in January 2008 he commenced 12 months' probation supervision during which time he engaged in alcohol counselling. The Probation Board case records show that he complied with the requirements of supervision, engaging in alcohol counselling. He was not involved in any offending during his period of supervision. He has told the Probation Service that he has made a conscious decision to reduce alcohol use and reports that he has abstained from alcohol for the past four years. This assertion is also contained in a psychiatric report from Dr Maria O'Kane which was obtained in relation to Mr McCormick's personal circumstances. He has a long term partner with whom he has a 26 year old daughter. He has two grandchildren aged 6 years and 6 months respectively. He has a good relationship with his family who continue to visit him in prison. He does not enjoy good health. He has had a

hip replacement and suffers from early osteoarthritis. Dr O’Kane was of the opinion that he is suffering from symptoms of post-traumatic stress disorder and that he requires on-going medication and treatment for this condition. Her view was that a prolonged sentence is likely to develop increased symptoms of anxiety and of depression and indeed in the pre-sentence report it is recorded that Mr McCormick is finding imprisonment more difficult to cope with than on the previous occasion when he was in custody in 2006.

[17] James Martin McCormick is Hugh McCormick’s brother being four years younger having been born on 5 February 1969.

[18] He too has a criminal record but it is nowhere near as serious as that of his brother. He commenced offending at a young age. Although he did not obtain any academic qualifications at school he later trained as a plumber when he was 26 and this correlated with a cessation of his offending behaviour. He worked regularly up until two years ago but has not done so recently due to back and leg pain. There has been a lack of any significant offending since 1993 save for a minor road traffic conviction in March 2008. He has a long term partner of about 14 years and lives with her and her two children. He also has four children arising from a previous relationship with the sister of Mr Henry.

The Appropriate Sentence

[19] In terms of the appropriate sentence there are no guideline cases for attempted murder in Northern Ireland. I have read all of the cases referred to me by counsel and also the paper prepared by Sir Anthony Hart QC for the Judicial Studies Board for Northern Ireland dated 13 September 2013. The reported cases suggest a range from 12 years to 20 years custodial terms with a small number of cases in excess of that period including life imprisonment for particularly heinous offences. What is clear is that each of the cases are fact specific. On the facts the case which was closest to the circumstances of this case is that of R v Loke Kwong Fatt [1999] NI 165 in which the defendant received a 12 years custodial sentence on a contest. He knew his victim and accompanied two men to the victim’s house. The men then attacked the victim with knives and inflicted five very grave wounds. The evidence showed that the defendant was either a direct participant and had a knife or was an aider and abettor who contemplated that the others would attack the victim. There was a breach of trust as the defendant used his friendship of the victim to deceive the victim into opening his door to his attackers.

[20] Whilst the cases to which I referred are of assistance I have to decide on an appropriate sentence in this case which reflects the degree of culpability of the defendants and which takes into account the factors to which I have referred above.

The Criminal Justice (Northern Ireland) Order 2008

[21] Each of the defendants has been convicted of a serious offence and so Articles 13 and 14 of the Criminal Justice (Northern Ireland) Order 2008 are engaged.

[22] In relation to Article 13 I do not consider the seriousness of the offence justifies the imposition of a life sentence or indeterminate custodial sentence. Whilst self-evidently this was a serious offence it lacked the particularly aggravating features present in cases such as R v Kerr [2009] NICC 79, R v William James Fulton [2007] NICC 2 and R v McDonald [2001] NICA 26.

[23] I turn to Article 14 of the 2008 Order. Giving my findings in relation to Article 13 I now have to decide whether there is “a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences”. I have to consider this in relation to each defendant and if I am of that opinion I must impose an extended custodial sentence. In assessing this issue which has been described as “the assessment of dangerousness” I must have regard to three factors set out in Article 15 of the Order namely:

- “(a) ... all such information as is available ... about the nature and circumstances of the offence;
- (b) ... any information ... about any pattern of behaviour of which the offence forms part; and
- (c) ... any information about the offender which is before it.” (i.e. the court)

These provisions have been considered by the English Court of Appeal in R v Lang [2005] EWCA Crim 2864 which sets out the principles to be applied. These principles have been adopted in this jurisdiction see R v EB [2010] NICA and were recently applied in the case of R v Mongan by our Court of Appeal on 5 November 2015. I also have regard to the subsequent decision of the English Court of Appeal in R v Johnston [2006] EWCA 2486 in which the Court of Appeal commented that the principles set out in R v Lang should not be treated as if they were a statute but rather provided useful guidance as to the approach to sentencing which the Act required. As Lord Chief Justice Morgan pointed out in the Mongan case at paragraph [21] “the analysis is likely to be highly fact sensitive”.

