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ICOS No: 19/029740

IN THE CROWN COURT IN NORTHERN IRELAND

SITTING AT DOWNPATRICK CROWN COURT

R

v

MICHAEL O'CONNOR

Geoffrey Miller QC
Judge of the Crown Court in Northern Ireland

[1] Michael O'Connor has pleaded guilty to the murder of Joeleen Corr and accordingly I have passed upon him a sentence of life imprisonment, this being the only and prescribed sentence for this offence. The purpose of todays' proceedings in his case is to determine the period of time he must remain in custody before he may be considered for release. Two things should be clearly understood by members of the public. First that the tariff period must be served in its entirety; there is no remission. Second that the decision as to whether he can be released after the expiration of the tariff period, will be made by the Parole Commissioners after careful consideration of the available information as to the level of risk he then presents.

[2] It is therefore not the case that release is automatic. Further, once released he shall remain subject to licence conditions, which will remain in force for the remainder of his life and which, if breached, may lead to his return to custody for a further period.

[3] The Court is grateful to Mr Philip Mateer QC (appearing with Mrs Laura Ievers) for the Crown and Mr Charles MacCreanor QC (leading Mr Tom McCreanor) on behalf of the defendant, for their focused and comprehensive written submissions on the principles applicable to the determination of the core question. These have been supplemented by equally helpful oral argument, all of which have been of great assistance to me in this task.

[4] The core facts of the case have been outlined in the Crown Opening and I do not intend repeating these in extenso though in due course I shall touch upon aspects when considering the aggravating and mitigating factors relevant to the determination of the appropriate tariff. Nevertheless, a copy of the Crown Opening will be attached as an appendix to these remarks for reference purposes.

[5] Before I turn to a consideration of the sentencing principles I intend to make a few comments relevant to the circumstances of the deceased, Joeleen Corr. When a hearing focuses on the issue of sentence, what may seem a disproportionate amount of time is spent in discussing the personal circumstances of the defendant upon whom that sentence is to be passed. He, of course is here and able, through his counsel, to make his plea. The same is not true of the deceased, who all too frequently is seen not as the person she was but only in the context of her untimely death.

Joeleen Corr

[6] Joeleen Corr was mortally wounded on the evening of 1st December 2016 when she was punched with considerable force fracturing her jaw and causing her to fall headlong down the stairs of the home she shared with the defendant at 10 Thomas Russell Park, Downpatrick. As a direct result she sustained catastrophic brain injuries from which she never recovered. It was not until the following morning that she was discovered and by then there was no prospect of any form of meaningful recovery and thereafter life was sustained solely through artificial means. Ultimately, following an application to the High Court, Mrs Justice Keegan directed that the life-support machinery should be switched off following which she died peacefully in the arms of her family at the Hospice on 26th April 2018. She was only 27 years of age.

[7] The 16 month period between the assault and her ultimate death was a traumatic time for Joeleen's family who sat with her, praying and willing her to recovery whilst all the time knowing in their hearts that the woman they loved had gone. The Court has received VISs from Joeleen's mother, sister and uncle together with a 'narrative' prepared by Social Services focusing on Joeleen's son and the impact upon him of the loss of his mother.

[8] I do not intend to outline the detail of each statement but I do wish to highlight aspects. I do so for two purposes. First to emphasise the huge impact of the pain and sense of loss caused to this family by the defendant's actions, something which is of significance in the context of the purpose of today's hearing. The second reason is to draw attention to the life of a bubbly young woman before it was so cruelly cut short.

[9] I wish to pay tribute to the dignity and fortitude displayed by Mrs Carol Corr and her entire family throughout the lengthy court process, which has lasted for 3½ years since the night Joeleen was attacked by the Defendant.

[10] Joeleen was her parents' first child born on the 29th November 1990. She had four younger siblings, Cherie, Christine, Chloe and Jim. After attending St Catherine's Primary School on the Falls Road she moved to St Rose's High School on Beechmount Avenue, near to the family home. Mrs Corr describes Joeleen as a 'happy girl' who had a 'good childhood'. After leaving school at 16 she studied Beauty at Belfast Metropolitan College after which she worked for two years at McDonald's at the Westwood Centre; a job she reportedly enjoyed very much.

