Judicial Communications Office

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COURT SENTENCES FOR MURDER OF PAUL McCAULEY

Summary of Judgment

Mr Justice Colton, sitting today in Londonderry Crown Court, sentenced Piper John McClements (formerly known as Daryl John Proctor) for a minimum term of nine years for the murder of Paul McCauley who died on 6 June 2015 from injuries inflicted on his in an attack in July 2006. He also sentenced Matthew Brian Gillon to ten years imprisonment for manslaughter.

Piper John McClements ("the first defendant") and Matthew Brian Gillon ("the second defendant") were jointly charged with murder. The second defendant was also charged with causing grievous bodily harm with intent to Mark Lynch and attempting to cause grievous bodily harm with intent to Gavin Mullin. The first defendant initially pleaded not guilty to the murder charge but on 19 September 2018 he applied to be re-arraigned and pleaded guilty. The second defendant initially pleaded not guilty to all three counts but on 20 September 2018 he pleaded not guilty to murder but guilty to manslaughter which was accepted by the Crown. He also pleaded guilty to unlawfully and maliciously inflicting grievous bodily harm on Mark Lynch and to a fourth count namely a Section 47 assault on Gavin Mullin. The third count of attempting to cause grievous bodily harm to Gavin Mullan was left "on the books".

Background Circumstances

On 15 July 2006, Paul McCauley, Gavin Mullin and Martin Lynch attended a barbeque and a bonfire at a field adjacent to a friend's house. At approximately 3.30 am they were suddenly attacked by a group of between six and ten youths. One of them ran back to the house and rang 999. The paramedics found Paul McCauley unconscious and having difficulty breathing. He was found to have suffered a serious brain injury and underwent neurosurgery in an attempt to alleviate brain swelling. A subsequent CT scan demonstrated a large haemorrhage on the outer surface of the brain and a fracture of his skull. He was left with irreversible severe brain damage and remained in a low level conscious, vegetative state until his death on 6 June 2015 from pneumonia, a complication associated with his head injury.

In 2008, the first defendant was charged with attempted murder of Paul McCauley, causing Mark Lynch grievous bodily harm with intent, attempted grievous bodily harm in relation to Gavin Mullin, and causing grievous bodily harm with intent to Paul McCauley. On Friday 30 January 2009, the first defendant was the subject of a sentencing hearing having pleaded guilty to Counts 2, 3 and 4. The count of attempted murder was left on the books. The first defendant accepted his guilt as a participant in a joint enterprise to carry out a violent attack on Mr McCauley and his companions. On 6 February 2009 he was sentenced to a custody probation order comprising 12 years' custody and one year's probation supervision. He was released from custody on 23 January 2015 and was under the supervision of the Probation Service for the following 12 months until the completion of the order on 30 January 2016.

Evidence

DNA attributed to the first defendant was found on a baseball cap found at the scene. DNA attributed to Paul McCauley was found on his training shoes. The prosecution also referred to the contents of various telephone recordings made by the first defendant while in prison between 2009 and 2010. The judge said the comments ranged from denial, self-pity, admissions, bravado, complaints about the fact that he is taking the "rap" for all the others who were involved and suggestions that he should be paid money by them for doing so: "What is entirely absent from his comments on this whole affair is a lack of remorse or empathy for the victim or his family".

Victim Impact Reports

Mr Justice Colton said he wanted to highlight and acknowledge the victim impact statements he received from the immediate family of Paul McCauley, Mark Lynch and Gavin Mullan. These were supplemented by photographs of Paul both before and after the attack. The judge said the statements brought home to him the enormous and devastating impact Paul's injuries and eventual death have caused to his family. He said it was also clear that the sectarian nature of the assault had engendered justifiable condemnation in the community which was reflected in widespread sympathy and support for the McCauley family:

> "The impact of Paul's death will resonate with his family and friends for the rest of their lives. I recognise that the loss of Paul's life cannot be measured by the length of a prison sentence. There is no term of imprisonment that I can impose that will cure the anguish and loss suffered which is so movingly expressed in the impact statements I have read."

