Neutral Citation No.[2008] NICA 27 | *Ref:* **KER7217**

Judgment: approved by the Court for handing down | *Delivered:* **27/6/08**
*(subject to editorial corrections)**

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

v

TREVOR HAMILTON

Before Kerr LCJ, Campbell LJ and Higgins LJ

KERR LCJ

Background

[1] On 12 April 2006, after a trial before McLaughlin J and a jury, Trevor Hamilton was convicted of the murder of Attracta Harron. Mrs Harron was 65 years old when she was killed. During her working life she had been a librarian. At the time of her murder she was recently retired. Mrs Harron was a religious woman. On the day that she disappeared, 11 December 2003, she had attended Mass at Lifford, County Donegal. The service was part of a thirty day prayer plan which Mrs Harron had undertaken. The church where it was held was some two miles from her home and she had walked there. It had been her intention to walk home after Mass.

[2] When Mrs Harron failed to return home, her anxious family set out to find her. In the days and weeks that followed, increasingly distraught, they travelled throughout Ireland searching for her. Their apprehension deepened as the days passed without any trace of her being found. In his sentencing remarks the trial judge has captured well the impact on this close knit, erstwhile happy family that Mrs Harron's disappearance had. The eventual discovery of her decomposed body, secreted in the squalid circumstances that McLaughlin J so graphically described, has caused them unimaginable grief.

[3] That grief has been compounded and made infinitely worse by the unfolding of the case against the appellant, Trevor Hamilton. Mrs Harron's husband, her children and her siblings have had to confront the awful reality that their beloved wife, mother and sister had been abducted; that she knew of her likely fate before she was done to death and that she was killed in the most horrific circumstances. The effect that this has had on their lives is truly incalculable. The untimely death of a much loved parent and spouse is always difficult for those bereaved. The anguish that inevitably accompanies such a death is obviously greater when the death is violent. When, as here, the deceased occupied a central role in the lives of all her family, their suffering is of a completely different order. But the knowledge that this fine woman, this devout, trusting person, had experienced terror before she was killed and endured an unspeakable ordeal before her death must make their torment uniquely painful.

[4] Hamilton pleaded not guilty to the charge of murder. He contested his guilt throughout the trial, brazenly giving what, it is now clear, was perjured evidence. He applied for leave to appeal against his conviction and only withdrew that application when the substantive appeal was about to begin. The case against him, although circumstantial, was correctly described by the judge as irrefutable. Mrs Harron's body was found on 5 April 2004 at the base of the river bank behind the house where Hamilton lived with his parents. At the site of a bonfire at the rear of the applicant's home various items were found which included pieces of red woollen fabric, an Allied Irish Bank cash receipt, part of a religious prayer book, two small pieces of red acrylic fabric, a partial business card and two lengths of beads. Forensic testing and evidence from members of the victim's family established that these were all items which had originated from the victim. It is moreover clear that he attempted to destroy traces that Mrs Harron had left in his car by setting fire to it. As the judge observed, fortunately this was not successful in eliminating valuable forensic evidence that unmistakably showed that Mrs Harron had indeed been carried in that car. Sadly, however, that evidence consisted of traces of Mrs Harron's blood, pointing clearly to her having already been assaulted.

[5] Although the body was badly decomposed, on post mortem examination a number of grievous injuries were detected. There was a laceration on the left side of the scalp above the left ear and another just behind the pinna of the ear. The skull underlying these wounds was badly fractured and the fragments depressed inwards into the brain. A further laceration on the left side of the face extended from the root of the nose to the upper lip and this was associated with fractures of the nasal bones and the upper jaw. A further curved fracture of the skull on the right side of the head extended to the upper margin of the bony eye socket.

[6] Professor Crane, who conducted the autopsy, considered that the scalp and facial injuries indicated at least three blows to the head with a heavy object possibly with a cutting edge. The damage to the right side of the skull could have been due to a further blow from a blunt object or as a result of counter pressure if one of the blows to the left side of the scalp was inflicted whilst the right side of the head was resting on a hard surface such as the ground. Although the skull was of somewhat less than normal thickness and density, the extent of comminution of the bone pointed to quite substantial force having been used. The injuries had caused significant damage to the underlying brain sufficient to cause fairly rapid death.