[11] Joeleen had two long term boyfriends before she met the defendant and she remained on good terms with each after their respective relationships ended. By 2013 Joeleen was living in a flat on the Springfield Road and her mother became concerned that she was drinking and partying to excess. It was at this time that Mrs Corr first became aware of the Defendant, known colloquially as 'Mickey Dope'. Within months of his starting to date Joeleen she was pregnant and on 14th July 2014 she gave birth to their son.

[12] I do not intend going through the history of Joeleen's relationship with the defendant over the following two and half years culminating in his murderous attack upon her, but suffice to say it was characterised by periods of violence both physical and psychological, fuelled by alcohol and drugs. His behaviour towards both Joeleen and her mother was such that each took out Non Molestation Orders (NMO) against him. During this time the defendant was sentenced to a term in prison, which coincided in a marked improvement in Joeleen's life. Subsequent to his release he contacted her again and was seen in the company of their son, which was forbidden by court order.

[13] Social Services became involved and eventually on 26th August 2015 their son was taken into care, which was devastating for Joeleen who set about doing all she could to have him returned to her. As a result of her strenuous efforts to get her life back on track she succeeded in getting their son back on 6th July 2016. This was under the strict condition that the defendant was to have no contact with his son. Notwithstanding this the defendant approached Joeleen again in September 2016 and inveigled his way back into her life by a combination of means including blackmail when he threatened to send photographs of him with their son to Social Services.

[14] In the last 3 months of her life Joeleen was living with her son in Downpatrick with the defendant spending considerable periods of time with them, although he officially still resided in West Belfast. In the last week of her life, as it had been, Joeleen was staying with her mother. The family went out to celebrate her 26th birthday on 29th November 2016 and the following day she and her son returned to Downpatrick with a new puppy they had just acquired. The next time Mrs Corr

saw her daughter was when she was lying in hospital, her life utterly and irrevocably changed.

[15] In her statement to the court for this hearing Mrs Corr speaks with painful eloquence of the loss she, her family and her grandson have sustained through Joeleen's death. Without wishing to upset her or them I do wish to quote one small portion of that statement in which she speaks for the whole family:

> *"When Joeleen did die I lost a piece of my heart. I miss her so much; we talked every day, I miss the silly texts. Sometimes I dream about her being alive and just being with her. Then when I wake up I'm upset. It's hard to think that, not sickness and not an accident but someone else took her life, someone who was supposed to love her."*

The Defendant

[16] I turn now to consider the defendant's background and personal circumstances. The Court is in receipt of a detailed and helpful PSR dated 18th March 2020, prepared by Amanda Cooper (PBNI). The defendant was born on 16th January 1986 and is now 34 years of age. He is the eldest of 5 siblings and the only one to have had contact with the Criminal Justice System. Although he describes his childhood as happy and without adverse experiences I note Ms Cooper records that his parents separated when he was very young and he had no contact with his father from then until he reached adulthood though he has no meaningful relationship with him. This sits directly at odds with his account to Dr Davies (Consultant Clinical Psychologist) who in a report dated 11th August 2018 notes:

> "*that both his parents are in their early fifties and have been married for over 30 years. He described their relationship as 'brilliant'."*

[17] The picture of a settled childhood sits somewhat at odds with the history of disruptive and challenging behaviour and diagnosis of ADHD eventually leading to his expulsion from Corpus Christi College in his 4th year. Thereafter, he attended Loughshore Alternative Education Programme, from which he was also ultimately expelled, leaving education without any formal qualifications.

[18] In terms of employment O'Connor has a history limited to two years from the age of 16 in a car wash followed by a further year in a related car valeting business. He has not worked since the age of 19 and at the time of his remand into custody following the index incident he was in receipt of Employment and Support Allowance together with Disability Living Allowance.

[19] Drug and alcohol abuse combined with his ADHD accentuated symptoms of anxiety and an associated inability to regulate his emotions from his adolescence.