SENTENCE IN RESPECT OF THE FIRST DEFENDANT

On 19 September 2018 the first defendant entered a plea of guilty to the murder of Paul McCauley and accordingly a mandatory life sentence was imposed. At today's hearing, the role of the court was to determine the length of the minimum term that the defendant will be required to serve in prison before he will first become eligible to have his case referred to the Parole Commissioners for consideration by them as to whether, and if so, when he is to be released on licence[1]. If and when, he is released on licence he will, for the remainder of his life, be liable to be recalled to prison if at any time he does not comply with the terms of that licence. The minimum term is such part as the court considers appropriate to satisfy the requirements of retribution and deterrence having regard to the seriousness of the offence, or of the combination of the offence and one or more offences associated with it. The legal principles that the court should apply in fixing a minimum term are well settled[2].

Mr Justice Colton commented that in applying the principles, he must bear in mind that it is not to be interpreted as a straitjacket designed to create a rigid, compartmentalised structure into which each case must be shoehorned. The Court of Appeal has made it clear that selecting a starting point is not a mechanistic or formulaic exercise. The guidelines are there to assist the court to proceed to, what in the circumstances of the case, it considers is a just and proportionate sentence having regard to the guidelines. The judge firstly considered what is the appropriate starting point? He said the court must have regard to the fact that the first defendant was just under 16 years of age at the time he committed the offence. The sentencing guideline cases on the proper approach to the sentencing of an adult in respect of conduct when a child confirm that while the seriousness of the offence will be the starting point, the approach to sentencing should be individualistic and focussed on the child

[1] In accordance with Article 5 of the Life Sentences (Northern Ireland) Order 2001
[2] See Notes to Editors.

or young person as opposed to offence focussed. The case law expressly recognises that children and young people are not fully developed and they have not attained full maturity: *"As such, this can impact on their decision making and risk taking behaviour. It is important to consider the extent to which the child or young person has been acting impulsively and whether their conduct has been affected by inexperience, emotional volatility or negative influences. They may not fully appreciate the effect their actions can have on other people and may not be capable of fully understanding the distress and pain they cause to the victims of their crimes. Children and young people are also likely to be susceptible to peer pressure and other external influences and changes taking place during adolescence can lead to experimentation, resulting in criminal behaviour. When considering a child or young person's age their emotional and development age is of at least equal importance to their chronological age (if not greater)."*

The judge also noted that the section in the guidelines headed "Determining the Sentence" indicates that: *"In assessing culpability the court will wish to consider the extent to which the offence was planned, the role of the child or young person (if the offence was committed as part of a group), the level of force that was used in the commission of the offence and the awareness that the child or young person had of their actions and its possible consequences. There is an expectation that in general a child or young person will be dealt with less severely than an adult offender. In part, this is because children and young people are unlikely to have the same experience and capacity as an adult to understand the effect of their actions on other people or to appreciate the pain and distress caused and because a child or young person may be less able to resist temptation, especially when peer pressure is exerted. Children and young people are inherently more vulnerable than adults due to their age and the court will need to consider any mental health problems and/or learning disabilities they may have, as well as their emotional and development age. Any external factors that may have affected the child or young person's behaviour should be taken into account."*

Mr Justice Colton commented that the basis of the expectation that in general a child or young person will be dealt with less severely than an adult offender is supported by the individual features in this case.

Expert and Pre-Sentence Reports

The court received a report from a Consultant Clinical Psychologist which offered an insight into the first defendant that was not available to the Probation Service or to the sentencing court in 2009. The report stated that he presented as someone with mental health problems. By the age of 13 he had been referred to a consultant psychiatrist in the Child and Family Team in Derry because of his depression and history of fire setting and behaviour disorder. In January 2006 he suffered a head injury after he was hit with a brick that came over their garden wall. The judge said this history contrasted somewhat with the first defendant's comments to the Probation Service in both 2008 and 2018 where he suggested he had an "uneventful childhood" which was not marred by any significant or traumatic incident. He said the factors set out in the psychologist's report resonated with the factors set out in the definitive guideline which underpin the recommended approach to sentencing of children and young offenders.

