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Judgment: approved by the Court for handing down | *Delivered:* **27/03/07**

*(subject to editorial corrections)**

IN THE CROWN COURT SITTING IN NORTHERN IRELAND

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REGINA

-v-

WILLIAM SAMUEL COURTNEY

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[1] On Thursday 22 March 2007 Mr Arthur Harvey QC with whom Mr Charles McCreanor appeared, applied to the court to have his client, William Samuel Courtney re-arraigned on the first count of the indictment, namely the murder of Mr Alan McCullough. I directed that this be done and Courtney then pleaded not guilty to murder but guilty to manslaughter. Mr Geoffrey Miller QC, who appeared with Mr John Creaney QC and Mr Magill for the prosecution accepted that plea and said that the Crown would not seek to call evidence to prove the charge of murder. He proceeded to open the matter to the court and a plea in mitigation was then entered by Mr Harvey.

[2] Mr Harvey did not wish to have the hearing of the plea adjourned to obtain a pre-sentence report from the Probation Service. In his submission this was neither necessary nor appropriate. I find, and counsel accepted, that the offences are so serious that a custodial sentence is necessary in the circumstances, pursuant to Article 19, Criminal Justice (NI) Order 1996. He further said that his instructions from his client were that, without disrespect to the Probation Service, he was unwilling to undergo a custody probation order. That is his right in law. He submitted that the court would have all the necessary factors before it without such a report which his client did not wish to have. Mr Miller QC for the Crown agreed that a pre-sentence report was not necessary. In all those circumstances I have formed the opinion as required by Article 21(2) of the 1996 Order, that such a report is unnecessary given the inevitability of a custodial sentence, the attitude of the accused and the submissions of experienced leading counsel. It is also relevant to note the age of the accused, the nature of the offence and the period of 16 years which have elapsed since his last conviction in considering that a custody probation order may well not have been appropriate in any event.

[3] Prosecuting counsel had helpfully set out his opening of the matter in a written text which I attach as an appendix to these sentencing remarks. It was fully opened in court on Thursday 22 March. The late Mr Alan McCullough was said by the prosecution to have been a member of "C Company of the Ulster Defence Association under the command of Johnny Adair". Following the murder of John Gregg and Robert Carson in February 2003 the adherents of C Company were driven out of the Shankill area of Belfast by other members of the UDA. The deceased went to Blackpool with his girlfriend but was anxious to return. He did so in early April 2003. The defendant was one of a considerable number of persons who were approached by his mother with a view to trying to render acceptable to the leaders of the UDA the return of Mr McCullough. Contact was made. In particular on Monday 26 May the deceased left his mother's house with the defendant who was driving his blue Mitsubishi car. They had a meal with other persons in a restaurant in County Antrim. The trainers and trouser hems of the deceased were noted to be covered in mud on his return from this expedition. On Wednesday 28 May 2003 the deceased left his mother's house following a phone call from the defendant. It seems this was in the defendant's Mitsubishi car. On his case he took him at the deceased's request to a meeting with members of a paramilitary organisation. The deceased hoped that this would facilitate him remaining in Northern Ireland. The defendant contemplated that Alan McCullough would be subjected to harm on this occasion which might include a punishment shooting in the form of a kneecapping. However his case was that he did not intend nor wish such an outcome and in particular that he never contemplated that these other persons would go outside the scope of such harm by actually shooting Alan McCullough to death. Mr Harvey contends, without objection, that at all times Courtney's role had been open, visible and public. I observe that if Courtney did believe that he was driving Alan McCullough to his death it was an act of considerable bravado to use his own car to do so, collecting the man from his family home where there would be several people who could or would see that. I also observe the pathological evidence to which the Crown drew my attention ie. that apart from very slight bruising to the left hand of the deceased there was no other evidence of struggle on his part. In any event the prosecution have made the decision to accept this plea of manslaughter on the basis that the defendant brought the deceased to the scene of the fatal shooting on 28 May 2003 but that he did not shoot him. No doubt the decision to do so was arrived at carefully by the Director of Public Prosecutions who had the assistance of very experienced counsel in arriving at that view.

