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(subject to editorial corrections)

IN THE CROWN COURT OF NORTHERN IRELAND

THE QUEEN

v

JULIE McGINLEY and MICHAEL MONAGHAN

KERR J

[1] On 3 December 2002 the defendants were convicted by unanimous verdict of the jury of the murder of Gerald McGinley, the husband of the first accused. The precise circumstances in which that murder took place are not – and may never be – known but it is clear that the killing took place in Mr McGinley's own home at Derryraghan, Coa, Enniskillen in the early hours of the morning of 13 August 2000. The two accused may not have actively participated in the actual killing but it is clear from its verdict that the jury was satisfied that both either did so or that they procured another or others to do so.

[2] The killing of Mr McGinley took place in horrific circumstances. He was in a vulnerable, not to say defenceless, position when the first blow was struck. It is virtually certain that he was sleeping soundly in his bed after having been out for a night's drinking. I think it probable that he had not drunk an amount that was unusually excessive by his standards but from the medical evidence I am satisfied that he did not expect the first blow and was wholly unaware that he was about to be attacked. That blow was sufficient to incapacitate him and he was then struck further blows, although the exact number is uncertain. The blows struck caused massive injuries and the object used to inflict those injuries must have been a heavy one or else the blows were delivered with terrific force. In either event, there can be no doubt that the intention was to kill.

[3] Mr McGinley's body was taken from his home and secreted in a wood near Ballinamore. There it lay undetected for some ten months. Throughout

that time his distraught parents tried to trace him. Their efforts grew increasingly desperate, even to the extent of consulting a clairvoyant. One cannot but be struck by the contrast with this frantic activity that is provided by the behaviour of the two defendants. They set up home together first in Donegal and then at the home of Mrs McGinley's father in Enniskillen. The defendants had begun a sexual relationship some months at least before Mr McGinley's murder and there is little doubt that this relationship played its part in the conspiracy to kill him.

[4] Again, the full extent and the nature of that conspiracy will probably never be known. It is highly likely that both defendants were complicit in the plot to have Mr McGinley arrested in June 2000 at Blacklion, having planted or arranged to have planted drugs in his car. The jury's verdict does not depend on their having concluded that the defendants were involved in that enterprise, however, and I shall leave it out of account in fixing the tariff in their case.

[5] It is difficult to say whether the plan to kill Mr McGinley on the night of 12/13 August had been hatched some time before or whether the defendants seized on the opportunity that was presented to them that night. In the absence of clear evidence to the contrary, I intend to proceed on the basis that this was an opportunistic killing, although I am satisfied that the defendants must have had it in mind to dispose of Mr McGinley for at least some little time before the actual murder. Their determination to carry out the murder was clearly callous and chilling, however, when one considers that it had to be executed while two young girls, scarcely more than infants, lay sleeping in the house. Moreover, the ferrying of the body to a remote spot, the removal of all identifying clothes and belongings and its encasement in plastic sheeting all indicate a determined effort to evade detection for the killing.

[6] The law permits only one sentence for the crime of murder: life imprisonment and I have already imposed that sentence on both defendants. Since the coming into force on 8 October 2001 of the Life Sentences (NI) Order 2001 the court is also required (by article 5 (1) of the Order) to fix the period that must be served by a person on whom a life sentence has been passed before he or she can be considered for release, provided the court concludes that article 5 (3) of the Order does not apply. Article 5 (3) provides: -

> "(3) If the court is of the opinion that, because of the seriousness of the offence or of the combination of the offence and one or more offences associated with it, no order should be made under paragraph (1), the court shall order that … the release provisions shall not apply to the offender".

I do not consider that this is a case in which no order should be made under article 5 (1).

[7] In every case other than one where the court decides that the offender should not be released, therefore, it must make an order as to the date on which the release provisions should apply. The release provisions are defined as those contained in paragraphs (3) to (7) of article 6 of the Order. In effect at the end of the period specified by the court the offender's case is referred to the Life Sentence Commissioners who are to direct his release if satisfied that it is no longer necessary for the protection of the public from serious harm that the prisoner should be confined.

[8] The period to be specified by the judge is dealt with in article 5 (2) as follows: -

> "(2) The part of a sentence specified in an order under paragraph (1) shall be 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."

Thus the sentence to be served by a life prisoner is divided into two distinct and consecutive segments. The judge fixes the period to be served in respect of the deterrence and retribution requirements of the sentence and the Commissioners deal with the period that the prisoner must be detained thereafter until the risk of serious harm to the public has passed.