The pre-sentence report assessed the first defendant's likelihood of re-offending as medium. The report expressed concern that he associated with individuals who like him appear to possess strong sectarian views and rigid beliefs, particularly at the time of the offence and also negative peer influences. In terms of the future the pre-sentence report acknowledged that the first defendant was fully compliant with his 12 month period of supervision subsequent to his release from custody in 2015. He had not come to any adverse police attention for violence from his release from custody in 2015 until his remand in 2018. The report indicates that the defendant has reflected on his former lifestyle and has come to understand how his young life was manipulated by older and negatively

influential peers from his community during his formative years, factors which he states would no longer be relative to him. He now has had a steady girlfriend who is in the early stages of pregnancy. Following his eventual release from custody he is keen to move away from Northern Ireland with a view to making a fresh start in life. It has not been possible for him to do so because of bail conditions in relation to this matter.

Sentencing

Mr Justice Colton said he proposed to sentence the first defendant on the same basis as the judge at the original trial in 2009, namely that the prosecution accepted that he did not himself kick or stamp upon Paul McCauley's head but he was a party in a joint enterprise possessed of the intention to assist or encourage others to act with the intention to cause grievous bodily harm. That assistance or encouragement included, at the very least, striking Mr Lynch. Applying the general principles applicable to sentencing for offences committed by young persons together with the individual circumstances of this defendant Mr Justice Colton said he had no doubt that the starting point of 12 years should be reduced in this case. He reduced it to one of 10 years in this case to take into account the maturity and age of the defendant at the time he committed this offence.

Having settled on the starting point the judge then considered the aggravating features in this case. The victim was deliberately targeted because of his religion. He was in a vulnerable position having regard to the fact that he was subject to a brutal unprovoked attack from a large number of males. The victim was a man of a peaceful, friendly disposition and was in no position to defend himself. The injuries were inflicted by kicking or stamping upon his head. There were other victims. The injuries caused to Mr McCauley were catastrophic. They have resulted in enormous pain and suffering for him and his family both in terms of having to care for him during his remaining years and having to cope with his pointless and tragic loss of life. Mr Justice Colton considered that there was a degree of premeditation in the assault. While the first defendant and the group of which he was a part did not specifically target the victim and only came across him and his friends by coincidence, it was clear they were "spoiling for a fight". He said they left a predominantly Protestant area of the city to travel to a predominantly Catholic area motivated by a desire to administer retribution, as they saw it, for the removal of a flag or the perceived sectarian assault of an acquaintance. The judge considered that the aggravating features would justify a variation of the 10 year starting point upwards to one of 14 years.

In terms of mitigation, the judge accepted that by his participation in the offence the first defendant did not intend to assist, encourage or kill Mr McCauley nor did he have knowledge that any of the others involved in this assault intended to kill. He also took into account that the first defendant was a participant in a joint enterprise rather than himself inflicting the injuries on Paul McCauley. At the commencement of the hearings the judge was handed in a written letter from the first defendant in which he expressed his deepest sympathy and condolences to the McCauley family. He said he is fully aware of the heartache and suffering he has caused to all concerned and that this is a burden he will live with on a daily basis. He went on to say:

> "*I was 15 at the time of offence, this is by no (sic) means of excuse in any capacity, however standing before the courts today I am a 28 year old man. My views, friendships and values have changed. I am now a better person who lives a law abiding life. I wish to minimise any factors that could be deemed an attempt to mitigate my actions, out of respect for the McCauley family. I will accept the sentence the courts deem appropriate*

and fair. I hope and pray the sentence I receive helps the McCauley family, if at all possible."