[4] Among the many unusual aspects of this case is that the body of the deceased was actually found by a public spirited citizen, witness A, who read an article about the matter in the Irish News, dated 5 June, which jogged his memory of seeing a car on the Aughnabrack Road on 28 May. Pathological examination showed that the victim had been shot with 3 (or possibly 4)

9 mm pistol rounds. Forensic evidence tied Courtney to the location but not to the rounds. The weapon has not been found. The deceased had a small quantity of alcohol but also cocaine in his blood. Other details can be found in the Crown opening and in the voluminous papers. The Crown drew attention to the criminal record of the defendant that was of some six pages running from 4 August 1975 and included an offence of robbery when he was only seventeen. He was born on 8 July 1963 and is now 43 years old. However counsel acknowledged that the last offences, of robbery and hijacking, were in 1991. Most of the offences were of dishonesty or disorderly behaviour and there is nothing of the present character.

[5] Mr Harvey relied on what he described as a considerable number of factors in mitigation. The first of these was the plea of guilty of his client which he described as being at the first opportunity when one considered the historical background of the case. It is necessary to briefly describe that at this time as it is relevant both to this ground and to another point on which Mr Harvey relies ie. delay. His client was arrested immediately after the disappearance of Mr McCullough but was released by the police. He was then re-arrested in June and charged with the murder. He remained in custody, despite repeated applications for bail until May 2005 ie. almost two years later, when Mr Justice Hart released him on bail in light of the considerable and continuing delay in bringing the case to trial. He was due to be tried in October 2005 but the trial judge, as a result of the evolution of the case was obliged to recuse himself. The case, as counsel on both sides put it, continued to evolve and the re-trial of the accused only commenced on 25 September 2006. Mr Harvey said, without dissent from the Crown, that the opening of the Crown case at that time was materially different from the opening in October 2005. The Crown case has further evolved and changed between then and the opening before me. The 2006 trial ended with the acquittal of the accused on the count of murder and some other charges which are not before this court. However the Crown availed of their right under the Criminal Justice (NI) Order 2004 to appeal that acquittal, which came at the end of the Crown case. The relevant provisions came into force in 2006. The Court of Appeal in Northern Ireland in its judgment of 26 January 2007 upheld the Crown's contention and allowed the appeal against the judge's order and directed that the defendant stand trial again on the charge of the murder of Alan McCullough. Counsel's contention was that it was only now and at the first opportunity that the Crown were prepared to accept his client's plea of guilty to manslaughter. This was not disputed by Mr Miller although the court was not told whether there had been any earlier without prejudice offer from the defence. Presumably there was not, or the defence could not have been conducted as it was in 2006. However the point relied on by Mr Harvey was that if his client had pleaded guilty to manslaughter but not guilty to murder and that had not been accepted by the Crown, as was the case until now, such a plea would have been a nullity. He relied on R v Hazeltine 51 CAR 351 as authority for that proposition. In that case an

unaccepted plea of guilty to unlawful wounding when there was a single count of wounding with intent was indeed held by the Court of Appeal in England to be a nullity. However I must also take into account and indeed am governed by the clearly stated views of our Court of Appeal in Attorney General's Reference (No.1 of 2006), 24 February 2006 with regard to the importance of an early plea in respect of the particular offence at the earliest opportunity. Lord Chief Justice Kerr said:

> "It will not excuse a failure to plead guilty to a particular offence if the reason for delay in making the plea was that the defendant was not prepared to plead guilty to a different charge that was subsequently withdrawn or not proceeded with."

The court went on to advert to what the accused had said at interviews as being relevant. The accused here at interview was denying any involvement in that offence. I do not understand it to be contended that he had reached his present position until recently. The matter is a most unusual one, given particularly that he was acquitted of murder last November. I have concluded that I cannot accept the submission of Mr Harvey that I should treat the plea as at the first opportunity, but that in light of the attitude of the prosecution, which has only reached its present position in the last few weeks, or even more recently, and in the light of the undoubted fact that the nature and evidence in the cases evolved over the years that the accused is entitled to a substantial discount for his plea of guilty.

[6] In saying that I take into account the reasons why the courts do reduce the sentences of persons who plead guilty. By doing so those persons abandon the possibility of being found not guilty of any offence at trial. Self evidently that is relevant here given the history. A plea avoids the necessity of a trial which has important consequences. It spares the witnesses the burden and possible stress of giving evidence, which may be particularly onerous when they are giving evidence for a second time. Here, of course, it brings a measure of closure to the grieving relatives of the deceased, some of whom gave evidence at the earlier trial and may have been called again. It avoids a very considerable expenditure of public money and court time. The estimate for the trial was given to me as, at least, six months. It allows the accused to express, as he did through his counsel, his deep regret for his involvement in these fatal events.