The impact on the family

[7] Written statements made by Mrs Harron's husband and her son and daughter were considered by the trial judge. These described the appalling and shattering impact that the murder of Mrs Harron has had not only on her immediate next of kin but on the entire extended family. It is impossible to read these accounts without being enormously moved. Evidence was given at the trial by Mr Harron and the deceased's brother and sisters. A witness statement of another daughter, prepared before her mother's body was found, was also considered by the judge. She had been too ill to attend the trial and the judge aptly described the witness statement as distressing in the extreme. Particularly poignant was the section that described the daughter's belief that her mother was still alive. Sadly, there has been a marked deterioration in this daughter's health since her mother's murdered body was discovered.

[8] All of the material received by the judge has been considered afresh by this court. We are left in no doubt of the overwhelming consequences that the killing of Mrs Harron has had on her family. Indeed, we cannot but be aware of the devastating effect it has had on the entire community. When one comes to the task of selecting a minimum term to be served by any prisoner convicted of murder, these are matters that are directly relevant to the exercise since the purpose of the minimum term is to reflect the requirements of retribution and deterrence. As this court said in *Attorney General's reference (No 6 of 2004)* [2004] NICA 33, although "the conventional definition of retribution is punishment for crime … the concept also includes an aspect which might be described as exacting from the offender society's due for the wrong that he has done". Society's due must comprehend and cater for the impact that the murder has had on the immediate victims and the wider community.

The appellant's previous convictions

[9] The appellant was convicted on five counts of indecent behaviour arising from his involvement in four separate incidents at Strabane Youth Court on 17 December 1999. A probation order for 2 years was made in

respect of those offences. In September 2001, he was convicted of rape, attempted buggery, indecent assault on a female and making threats to kill. These charges related to offences which occurred on 16 February 2000. The original sentence of a custody probation order for 3 years 11 months detention and 3 years probation was the subject of a reference by the Attorney General to the Court of Appeal and was varied to a custody probation order of 7 years detention and 12 months probation (*Attorney General's Reference 2 of 2001*). The appellant was released from custody on 18 August 2003. Within four months of that date Mrs Harron had disappeared.

[10] The learned trial judge described the offences committed by the appellant on 16 February 2000 in the following passage from paragraph 15 of his judgment: -

> "The February 2000 charges were very serious by any standard. You were convicted of rape, attempted buggery, indecent assault on a female (forced oral sexual contact) and making threats to kill. The circumstances of those offences were dealt with in detail at this trial as the convictions were admitted in evidence before the jury. The victim, Ms H, was abducted by you after she had taken a lift in your car on the pretext that you would leave her home whereas she was taken to your parents' home, when you knew they were absent, and she was subjected to a prolonged sexual attack leading to your conviction for the various offences I have mentioned. The victim was so greatly traumatised that even six years later she was unable to come to this court to give evidence of what happened and her statement made at the time of the events was read to the court. The examination of the details of those offences which that took place in this trial, including hearing evidence from you as the accused, showed that Ms H was subjected to a dreadful ordeal and it is not surprising she was unable to attend the court so long after. A particularly significant feature was that you threatened to kill her in order to frighten her and so prevent her reporting the attack to the police. This is something seen often in such cases and may or may not be intended to be taken seriously. In this case however Ms H was so fearful that she pleaded for her life and was eventually allowed to

> go free. She took the threats very seriously indeed."

[11] We have read the witness statement of Ms H made for the purpose of the prosecution of the appellant that took place in September 2001. We do not intend to rehearse its contents. It is sufficient to say that it contains the most harrowing account of a prolonged, brutal and unspeakable attack on the injured party. As the judge observed, it is of especial significance that the appellant threatened to kill her and that she was so traumatised by the attack that she was unable to give evidence on the appellant's trial for the present offence.

