

*Judgment: approved by the Court for handing down  
(subject to editorial corrections)*

*Delivered:* **30/01/2015**

**IN THE CROWN COURT IN NORTHERN IRELAND**

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**SITTING AT BELFAST**

—————  
**THE QUEEN**

**-v-**

**IAN HUGH WEIR**

—————  
**BILL NO. 14/118652**

**WEIR J**

[1] Ian Weir, you have pleaded guilty to two counts on this indictment, namely the possession of a handgun without a firearms certificate and the possession in suspicious circumstances of a round of ammunition suitable for use in that gun. It is now my responsibility to sentence you for those offences.

[2] The offences came to light in the following way. On 11 January 2012 a Mr Strickland was shot dead in the countryside outside Comber. Police suspected that you and other members of your family were implicated in the killing and carried out searches of various premises including your house and gardens at Derryboye Road, Crossgar. In the course of that search on 13 January 2012 the gun and ammunition round which are the subject of the present charges were found wrapped up with another, imitation, firearm and two balaclava masks inside a cushion cover hidden under a rock in a flower bed in your garden. You were arrested and at that time denied knowing anything about any firearms.

[3] The items were sent to Forensic Science NI for examination and on 18 May 2012 the forensic scientist confirmed in writing to the police that the gun was a functioning weapon and that the round of ammunition was live, in good condition and suitable to be fired in the gun.

[4] You had been interviewed about these items on 27 February 2012 and again on 23 July 2012. On both occasions you said that you had been given the imitation

gun by your brother and claimed, somewhat implausibly, that you had found the functioning weapon in a skip while you were searching in it for scrap copper wire in December 2011 and had buried the items where they were found by police during the subsequent search.

[5] Thereafter nothing appears to have been done by police or prosecution to pursue these offences even though their evidence in relation to them was complete. Initially that may have been because they were concentrating on their investigation into Mr Strickland's killing. That case came to trial in January and February 2014. You and your brother Jason pleaded guilty to murder and you pleaded guilty to possession of the shotgun used in the killing. You gave evidence for the prosecution in the course of that trial in which your father and a Mr McCaughey were found guilty of murder by the jury. On 10 April 2014 I imposed upon you a minimum term of four years in respect of the murder before you would become eligible for consideration for possible release on parole and I imposed a sentence of eight years imprisonment on you on the firearms count being four years' custody and four years' probation supervision, that sentence to be concurrent with the minimum term for the murder. My approach to the imposition of those sentences is detailed in my sentencing remarks in respect of them at [2014] NICC 11 and need not be set out again here. The practical effect of those sentences together with the time that you had by then already served in custody was that you would first become eligible for consideration of your case by the Parole Commissioners in early 2016.

[6] Suddenly and without prior warning the present prosecution was initiated towards the end of 2014, some three years after the offence had been detected in January 2012 and some 2½ years after the police and Public Prosecution Service had all the evidence required to prosecute them. Your solicitors wrote in early January 2015 to the Public Prosecution Service asking why the prosecution was only now being brought and asking for a reconsideration of the decision to prosecute. A senior public prosecutor sent a long reply dated 14 January 2015 which recites a complex history but really does not explain why you were not prosecuted for the present offences long ago. In the course of that letter the prosecutor said:

"It is not disputed that there was delay in taking the decision to bring the present prosecution against your client. While I understand your concerns in this case it is not accepted that there was any manipulation of Court Processes by the prosecution. Furthermore it is not accepted that the delay amounts to an abuse of process or that your client's right to a fair trial is prejudiced in any way."

[7] I have no material before me to lead me to conclude that there has been any deliberate delaying of this prosecution in order to manipulate the "Court Processes". However the result of the acknowledged unjustified delay has potentially serious consequences for you. That is because the charge of possessing the handgun

without a certificate has been preferred under Section 3(1)(a) of the Firearms (NI) Order 2004 which by reason of subsequent legislation is punishable by a required statutory minimum term of five years' imprisonment whether following a contest or after a plea of guilty. It is a draconian penalty whose impact can only be mitigated in a case where the court is able to conclude that there are exceptional circumstances relating to your offence or to you as the offender which justify it in not imposing that required minimum term.

[8] I begin my examination of that question by considering what sentence I would have imposed had I been dealing with the present charges when they ought to have been brought or at the time of my sentencing for the murder and possession of the murder weapon. While the present offences are unrelated to the murder I am satisfied that I would have imposed a sentence not greater than one of five years imprisonment having regard to the four factors identified in the English Court of Appeal decision in R v Avis [1998] 1 Cr App R 420 which decision was approved of by the Court of Appeal in R v O'Keefe (8 March 2000) (unreported). I was assisted in that evaluation by Mr Magee for the prosecution whose presentation of the case was a model of prosecutorial fairness and restraint.

- (1) The gun was not loaded although the live round was found in the same packaging.
- (2) The prosecution did not contend that you had used the gun on any occasion.
- (3) There is no suggestion that the gun was in your possession for a sinister purpose hence the charge of simple possession although, somewhat incongruously, the allegation in relation to the single round of ammunition is that it was possessed in suspicious circumstances.
- (4) You have no relevant previous criminal record, the convictions for murder and possession of the murder weapon having been imposed subsequently to the commission of the present offences.

[9] I am equally satisfied that had these charges been preferred at the proper time as Mr Magee and the senior prosecutor both acknowledged could have been done but regrettably were not, I would have ensured that the effective sentence that I passed in relation to them would not have exceeded that which I passed for possession of the murder weapon which in turn, as earlier explained, I designed to correspond with your earliest possible release date in respect of the murder. The imposition now of the statutory minimum sentence without the possibility of discount for your plea of guilty would, coming at this late stage, wholly frustrate that objective.

[10] I accept the general proposition that the finding of exceptional circumstances in cases will be rare (see R v Jordan and Others [2005] 2 Cr App R (S) 44). However

sentencers have been enjoined by Lord Woolf LCJ in R v Rehman and Wood [2005] EWCA Crim. 2056 not to look at the individual circumstances separately and to conclude that each does or does not amount to an exceptional circumstance. At paragraph 11 he said as follows:

“A holistic approach is needed. There will be cases where there is one single striking feature, which relates either to the offence or the offender, which causes that case to fall within the requirement of exceptional circumstances. There can be other cases where no single factor will amount to exceptional circumstances but the collective impact of all the relevant circumstances truly makes the case exceptional.”

And later, having considered the potential impact of the Human Rights Act and Article 3 of the ECHR upon the interpretation of this mandatory sentencing provision he said at paragraph 16:

“It is clear in our judgment that, read in the context to which we have referred, the circumstances are exceptional for the purposes of [the section] if it would mean that to impose five years’ imprisonment would result in an arbitrary and disproportionate sentence.”

[11] I am satisfied that the particular circumstances of this case and of you as the offender as identified above mean that the imposition of such a sentence in this late stage prosecution for which no cogent explanation much less excuse has been provided would be arbitrary and disproportionate and accordingly I am satisfied that, viewing the matter holistically, the circumstances are exceptional so that I need not impose upon you the mandatory five year sentence.

[12] I take as my starting point a term of five years on each count which I reduce by 30% for your plea of guilty, your admission of guilt having been made to the police at an early but not at the earliest possible opportunity. I reduce the resultant term of three years and six months to one of two years and six months to take account of the long delay in bringing this prosecution. Of that period you will in accordance with the legislation which I am obliged to apply serve one year and three months in custody followed by a further period of one year and three months under the supervision of the Probation Service. Your sentences on each count will be concurrent with each other and with the terms which you are presently serving.