

Judicial Communications Office

28 February 2020

COURT SENTENCES FOR MANSLAUGHTER OF PAULINE KILKENNY

Summary of Judgment

Mr Justice Colton, sitting today in Omagh Crown Court sitting in Belfast, sentenced Joseph Dolan to an indeterminate custodial sentence for the manslaughter of Pauline Kilkenny at her home in Belcoo in November 2018 and ordered that he must serve a minimum of ten years before he can be considered for release by the Parole Commissioners.

Background

Pauline Kilkenny ("the deceased") was found dead at her home on 13 November 2018. Her sisters went to her house after being alerted that she had not turned up for work. The doors were locked and the curtains closed. The deceased's handbag was in the kitchen beside her open purse which had no cards or money in it. Her bedroom door was locked with the key in the outside of the door. The deceased's sisters found her body on the bedroom floor. A post mortem found she had been subjected to blows to the head with an object such as the kitchen pans which were found at the scene. She had also been stabbed 28 times in the face, neck and chest. The pathologist concluded that death was as a result of the combined effects of external bleeding from stab wounds to the neck and lacerations to the scalp and the main injuries associated with a fractured skull.

Joseph Dolan ("the defendant") was approached by police later that day while he was sitting in the deceased's car outside Enniskillen. He was arrested on suspicion of murder. He admitted in an early interview to stealing the car but initially attempted to place responsibility for the killing on his girlfriend. He alleged she had been present and had participated in the assault. In his eleventh interview he finally confirmed that his girlfriend had nothing to do with the killing.

The defendant was charged with murder, theft of the deceased's car and perverting the course of justice (in respect of falsely implicating his girlfriend). After medical evidence was provided to the court, the defendant applied to be re-arraigned and pleaded guilty to manslaughter on the grounds of diminished responsibility which was accepted by the prosecution. He also pleaded guilty to the other two counts.

Pre-sentence report

The pre-sentence report noted that the defendant entered the care system at the age of 11 and experienced three foster placements until he was discharged aged 18. He has never engaged in employment or training after leaving school. After the age of 18 he engaged in significant drug misuse and had periods of homelessness, imprisonment and short term in-patient hospital treatment. Through his sister he came into contact with the deceased in 2015 and she provided him with a home, support and stability.

The defendant claimed the demise of his relationship with his girlfriend was a significant stressor and led to increased low mood, anxiety and paranoia which formed the background to his actions. He provided very little detail of the incident itself and said his only recollection was of standing over

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the deceased's dead body with a knife in his hand. He said he sat on the bed and watched the deceased for about an hour without contacting the emergency services. It was also noted that he left the deceased's house, went to visit his girlfriend and then returned to steal the deceased's car. The pre-sentence report also referred to the defendant's extensive criminal record (34 convictions in the Republic of Ireland and two in this jurisdiction). The offences included the use of violence, use of a weapon, a desire for financial gain and substance abuse. The report assessed the defendant as a person who presents a high likelihood of further offending and that he is an offender who represents a significant risk of serious harm. The judge agreed with these assessments.

Diminished Responsibility

Section 5 of the Criminal Justice Act (Northern Ireland) 1966, as amended by section 53 of the Coroners and Justice Act 2009, sets out the requirements which must be established in order to establish the partial defence of diminished responsibility. The defendant must be suffering from abnormality of mental functions which arose from a recognised medical condition; substantially impaired his ability to do one or more of the things referred to in the statute; and provides an explanation for the defendant's acts and omissions in doing or being party to the killing. The things referred to in the statute are: to understand the nature of the defendant's conduct; to form a rational judgment; and to exercise self-control.

The Court received reports from three consultant psychiatrists. It also received a joint statement from two of the psychiatrists (one on the instruction of the defendant and one on the instruction of the prosecution). The consultant psychiatrists agreed that the defendant suffered from a mental disorder, known as a personality disorder. It was also agreed that this personality disorder contained traits that could be described as mixed personality disorder:

"All psychiatric opinion before the court was in agreement that [the defendant's] mental state (of extreme distress, fear, terror and abandonment rage) arising from [your] emotionally unstable personality disorder characteristics substantially impaired [your] ability to form a rational judgment and to exert self-control at the time of Pauline Kilkenny's killing. This is the basis upon which the partial defence of diminished responsibility has been accepted in this case."