There is a history of aggressive behaviours and incidents of self-harm including suicidal ideation culminating in several attempts at hanging.

[20] These issues are discussed at length in the reports of Dr Davies dated 11th August 2018 and 16th March 2020 and of Dr Ian Bownes (Consultant Forensic Psychiatrist) dated 19th May 2020. In that last report the doctor notes:

> *"it appears to have been consistently the case that rather than seeking out and then adhering unequivocally to the support, guidance and treatment advices of professionals involved in his care over the years Mr O'Connor has instead chosen to either fail to fully and meaningfully engage with or prematurely disengage from the therapeutic services offered to him."*

[21] It is apparent that over the years O'Connor has resorted to both alcohol and drugs as a means of coping with and medicating his feelings of anxiety, low mood, agitation and frustration. The result, however has been that this has only exacerbated the worst aspects of his condition and led to him becoming increasingly involved in ever more serious criminal conduct.

[22] Based on the information available to him, Dr Bownes observed that:

> "*Mr O'Connor has for many years demonstrated a tendency to engage in 'sensation seeking' behaviours without appropriate forethought, instability of mood, a propensity to emotional dysregulation, persistently antisocial and irresponsible behaviours, lack of regard for societal norms and failure to accept responsibility for and learn from his mistakes…*"

[23] Dr Davies conducted psychometric testing on the defendant, which resulted in him being assessed with a full-scale IQ of between 68 and 77. This placed him outside the criteria for Mental Handicap as defined in the Mental Health (NI) Order 1986 but in the bottom 3% of the population of his age range. These results closely mirrored those obtained in a similar assessment undertaken in 1994 when the defendant was 8 years of age. He should, therefore be considered to be of limited intellectual ability.

[24] It is against this background of personality traits that I turn to consider the history of the defendant's offending and in particular where this links in with his fractured personal relationships.

[25] At the time of the offence the defendant had been in an on/off relationship with Ms Corr for approximately four years. There was one child of that relationship, who was born in 2014. Although none of the defendant's previous convictions relate to Ms Corr, domestic abuse was a repeated feature throughout this period. The defendant exhibited controlling and threatening attitudes towards his partner.

[26] As highlighted earlier in these remarks Social Services became involved in 2015 after one such incident, which resulted in the deceased obtaining a NMO against the defendant. Notwithstanding this order the defendant maintained his contact with Ms Corr resulting in Social Services removing their son and placing him in a kinship placement with his maternal grandmother. This placement was ended, however because the defendant persistently harassed and threatened Mrs Carol Corr, who in turn had to seek an NMO against O'Connor.

[27] As a direct result of the defendant's behaviour Social Services placed their son in foster care where he remained until July 2016. It was then that he was returned to Joeleen but on the clear understanding that her relationship with the defendant was definitely over. At the same time the Family Court made a 'No Contact' order in respect of O'Connor.

[28] Notwithstanding the clearest possible directions from Social Services, the Courts and Ms Corr's family, it is apparent that very soon thereafter she resumed her relationship with the defendant. This underscores both the level of her vulnerability that she would place so much at risk and also the degree of persistence and control exhibited by the defendant over her.

[29] Ms Cooper records that O'Connor has two older children (aged 5 and 10 years) from two previous and separate relationships. He has no contact with either child.

[30] There is a history of un-adjudicated domestic abuse in the first relationship in the period 2005-06. His second child was from a relationship lasting 10 years, which spanned a period including that during which he was with Ms Corr. Again, there is a long history between 2009 and 2016 of domestic abuse with that partner, which culminated in his being convicted and imprisoned for offences of AOABH, Criminal Damage, Harassment, improper use of electronic communications and Common Assault against her in 2015 -16. Significantly, he was sentenced for these matters in September and October 2017, 9 months after being remanded in custody for the attack upon Ms Corr.

