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IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

v

RYAN ARTHUR QUINN

Before Kerr LCJ and Nicholson LJ

KERR LCJ

Introduction

[1] This is an application by Ryan Quinn, a young man now aged twenty four, for leave to appeal against a sentence of four years imprisonment imposed by Deeny J at Belfast Crown Court on 10 October 2005. The applicant had been charged with the murder of another young man, Finbar McVey, on 27 September 2003. At that time Mr Quinn was some ten weeks short of his twenty-third birthday. Mr McVey was twenty one years old. When arraigned on the charge of murder on 4 June 2004 Mr Quinn pleaded not guilty. He did not enter a plea of guilty to manslaughter at that time. Subsequently, on 18 May 2005, the applicant was re-arraigned on the charge of murder. He then pleaded guilty to manslaughter and that plea was accepted by the Crown. It has been claimed on Mr Quinn's behalf that he entered a plea of guilty at the first opportunity and this is a topic to which we will have to return.

Factual background

[2] Although they were not close friends, the applicant and the deceased had known each other for some time before September 2003. They had had their differences. In interview by the police Mr Quinn claimed that in January 2003, some few weeks before he was due to go into hospital for an operation on his foot, Mr McVey had beaten him up over what appears to have been a trivial disagreement. Mr Quinn gave an account of a severe beating where he

was kicked in the face and punched several times in the head. He did not report this incident to the police, however, and no medical treatment for his injuries was required. It appears that the two passed each other on various occasions between January and September 2003 but did not speak because of what had happened in January. Mr McVey through an intermediary had offered to apologise but this was rebuffed by Mr Quinn.

[3] In the evening of 26 September and the early morning of 27 September 2003 both the applicant and the deceased had been in places of entertainment in Cookstown, County Tyrone. Both had had a considerable amount to drink. The applicant estimated that he had drunk two pints of lager and at least six glasses of vodka in the course of the evening. Analysis of the deceased's blood and urine revealed the presence of alcohol in sufficient quantity to render him intoxicated.

[4] The applicant claimed during police interviews that as he was walking on Molesworth Street in the town, he met an old school friend, Martin Bates, who was with another young man whom Mr Quinn knew to see. They stood together talking for a few moments and, as he was leaving their company, Finbar McVey joined the group and said to the others, "I'd just laugh at him because that's nothing only an asshole", referring to Mr Quinn. The applicant said that he did not react to this at the time. Some short time later, according to Mr Quinn, he and his friend, Declan Curran, were walking along Molesworth Street when he heard a loud voice from behind. On turning round he saw that this was Finbar McVey. He had his hands in the air and was holding a black object in one hand. The applicant claimed that he thought that Finbar McVey was going to start fighting with Declan and so he punched him. This happened at about 2am.

[5] The claim that the applicant believed that the deceased was going to strike Declan Curran was repeated in the defence statement that was served on his behalf on 6 May 2004. But it was not supported by the statements of various witnesses that are included in the committal papers. Thomas Devlin described how he saw the applicant walk past him "looking agitated with his fists clenched". He heard Mr Quinn's brother say that he was going to fight. Niall James Martin saw the applicant approach Mr McVey and he "knew by the way Ryan Quinn walked towards Finbar McVey that Quinn was going to hit Finbar". Ryan Taylor had been talking to Finbar McVey when he saw a person's fist strike him on the right side of the head. He was not expecting to be struck. When Mr Taylor accosted Ryan Quinn and asked why he had hit Finbar, the applicant replied that Mr McVey had struck him on an earlier occasion. Emma Mullan had been in Mr McVey's company during the evening of 26 September. She did not witness the assault but a short time before it she described how Mr Quinn had "shouldered" his way past her and seemed agitated and tense. He had "his fist clenched and [was] walking like a hard man with his elbows out". Declan Curran made a statement in which he

described how the applicant had telephoned him some time before the assault on Mr McVey took place. The applicant expressed annoyance at something Finbar McVey had said and stated that he was going to sort it out with Mr McVey. Later Mr Curran joined the applicant in Molesworth Street. While they were there Mr McVey approached. According to Mr Curran, he had his mobile telephone at his left ear and he threw his arm around Mr Curran in a friendly gesture. The applicant was a little distance away and when he turned round he saw Mr McVey. He approached and swung his right arm and struck Mr McVey on the right side of the face.