Victim Impact

Mr Justice Colton was provided with victim impact statements from the deceased's family and a friend. He said they eloquently conveyed the devastation caused by her death and that they are a testament to her character:

"It was clear that [the deceased] was a kind and trusting person. Indeed it was this very kindness that led to [the defendant's] involvement with Ms Kilkenny. She took you in at a time when you were desolate and homeless. She looked after you, provided a home for you and provided some much needed stability in your life. It is one of the greatest tragedies of her death that it was her kindness and desire to help people that brought her into contact with her killer."

The Appropriate Sentence

In a case where a defendant has pleaded guilty to manslaughter on the grounds of diminished responsibility the first issue for the sentencing judge is to determine whether or not a Hospital

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Order, with or without restrictions, would be an appropriate disposal. This decision will primarily depend on the medical evidence. Mr Justice Colton referred to the joint statement prepared by the consultant psychiatrists and said it was agreed that a Hospital Order is not an appropriate disposal in this case. The statement noted that the defendant can access risk reduction psychological interventions and the mental health team while in prison. However, in order for his deeply ingrained personality disorder to be treated he would need specialised treatment within a 24/7 therapeutic environment. In Northern Ireland, however the mental health legislation does not support Hospital Orders when the primary diagnosis is a personality disorder. Mr Justice Colton said that even if there had been medical support for a Hospital Order he would, in any event, have had concerns about the premature release of a dangerous offender.

As the judge found that a Hospital Order was not appropriate the defendant had to be sentenced in accordance with Article 13 of the Criminal Justice (NI) Order 2008 where the sentence will be imprisonment for life, or an indeterminate custodial sentence or an extended sentence, where the court is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission of further offences by the defendant. Serious harm means death or serious personal injury, whether physical or psychological.

Mr Justice Colton said he had no doubt there is a significant risk to members of the public of serious harm being occasioned by the commission by the defendant of further specified offences. The pre-sentence report had also assessed the defendant as having a high likelihood of further offending. The report also regarded the defendant as currently meeting the threshold as representing a significant risk of serious harm identifying the following factors as being relevant: his criminal record including the use of violence and aggressive behaviours; use of weapons to inflict serious harm on vulnerable victims; evidence of destabilising factors such as his chronic substance abuse history, personality and mental health issues and lack of insight; non-compliance with probation and mental health services in the past; and lack of family or support systems. The judge said these factors were reinforced by the medical evidence. A report prepared for the prosecution opined that “the future violence risk for life threatening harm in my view is thus a significant one, which will require indefinite management and supervision”. In the joint statement prepared by the consultant psychiatrists they both agreed that the nature of the defendant’s personality disorder combined with his proven history of violence means that unless his personality disorder is treated or effectively managed, he will remain dangerous.

Mr Justice Colton was satisfied that the Article 13 threshold had been met in this case. Having come to that conclusion he then must consider whether or not the seriousness of the offence is such as to justify the imposition of a life sentence or an indeterminate custodial sentence (he considered that an extended custodial sentence would not be adequate in this case). The judge said the submissions from counsel appeared to be that an indeterminate custodial sentence was appropriate but that they differed on the defendant’s residual culpability which would primarily impact on the tariff to be imposed. He was guided by a Court of Appeal judgment¹ which said that when the court finds that the defendant satisfies the criteria for dangerousness, a life sentence “should be reserved for cases where the culpability of the offender is particularly high or the offence itself particularly grave”.

Mr Justice Colton said the most important matter is the protection of the public, something which was movingly referred to in some of the victim impact statements. He said the 2008 Order is in effect a “game changer” in terms of the appropriate sentence in diminished responsibility cases as there is

¹ *R v Hackett* [2015] NICA 57

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no longer any need to protect the public by passing a sentence of life imprisonment because the public is now properly protected by the imposition of an indeterminate custodial sentence. The judge considered this was the appropriate sentence in this case as it would provide protection to the public in that the defendant will only be released on licence if approved by the Parole Commissioners:

“It is imperative in my view that the Parole Commissioners have access to the pre-sentence report in this case and all the medical evidence I have considered in the event that they are considering your release in the future. Given the contents of the medical evidence I have received any consideration of your release will require the most intense scrutiny.”