[31] Between 2004 when his criminal record begins at the age of 18 and 2010 the defendant was persistently before the courts with the only gaps corresponding to the times he was in custody. His convictions for acquisitive driving related offences and criminal damage demonstrate risk taking and lack of consequential thinking. Subsequent offences of wounding and attempted hi-jacking serve only to raise concerns in this respect. His record is further characterised by several drug related convictions during this period and more recent years.

[32] Set against the cumulative impact of these several and various factors Ms Cooper concludes that the defendant presents with a high likelihood of re-offending. Further, following a Risk Management Meeting convened on

5th March 2020 it was agreed that O'Connor met the criteria for significant risk of serious harm. Whilst Dr Bownes observes Mr O'Connor's presentation doesn't present in such a way as *"would unequivocally categorise him as a 'dangerous person' within the meaning of the Criminal Justice (NI) Order 2008"* this has to be seen in the context of his being in the contained setting of Maghaberry Prison. Moreover, in the conclusion of his report he takes no issue with Ms Cooper's assessment beyond observing that the risks of him acting dangerously, within the meaning of the 2008 Order could be attenuated if the defendant were to adhere to the terms of a rigorous therapeutic programme, which he recommends for consideration.

[33] As matters stand I am satisfied that the defendant fulfils the statutory criteria of *'dangerousness'*. It will, however, be for the Parole Commissioners to determine whether that remains the position when he has served the full tariff period set today. Lest there be any doubt on the matter he will only be released thereafter if he is no longer assessed as being a *'dangerous offender'*.

Sentencing principles

[34] I turn now to the sentencing principles applicable to tariff hearings and will then consider how these should be applied to the facts of this case. In so doing I shall make reference to the many and various submissions by both Crown and Defence counsel. I shall then set out my conclusion on how these apply to my determination of the appropriate tariff taking fully into account the aggravating and mitigating factors I find to be present in this case.

[35] There is no dispute as to the applicable guiding principles as to how a court approaches the fixing of a minimum term. Both Crown and Defence accept that these are to be found in *R v McCandless & Others* [2004] NICA 1, which is the leading case in this jurisdiction. The principles are set out in the Crown written submission, which I adopt for the purposes of these remarks.

[36] The case sets out the Practice Statement issued by Lord Woolf, C.J. and reported at [2002] 3 All ER 412. The principal sections of the Practice Statement are set out at paragraphs 10 to 19 thereof 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.

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).

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 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 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 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, 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.

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.

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."

The Crown & Defence submissions

[37] Mr MacCreanor QC accepted at the outset that the sentencing court should not be constrained by arbitrarily fixing a starting point according to rigid application to defined categories. He cited the following observations of the Court in *McCandless* at paragraph 8:

> *'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'.*

[38] The further observations of Sir Brian Kerr (as he then was) presiding in the case of *AG Reference No 6 of 2004 (Doyle)* [2004] NICA 33 at Paragraph 24, are both pertinent and helpful:

> *"[24] What the Practice Statement does is to provide a broad structure for the manner in which the minimum sentence should be chosen. We agree with the submission of Mr McCloskey QC, counsel for the Attorney General, that in the vast majority of cases the sentencer should be able to decide which of the starting points is appropriate to the particular case that he or she is dealing with. The facts of an individual case may not precisely mirror those outlined in the statement but, as we have said, the categories in the Practice Statement should be regarded as illustrative rather than comprehensive. Once the starting point has been chosen, the facts of the case should be examined in order to identify those factors that may give rise to a variation of the starting point. Once more, the aggravating and mitigating matters outlined in the Practice Statement must be regarded for this purpose merely as examples."*

[39] Mr MacCreanor contended that this case falls within the normal starting point. He placed emphasis on the fact that the killing arose out of a *'quarrel or loss of temper between two people known to each other'* (Practice Direction at Paragraph 10) and that it came close to the borderline between murder and manslaughter, (Paragraph 11 (a)). During oral argument at the hearing on 19th June he clarified this, stressing that it was the mechanism, i.e. that death resulted from a single-punch killing that provided the comparison to manslaughter.