[6] The claim that Mr Quinn was apprehensive that Mr McVey might strike Mr Curran was clearly false. No-one supported that claim. Mr Curran, described by Mr Quinn as his best friend, gave an account that was completely at odds with it. Despite this, the applicant persisted in the claim even unto trial. Mr Dermot Fee QC, who appeared for the applicant both in the Crown Court and this court, suggested in the course of his plea in mitigation to Deeny J that Mr McVey's greeting to Declan Curran was mistaken for aggression. Deeny J rejected that claim and, in our judgment, he was entirely right to do so. We were told by Mr Fee that the applicant no longer wished to make that case on his application for leave to appeal against sentence. We are not surprised that it has not been advanced before this court. It was so comprehensively contradicted by all the other evidence that the only matter for surprise is that it was espoused in the defence statement and at trial. That it was promoted, however, says much, we believe, about the applicant's claimed remorse. We shall have something more to say about this presently.

[7] The blow caused a subarachnoid haemorrhage. The mechanism of this was that a traction injury was caused to a left vertebral artery which then severed. Since the blow was to the right side of the face and head, it was concluded that this was a contralateral injury. On post mortem examination marked bruising was found on the anterior and posterior surfaces of the right sternomastoid muscle. Dr Curtis, the pathologist who carried out the autopsy on the body of the deceased, considered that this was consistent with a blow to that side of the neck. Dr Carson, who was retained by the defendant, suggested that this was unlikely since there was no surface bruising. He felt that it was possible that the bleeding into this muscle had been caused by the rotation of the head and the consequent stretching of the muscle. This opinion was expressed after sentence had been passed by Deeny J and there is no contrary view available from Dr Curtis. We are bound, therefore, to acknowledge that Dr Carson's theory is at least possible as an explanation for the bruising of the sternomastoid muscle. The learned trial judge had treated the bruising of that muscle as indicating that a heavy blow had been struck and Mr Fee argued that, in light of Dr Carson's report, this court should conclude that there was now no evidence to support that conclusion.

[8] Relying solely on the medical evidence, it is impossible to be certain that the blow struck was a hard one. Mr Fee suggested that the most that one could say was that it was of moderate force. We are not dependent solely on the medical evidence, however, and it is noteworthy that neither of the doctors who have reported on the matter has suggested that the findings on post mortem *excluded* a heavy blow. We consider that, in deciding whether the blow struck was a heavy one, we are bound to take into account the circumstances leading up to the attack and the description of the manner in which the applicant struck the deceased. It is clear from his demeanour as observed by a number of witnesses that the applicant was bent on exacting revenge on Mr McVey for the remark that he had made to Mr Bates. He approached the deceased in a determined fashion and swung a blow at his head. The deceased was completely unaware of what was about to befall him and we are of the view that the potential for the blow to inflict greater injury on that account is obvious. All these factors lead us to the conclusion that the applicant intended to and did strike the deceased with considerable force.

[9] Mr Fee has urged us to regard Mr McVey's death as a most unusual, unintended and unexpected outcome. We do not doubt that the applicant did not intend to cause fatal injury. He knew, however, that his victim was unprepared for the blow. He certainly should have been aware that a blow inflicted in such circumstances could have felled the deceased and that, in the fall, he could have sustained further injury. While, therefore, the exact mechanism by which the fatal injury occurred could not have been anticipated, we are not disposed to regard the result of the applicant's attack on Mr McVey as in any way freakish. If a person is struck a hard blow in circumstances such as occurred here, it is entirely to be expected that he could fall to the ground and sustain serious injuries.

[10] It has been observed in *R v Grad* [2004] 2 Cr App R (S) 218 that subarachnoid haemorrhage, once rarely encountered, is now more frequently a cause of death. It is perhaps speculative to attribute this to a greater incidence of gratuitous violence among young males but it is unquestionably the case that the Crown Court and this court have had to deal recently with a great many cases of serious and frequently fatal injuries where both the assailant and the victim were young males and both were under the influence of alcohol. Later in this judgment we shall return to consider this phenomenon and what effect it should have on the outcome of the present application.