The Appropriate Tariff

In setting the appropriate tariff, the court must look at the gravity of the offence and the culpability of the accused. Mr Justice Colton said this was a shocking offence which was aggravated by a number of features including:

- The victim was extremely vulnerable;
- The attack was unprovoked;
- Extensive and multiple injuries were inflicted by weapons including a knife and blunt instruments;
- The attack occurred in the victim’s home;
- The defendant was indifferent to the seriousness of the likely injury he inflicted;
- Associated offences were committed at the time including theft and providing a false account; and
- The traumatic effect upon the family of the deceased.

The judge also noted that the defendant has failed to respond to previous sentences.

In terms of mitigating features it was submitted that there was some evidence of remorse but Mr Justice Colton said he was not persuaded that the defendant had demonstrated any real remorse:

“Indeed a chilling feature of this case is your apparent emotional indifference to the plight of your victim or her family during the course of police interviews, during your interview for the pre-sentence report and in the medical that I have considered. In truth the only true mitigating factor relates to your undoubted diminished responsibility. The court must do its best to make some assessment of your residual degree of culpability having regard to the circumstances of the case and the medical evidence it has received.”

Mr Justice Colton noted that the medical experts disagreed in this respect however they emphasised that the evaluation of what went on in the defendant’s mind for the duration of the offence relies on personal evaluations and interpretations. It was therefore not possible for them to say precisely to what degree each aspect of mental state had contributed to the totality of the offence behaviour. Ultimately this is a matter for the court on assessing all of the evidence available. In terms of residual culpability, the judge said there are a number of influential matters. Both doctors agreed that it is unusual for a defendant to have been convicted of manslaughter with diminished responsibility on the basis of a personality disorder in Northern Ireland. The judge said it was also

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relevant that the defendant knew that the drug use increased his risk of behaving dangerously based on his previous violent conduct.

Mr Justice Colton said there was some evidence of some rational thinking by the defendant during the course of his “horrible actions”. He said that after the event, the defendant locked the bedroom door and outside door before initially leaving the scene:

“Your actions in returning to the scene and stealing the victim’s car and your carrying on as normal, despite what you knew must have happened indicate to me that you were capable of rational thought following the index offence.”

The judge also shared the psychiatrists’ reservations that the defendant is a “poor and unreliable historian generally”. The report pointed out that the defendant omitted significant information from his narrative, told untruths and gave changeable accounts. The psychiatrist commented that the defendant “may well have been capable of rational thought immediately before the index offence”. Mr Justice Colton concluded that the defendant’s responsibility was not minimal. He said it was not possible to assess his residual culpability in any scientific way but in all the circumstances he considered it to be medium at the very least.

Mr Justice Colton said that a tariff in the range of 18 to 20 years would have been appropriate had the defendant been convicted of murder following a contest. This would have been reduced in the event of a plea. Given the defendant’s diminished culpability the judge considered that in the event of a conviction after trial the appropriate tariff would have been 13 years. The defendant, however, was entitled to credit for his plea of guilty which was entered when it became clear that the prosecution would accept a plea to manslaughter on the grounds of diminished responsibility. The judge considered that the defendant was entitled to substantial credit for his plea which was a recognition of his guilt, saved public expense and spared the deceased’s family the ordeal of a trial. He considered that a tariff of 10 years was appropriate.

In concluding his sentencing remarks Mr Justice Colton said that it was regrettable that the treatment that would be needed to address the defendant’s personality disorder cannot be made available to him in Northern Ireland. The psychiatrists had commented that they were so concerned about his dangerousness and his need for treatment that they wanted to emphasise the importance of the defendant and others like him in Northern Ireland having equitable access to services as those in England and Wales not just for his benefit but for the benefit of the whole community because he would be released back into the community eventually.

Mr Justice Colton imposed an indeterminate custodial sentence in respect of the offence of manslaughter by reason of diminished responsibility (count one) and specified a tariff of 10 years. He imposed sentences of 12 months’ imprisonment in respect of each of the other counts to run concurrently with the sentence imposed in respect of count one.

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://judiciaryni.uk>).

ENDS

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