Mr Justice Colton hoped that this remorse is genuine and that the contents of the letter are sincere but noted that they do not chime with his conduct at the time or what he was recorded as having said in the telephone conversations recorded covertly. He added that neither the pre-sentence report, nor that of the psychologist, convey any true remorse and said that what would undoubtedly be of the most assistance to the McCauley family would be the revelation of the identity of all the other persons who were involved in this offence. The judge concluded that he did not consider this to be a case in which there should be any significant discount for remorse. Taking the mitigating factors into account the judge said he would vary the tariff downwards from 14 years to 13 years.

A difficult issue in this case is the impact, if any, of the fact that the first defendant has previously been convicted and sentenced for causing grievous bodily harm to the deceased with intent in respect of the same incident giving rise to this prosecution. The first defendant has also served the custodial element and probationary period of the sentence imposed by the court for that offence. Counsel for the prosecution argued that the court should reduce the minimum term to be served by the first defendant by the six years he has already spent in custody but no more. Counsel for the defence, however, argued that the tariff imposed should be such as to avoid the defendant serving any further period in custody because of the particular circumstances of the case.

Mr Justice Colton said this issue has not been considered before in this jurisdiction and in this unique situation he had given careful consideration to the implications of the previous conviction and sentence. In 1996, the "year and a day rule" in homicide was abolished by the Law Reform (Year and a Day Rule) Act 1996. This Act emerged after a report of the Law Commission which recommended the abolition of the rule but recognised that problems might arise where the defendant had already been prosecuted for a non-fatal offence before the death occurred and served or is serving a substantial sentence. The Law Commission said it was clearly desirable there should be safeguards for defendants against unduly late or unnecessary second prosecutions. These safeguards take the form of both a screening process to prevent unfair prosecutions being brought in the first place, and a system by which the defendant can apply to have an unjust prosecution stopped if it is in fact brought. For this reason, the consent of the Director of Public of Prosecutions is required before a prosecution in these circumstances.

It was not suggested by the first defendant that the prosecution in this case was either unfair or unjust but it was highlighted that the Law Commission report indicated that in some cases the sentence imposed for a non-fatal offence will be an adequate punishment for a homicide offence arising out of the same incident, allowing for the lapse of time, the element of double jeopardy, and the fact that the sentencer would have taken into account the consideration that the victim was brought close to death by the offence. The report continued: "The question then is, how severe must a sentence for a non-fatal offence be for it to be genuinely doubtful whether, after the appropriate discounts for delay and double jeopardy, conviction of a homicide offence would be likely to justify a substantially greater sentence than that already imposed? We have come to the conclusion that two years is the appropriate figure."

This recommendation was not reflected in the 1996 Act which requires the consent of the Director in all cases in which there has been a conviction in circumstances alleged to have been connected with the death. In seeking to set a baseline for a sentence beyond which the Director's consent would be required the Commission said that sentence for any subsequent homicide offence would probably not be substantially greater than the original sentence.

Mr Justice Colton referred to a number of cases on this point from England and Wales. He said that, as a matter of principle, the court should consider whether a tariff should be discounted in circumstances where a defendant has already been convicted and sentenced in respect of an offence committed in circumstances alleged to have been connected with the death which has resulted in a tariff hearing. He listed the important factors for that consideration in this case as:

(a) Plainly the degree of culpability of the defendant remains the same today as it was when sentenced in 2009.
(b) The sentence in 2009 was described as "severe" by the Court of Appeal.
(c) There has been a substantial gap of close to 10 years between the sentencing on 3 January 2009 and today's date.
(d) In effect he has served the custodial element of the sentence imposed in 2009 together with the completion of the probation order imposed.
(e) Since his release from custody he has not engaged in any relevant offending.
(f) Since being charged with these offences he has been on restrictive bail conditions which prohibited him from leaving the jurisdiction as intended to attempt a new life in England.
(g) When he was originally sentenced in 2009 the court was aware that the victim's life expectancy was placed between 10 and 15 years from injury, something which contributed to the sentence imposed. The court was fully aware of the almost inevitable consequences of the injuries sustained by the victim and these were taken into account in the sentence.

