

Judicial Communications Office

1 February 2019

COURT IMPOSES MINIMUM TERM OF 10 YEARS IMPRISONMENT FOR MURDER OF BRIAN BURKE

Summary of Judgment

His Honour Judge David McFarland, Recorder of Belfast, today fixed a minimum term of 10 years' imprisonment to be served by Kenneth Cowan for the murder of Brian Burke before he can be considered for release by the Parole Commissioners.

On 7 April 2018, Kenneth Cowan and Brian Burke ("the deceased") were at a mutual friend's house. They had been there from the afternoon listening to music, drinking beer and in the case of Cowan smoking cannabis. During the evening an argument started between Cowan and the deceased, the reason for which was not recorded, and there was a degree of "horseplay". Cowan then armed himself with a knife from the kitchen and stabbed the deceased once in the chest. Cowan recollected an element of play-fighting during which "the red mist" descended resulting in him getting and arming himself with the knife. The pathologist said that moderate force was used to deliver the stab wound which punctured the deceased's lung and then entered his heart. The effects of the extensive bleeding resulted in a fairly rapid death.

Cowan attempted to provide assistance to the deceased, called 999 and remained at the scene. He made a full confession to being responsible for the death during his first police interview. Cowan entered a plea of not guilty when first arraigned before the Crown Court as he was undergoing a psychiatric assessment which may have given rise to the possibility of raising the issue of diminished responsibility. The trial was fixed for 7 January 2019 and Cowan pleaded guilty on 14 December 2018. Having pleaded guilty to the offence of murder, the court imposed a mandatory sentence of life imprisonment and today fixed the length of the minimum term that Cowan must serve in prison before becoming eligible for release on licence by the Parole Commissioners.

The court heard that Cowan has maintained a reasonable record of employment during his adult life and has a very limited number of criminal convictions. He has a partner and child who currently live in Finland due to financial constraints. A letter from his partner, as well as from both his parents, his sister and two friends spoke highly of him and expressed their shock at his conduct which was regarded as completely out of character. The court also received a victim impact report in respect of the deceased's mother and statements and letters from family members and friends. They too set out the impact of his death. Judge McFarland commented that "this was a senseless taking of life of a young man, and it is natural that family and friends will struggle to rationalise what has happened".

Judge McFarland set out the relevant legal principles that the court should apply in fixing the minimum term¹. He said there were three aggravating factors in this case: Cowan armed himself with a knife and used it to kill the deceased, and at the time he had consumed alcohol and drugs, and the impact of the death on the deceased's family, particularly his mother. He listed the mitigating factors as follows:

¹ See Notes to Editors.

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- Cowan is aged 30 years and appears before the court with a very limited criminal record;
- Although he armed himself with a knife, the attack was largely spontaneous in nature and was a single stab delivered with modest force;
- It is accepted that Cowan did not intend to kill the deceased, but rather to cause him really serious injury;
- Cowan has expressed genuine remorse concerning his conduct and its consequences;
- He pleaded guilty at a very early stage and although he did not enter his plea at the first opportunity, it had been indicated at an early stage of the proceedings that the factual background had been accepted. The judge said he would not receive the full credit because of the delay in his plea, taking into account the impact of any delay on the deceased's family and on witnesses who will have been required to prepare for the giving of their oral testimony.

Judge McFarland did not consider there were any significant issues raised in the reports on Cowan's mental health that would indicate that this could be regarded as a mitigating factor. The judge commented:

"The impact of the crime on the victim's family, the consumption of alcohol and drugs and the use of a knife are aggravating factors. It is not a case of Cowan carrying a knife and then using it. However, it must be understood that those who would arm themselves with weapons such as knives to somehow give themselves an advantage in any scuffle or fight, must expect to receive additional punishment. The use of weapons, particularly knives, will always significantly increase the risk of serious or fatal injury."

Judge McFarland concluded that the appropriate minimum term of imprisonment to be served by Cowan would be 13 years which he reduced to 10 years to take into account his guilty plea.

NOTES TO EDITORS

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>).

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.

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

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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

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