[12] The appellant did not plead guilty to the offences that arose from the attack on Ms H until the last moment. On his trial for the murder of Mrs Harron, he sought to deny that he had committed the offences on Ms H, claiming that he had only pleaded guilty as a result of pressure that had been exerted on him by his legal representatives. This was quite extraordinarily shameless. As in the present case, the evidence against the appellant was overwhelming but this did not deter him from an unabashed attempt to persuade the jury on the murder trial that he had not committed the offences. This speaks strongly of the appellant's complete lack of moral scruple.

The medical evidence

[13] At his solicitors' request, Dr Ian Hanley, a consultant psychologist, examined the appellant on two occasions in July 2006. He also reviewed medical reports that had been provided by a number of other consultants. He administered Eysenck personality tests on the appellant. Nothing from these suggested that the appellant was a neurotic, emotionally unstable individual or prone in any way to psychiatric illness. In Dr Hanley's opinion, the violent and escalating nature of the offences of which Hamilton had been convicted, the continuing denial of guilt and his utter lack of remorse or insight into his actions clearly ruled out the option of treatment.

[14] Dr Bownes, a consultant psychiatrist, prepared a psychological and psychiatric profile on Hamilton based on audiotapes of group sessions in which Hamilton participated, reports and records of his contact with the Probation Service, with a health and social services trust, the prison psychology service at the Young Offenders Centre and a report from Dr Browne, consultant psychiatrist. Dr Bownes did not examine or interview Hamilton. From the reports that he considered, Dr Bownes concluded that Hamilton had repeatedly engaged in lying and manipulative behaviour in a self serving manner. He has resisted attempts to encourage greater insight into his offending. His persistent denial of guilt despite overwhelming evidence against him was consistent with an "inherent lack of empathetic

concern and a style of thinking" that allowed him to disassociate himself from his actions and their consequences.

The judge's conclusions as to the motive for the murder

[15] At paragraph [9] of his sentencing remarks, McLaughlin J said that he was sure that the motive for the original abduction of Mrs Harron was a sexual one and that Hamilton had killed her in order to avoid being apprehended for the offence. He explained the reasons for this conclusion in this later passage of his judgment: -

> "The advanced state of decomposition of the body when found precluded evidence being found which might have established a sexual assault upon Mrs Harron. I am sure however that her abduction was for a sexual purpose. As Mr Terence Mooney QC for the prosecution put it, there was no other logical reason for it. No other explanation has ever been advanced even on a theoretical basis and it is impossible to think of a credible one. This overwhelming inference is supported by the similarity of the pattern of your previous offending and by the fact that you have a proven "enduring predilection to predatory, sexual and violent offending against women" as it was described by Dr Bownes, Consultant Forensic Psychiatrist."

[16] Mr Gallagher QC, who appeared on behalf of the appellant at the appeal, challenged this conclusion. He referred us to the decision of the Court of Appeal in England and Wales in the case of *R v Davies* [2008] EWCA Crim 1055 in which it was held that in principle the standard of proof required to show that aggravating factors were present which would warrant the selection of a higher starting point for a life sentence tariff should be the same as that to be applied by a jury when reaching their verdict.

[17] We are satisfied that the same standard of proof beyond reasonable doubt is required to establish the existence of aggravating factors as is needed to establish a defendant's guilt. Whether or not such factors are present may make a substantial difference to the tariff chosen and it would be anomalous if any lesser standard were deemed to be sufficient. We are equally satisfied, however, that the judge was convinced to the requisite standard as to the motive for Mrs Harron's abduction and that his conclusions were correct.

[18] In the *Davies* case, the only significant matter relied upon by the judge was the fact that the victim's body had been stripped of its clothing before it

was buried and, as the Court of Appeal pointed out, it was likely that she had removed some of her own clothing as it was known that she had been in the habit of sunbathing in the area near to where her body was found. It was also suggested that the clothing might have been removed to prevent forensic links with the appellant or to make it easier to conceal the body, or to inhibit identification. In the present case, however, there was substantially more material to support the conclusion that Mrs Harron was abducted for the purpose of carrying out a sexual attack on her and that she was murdered so that Hamilton could escape detection.

