

Judicial Communications Office

30 January 2023

COURT DELIVERS GUIDANCE ON SENTENCING FOR MURDER ASSOCIATED WITH DOMESTIC VIOLENCE

Summary of Judgment

On 20 January 2023 the Court of Appeal¹ delivered a decision affirming a 21 year minimum tariff (in connection with a mandatory life sentence) imposed by His Honour Judge Miller KC upon William Hutchison ('the applicant') and refusing his application for leave to appeal against that life sentence tariff for the murder of Alice Morrow ('the deceased'). The court expressly noted that this was a femicide case involving significant domestic violence and took the opportunity to provide guidance to sentencers in dealing with such cases.

Factual Background

The applicant was sentenced on 7 June 2021 following his late plea of guilty to the murder. The deceased, aged 53, had been in an intimate relationship with the applicant for 11 years. She was murdered by him on the evening of Sunday 10 March 2019. The applicant called emergency services at 11:10pm that night. Police officers arrived at the scene at 11:21pm and found the deceased lying on the bedroom floor, naked and lifeless with multiple injuries.

The deceased was confirmed dead at 11:25pm. A post-mortem examination established that death had resulted from a sustained blunt force assault. There were 71 single or groups of injury including extensive bruising to her body and rib fractures which would have impaired breathing. Notably, there were finger marks and bruising to the deceased's jaw and throat supporting a conclusion of attempted strangulation or asphyxiation. The applicant had telephoned a Ms Woods prior to calling an ambulance and told her: 'I never hit her this bad before, I haven't hit her in two years, I fucked up this time, this is the worst I've hit her.' Commenting that he did not want to go back to jail he went on to say that if she didn't wake up he was 'going to have to bury her.' At police interview the applicant denied causing the deceased's death and despite his subsequent guilty plea continued to deny the commission of the crime, giving his Probation Officer an account of what happened at variance with what he had earlier told police.

Grounds of Appeal

The court distilled the applicant's submissions to two essential grounds of appeal:

- (i) that the judge erred in law when determining the appropriate tariff prior to adjustment for the guilty plea. In particular, it was claimed that the judge double counted certain factors after deciding on the higher starting point category when varying that starting point on account of aggravating factors.
- (ii) that the judge failed to take into account certain factors in mitigation and made insufficient allowance for the guilty plea.

¹ The constitution of the court was Keegan LCJ, Treacy LJ and McAlinden J. Keegan LCJ delivered the judgment of the court.

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Ground 1 - The judge double counted in arriving at the tariff

In rejecting this ground, the court noted that the exercise in fixing the minimum life term (*i.e.*, the tariff or period of time after which the prisoner may be considered for release on licence under Article 5 of the Life Sentences (Northern Ireland) Order 2001) was governed by its decision in *R v. McCandless and others* [2004] NICA 1 which adopted Lord Woolf's *Practice Statement* of 2002. That statement sets out various starting points for different categories of murder and, in addition, lists aggravating and mitigating features which would serve to increase or reduce the tariff from those starting points.

The court endorsed as 'inevitable and entirely correct' the sentencing judge's selection of the higher starting point of 15/16 years which applied to cases where, as here, the applicant's culpability was exceptionally high, or the victim was in a particularly vulnerable position. Paragraphs [14]-[17] of the *Practice Statement* then go on to list aggravating and mitigating factors relating to both the offence and the offender which would make it appropriate for the starting point to be varied upwards or downwards. The court noted that the judge approached the sentencing exercise in three stages:

- (i) The choice of the higher or lower starting point;
- (ii) The variation of the starting point by factors relating to the offence; and
- (iii) The variation of the starting point by factors relating to the offender.

The court found no fault with this methodology. The sentencing judge determined that three qualifying features justifying the higher starting point category were present: the victim was vulnerable; there was evidence of gratuitous violence; and there were extensive and multiple injuries inflicted on the victim before death. The sentencing judge then went on, rightly in the court's view, to identify that the murder was 'the culmination of cruel and violent behaviour by the offender over a period of time' - as an aggravating factor in this case. The court noted that the phrase 'over a period of time' referred to a history of domestic violence and it disagreed with the applicant's contention that this feature had already been taken into account by the judge in determining the higher starting point. This factor did not duplicate any of the features chosen from paragraph [12] of the *Practice Statement* in order to arrive at the higher starting point, the court held. Further the court made it clear that behaviour of this kind towards the deceased and previous female partners can be taken into account to establish a culmination of cruel and violent behaviour over a period of time. The court stated that the applicant's reliance upon *R v. Robinson* [2006] NICA 29 was misplaced and did not alter its assessment of the correctness of the method applied by the judge.