[40] Moving on Mr MacCreanor submitted that none of the factors set out in Paragraph 12 (a) to (k) was present, such as to bring this case within the category of the higher starting point. He also argued that with the exception of the vulnerability of the victim none of the aggravating factors set out in Paragraph 14 applied. On the other hand it was his contention that both mitigating factors specified in Paragraph 16 were present, these being the intent was to cause GBH rather than to kill and that

the killing was spontaneous and therefore lacked premeditation. Finally, it was submitted that the Court should, as per Paragraph 17, give weight to the evidence of the defendant's remorse and contrition. He also took issue with the Crown assertion that the defendant's culpability was exceptionally high whilst conceding that in every case of murder culpability will inherently be high.

[41] Mr Mateer QC countered that this case clearly falls within the higher starting point. He argued that Ms Corr was particularly vulnerable and lived in fear of the defendant. The murder was the culmination of a sustained pattern of domestic violence perpetrated by the defendant against her over the course of their relationship. He also pointed to the defendant's history of domestic abuse against other previous partners and his failure to respond to previous court ordered interventions. It was further argued that the defendant's actions after the assault by leaving the scene and failing to summon assistance for the deceased when he would have plainly known she was very seriously injured were seriously aggravating features. Finally, Mr Mateer argued that by taking the bath and having his hair cut when back in Belfast the defendant had sought to destroy evidence.

[42] The Crown accepted as mitigating factors, the intention to cause GBH rather than to kill; the fact that the fatal injuries were most likely the result of the deceased being propelled down the stairs and sustaining the subdural haematoma after the punch to her jaw. Finally, the plea of guilty had to be considered albeit it was Mr Mateer's contention that this was at a very late stage of proceedings.

Conclusions as to Starting Point

[43] I have given consideration to the specific and several submissions advanced both in writing and orally by Crown and Defence counsel over and above those highlighted in the preceding paragraphs. Each has made reference to several authorities, several of which provide the court with useful guidance as to the approach to be taken to the issues that arise in these cases. I should, however make it clear that I do not find it particularly helpful to compare the facts of one murder to another when assessing the category or indeed range within which the tariff should fall. It goes without saying that any murder is heinous but it does not necessarily follow that a frenzied attack resulting in multiple wounds should automatically lead to a higher tariff than one involving a single wound or even blow. Each case must be seen against the background of the totality of factors relevant to how the killing took place.

[44] I have reached the conclusion that this case clearly falls into the category where the higher starting point of 15/16 years applies.

[45] Whilst it is accepted that the defendant's intention was to cause really serious harm as opposed to killing Ms Corr, I consider this is of limited impact in terms of mitigation. Similarly, to equate this case with a single punch manslaughter is to adopt an unduly narrow approach and one without regard to the history of the

defendant's previous conduct. What he did that night has to be seen in the context of a man who used violence, both physical and psychological as a means of control.

[46] As is apparent from Ms Cooper's report there was a long history of domestic abuse not only in his relationship with Ms Corr but also with his two previous long-term partners, who were also the mothers of his children. Pausing there, I also take note of his actions towards Mrs Carol Corr, which prompted her to take out the NMO against him in the year before the index incident.

[47] Taking due account of this history of domestic abuse I am satisfied that Joeleen Corr was in a vulnerable position 'vis a vis' the defendant and by reason of this that the higher starting point applies.

Variation to the Starting Point

[48] Paragraph 13 of the Practice Statement empowers the sentencing court 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'*. Paragraph 14 deals with aggravating factors relevant to the offence. These '*can include*' at sub-paragraph (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."*

[49] Clearly this factor is applicable to the present case. I reject Mr MacCreanor's submission that to include it as an aggravating feature in addition to one determining that the case falls into the higher starting point amounts to double counting. Sir Brian Kerr (as he then was) LCJ addressed this point in *R v Andrew Robinson* [2006] NICA 29, when he observed:

> "[8] *Factors identified as aggravating features in paragraph 14 of the statement may also be considered as justifying the selection of the higher starting point. We have particularly in mind domestic murders. In view of the incidence of this type of crime in our community, we consider that where domestic murder occurs as "the culmination of cruel and violent behaviour by the offender over a period of time", this will normally warrant the selection of the higher starting point. Consideration of this issue should not be confined to its significance as an aggravating feature giving rise to an increase on whatever starting point is selected."*