[19] As the judge pointed out, it had been established that Hamilton had an enduring predilection to predatory, sexual and violent offending against women. The manner in which he had abducted Ms H by offering her a lift in his car is highly significant in light of the evidence that Mrs Harron was in the car with him and in an injured condition before being brought to his parents' home, just as Ms H had been. It is, in our judgment, inconceivable that Hamilton would have abducted Mrs Harron for any other reason and, of course, none has ever been proffered by him or on his behalf. It is not possible to be certain that a sexual assault in fact took place but we are entirely satisfied that this was the motive for Mrs Harron's abduction and we do not consider that the minimum term to be served by the appellant should vary whether or not he was successful in carrying out his malign plan.

[20] We are likewise satisfied that the judge was correct in his conclusion that Hamilton killed Mrs Harron in order to escape detection for abducting her. It is clear from Ms H's statement that Hamilton had been greatly exercised by the possibility of her reporting the attack to the police if he released her and that he made threats to kill her on that account. It is also clear that she found those threats to be entirely convincing. Hamilton would have realised that, if he were apprehended for Mrs Harron's abduction he would inevitably face a substantial prison sentence. We agree with the trial judge that the only inference that can properly be drawn is that she was killed by Hamilton in an attempt by him to avoid having to face the consequences of his criminal behaviour.

The fixing of minimum terms in life sentence cases

[21] The determination of the minimum period to be served by a person sentenced to life imprisonment must be made in accordance with the provisions of article 5 of the Life Sentences (Northern Ireland) Order 2001, the relevant parts of which are: -

> "*Determination of tariffs*
>
> 5. - (1) Where a court passes a life sentence, the court shall, unless it makes an order under

> paragraph (3), order that the release provisions shall apply to the offender in relation to whom the sentence has been passed as soon as he has served the part of his sentence which is specified in the order.
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> (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.
>
> (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, subject to paragraphs (4) and (5), the release provisions shall not apply to the offender."

[22] The manner in which courts in Northern Ireland apply these provisions was described by Carswell LCJ in *R v McCandless and others* [2004] NICA 1. At paragraph [2] of the judgment he said: -

> "When a defendant in a criminal matter is sentenced to imprisonment for life, that does not in practice mean that he will be detained for the whole of the rest of his life, save in a few very exceptional cases. He will ordinarily be released after a period has elapsed which is regarded as appropriate to reflect the elements of retribution and deterrence, provided it is no longer necessary for the protection of the public to detain him. The factual background of murder cases is infinitely variable and the culpability of individual offenders covers a very wide spectrum. Reflecting this variation, the terms for which persons convicted of murder have actually been detained in custody have accordingly varied from a relatively few years to very long periods, even enduring in a few cases to the rest of the offender's life."

[23] In *R v Secretary of State for the Home Department ex parte Hindley* [2001] 1 AC 410 it was held that there was no reason why a crime, if sufficiently

heinous, should not be regarded as deserving lifelong imprisonment for the purposes of pure punishment. Clearly, where a whole life tariff is chosen, the issue of deterrence is of significantly less importance for, although the question of deterring others is still in play, there is no concern in relation to deterring from further offending the prisoner who is to remain incarcerated for the remainder of his life. The basis on which a whole life tariff is chosen must therefore be that this is what is required to punish the offender. It was on that account, no doubt, that Carswell LCJ observed in *McCandless* that such a disposal would occur only in a few very exceptional cases.

[24] In England and Wales the choice of a minimum term in life sentence cases is now governed by the Criminal Justice Act 2003. Section 269(2) of this Act requires the court to order that the early release provisions in section 28(5) to (8) of the Crime (Sentences) Act 1997 are to apply to the offender after he has served such part of the sentence as the court specifies (as in article 5 (1) of the 2001 Order). The requirement to fix a minimum term does not apply where the court makes an order under section 269(4) of the 2003 Act that the early release provisions do not apply to the particular offender but the wording of this provision is somewhat different from article 5 (3) of the 2001 Order. Section 269 (4) provides: -

> "(4) If the offender was 21 or over when he committed the offence and 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 subsection (2), the court *must* order that the early release provisions are not to apply to the offender." (emphasis added)

[25] Section 269 (5) of the 2003 Act requires the court, when considering under subsection (3) or (4) the seriousness of an offence (or of the combination of an offence and one or more offences associated with it), to have regard to the general principles as set out in Schedule 21. Paragraph 4 of this schedule deals with the circumstances in which a whole life order is the appropriate starting point for the determination of the minimum term in relation to a mandatory life sentence. So far as is material, paragraph 4 provides: -

> "(1) If –
>
> (a) the court considers that the seriousness of the offence (or the combination of the offence and one or more offences associated with it) is exceptionally high, and
>
> (b) the offender was aged 21 or over when he committed the offence,

the appropriate starting point is a whole life order.