Counsel for the first defendant argued that these factors indicate that the "severe sentence" imposed on the defendant in 2009 has satisfied the requirements of retribution and deterrence for the purposes of the offence of murder and that in the exceptional circumstances of this case he argued that the court should impose a minimum term which will not require him to serve any further time in custody. Mr Justice Colton considered that the first defendant should receive discount by reason of his previous conviction and sentence because of the factors set out above but he did not agree that that any discount should be such as to avoid the requirement for the defendant to serve further time in custody.

> "The fact remains that the defendant has now been convicted of murder. This has the consequence of the imposition of a life sentence which means he will remain under licence for the rest of his life. However, in my view a second inevitable consequence is that a more severe punishment will be imposed than was appropriate for a Section 18 offence and this should include an additional period in custody … I therefore propose to reduce the minimum tariff by reason of the previous conviction and sentence from 13 years to 11 years."

Mr Justice Colton then considered whether there should be any discount in terms of the first defendant's plea. He noted the plea was very much at the last minute and occurred on the day the trial was about to commence. The judge said the defendant was, nonetheless, entitled to discount for a plea as by doing so he has accepted responsibility for his actions and he had reinforced this in the letter he submitted to the court:

> "The plea may well be belated evidence of genuine remorse and may be of some comfort to the family of the deceased. It has also resulted in an important and

> significant saving of time. Overall, I consider that as a result of the defendant's plea the tariff should be reduced from 11 years to 9 years which approximates to a discount of one sixth."

The judge then considered the credit which the first defendant is entitled to for the six year period he spent in custody as a result of his conviction in 2009. He said the mechanism by which that should be given effect is not entirely straightforward and the issue was whether or not the period during which the first defendant was in custody was as a result of an order of the court made in connection with any proceedings relating to that sentence or the offence for which it was passed or any proceedings from which those proceedings arose. Mr Justice Colton said it could reasonably be argued that in this case there is the necessary direct connection between the offence in respect of which the first defendant had been sentenced in 2009 the offence in respect of murder which he is now to be sentenced.

Conclusion

Mr Justice Colton imposed a minimum term of nine years on the first defendant. This was arrived at by reason of a minimum tariff of 13 years reduced to 11 years by reason of the first defendant's previous conviction and sentence and further reduced to 9 years by reason of his plea of guilty. The tariff should be reduced by the amount of time the first defendant served in custody as a result of the sentence imposed in 2009 (2190 days, a total of six years). This has the effect of reducing the tariff to one of three years. The first defendant will also be entitled to credit for the time served since his return to custody on 19 September 2018, the date upon which the life sentence was imposed.

SENTENCE IN RESPECT OF THE SECOND DEFENDANT

The evidence against the second defendant was obtained via covert recordings arising from the deployment of an audio device in a car between 4 December 2015 and 8 January 2016. In the course of the recordings obtained from this device a person subsequently identified as the defendant places himself at the scene before, during and after the attack. He was arrested on 20 December 2015 for the murder of Paul McCauley and the attempted murders of Gavin Mullin and Mark Lynch. He made no comment during interviews or after being charged. On 2 February 2018 he was arraigned and pleaded not guilty to each of the three counts but on 20 September 2018 he was re-arraigned and pleaded guilty to manslaughter, unlawfully and maliciously inflicting grievous bodily harm on Mark Lynch, and to a Section 47 assault on Gavin Mullin.

The prosecution accepted the defendant's plea of guilty to unlawful act manslaughter on the basis that he participated in unlawful assaults on the injured parties and did not intend to inflict or assist in the infliction of grievous bodily harm with intent. The second defendant's account of his involvement was set out in the pre-sentence report. He said he found himself in Irish Street with a group of like-minded peers and after hearing reports that 'something happened' in relation to a form of sectarian attack against those in Irish Street earlier that evening, there was a consensus among the group for a form of retaliation. Not knowing what the particular plan was, he followed the group towards a Catholic area but denied any premedication for the attack. He recalled following the group towards a field area but denied any sight of the bonfire that the victims had lit. He recalled hearing a lot of raised voices and quickly found himself in the middle of an altercation. He accepted that during this time he had punched at people three times, not knowing who and what were the consequences of his actions. He recalls at one point though he did think that the situation was 'getting out of hand' and he, as well as others from the group, fled the scene.