[50] Moreover, at paragraph 9 of the ruling the Chief Justice observed that the fact after committing the murder Robinson had engaged in a pretence designed to throw

suspicion from himself, would of itself have justified the selection of the higher starting point. His Lordship continued:

> *"Engaging in this type of pretence is not referred to specifically in the Practice Statement as a factor that justifies the selection of a higher starting point but its omission does not preclude that result. We consider that this is a substantial aggravating feature that makes the culpability of the applicant significantly greater. As paragraph 12 of the statement makes clear, the selection of the higher starting point is warranted where the culpability of the offender is exceptionally high. Any factor tending to have that effect, even if not mentioned in the paragraph, should nevertheless be taken into account in deciding whether the higher starting point is appropriate."*

[51] In the present case I consider the defendant's actions after he struck Ms Corr amount to serious aggravating features justifying not only the selection of the higher starting point but it being varied significantly upwards.

[52] Let me be clear; we have no real idea of what actually happened in the deceased's home on the night of 1st December 2016. There were only 3 people present in the house that night; the defendant, the deceased and their infant son.

[53] The account of events we are left with is the defendant's and this has to be seen as self-serving. According to him a physical argument took place at the top of the stairs, which culminated in him punching Joeleen to the jaw with considerable force causing her to fall down the stairs thus sustaining the catastrophic injuries from which she never recovered. That is as far as the Court can go in accepting the defendant's account of events.

[54] So far as the remainder of the defendant's account is concerned this is replete with unsupported assertion, contradictions and blatant and cruel lies. I highlight just a few of these:

(a) On the defendant's account this incident was brief yet this sits uneasily with the evidence of the next door neighbours' that they heard sustained banging coming from the house for a period of 30 minutes or so;

(b) He says that after she fell down the stairs Joeleen got up and went to the back door, where she vomited. He does not suggest that either she or indeed he cleaned this up and yet neither police nor CSI found any evidence to support this account;

(c) O'Connor's account lacks any detail as to what occurred between the time of his direct assault on Joeleen and his leaving the house around 10.30am the

following day. According to him he slept and awoke in the morning to find her beside him lying in or on the bed snoring.

[55] Even if one takes his account at face value he could have been in no doubt as to her condition when he found her in bed in the morning. Yet, his first and only thoughts were for himself and how he was going to avoid the consequences of his actions.

[56] Evidence of this intent is highlighted by his flight to Belfast; the laying of a false trail including the shameful calumny that Joeleen had tried to hang herself and his false accusation that she had taken drugs that night. Finally, there is the issue of his taking a bath and having his head shaved once he got to Belfast. Whatever his motivation for doing so may have been and whether or not Mr MacCreanor is right in submitting that this could not amount to an attempt to destroy evidence, at the very least it again points to the defendant's supreme indifference to Ms Corr's fate.

[57] Finally, in this regard I consider the fact that the events of the night in question took place in the presence of their son is a serious aggravating feature. One shudders to think of what that little boy witnessed or heard though the reported observations recorded in Paul Corr's VIS present a chilling image:

> *"I recall at one play therapy session […] placed a female toy figure on a box. He then took a male warrior figure and hit the female toy of the box and then mimicked the male figure saying sorry over and over again to the female figure."*

[58] For the avoidance of doubt it is the mere fact of the child being present when the assault occurred rather than what he may or may not have seen, which I accept is speculative, that I have factored into the sentencing exercise.

[59] Paragraph 15 of the Practice Direction requires the Court to consider any aggravating factors relating to the offender, which 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 risk"*.

[60] The defendant's criminal record and the history outlined in the various reports provide a picture of a man with limited insight into the feelings and needs of others; who was motivated by thoughts of self over the rights and wishes of others. The fact that he was diagnosed with ADHD might provide some explanation for misconduct in his youth but there is no evidence he ever sought to address those behaviours by appropriate medication. Rather he resorted to the abuse of alcohol and drugs throughout his adolescence and adult life, with consequences extending to the acquisition of an extensive criminal record of 86 convictions prior to the commission of the index offence. Standing back however, I have decided that this history whilst clearly relevant to a determination as to the appropriate starting point does not lead to any appreciable increase in where the case falls within that category.