[24] I turn now to the appropriate custodial sentence that I should impose in relation to each defendant having considered Article 14 of the 2008 Order. I turn firstly to James Martin McCormick. The pre-sentence report indicates that “PBNI assesses an offender to present a significant risk of serious harm where there is a high likelihood that an offender will commit a further offence causing serious harm ...” In relation to James Martin McCormick the report goes on to state:

“While Mr McCormick has a criminal record these mainly relate to offences committed over 20 years

ago. In addition he has no prior convictions for violence apart from assault on the police committed in 1992.

Nonetheless his committal of this serious offence is concerning and indicates a potential to act in a violent manner, along with others. The injuries sustained by the victim are outlined above and are clearly a cause for concern. As well as the physical injury, the distress and fear experienced by the victim is also highlighted in the court records. While the victim's statement indicates Mr Henry was not the intended target this offending involved a measure of premeditation. By arming himself with a knife and approaching the victim's home, violence appears to have been anticipated by the defendant. Through Mr McCormick's continued denial of committing the offence he has demonstrated the lack of responsibility for his behaviour.

In light of the concern raised by the committal of this offence Mr McCormick was assessed by PBNI as a significant risk of serious harm at a risk management meeting held on 20 October 2015."

[25] Obviously this opinion is something which carries significant weight with the court and I should be very careful before coming to a different conclusion. Nonetheless I am not of the opinion that an extended custodial sentence is required for this defendant. When I look at the probation report I note that the test applied is that there must be "a high likelihood that an offender will commit a further offence occasioning serious harm ..." (my underlining). Yet I note that in the prior section of a report under Offence Analysis the author of the report assesses the defendant as being of "a medium likelihood of re-offending" (my underlining). It seems to me that there is a degree of inconsistency in this assessment and the defendant is entitled to the benefit of being assessed as a medium risk of re-offending as opposed to there being "a high likelihood" of re-offending. Under the article there has to be a "significant risk". Whilst this is not defined in the statute, in Lang the English Court of Appeal relied on the dictionary definition of "significant being noteworthy or of considerable amount of importance". In James Martin McCormick's case the Probation Service appear to have been particularly influenced by the nature of the offence itself and the continued denial by Mr McCormick of his involvement in the offence. Whilst of course the nature of the offence is an important factor in the assessment of dangerousness the court should not arrive at a conclusion on dangerousness purely on the basis of the offence itself. In relation to James Martin McCormick I am particularly influenced by the lack of any significant conviction since 1993 and his personal circumstances since that time. Another key factor for me

in the assessment of dangerousness relates to the fact that Mr McCormick has been on bail for these offences for a period of almost four and half years. Initially as one would expect the bail conditions were stringent involving a change of address, curfew and a requirement that he not contact the injured party or any other Crown witness. He has as I understand it complied with all the conditions of bail and has not come to the attention of the police during that four and a half year period. This goes a long way in persuading me that he does not meet the criteria for dangerousness. Whilst of course the exercise is different in terms of deciding a determinate sentence and an extended custodial sentence I also bear in mind that as a result of the sentence I impose the defendant will be in custody for a significant period of time and thereafter will be on licence which will provide protection for the public in its own right.

[26] In terms of the assessment of dangerousness this is more difficult in the case of Hugh McCormick. In the pre-sentence report he too has been assessed as meeting the criteria for dangerousness. The assessment is reflected in the following issues:

- “1. The defendant has been convicted of an offence of attempted murder. The victim suffered serious physical harm and a life threatening injury.
2. His behaviour was reckless. The defendant had a lack of self-control and disregard of consequences.
3. His behaviour was premeditated with the defendant and his brother confronting the victim in his home.
4. The victim reports Hugh McCormick was in possession of a knife and a crowbar.
5. The defendant does not accept any responsibility for his behaviour and denies his guilt.
6. The defendant has a previous conviction (2006) for serious violence, in which he used a knife to inflict serious harm.”