(2) Cases that would normally fall within sub-paragraph (1) (a) include –

(a) the murder of two or more persons, where each murder involves any of the following –

(i) a substantial degree of premeditation or planning
(ii) the abduction of the victim, or
(iii) sexual or sadistic conduct,

(b) the murder of a child involving the abduction of the child or sexual or sadistic motivation,

(c) a murder done for the purpose of advancing a political, religious or ideological cause, or

(d) a murder by an offender previously convicted of murder."

[26] In *R –v- Jones and others* [2005] EWCA Crim 3115 the English Court of Appeal considered the setting of minimum terms for mandatory life sentences. In relation to "whole life tariffs" Lord Phillips CJ stated: -

"A whole life order should be imposed where the seriousness of the offending is so exceptionally high that just punishment requires the offender to be kept in prison for the rest of his or her life. Often, perhaps usually, where such an order is called for the case will not be on the borderline. The facts of the case, considered as a whole, will leave the judge in no doubt that the offender must be kept in prison for the rest of his or her life. Indeed if the judge is in doubt this may well be an indication that a finite minimum term which leaves open the possibility that the offender may be released for the final years of his or her life is the appropriate disposal. To be imprisoned for a finite period of thirty years or more is a very severe penalty. If the case includes one or more of the factors set out in paragraph 4 (2) it is likely to be a case that calls for a whole life order, but the

> judge must consider all the material facts before concluding that a very lengthy finite term will not be a sufficiently severe penalty."

[27] As McLaughlin J pointed out in his sentencing remarks, this court has decided in *McCandless* and in *Attorney General's Reference No 6 of 2004* that the "the provisions of the 2003 Act [could not] be imported and applied in Northern Ireland in the absence of legislation to like effect in this jurisdiction". That is not to say, however, that these provisions are entirely irrelevant to the consideration that must be given to the circumstances in which it is appropriate to choose a whole life tariff. Two observations may therefore be made. In the first place, none of the examples given in paragraph 4 (2) of Schedule 21 mirrors the circumstances of this case. On the other hand, the appropriate starting point is to be a whole life order where the court considers that the seriousness of the offence is exceptionally high and one might suggest that the seriousness of Mrs Harron's murder, especially when viewed against the appellant's appalling record of having committed such grievous offences against Ms H, must rank as exceptional.

[28] While the views of the legislature in another part of the United Kingdom of the circumstances in which a whole life tariff should be imposed are not irrelevant, as we said in *Attorney General's Reference No 6 of 2004*, the touchstone in this jurisdiction for the fixing of minimum terms in life sentence cases remains the *Practice Statement* issued by Lord Woolf CJ and reported at [2002] 3 All ER 412. Carswell LCJ had referred to this in paragraph [10] of the judgment in *McCandless* in the following way: -

> "In a number of decisions given when imposing life sentences and fixing minimum terms, including those the subject of the present appeals and applications, judges in the Crown Court have taken account of the principles espoused by the Sentencing Advisory Panel and by Lord Woolf CJ in his *Practice Statement* and have fixed terms in accordance with those principles and on a comparable level with the terms suggested in them. We consider that they were correct to do so. We have given careful consideration to the level of minimum terms which in our view represent a just and fair level of punishment to reflect the elements of retribution and deterrence. We are not unmindful of the mandatory minimum terms prescribed in England and Wales for certain classes of case by the Criminal Justice Act 2003, but we consider that the levels laid down in the *Practice Statement,* which accord broadly with

those which have been adopted for many years in this jurisdiction, continue to be appropriate for our society."