[61] As previously noted the plea was predicated on an acceptance by the Crown that the defendant's intent was to cause really serious harm rather than to kill. I have already indicated that this is of limited value in terms of mitigation. I am satisfied that similar considerations apply and for the same reasons to the lack of pre-meditation in the killing.

Remorse

[62] I turn now to consider the extent to which credit, if any, should be given for the Defendant's espousal of remorse in this case. Whilst this issue is linked to the credit for the guilty plea, I will address the two separately. Mr MacCreanor drew reference to the observations of both Dr Davies and Dr Bownes as to the defendant's presentation and reported thoughts regarding the killing.

[63] In his addendum report dated 19th March 2020 Dr Davies recorded that:

> *"Mr O'Connor told me he thinks every day about his ex-partner and he said he feels a strong sense of sadness, sorrow and remorse about the events – and his part in them – that led to her death."*

The doctor went on to note the defendant reporting he had nightmares '*twice a week*' and that his cell-mate told him he sometimes awoke screaming.

[64] It is interesting to note Dr Davies's observation that when discussing his sense of shame about what he did this related to the impact of his conviction upon his family and in particular his mother. The doctor noted:

> *"He did not refer to Joeleen Corr or to her family when discussing his sense of remorse."*

[65] In his report dated 19th May 2020, Dr Bownes records the defendant as saying:

> *"…each time I think of Joeleen and what her family are going through I feel disgusted with myself…would think of suicide…but I haven't harmed myself since the first few weeks in here…"*

[66] Further into the report Dr Bownes, when considering the defendant's reaction to the consequences of his actions noted:

> "*he went on to express <u>some</u> remorse'… I'm ashamed and disgusted with myself…I wish that I could turn the clock back – but I can't…"*

[67] Whilst I accept the defendant's expressions of regret the question remains as to how far this goes. In particular, I note the following from Ms Amanda Cooper's PSR where she observes:

> *"Mr O'Connor attempted to justify his actions a number of times by stating 'we were both as bad as each other' and 'I didn't intend to kill her' which evidences that his level of responsibility remains limited."*

Similarly, his assertion to Dr Davies that *'he had never denied it (the killing) was something to do with me'* is directly contradicted by the fact that even as the evidence started to stack up against him he had maintained his lies and denials including through over 5 hours and 10 interviews.

Conclusion as to the appropriate Starting Point

[68] Balancing these additional factors I am satisfied that the starting point should be varied upwards to 19 years, which is the tariff I would have imposed had the defendant been convicted of this murder after a contested trial. I must now consider the extent to which that figure should be reduced to take account of the guilty plea. Before doing so however I shall address the issue of delay since this was specifically raised by Mr MacCreanor.

Delay

[69] A total of 38 months elapsed between the date of the fatal assault upon Ms Corr and the opening day of the defendant's trial. Of course she did not die until April 2018 after which proceedings for murder were commenced by way of voluntary bill. Mr MacCreanor set out the chronology of events in his skeleton argument and he placed emphasis on the delay of 9 months between the granting of the High Court order authorizing medical staff to turn off Joeleen's life support and the lodging of the voluntary bill in January 2019.

[70] In granting the bill in March 2019 HHJ Grant made critical comments regarding the delay in providing disclosure, an issue that continued to cause concern thereafter. Trial dates in the summer and autumn were missed first because the Crown had failed to notify the pathologist Dr Bentley, then because the Defence required time to consider a further report from Dr Rouse and finally because Defence senior counsel was engaged in an ongoing trial before Mr Justice Colton.

[71] I accept that set against this background there is prima facie evidence of delay, which even allowing for the undoubted complexities raised by this case, was unconscionable. Nevertheless, the issue for this Court to consider is whether there is evidence of delay such as to warrant a finding of a breach of the *'reasonable time'* provisions of Article 6 ECHR.

