Judicial Communications Office

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COURT FINDS SENTENCE UNDULY LENIENT

Summary of Judgment

The Court of Appeal[1] today found that the sentence imposed on Gary Haggarty was unduly lenient. It substituted a tariff of ten years for the tariff of six and a half years imposed by the Crown Court.

Background

Gary Haggarty ("the defendant") was arrested in August 2009 by arrangement, interviewed and charged in connection with the murder of John Harbinson. After being charged he indicated a willingness to assist the authorities within the framework provided by the Serious Organised Crime and Police Act 2005 ("SOPCA"). Sections 73 to 75 of SOPCA provide that where a defendant pleads guilty to criminal charges and provides information and assistance to the police he/she will receive discounting on their sentence. Police will conduct scoping interviews with the offender to examine the nature and extent of the assistance he/she can provide and to inform the decision as to whether he/she is a suitable person to be offered a SOPCA agreement. On 13 January 2010 the defendant entered into an agreement with a Specified Prosecutor pursuant to section 73 SOPCA and was interviewed on 1,015 occasions between 2010 and 2017.

The defendant pleaded guilty to 202 counts including five murders, five attempted murders, one count of aiding and abetting murder, 23 counts of conspiracy to murder, various serious offences involving firearms, explosives and punishment beatings and four counts of directing terrorism. In addition he asked for 301 offences to be taken into account. Throughout the period the defendant was a member of the UVF. The trial judge concluded that the catalogue of offending reflected the total immersion of the defendant in terrorist activities over a 16 year period. In sentencing the defendant he imposed an effective tariff of six and a half years. The Director of Public Prosecutions submitted that the tariff is unduly lenient.

Sentencing Principles

In light of the convictions for murder the court was obliged to pass a life sentence and fix a minimum term being such period as the court considered appropriate to satisfy the requirements of retribution and deterrence having regard to the seriousness of the offence or the combination of the offence and one or more offences associated with it ("the tariff"). The offender is not entitled to be released until that period has passed and may not be released until the Parole Commissioners are satisfied that it is no longer necessary for the protection of the public from serious harm that he should be confined.

Citing the approach to the determination of the tariff in this jurisdiction[2], the Court said that this was clearly a case of the utmost seriousness:

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[1] The panel was the Lord Chief Justice, Lord Justice Stephens and Sir Donnell Deeny. The Lord Chief Justice delivered the judgment of the court.

[2] *R v McCandless and others* [2004] NICA 1

> "The offender played a major part in the activities of a murderous, terrorist gang over a period of 16 years. He committed five murders. We are satisfied that several of the features characterising the higher starting point are present. His killings were professional in the sense that they were acts committed to further the aims of a well-resourced and much feared terrorist gang. The terrorist gang claimed to have political motivation. The victims were deliberately targeted because of their religion."

The trial judge identified his reasons for not imposing a whole life sentence in this case. One reason was that he was not aware of any terrorist offences in this jurisdiction in which a whole life tariff had been imposed. The Court commented, however, that the absence of any case justifying such a tariff in the past ought not to prevent the imposition of a whole life tariff where it was appropriate. It added that in the absence of mitigating factors it was satisfied that this was a case for a whole life tariff. The Court accepted, however, that mitigating factors should be taken into account before reaching the conclusion that no whole life tariff should be set.

The trial judge identified as a mitigating factor that the defendant had pleaded guilty and accepted responsibility for his crimes. The Court commented that the weight to be given to this factor must vary with the circumstances. It said that in this case there was substantial evidence linking the defendant to the crimes but that his responsibility for many of them could not have been established without his admissions and that in a large number of cases was not known even on an intelligence basis. The Court said that this was a factor which gives greater weight to the plea in this instance.

Another factor taken into account by the trial judge was that to impose a whole life sentence would defeat the objects of the SOPCA scheme which gives statutory recognition to the well-established principle of discounting the sentences of those defendants who provide assistance to the prosecuting authorities. The Court agreed that the trial judge was entitled to have some regard to this factor.

