

# Judicial Communications Office

20 November 2017

## **COURT SETS LIFE SENTENCE TARIFF FOR FRED McCLENAGHAN**

### Summary of Judgment

Mr Justice Colton, sitting today in the Crown Court, ordered that Fred McClenaghan must serve a minimum of 13 years for the murder of Marion Millican before he can be considered for release.

#### **History of the Criminal Proceedings**

The defendant was charged with the murder of Marion Millican and with the possession of a firearm with intent to endanger life. He pleaded not guilty to both counts but was convicted by a jury on 3 July 2012. He appealed his convictions and on 29 January 2014 the Court of Appeal allowed his appeal in respect of the murder conviction on the conclusion that the trial judge had wrongly excluded expert evidence which the defendant sought to introduce.

A retrial took place on the charge of murder and on 5 November 2014 the defendant was again found guilty by a jury. This conviction was also appealed. On 7 December 2016 the Court of Appeal allowed the appeal on the grounds that the verdict was unsafe because of a failure by the trial judge to permit the jury to consider the defences of unlawful act manslaughter and manslaughter by gross negligence.

The retrial commenced on 14 September 2017 and on 19 September the defendant asked to be re-arraigned at which stage he pleaded guilty to the offence of murder.

#### **Determination of Sentence**

The only sentence open to the court on conviction for murder is one of life imprisonment. The court then has to fix the minimum term, or tariff, which is the minimum period that it considers appropriate to satisfy the requirements of retribution and deterrence having regard to the seriousness of the offence. This sentencing exercise involves the court determining the appropriate starting point in accordance with sentencing guidance and then varying the starting point upwards or downwards to take account of aggravating or mitigating factors which relate to either the offence or the offender in the particular case. The defendant receives no remission for any part of the minimum term.

Mr Justice Colton said this case did not fall easily into the specific categories identified in the guidelines. In his view the defendant's culpability was high and

# Judicial Communications Office

Mrs Millican was in a vulnerable position. He said the offence was aggravated by the fact that the defendant used a firearm with which he had armed himself in advance. There was also another victim as Mrs Millican's friend was present when the gun was discharged into the ground in close proximity to where they were both standing. In mitigation, the judge took into account that the defendant was suffering from a depressive illness at the time of the offence characterised by homicidal and suicidal ideation for which he had sought treatment in the months leading up to the murder. The judge commented that, by his plea to the offence of murder, the defendant had accepted that his illness was not sufficient to lower the degree of his criminal responsibility enough to afford a defence of diminished responsibility but accepted that it has a mitigating effect on his culpability.

At the sentencing hearing defence counsel on the express instructions of the defendant asserted in open court his complete remorse in respect of Mrs Millican's death and to apologise to her family who were present in court. He had taken a similar course on the two previous sentencing occasions. Mr Justice Colton said these expressions of remorse must be qualified by the late plea in this case. He also referred to the pre-sentence report which stated that the defendant has a tendency to portray himself as a victim of his own life circumstances in the context of this murder. The judge took the defendant's expressions of remorse into account by way of mitigation but only to a limited extent.

Counsel for the defendant also urged the judge to take into account the impact of the prolonged nature of these proceedings on the defendant. In this case, however, the prosecution always maintained that the defendant was guilty of murder as a result of the deliberate killing of Mrs Millican and there was no basis for accepting a plea to manslaughter. The judge said that whilst the defendant was not to blame for the decisions to order retrials in this case the fact remained that the primary reason for any delay in this case was his belated plea to murder: "It was always open to the defendant to plead guilty to murder and I do not consider that the delay in this case, regrettable though it is, is a mitigating factor".

Mr Justice Colton noted that the Crown Court judges in the previous trials had concluded that the appropriate tariff had there been a trial in this case would have been one of 16 years. The judge agreed with this and said this figure is properly in the range for a starting point close to the higher starting point, after making adjustments for aggravating and mitigating factors. The remaining issue was what discount, if any, should be applied having regard to the defendant's plea of guilty.