[9] The approach to be taken by the court in specifying the period to be served has been considered in a number of recent decisions in this jurisdiction. In the most recent of these *R v Graham* (delivered on 12 December 2002) McLaughlin J helpfully reviewed the cases decided in Northern Ireland, the relevant decisions in England and Wales, the reports of the Sentencing Advisory Panel and the Practice Statements of the Lord Chief Justice, Lord Woolf. The Sentencing Advisory Panel recommended that a "three tier" approach be adopted to the matter of tariff fixing. Thus the sentencer should decide as a first step into which of the categories the particular case fell: - lower, middle or higher. The location of the actual tariff within the range should depend on the presence or absence of certain features in the case. Those features were outlined in the following section from the panel's advice to the Court of Appeal published in April 2002: -

> "13. Whichever starting point is selected in a particular case, it may be appropriate for the trial judge to vary 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.

14. Aggravating factors relating to the offence can include:
(a) the fact that the killing was planned;
(b) the use of a firearm;
(c) arming with a weapon in advance;
(d) concealment of the body, destruction of the crime scene and/or dismemberment of the body;
(e) particularly in domestic violence cases, the fact that the murder was culmination of cruel and violent behaviour by the offender over a period of time.

15. Aggravating factors relating to the offender will include the offender's previous record and failures to respond to previous sentences, to the extent that this is relevant to culpability rather than to risk.

16. Mitigating factors relating to the offence will include:
a) an intention to cause grievous bodily harm, rather than to kill;
b) spontaneity and lack of pre-meditation.

17. Mitigating factors relating to the offender may include:
a) the offender's age;
b) clear evidence of remorse or contrition;
c) a timely plea of guilt."

[10] The majority of the panel considered that the lower starting point should be set at 8 or 9 years; the middle starting point at 12 years and the higher starting point at 15 or 16 years. Previously the middle starting point had been 14 years and the panel acknowledged that there were arguments for retaining this, particularly because of the risk of undermining public confidence in the criminal justice system by reducing the level of minimum terms set for murder. If 14 years was taken as the middle starting point, the `lower starting point' would be either 10 or 11 years and the `higher starting point' either 17 or 18 years.

[11] Following publication of the panel's advice Lord Woolf published a "Practice Statement as to Life Sentences" on 31 May 2002. As McLaughlin J

pointed out in *Graham,* this favoured a two-tier approach with a normal or a higher starting point being selected by the trial judge. The higher starting point cases were described in paragraph 12 of the Practice Statement as follows: -

> "12. The higher starting point will apply to cases where the offender's culpability was exceptionally high or the victim was in a particularly vulnerable position. Such cases will be characterised by a feature which makes the crime especially serious, such as:
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> (a) the killing was `professional' or a contract killing;
> (b) the killing was politically motivated;
> (c) the killing was done for gain (in the course of a burglary, robbery etc);
> (d) the killing was intended to defeat the ends of justice (as in the killing of a witness or potential witness);
> (e) the victim was providing a public service;
> (f) the victim was a child or was otherwise vulnerable;
> (g) the killing was racially aggravated;
> (h) the victim was deliberately targeted because of his or her religion or sexual orientation;
> (i) there was evidence of sadism, gratuitous violence or sexual maltreatment, humiliation or degradation of the victim before the killing;
> (j) extensive and/or multiple injuries were inflicted on the victim before death;
> (k) the offender committed multiple murders."

If any of these features were present it would not be appropriate to classify the case as one where the normal starting point would apply. Normal starting point cases were those where, for instance, an adult victim was killed as a result of a quarrel or loss of temper between two people known to each other. The Practice Statement suggested that the normal starting point should be 12 years and for the higher starting point a period of 16 years would be appropriate.

[12] McLaughlin J expressed the view in *Graham* that courts in Northern Ireland should adopt minimum periods "significantly higher than those suggested in England and Wales in order to reflect the continuing sense of despair and revulsion voiced in the community by the families of victims whose lives have been destroyed by those who kill deliberately or do so as a

result of inflicting grievous bodily harm on others". He suggested that the prospect of a person convicted of murder being freed within 12 to 14 years would be considered "an affront" in some cases and would "[bring] the criminal justice system into disrepute in many quarters".

[13] In support of the conclusion that a different standard should apply in Northern Ireland from that in England and Wales, the learned judge referred to the decisions of the Court of Appeal in this jurisdiction in the case of *R v McDonald* [1989] NI 37 and *Simpson v Harland & Wolff* [1988] 13 NIJB 10. In the first of these the Court of Appeal dealt with a number of appeals against sentence for the offence of rape. Sir Brian Hutton LCJ reviewed the judgment given by Lord Lane CJ in *R v Billam and others* [1986] 8 Cr App R (S) 48 (which had suggested that five years was the appropriate starting point in a contested case of rape without aggravating or mitigating features). While agreeing with Lord Lane's approach to the offence of rape the Lord Chief Justice nevertheless concluded that in this jurisdiction for rape committed by an adult without any aggravating or mitigating features, a sentence of seven years and not five years should be taken as the starting point in a contested case. It is clear, however, that this conclusion was based substantially on the different experience of sentencing for rape in England and Wales from that in Northern Ireland. At page 41B Hutton LCJ said: -