[7] Mr Harvey urged upon the court that the accused was entitled to a separate and additional reduction in his sentence arising out of the delay in bringing him to trial. It is now three years and nine months since he was charged with this offence. It is true that if a trial had occurred even longer delay would have been experienced but it seems to me that that is much less relevant than the actual delay at the date of sentencing. He drew attention to

the fact that the Crown had on 24 January 2006 made public acknowledgment that failures in disclosure, not by counsel but by others involved in the prosecution process, had led to a delay which constituted a breach of the right of the accused to a trial within a reasonable time under Art. 6 of the European Convention on Human Rights.

[8] Counsel relied on a decision of the Third Section of the European Courts of Human Rights in Dzelili v Germany (10 February 2006). It followed Eckle v Germany 5 EHRR 1 in holding that an acknowledgement of a breach coupled with redress met the requirements of the State where there had been a breach of the time requirement "in particular by reducing the applicant's sentence in an express and measurable manner". (Paragraph 83). The issue as to whether the court should expressly measure the reduction for the breach does not seem to have been addressed by an appellate court in the United Kingdom. But the principle of reduction has been expressly approved by the House of Lords in Attorney General's Reference (No. 2 of 2001) 2004 1 All ER 1059, per Lord Bingham at paragraph 24. Neither counsel went so far as to suggest what the reduction should be here. I observe that there would be a price to pay in terms of delay itself if the court were to have to have a hearing to measure how much passage of time arose from culpable delay on the part of the State and how much it was an inevitable or natural consequence of the charge or of the defendant's own conduct. I take into account the submissions of both senior counsel without repeating them. It does seems to me that there is justice in the point that this case did lead to unusual scientific developments which were apparently grounding breaking and even revolutionary in some respects. Furthermore one must take into account that the accused has now pleaded guilty to manslaughter so that the effluxion of time stems in considerable measure from his involvement in this grave offence and the timing of the resolution of these proceedings. I note that time was lost because the first expert selected by the defendant then became unavailable through no fault of the defence. But nor was it the fault of the prosecution. It might be said that the delay since last November is something that should be laid at the door of the State, in the broadest sense of that word, but Mr Miller points out that in that regard at least William Courtney has been on bail without conditions since November 2006. However, as I mentioned he was released on bail earlier but on conditions which, inter alia, required him not to return to his home but to live in a different town with grave disruption to his family life. Making the best judgment I can I have concluded that he is entitled to a reduction of six months in his sentence with regard to delay.

[9] Counsel furnished the court with a helpful folder of cases relating to sentencing in manslaughter in this jurisdiction and I take those into account. He very properly acknowledged however that the citing of such cases was of limited value given the enormous range of circumstances which are covered by the crime of manslaughter. In R v Ryan Quinn [2006] NICA 27 the Court

of Appeal upheld my own sentence in a case of manslaughter :[2005] NICC 33. In doing so they considered that a higher starting point for single blow manslaughter would apply in this jurisdiction than that currently applying in England and Wales. It seems to me therefore that, partly for that reason and partly because of other decisions of our Court of Appeal I should look for comparative sentences in this jurisdiction. In doing so, of course, I bear in mind that the object is to do justice in the instant case and that consistency should be a servant of such justice and not its master. Mr Harvey relied on R v McFerran, 2007, but while there is some resemblance on the facts I am satisfied that the two cases are not on all fours. I take into account all the matters drawn to my attention by defence counsel. I note that the defendant is a married man with four children, three of whom are in employment. I note that he was in employment as a tiler and resident in the semi-detached house in a part of north Belfast where some of the items of evidence against him were found. I note Mr Harvey's contention that he was a secondary figure and not a principal in this crime. That is clearly the basis on which I am obliged to sentence him. It must be borne in mind however that the principal in this case was indisputably guilty of murder and would receive a sentence of life imprisonment with a substantial minimum period if convicted. William Courtney has done nothing to assist in this conviction. He must know someone else who was at the scene of this murder but he has not chosen to disclose that to the authorities. But I accept that as a secondary party he is less culpable than, for example, the accused in R v Donnell or R v Magee, two cases of manslaughter by plea, where the accused received the equivalent of eleven and ten years sentences, respectively. He cannot claim a clear record although I accept that the record is of limited relevance.

[10] William Samuel Courtney, it is my duty to sentence you for the manslaughter of Alan McCullough on the basis which has been put before the court and not on any other basis. Having taken all the relevant factors into account, including your entitlement to a significant, although not the maximum, discount for your plea of guilty for the reasons outlined above, I have concluded that a sentence of eight and a half years would have been appropriate. I reduce your sentence by a further six months because of the factor of delay, in the light of the decisions of the European Court of Human Rights. I therefore impose upon you a sentence of 8 years imprisonment.