Culpability versus consequences

[11] Sentencing levels in cases where death has occurred as the result of a single blow were reviewed recently by the Court of Appeal in England in *R v Furby* [2005] EWCA Crim 3147. In that case Lord Phillips CJ commented on the difficult sentencing exercise that cases such as this can present: -

> "11. The judge was right to say that cases such as this present a difficult sentencing exercise. A sentence must reflect the seriousness of the offence. The seriousness depends on the culpability of the offending conduct and on the harm that has resulted from it. Difficulty arises where there is a wide disparity between the culpability of the offender and the harm that he has caused. In the crime of manslaughter the harm caused is an element of the offence. No harm can be more serious than the death of a victim. Its impact usually extends, as it does in this case, to the relatives who have lost a loved one. They may, understandably, feel that no sentence can properly reflect the harm that has been caused. Because of the harm caused, the offence of manslaughter will usually, though not inevitably, attract a custodial sentence, regardless of the nature of the wrongdoing that has caused the death."

[12] The tension between a relatively modest level of culpability and calamitous consequences of criminal behaviour was recognised by this court in the different context of causing death by dangerous driving in *Attorney General's reference (Nos 2 – 8 of 2003)* [2003] NICA 28 where it was stated that there were logical difficulties in imposing a heavier sentence on a driver whose driving has caused a death than on one whose driving was just as dangerous but did not result in the same tragic consequence. Likewise there are sound reasons for questioning the justice of imposing a more severe sentence on someone who has struck a blow that caused death than on a person whose similar blow fortuitously failed to cause serious injury. But, as this court said in the *Attorney General's reference*, such an outcome has to be accepted as a pragmatic approach which reflects the sense of justice of the general public.

[13] Given that the consequences of the criminal action must be reflected in the sentence, it is clear that where death has resulted, this must weigh heavily in the choice of penalty. The present case strongly exemplifies that requirement. The deceased was a young man at the threshold of life. He was a member of a loving family and his loss is felt grievously by them. The judge at first instance in *Furby* said that it had recently been recognised that too little attention had been paid in the past to the loss of human life, implying that there had been too much concentration on the culpability of the offender. We make no comment on that suggestion beyond saying that, in deciding on the

appropriate sentence in the present case, it is important that we remember that a young life was lost as a result of the applicant's actions.

The judge's sentencing remarks

[14] The learned trial judge in this case had been referred to the case of *R v Coleman* [1992] Cr App R (S) 502 as the principal guideline authority in this area. Deeny J observed that in cases decided since *Coleman* he could detect a tendency to impose somewhat higher sentences than had been suggested in that decision. (In *Coleman* a starting point of twelve months' imprisonment had been proposed for cases where there was a plea of guilty and the single blow had caused the victim to fall and sustain injuries that brought about the death.) Mr Fee submitted that, since sentence was passed in the present case, the Court of Appeal in England had in effect restored *Coleman* to its position as the principal guideline authority. In so far as the judge had departed from the position established by *Coleman*, therefore, he had fallen into error, Mr Fee argued. We shall deal with this argument shortly.

[15] The judge took favourably into account the applicant's plea of guilty "at the early opportunity on which it was made". He pointed out, however, that the case against him was a strong one and that he could not have avoided a conviction for manslaughter. He also gave the applicant credit for his previous good character and referred particularly to the testimonials that had been submitted on his behalf and the evidence given by his parish priest but he commented that there was no firm evidence of significant remorse. This observation was strongly challenged by Mr Fee who suggested that all indications were that the applicant had evinced significant sorrow at what he had done. He produced to this court a report from the applicant's general medical practitioner and a letter from the applicant himself which, he suggested, testified to his genuine repentance. Again we will deal with this issue later in the judgment.

[16] The judge considered the possibility of imposing a custody/probation order but concluded that this was not necessary. He cited two reasons for that. Firstly, he suggested that the applicant's previous good character indicated that this was not required. Secondly, he referred to the expressed desire of the applicant to emigrate at the end of his sentence. A probation element to the sentence might inhibit that, Deeny J suggested. Mr Fee informed us (as did indeed the applicant's letter) that he no longer wished to leave Northern Ireland. Mr Fee suggested, therefore, that a custody/probation order should now be considered, especially because the probation officer had said that this could provide the opportunity to monitor the applicant's consumption of alcohol.