[27] It appears that Hugh McCormick was assessed as being dangerous at the same meeting at which Martin McCormick was assessed.

[28] In assessing Hugh McCormick I also take into account the statutory provisions and the case law to which I have referred above. I pay significant weight to the opinion of the pre-sentence report. I note that Hugh McCormick was assessed as being at medium likelihood of re-offending and I note that the test required under

the PBNI for risk of serious harm is that there would be a high likelihood of further offending. Obviously any further offending to meet the requirements must result in serious harm. Whilst this is very much a borderline case I have come to the view that an extended sentence is not required in the case of Hugh McCormick. In coming to this decision I bear in mind I should not decide the matter solely on the basis of the offence in respect of which he has been convicted, although this very clearly raises a serious issue of dangerousness for this defendant. I am influenced by the fact that his last conviction for violence arose from an incident in 2003. The most significant factor in coming to my view relates to the fact that he has been on bail for this offence for 4½ years during which time he has not come to the attention of the police. As one would expect initially his bail restrictions were quite stringent involving a change of address, curfew and a requirement not to contact any Crown witness in the case. As I understand it he has complied with all conditions of his bail to the extent that they were reduced as time has passed. This period provides tangible support for the opinion that there is not a significant risk of re-offending to the extent that any such re-offending will cause serious harm to members of the public. Mr McCormick's personal circumstances since the commission of this offence including his absence from alcohol, his ill-health and the difficulty he has in coping with his imprisonment have also influenced me in coming to this view. Whilst the purpose of the determinate sentences and extended custodial sentences are different I nonetheless am reassured by the fact that as a result of the sentence which he receives he will be in custody for a significant period of time and thereafter will be on licence for a significant period of time thereby providing protection to members of the public in terms of the risk of any future offending.

Conclusion

[29] Accordingly I have come to view that the appropriate sentence for Hugh Patrick McCormick is one of 16 years imprisonment. Ms McDermott QC on behalf of Hugh McCormick contends that he is entitled to some reduction in his sentence by reason of delay. Her instructing solicitor, Mr Steele has prepared a detailed chronology of the events leading up to the trial which finally took place in September 2015. It is accepted by counsel that the delay in this case was not attributable to the conduct of either the defence or the prosecution but arose from matters outwith the control of the parties. For various reasons set out in the chronology trial dates were vacated on numerous occasions. Whilst the delay was not "culpable" delay it is nonetheless clear from the authorities that delay is a matter which can be remedied by a reduction in sentence - see Mills v HM Advocate [2014] 1 AC and R v Trevor Clarke [1998] 2 Crim. App. R (137). The delay in this case has clearly been significant and I propose therefore to reduce the custodial sentence here by six months to one of 15 years and 6 months. Under the provisions of Article 8 of the Criminal Justice (Northern Ireland) Order 2008 I am required to "specify a period (in this article referred to as 'the custodial period') at the end of which the offender is to be released on licence under Article 17".

[30] Furthermore under Article 8(3) the custodial period shall not exceed one half of the term of the sentence.

[31] Given the seriousness of the offence I consider the custodial period should be the maximum permitted under Article 8. Under Article 8(5) I consider that the remaining licence period is appropriate for the purposes of protecting the public from harm from the offender and in preventing the commission by the offender of further offences.

[32] Accordingly the defendant Hugh McCormick is sentenced to a period of 15 years and 6 months imprisonment. The custodial period under Article 8 shall be 7 years and 9 months with the remaining 7 years and 9 months being the relevant licence period.

[33] In relation to James Martin McCormick I consider that the appropriate custodial term should be one of 15 years. Allowing for the delay to which I have referred above I reduce this to 14 years and 6 months. I have imposed a lesser sentence for James Martin McCormick because of the significant difference in the criminal records of each of the accused. As in the case of Hugh McCormick I consider that under Article 8 the custodial period should be the maximum permitted namely one half of the term of sentence so James Martin McCormick is to receive a determinate custodial sentence of 14 years and 6 months with a custodial period of 7 years and 3 months and the remaining 7 years and 3 months to be the licence period under Article 8.