[72] The approach to be taken on this issue was recently set out by Stephens LJ in DPP'S Ref: (Number 5 of 2019) Harrington Legen Jack [2020] NICA 1. In terms it is for the Defendant to show that he has suffered prejudice by the delay. If the Court concludes that there is such evidence it must decide how that should be marked. This can be either by simple acknowledgement or by a reduction in the starting point for sentence and before any deduction on account of a guilty plea.

[73] In the context of this case whilst I acknowledge there is prima facie evidence of delay I do not consider that it was such as to amount to a breach of the reasonable time provisions. For the sake of completeness had I determined otherwise I would have been satisfied that a mere acknowledgement would have been sufficient.

Reduction in tariff for the Guilty Plea

[74] O'Connor continuously denied throughout more than five hours of interview any knowledge of how Joeleen came by her injuries. This remained his position until 26th September 2017 when he filed his Defence Statement to the then proffered charges of Attempted Murder and GBH with intent. In this for the first time he offered the following explanation:

> *"As they reached the top of the stairs Joeleen Corr made to grab the phone and the accused struck Joeleen Corr once to the face. As a result of their location at the top of the stairs the complainant fell backwards down the stairs hitting her head as she fell".*

[75] At paragraph 8 of the Defence Statement the Defendant made it clear that he neither intended causing the injuries to Ms Corr nor to knocking her over and down the stairs. Regardless of the difference in the charges to that upon which he now falls to be sentenced there can be no question of this being anything other than a lie. This remained the defendant's position until the morning of his trial on 3rd February 2020 when he entered the plea of guilty to manslaughter, followed that afternoon by a plea to murder.

[76] Mr MacCreanor stressed that the Defence legal team were not in a position to properly advise their client until such time as they had sight of all the medical notes, records, together with the final report commissioned from Dr Rouse by the Crown. Once these papers were available Professor Crane was instructed on the defendant's behalf. His report was dated January 29th 2020 and it was only thereafter counsel was in a position to advise their client, who then entered the pleas as previously set out.

[77] In *R v William Turner & James Henry Turner* [2017] NICA 52 the Lord Chief Justice conducted an analysis of the approach to sentence reduction for guilty pleas in murder cases throughout the UK. Ultimately, the Court concluded (at Page 11 Paragraph 40):

> *"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 specific 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."*

[78] Regardless of whether or not the Defendant acted on legal advice the fact remains that throughout the 16 months that Joeleen remained alive but in a vegetative state and for nearly two years thereafter he maintained a denial of responsibility for his actions. By his plea, finally entered at the last possible moment, he finally acknowledged what he had known all along, namely that he had struck Joeleen Corr with force and with the intent to cause her really serious harm, as a result of which she had subsequently died. As the LCJ went on to say later in the judgment of the court in *Turner* (at Pp 13 – 14 Paragraph 50):

> *"a primary reason for mitigation for a guilty plea is the vindication and sense of justice that it provides for friends and relatives. Where a plea of not guilty at arraignment is entered the friends and relatives of the deceased are generally deprived of that vindication and sense of justice at that time".*

That is certainly the position in this case and this impacts upon the level of credit attaching to the guilty plea.

[79] In the final analysis in assessing the tariff in this case I have borne in mind the observations of the LCJ in *Turner* (at Paragraph 37):

> *"…when looking at the aggravating and mitigating factors, including the appropriate reduction for a guilty plea, it is necessary in each case to stand back to see whether the overall figure properly reflects the seriousness and circumstances of the particular offence".*

In so doing I have concluded that the reduction for the guilty plea should be 3 years or approximately 16% of the tariff that would have applied following conviction after a contested trial.

Conclusion

[80] Weighing all these factors in the balance I consider that the appropriate tariff is 16 years, which I set as the minimum term that you must serve before you may be considered for parole and release on licence.

Sentence:

Count 1 – Murder – LIFE IMPRISONMENT with a tariff of 16 Years
Offender Levy - £50.00
2 July 2020