[29] It is, of course, necessary to remember that the *Practice Statement* is intended only to provide guidance and must not be applied rigidly. This court emphasised the point in *Attorney General's Reference No 6 of 2004* when we said: -

> "There is a temptation to try to strain the words of the *Practice Statement* in order to fit a particular case into a specific category or species of case instanced in the statement in pursuit of the aim of consistency. This should be firmly resisted, not least because of the infinite variety of murder cases and the facts that give rise to them. Moreover, Lord Woolf was careful to make clear that the examples that he gave to illustrate the broad categories were precisely that, examples rather than an exhaustive list of all those cases that might be classified in one group or the other."

[30] The relevant parts of the *Practice Statement* are these: -

> *"The normal starting point of 12 years*
>
> 10. Cases falling within this starting point will normally involve the killing of an adult victim, arising from a quarrel or loss of temper between two people known to each other. It will not have the characteristics referred to in para 12. Exceptionally, the starting point may be reduced because of the sort of circumstances described in the next paragraph.
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> 11. The normal starting point can be reduced because the murder is one where the offender's culpability is significantly reduced, for example, because: (a) the case came close to the borderline between murder and manslaughter; or (b) the offender suffered from mental disorder, or from a mental disability which lowered the degree of his criminal responsibility for the killing, although not affording a defence of diminished responsibility; or (c) the offender was provoked (in a non-technical sense), such as by prolonged and

eventually unsupportable stress; or (d) the case involved an overreaction in self-defence; or (e) the offence was a mercy killing. These factors could justify a reduction to eight/nine years (equivalent to 16/18 years).

The higher starting point of 15/16 years

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: (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.

Variation of the starting point

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 the culmination of cruel and violent behaviour by the offender over a period of time.
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> 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.
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> 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.
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> 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 guilty.
>
> *Very serious cases*
>
> 18. A substantial upward adjustment may be appropriate in the most serious cases, for example, those involving a substantial number of murders, or if there are several factors identified as attracting the higher starting point present. In suitable cases, the result might even be a minimum term of 30 years (equivalent to 60 years) which would offer little or no hope of the offender's eventual release. In cases of exceptional gravity, the judge, rather than setting a whole life minimum term, can state that there is no minimum period which could properly be set in that particular case."

Discussion

[31] McLaughlin J concluded that this was a higher starting point case and with that we unhesitatingly agree. The judge then listed a number of what he described as "aggravating and other relevant factors" which in many instances he referred to as indicating high culpability on the part of the appellant. He expressed his final conclusions thus: -

> "[23] Having regard to the presence of a number of the factors which attract the higher starting point,

> the major aggravating factors and the absence of any mitigating factors a very high tariff figure is justified, indeed demanded in this case. The rapidity of your reoffending within months of your first convictions and later release from prison, the gravity of the offences committed against Ms H in 2000, the sinister similarity in the circumstances of those offences and the death of Mrs Harron together with the complete lack of any remorse on your part have however driven me to the conclusion that the demand for retribution and the need for deterrence of people who think and act like you that this is a quite exceptional case. A rapist who treats a victim as you treated Ms H and who threatens to kill her to secure her silence and who then kills another victim whom he has abducted in these circumstances and does so within four months of completing a seven year term of detention must face a severe sanction in the absence of any mitigation. What you did to Mrs Harron, a good and loving woman, was at once nauseating and horrifying, it was the stuff of nightmares and the epitome of the loss of innocence in our community. What that poor woman experienced as you prepared to execute her, whatever weapon you used to accomplish it, was so appalling that it demands retribution of the most severe kind. When the multiple aggravating factors are taken into account, particularly that you murdered her so soon after your release from prison from such serious offences, I conclude that only one punishment is appropriate especially as you have been given a second chance in the past but it had no effect on your behaviour.
>
> [24] I shall therefore order you to be sentenced to life imprisonment and that the release provisions of Article 5(1) of the 2001 Order shall not apply to you. This is necessary in my opinion to satisfy the demand for retribution and to deter others from committing such appalling acts. You will in consequence spend the rest of your life in prison."