> "Accordingly in England where 95 per cent received custodial sentences, 51 per cent received sentences of less than three years, 69 percent received sentences of less than four years and 87 per cent received sentences of less than five years, whereas only 8 per cent received sentences of over five years. Therefore for the English Court of Appeal to raise the starting point to five years was a substantial increase having regard to the level of sentences in England.
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> However, the criminal statistics for rape in Northern Ireland for 1986, 1987 and 1988 furnished to us show that the average range of sentences in Northern Ireland was higher than the average range in England in 1984. In Northern Ireland during those three years of the 94 per cent who received custodial sentences, 4 per cent received sentences of two years or less; 12 per cent received over two and up to three years; 6 per cent received over three and up to four years; 14 per cent received over four and up to five years and 52 per cent received over five years (including 2 per cent life)."

[14] Similarly in the *Simpson* case, in rejecting the claim made by the defendant/appellant that compensation should be awarded at a level that was consistent with awards in England, the Court of Appeal held that experience in Northern Ireland of awards in similar cases should be the touchstone for the assessment of damages. In both cases it was because Northern Ireland enjoyed a different experience from that in England and Wales that the courts declined to follow the manner of disposal of like cases in that jurisdiction.

[15] On the matter of tariff fixing there is not a disparity of experience between this jurisdiction and England and Wales. Nor is there, so far as I am aware, any empirical evidence to support the conclusion that the criminal justice system would be brought into disrepute if tariffs were set at the same level in Northern Ireland as in England and Wales. Indeed, such evidence as is available would tend to suggest that in Northern Ireland in the recent past life sentence prisoners have generally served less than their counterparts in Great Britain. For my part, therefore, I am unable to accept that a different standard should apply in this jurisdiction from that considered appropriate in England and Wales.

[16] The present cases do not fit comfortably into either of the categories adumbrated in Lord Woolf's recent Practice Statement. They are quite different from the type of case where there is a sudden loss of control as the result of a quarrel but they do not clearly partake of any of the features set out in paragraph 12 of the statement. In *Graham* McLaughlin J found that the killing of the victim represented a "gain" for the defendant in the form of the removal of the husband of his lover. The same might be said of the present case but I am not sure that this was the type of gain that was contemplated by the Practice Statement, which referred to the killing having taken place for gain in the course of a burglary or robbery. I would also be reluctant to find that the injuries suffered by Mr McGinley (although they were massive) would qualify for the description "extensive or multiple injuries inflicted on the victim before death".

[17] There are several aggravating features present in this case, however. The killing was certainly planned in the sense that it was, I am satisfied, in the contemplation of both defendants for some time before it occurred and they were in extensive communication by telephone during the evening of 12 August and the early hours of the morning of 13 August 2000. I am satisfied that this was for the purpose of facilitating the killing of Mr McGinley. The person or persons who actually carried out the murder must have armed themselves in advance. If the defendants were not the actual perpetrators of the killing they must have known that the actual killer or killers would have obtained a weapon or weapons for the murder. After the killing Mr McGinley's body was concealed and elaborate attempts were made in which,

I am satisfied, both defendants participated to destroy all evidence of the murder.

[18] As against these factors must be balanced a number of mitigating factors personal to each of the accused. Julie McGinley has no previous convictions. She is the mother of two young daughters and her separation from them will be a particularly daunting aspect of the time that she must spend in prison. Michael Monaghan has a number of previous convictions but these all occurred a long time ago. Although some of these were associated with the use of violence there is no indication that this was of a serious kind and I am inclined to the view that he would never have become involved in this type of dreadful offence but for his association with Julie McGinley. He is the father of a son who will grow up without his father's society and that must also bear heavily upon him. I have taken these factors into account and have also had regard to all that has been said for the defendants by their counsel.

[19] I have considered whether any distinction should be made between the defendants. Although, as I have said, I believe that Michael Monaghan would not have become involved in such a heinous crime had he not met Julie McGinley, it does not follow that she was the driving force behind this killing. It is impossible to reach such a conclusion on the evidence available. I do not consider, therefore, that any difference in the tariffs to be applied is warranted. I have concluded that the period to be specified under article 5 (1) of the 2001 Order is 15 years. This is the period of imprisonment that must be served by each of the defendants before they can be considered for release. That period will be calculated so as to take account of the time spent in custody on remand and since their conviction by the jury. In practical terms this means that the specified part of the sentence shall run from the first remand date after the defendants' arrest.