At the time of the incident the second defendant was aged 19 years and 3 months. The pre-sentence report accepts that the second defendant has made efforts through the support of his partner to disassociate himself with those who were present on the evening in question, he has removed himself from the area where he lived at the time, and has found employment and lived a stable lifestyle in the last twelve years. The report assessed the second defendant as presenting as a low likelihood of re-offending. The judge said he received a very positive reference from the defendant's employer which described his significant responsibility and his very professional attitude to customers and peers. He is described as hardworking and an extremely capable, well respected member of staff. The report also indicates that the second defendant did show an element of remorse for his actions but that any empathy with the victim's family was somewhat overshadowed by the fact that he had not come forward to police until nine years after the attack even though he had been questioned by police in 2006, 2009 and 2015. The judge added that there was nothing in the transcript of the tape recordings which suggested any significant remorse on behalf of the defendant.

Sentencing

Mr Justice Colton said the normal range of sentence for the unlawful act of manslaughter involving the use of substantial violence is between 8 to 15 years, with a possibility of a sentence up to 17 years or thereabouts. In terms of aggravating features these are the same as apply to the first defendant namely that this was an unprovoked sectarian attack involving an element of pre-meditation, considerable violence was used, and the second defendant evinced an indifference to the seriousness of the likely injury to the deceased and the other two men who were injured. The prosecution accepted that he did not intend to inflict or assist in the infliction of grievous bodily harm with intent and the judge said that, in this regard, he is less culpable than the others involved in this assault: "It is for this reason that the defendant is to be sentenced on the basis of manslaughter and not murder in respect of Mr McCauley, however … those who take part in such cowardly and dangerous attacks must expect to be severely punished as a result, even if they did not themselves inflict the injuries. The mob or pack mentality that takes over in such situations is all too often fuelled and sustained by the support given to the actually attackers by supports who stand by or join in."

The judge noted that second defendant did not have a criminal record at the time of the offence and his subsequent employment record suggests that he has left the lifestyle he describes in 2006 behind him. He expressed some remorse to the Probation Service but the judge said he was not entirely convinced of the extent of this remorse although the expressions are to be welcomed. The second defendant's plea did entitle him to a discount but the judge noted that it was only entered when the trial was due to commence. He did, however, accept the prosecution's contention that the offer to plead guilty to manslaughter would not have been accepted at any earlier stage. By accepting the plea to the lesser offences the prosecution recognised that it would have been difficult to sustain the original counts on the indictment:

> "The pleas of guilty in this case bring certainty and finality to the matter. The pleas are an acknowledgment of guilt by the defendant and hopefully will provide some sense of justice and relief for the relatives and friends of the victim. The plea has led to a significant saving of time and public expense which is in the public interest. It has convenienced witnesses who would otherwise have to attend court."

The applicable sentencing regime for the manslaughter count is the Criminal Justice (Northern Ireland) Order 2008 as Mr McCauley died in 2015. Mr Justice Colton considered that the appropriate

custodial sentence on a contest for the offence of manslaughter would be one of 13 years and reduced this to a term of 10 years for the plea of guilt. He was satisfied that the second defendant is not a dangerous offender under the 2008 Order and imposed a determinate custodial sentence of 10 years – five years to be served in custody and five years on licence.

The applicable sentencing regime in relation to the second and fourth counts is the Criminal Justice (Northern Ireland) Order 1996. The judge considered the second count as sufficiently serious to warrant a custodial sentence and said the commensurate sentence taking into account the second defendant's plea of guilty is one of 3 years' imprisonment. In respect of the fourth count he imposed a sentence of one year's imprisonment. The judge did not consider that a custody probation order was appropriate. All sentences are to be concurrent.

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 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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