[32] Although the *Practice Statement* is intended to provide guidance, it does prescribe a sequence to be followed in firstly the selection of a starting point

and then the variation of that starting point by consideration of various aggravating or mitigating factors. It is, we believe, important to follow this sequence in applying the *Practice Statement* since there may otherwise be confusion as to which factors are to be regarded as operative in the selection of the starting point and which are to play a part in bringing about a variation of that starting point. An overarching consideration will always be whether no minimum period should be selected at all but it appears to us that this is a question that will normally be addressed after the broad sequence of the *Practice Statement* has been applied.

[33] At the start of the passage from the learned trial judge's sentencing remarks quoted above, he stated that a number of the factors attracting the higher starting point were present. It is not immediately clear which of the factors that he had earlier outlined were considered by the judge to qualify for this designation. Those identified by him may be summarised as (i) the appellant's previous convictions; (ii) a failure to respond to the work of agencies seeking to address his offending; (iii) the concealment of the body and the destruction of evidence; (iv) the abduction of Mrs Harron when she was alone; (v) the abduction for the purpose of sexual attack; and (vi) the vulnerability of Mrs Harron to the superior strength of the appellant.

[34] While it is of course true, as the judge was careful to point out, that the features set out in paragraph 12 of the *Practice Statement* are not designed to be exhaustive, it is noteworthy that only that referred to in sub-paragraph (d) (the killing was intended to defeat the ends of justice (as in the killing of a witness or potential witness)) is clearly present in this case, although it is arguable that the feature mentioned in sub-paragraph (j) (extensive and/or multiple injuries were inflicted on the victim before death) should be considered also to apply.

[35] The matters that we have summarised in paragraph [33] (i), (ii) and (iii) above are more properly to be regarded as aggravating factors – whether relating to the offence or the appellant himself – which warrant a variation upwards of the starting point rather than as features which indicate the selection of the higher starting point. We accept, however, that the three remaining features, although not mentioned in paragraph 12 of the *Practice Statement* are clearly relevant to the appellant's culpability, albeit that they appear to us to be aspects of the same essential point *viz* that the appellant abducted Mrs Harron in order to carry out a sexual attack upon her and was able to do so by use of his greater strength.

[36] This analysis is relevant to the application of paragraph [18] of the *Practice Statement*. One must, of course, avoid making a numerical count in order to decide whether, in the words of that paragraph, "there are several factors identified as attracting the higher starting point present" but one may observe that this is not clearly the case in the present appeal.

[37] We agree with the judge that the appellant's age cannot be regarded as a mitigating factor. He was 21 years old at the time of the murder and is now 26, his date of birth being 19 June 1982. As McLaughlin J said, Hamilton was a fully developed adult at the time that he committed this murder. He was of average intelligence. He did not suffer from any mental illness or abnormality of personality. His extensive experience of the criminal justice system can only have left him fully aware that what he had embarked on was a monstrous crime. He had failed to avail of the abundant advice, direction and counselling that he had been offered. This was no ingénue, unfamiliar with the ways of the world or one who came from a sheltered background. There is no reason to suppose that he had not reached full maturity.

[38] Although his comments were made in relation to the 2003 Act, we agree with the view of Lord Phillips CJ in *Jones* that the imposition of a whole life tariff should be confined to those instances where "the facts of the case, considered as a whole, will leave the judge in no doubt that the offender must be kept in prison for the rest of his or her life". While this was a heinous offence that must rank as one of the most grave that our community has suffered, after much anxious thought, none of the members of the panel who heard the appeal felt that this was a case in which he could feel no doubt that the appellant should remain in prison for the rest of his life.

Conclusions

[39] Accordingly, for the reasons that we have given, we have concluded that the whole term order made by the judge must be quashed. A very substantial minimum period must, however, be imposed and we have concluded that this must be one of thirty-five years. To that extent this appeal against sentence is allowed.

[40] We wish to emphasise that our decision does not mean that the appellant will be released at the expiry of the minimum term that we have imposed. It will be then a matter for the Parole Commissioners to decide whether it is safe to release him. Only if it is concluded that he no longer represents a danger to the public will his release ever be authorised. On the present evidence, there is every prospect that that day will never come.