The court also endorsed the judge's identification of a further aggravating feature of the offence as: the applicant's actions following the murder - which included deliberately failing to summon medical assistance at a critical time and maintaining the pretence of grieving partner.

The court then noted that having correctly identified two aggravating factors relating to the offence the judge properly went on to consider and identify any such factors relating to the offender in accordance with paragraph [15] of the *Practice Statement* and, in so doing, rightly identified the offender's previous criminal record and failures to respond to previous sentences, as going to culpability. This, the court held, was a valid third aggravating factor which justified the increase from the starting point. The judge, in the court's view, had been correct to place the case within the higher bracket of minimum terms and the brutal nature of the sustained attack on the deceased would alone have justified this without resort to any other factor. The judge correctly identified that at least three factors were present which justified the selection of the higher starting point and the

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court noted that the judge could have made use of a provision in the *Practice Statement* allowing for 'a substantial upward adjustment' where several factors are identified as attracting the higher starting point. The court was equally satisfied that the judge had correctly identified the various aggravating factors present in the case.

Ground 2 - that the judge failed to take into account certain factors as mitigation and made insufficient allowance for the guilty plea.

The court went on to note that the judge found that there were no mitigating factors apart from the applicant's late guilty plea and that he concluded that 24 years (increased from the 15/16 year starting point by taking account of the identified aggravating factors) was the minimum term or tariff that he would have imposed after a contested trial. The court saw no cause for criticism in this and was not attracted by the applicant's argument that the judge's reasoning in arriving at that figure was opaque, noting that Carswell LCJ in *R v. McCandless* had sought to eschew an 'overly mechanistic or rigid' approach to sentencing or one explained 'by way of arithmetic formula'. The court considered that the judge's approach was transparent and it could entirely understand, based on the aggravating factors, why he reached the conclusion he did.

The court then addressed the applicant's argument that the sentencing judge left out of account three mitigating factors, namely: that the killing was not pre-planned; that there was no intention to kill; and, that the applicant had a history of mental health issues. Noting that these matters were expressly and appropriately dealt with by the judge in his sentencing remarks, the court rejected each observing that the judge's assessment was beyond reproach in that he had observed that at the very least the applicant was supremely indifferent to the deceased's fate and noting that it was inexplicable that medical help was not instantly sought.

The court importantly stated that where there is gratuitous violence to a vulnerable victim and an indifference as to whether or not the victim dies it did not consider that the argument made for mitigation gains any traction at all (paragraph [46]).

The court also noted - as had the sentencing judge - that the expert psychiatric evidence available in the case did not support the view that the applicant's mental state was such that he did not understand what he was doing or appreciate the consequences of his actions. Accordingly, the judge had not left out of account any valid mitigating factors

Finally, in response to the applicant's criticism of the judge's reduction of the tariff for his late guilty plea, which amounted to one-eighth, the court, by contrast, considered that the reduction had been generous since the applicant had shown no remorse or empathy and his late plea offered little comfort or vindication to the deceased's family in addition to which he had maintained his innocence despite his guilty plea. (The court cited the earlier Court of Appeal decision in *R v. Turner and Turner* [2017] NICA 52 which had indicated that where a murder accused enters a not guilty plea at arraignment and later changes the plea to guilty (as the applicant had done in this case) he is unlikely to receive a reduction greater than one-sixth. That judgment also noted that each case had to be considered on its own facts.)

Conclusion

The court found no merit in any of the grounds of appeal; the judge's sentence was neither wrong in principle nor manifestly excessive but, rather, reflected the serious nature of the offence characterised, as it was, by significant violence against a vulnerable woman in a domestic setting by

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a man with a prolonged history of significant violence against the deceased and other female partners. It was particularly striking, the court observed, that a repeat pattern of domestic violence had escalated to murder and the sentence reflected and recognised 'society's utter condemnation of such behaviour and should be taken as a signal that offending of this nature will attract commensurate sentences.'

NOTES TO EDITORS

1. This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available on the Judiciary NI website (<https://www.judiciaryni.uk/>).

ENDS

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