## **What is the Appropriate Reduction, if any, for the Guilty Plea in this case?**

The judge noted that it is a long and firmly established practice in sentencing law in this jurisdiction that where an accused pleads guilty the sentencer should recognise that fact by imposing a lesser sentence than would otherwise be appropriate. Maximum credit is reserved for those defendants who plead guilty at the earliest

# Judicial Communications Office

opportunity and conventionally, in this jurisdiction, a defendant can expect a reduction in the range of one-third for a guilty plea entered at the first available opportunity. Those who enter guilty pleas at later stages in the proceedings will not be entitled to the maximum credit and, as a general principle, the later the plea in the course of the proceedings, the less the discount will be.

The rationale behind allowing discounts for guilty pleas is that a plea of guilty is an indication of remorse which can provide a sense of justice and relief for the relatives and friends of the victim. A plea can lead to significant saving of time and public expense and can ease witnesses who would otherwise have to attend court and give evidence.

Mr Justice Colton referred to a recent decision of the NI Court of Appeal<sup>1</sup> in which it was recognised that the sentence prescribed for murder is different from every other offence and that there are likely to be very few cases which would be capable of attracting a discount close to one-third. The Court of Appeal said it could not be prescriptive but suggested that where a discount of greater than one-sixth is being given for a plea in a murder case where the defendant originally pleads not guilty on arraignment but later pleads guilty on re-arraignment, the judge should carefully set out the factors which justify it.

Mr Justice Colton turned to the specific circumstances in this case. He said the defendant had “at last” acknowledged his guilt and that his plea provided a sense of justice and relief to Mrs Millican’s family who have been spared the ordeal of a further trial or the risk that the trial would result in a manslaughter conviction or another unsafe verdict. Counsel for the prosecution told the Court that Mrs Millican’s family had recognised that the defendant’s plea has been of particular value to them. Mr Justice Colton also noted that the plea prevented the need for a lengthy trial and said that had it proceeded it would probably have lasted for another 2-3 weeks.

Noting the Court of Appeal judgment, Mr Justice Colton said a reduction of one-sixth in this case would result in a final tariff of 13 years 4 months but concluded that the appropriate reduction should be to 13 years:

“This is marginally greater than one-sixth. In my view such a discount is justified in the particular circumstances of this case. In particular I have regard to the impact of the plea for the victim’s family and the undoubted public interest in the saving of public money and the convenience of witnesses. The history of the criminal proceedings in this case has been difficult and protracted. There can be no happy outcome but the defendant’s belated plea is a welcome recognition of his wrongdoing and a

---

<sup>1</sup> R v Turner and Turner [2017] NICA 52

# Judicial Communications Office

relief for all concerned in this tragic case. The uncertainty that has haunted this case is now at an end.”

## 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 Court Service website ([www.courtsni.gov.uk](http://www.courtsni.gov.uk)).

2. The minimum term is the term that an offender must serve before becoming eligible to have his or her case referred to the Parole Commissioners for them to consider whether, and if so when, he or she can be released on licence. Unlike determinate sentences, the minimum term does not attract remission. If the offender is released on licence they will, for the remainder of their life, be liable to be recalled to prison if at any time they do not comply with the terms of that licence. The guidance is set out in the case of R v McCandless & Others [2004] NI 269.

3. A Practice Statement, [2002] 3 All ER 417, sets out the approach to be adopted by the court when fixing the minimum term to be served before a person convicted of murder can be considered for release by the Parole Commissioners. It also sets out two starting points. The lower point is 12 years, and the higher starting point is 15/16 years imprisonment. The minimum term is the period that the court considers appropriate to satisfy the requirements of retribution and deterrence having regard to the seriousness of the offence. This sentencing exercise involves the judge determining the appropriate starting point in accordance with sentencing guidance and then varying the starting point upwards or downwards to take account of aggravating or mitigating factors which relate to either the offence or the offender in the particular case.

**ENDS**

If you have any further enquiries about this or other court related matters please contact:

Alison Houston  
Judicial Communications Officer  
Lord Chief Justice's Office  
Royal Courts of Justice  
Chichester Street  
BELFAST  
BT1 3JF

Telephone: 028 9072 5921  
E-mail: [Alison.Houston@courtsni.gov.uk](mailto:Alison.Houston@courtsni.gov.uk)