R v Furby

[17] In the recent case of *Furby* the Court of Appeal in England and Wales analysed sentencing in single blow death cases since the decision in *Coleman* and gave the following guidance: -

> "28. To summarise these authorities, *Coleman*, where a sentence of twelve months was imposed is the starting point where there is a guilty plea and no aggravating circumstances. But where there are aggravating circumstances an appropriate sentence can rise as high as four years, depending on the particular facts. Getting drunk and resorting to violent behaviour under the influence of drink will be a significant aggravating factor, particularly where the violence occurs in a public place. Lord Lane drew a distinction between the facts in *Coleman*, where the victim sustained his fatal injury as a result of being knocked to the ground by the blow and striking his head, and the case where the injury that results in death is directly caused by the punch. That may be a valid distinction where the fatal injury is caused because the blow is particularly severe. However, we can see no reason to draw that distinction where the severity of the injury was not reasonably to have been foreseen."

[18] The remark in this passage that "getting drunk and resorting to violent behaviour under the influence of drink will be a significant aggravating factor" must be viewed with some caution since, later in its judgment, the court questioned the correctness of the trial judge's treatment of the offender's intoxication as a significantly aggravating factor. This was on the basis that there was no evidence to show that he was prone to violent behaviour while drunk and because he had been sleeping off the effects of alcohol for some hours before the offence occurred.

Should the guidelines in Coleman and Furby be followed in Northern Ireland?

[19] The decisions in *Coleman* and *Furby*, while of course not binding on this court, are of considerable persuasive authority. But in this difficult area of striking a balance between, on the one hand, the culpability of the offender, and, on the other, the public's sense of justice, this court must reflect conditions encountered in our community and the expectations of its citizens. As we have said, it is now, sadly, common experience that serious assaults involving young men leading to grave injury and, far too often, death occur after offenders and victims have been drinking heavily. The courts must respond to this experience by the imposition of penalties not only for the

purpose of deterrence but also to mark our society's abhorrence and rejection of the phenomenon. Those sentences must also reflect the devastation wrought by the death of a young man such as Mr McVey.

[20] As the court in *Furby* said, however, where the consequences of a single blow were not foreseeable, care must be taken to ensure that the sentence imposed is not disproportionate. While acknowledging the strength of this factor, we cannot believe that a starting point of twelve months imprisonment adequately caters for the considerations that we have outlined in the preceding paragraph. We consider that a more suitable starting point in Northern Ireland for this type of offence is two years' imprisonment and that this should rise, where there are significant aggravating factors, to six years. It follows that we must reject the argument that the judge's sentence in the present case must be regarded as excessive because it does not accord with the guidelines contained in *Coleman*.

[21] We agree with the view of the Court of Appeal in *Furby*, however, that no valid distinction can be drawn between the case where a light or moderate blow unexpectedly causes death and that where the blow causes the victim to fall and sustain, as a result of the fall, injuries which prove fatal. Such a distinction is, of course, justified, where the blow is particularly severe and, for the reasons that we have given, we consider that the blow struck in this case falls into that category.

Mitigating and aggravating features

[21] Mr Fee outlined a number of mitigating features which, he said, were present in this case: -

1. The applicant pleaded guilty at the first opportunity and admitted his guilt from the outset;
2. He was a young man of impeccable character;
3. He had suffered from genuine remorse as evidenced by his decision not to proceed with an application for bail because it fell on the day that Mr McVey was buried and by his letter to the court;

[22] Possible aggravating factors that must be considered are:-

1. The unprovoked nature of the attack;
2. The fact that it occurred in circumstances where the victim was not only not in a position to defend himself but was wholly unprepared for it;
3. The attack was not spontaneous – the applicant sought out his victim and had plainly conceived an intention to assault him some little time before the attack took place;

4. The attempt by the applicant to excuse his behaviour by a mendacious account that he apprehended an assault on Declan Curran;
5. The fact that the assault occurred when the applicant was under the influence of alcohol;
6. The fact that it occurred in a public place.

[23] This court has emphasised recently (in *Attorney General's reference (No 1 of 2006) (McDonald, McDonald and Maternaghan)* [2006] NICA 4) that, in order to avail of the full measure of discount for a plea of guilty, a defendant must have admitted his guilt at the earliest opportunity. In this case the applicant did not plead guilty to manslaughter at his arraignment. It has been explained, however, that the pathologist's report was not provided to his legal representatives until after the arraignment had taken place. In the circumstances we consider that this adequately explains his failure to plead guilty at arraignment.