The Court noted an additional mitigating factor which it said ought to have been taken into consideration. Between 1993 and 2004/05 it was submitted on behalf of the defendant that he had acted as a covert human intelligence source. During that period he had provided material concerned with operational planning, recruitment, targeting, weapons procurement and storage, explosives and tensions or feuds within loyalist paramilitary groups. He gave pre-emptive intelligence allowing police to take prior action in approximately 44 potential incidents. At least 34 individuals were identified as being under threat and police were able to take mitigating action. On occasion weapons were recovered and police were made aware of the identity of some of those involved and, in some cases, prosecutions followed. The Court noted that the defendant had been remunerated in respect of his information and continued to operate at a high level within his terrorist organisation.

The Court commented:

> "Taking the appropriate mitigating factors into consideration we agree with the learned trial judge that the mitigating factors were such as to moderate the arguments in favour of a whole life term. The prosecution submission was that in the event of a whole life term not being chosen the tariff would lie between 35 and 40 years before taking into account mitigation. We therefore cannot criticise the learned trial judge for adopting a term of 35 years but in our view where a whole life term is moderated by mitigating factors the appropriate minimum term before taking into account mitigation will normally be 40 years. That is the figure we consider appropriate in this case."

The SOCPA Discount

The Court referred to the leading case[3] which sets out the principles in approaching the SOPCA discount and the approach to sentencing in such cases. It said that no hard and fast rules can be laid down for what is a fact specific decision. The Court said it was common case that the defendant had given a vast volume of information in respect of his own criminality and that of others. In 194 of the incidents there are independent records to indicate that the incident occurred. Additionally, the police confirmed that the defendant had a very good memory and the level of detail in his accounts was remarkable given the significant number of incidents in which he had been involved and the time that has passed since the incident occurred.

There was, however, some concern about his credibility and reliability. The Court noted that the defendant made allegations of serious criminality including conspiracy to murder against two named police officers between February 1994 and June 1994 but following extensive enquiries by the Police Ombudsman it was revealed that one of the named officers was on sick leave during this time. The prosecution also considered that the defendant had minimised his role in relation to specific offences and in relation to his involvement in UVF offending that occurred after the Good Friday Agreement:

> "In large measure his contribution has been extremely valuable in intelligence terms but the prosecution assessment is that the reliability and credibility of the offender are such that the test for prosecution could only be met in circumstances where there was independent supporting evidence of sufficient quality to support his account."

Consideration

Applying the guidance and principles, the Court considered that the minimum term before taking into account mitigating circumstances was 40 years. It noted that the trial judge had allowed 15% for the assistance given before the defendant entered into the SOCPA agreement. The Court said it could not take issue with this as it reflected the potential saving of a number of lives.

The discount under the 2005 Act should be applied to the figure resulting from the aggravating and mitigating circumstances. The Court said that to apply the discount under the Act to the figure comprising only aggravating circumstances leads to an increase in the discount: "That, in our view, is not consistent with the underlying scheme of the 2005 Act that the discount for assistance should be applied once aggravating and mitigating factors excluding the discount for the plea have been factored in." The Court noted that the trial judge had allowed a discount of 60% under the 2005 Act. That reflected the "very considerable" quantity of information and the "generally good quality" of what was provided. Counsel for the defendant submitted that this was an exceptional case where a much higher discount should have been provided. The Court did not accept that submission and said that even though the offender was willing to give evidence the assessment was that the test for prosecution would only be met where there was corroboration. This was material in assessing the discount.

The next stage in the sentencing exercise was the application of the discount for the plea. The trial judge allowed a discount of 25%. The Court considered this was generous taking into account that

[3] *R v P; R v Blackburn* [2008] 2 All ER 684

the plea was part of the reason for not imposing a whole life term but said it could not say it lay outside the boundary of what was properly within the discretion of the sentencer. Finally, the Court did not consider that any discount for double jeopardy is appropriate as the defendant is not facing a return to prison or a change in his circumstances as a result of any increase in the tariff other than if he is brought back under the 2005 Act and no such application is in place.

Conclusion

The Court considered that the minimum term before taking into account mitigating factors was 40 years. Applying the appropriate discount for the pre-agreement disclosures, a 60% reduction under the 2005 Act and a generous 25% discount for the plea results in a tariff of 10 years. The Court said it was satisfied, therefore, that the tariff of six and a half years was unduly lenient given the catalogue of infamy and murder of which he was guilty. It substituted a tariff of 10 years. The Court said that represents a very considerable discount from a 40 year starting point and provides a generous incentive for those who are prepared to assist in combating terrorist violence.

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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