[24] It is relevant, however, that the applicant had no viable defence to the charge of manslaughter. In *R v Pollock* [2005] NICA 43 this court declined to follow the recommendations of the Sentencing Guidelines Council that no distinction should be drawn between cases where an offender was caught red-handed and those where a viable defence was possible. This is not perhaps as significant an issue as it might be in other cases because the judge appears to have given the applicant full credit for his plea of guilty. In the particular circumstances of this case, we do not consider that the discount available for the plea should be reduced on account of the obvious strength of the case against him.

[25] The applicant's good character before this offence stands clearly to his credit. The references that have been produced on his behalf are impressive. The attack on Mr McVey appears to have been out of character. Whether this is to be regarded as an absence of an aggravating factor rather than a mitigating feature in the true sense of that expression is of no more than academic interest. The applicant is entitled to have these matters taken into account in the fixing of the appropriate sentence.

[26] The judge was not convinced that there was clear evidence of genuine remorse. Neither are we. As we have said, the applicant maintained the claim that he struck out because he thought that the deceased was going to strike Declan Curran. This was a false claim. His adherence to it is not compatible with true remorse. It is frequently difficult to distinguish authentic regret for one's actions from unhappiness and distress for one's plight as a result of those actions but we consider that the applicant's reaction partakes far more clearly of the latter. We have read his letter carefully and have noted that he referred to the assault on his victim as "an incident in which [he] was involved" and that he described the death of his victim as having occurred in "freak, tragic circumstances". Much of his letter is taken

up with an account of how he and his family have been affected by his arrest and conviction. Nowhere is there an explicit, frank acceptance that he was solely and directly responsible for the death of Mr McVey.

[27] We have also taken into account the report of his general medical practitioner on the question of the applicant's claimed remorse. It records the applicant as having said that he was sorry for what had happened and that he was well aware of the trauma suffered by the family of his victim. This report appears to have been obtained for the purpose of challenging the judge's view that there did not appear to be genuine remorse and must be viewed in that light. It is certainly not sufficient to persuade us to the opinion that the doctor expressed.

[28] All of the factors outlined as possible aggravating features, with the possible exception of the applicant's consumption of alcohol, should properly be regarded as such, in our opinion. There is no evidence that the applicant's intoxicated state made it more likely that he would attack the deceased and we consider that this should normally be present before the taking of alcohol should be regarded as an aggravating factor. But we are particularly concerned about the fact that the applicant determined to attack Mr McVey some time before he actually assaulted him and that he chose a method of attack that rendered his victim most vulnerable. This was not a sudden flaring of temper but a deliberate targeting of Mr McVey and an assault on him without warning. We have no doubt that this method of attack was chosen so that the victim would not be able to fight back. It was callous and cowardly. It was, in our judgment, unprovoked on any proper understanding of that term. The abusive comment alleged to have been made by Mr McVey could not be regarded as provoking the deliberate assault by the applicant some time later. The fact that the attack took place in a public place and that the applicant gave a lying account of the reason that he struck Mr McVey must also rank as significant aggravating features.

Would a custody/probation order be suitable?

[29] In our view a custody/probation order was clearly not appropriate in this case. The only indication that the probation officer gave in relation to this was that, if such an order was made, the applicant could be accommodated on a number of courses. He did not recommend that a probation order be made. A custody/probation order should only be made where it is considered that the offender would benefit from probation at the conclusion of a period of custody and that it is deemed necessary to enable him to re-integrate into society or because of the risk that he would otherwise pose. Neither condition arises in this case and we have concluded, therefore, that such an order should not be made.

Conclusion

[28] The sentence imposed by the judge could not be described as lenient but neither can it be characterised as manifestly excessive, in our opinion. Substantial sentences are required to deter young men from engaging in this type of wanton violence and to remind them that if the effects of their actions go beyond what they in their drunken condition intended, they must face the consequences of that eventuality. Severe sentences are also required to mark society's outright rejection of such behaviour and to reflect the ultimate and terrible tragedy of a young life brought shamefully to an end. The application for leave to appeal against sentence is therefore dismissed.