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(subject to editorial corrections)\**

**Delivered: 19/9/2017**

**IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND**

—  
**THE QUEEN**

**-v-**

**WILLIAM TURNER  
AND  
JAMES HENRY TURNER**

—  
**Before: Morgan LCJ, Weatherup LJ and Deeny J**

**MORGAN LCJ (giving the judgment of the court)**

[1] William and James Turner are brothers. Each pleaded guilty on the first count to the murder of Matthew Richard Goddard on 23 December 2014. On a second count William pleaded guilty to assault causing grievous bodily harm with intent, contrary to Section 18 of the Offences Against the Person Act 1861, on Gareth Grattan on the same date. The prosecution accepted a plea of not guilty by James on that count.

[2] Each was sentenced to life imprisonment and in each case the learned trial judge ordered that each should serve a period of 17 years in custody before being considered for release. Treacy J imposed a discretionary life sentence on the second count with a tariff of ten years custody.

[3] James appeals with the leave of Colton J and William renews his application for leave. Mr Eugene Grant QC appeared with Mr McConkey for William Turner. Mr Patrick Lyttle QC appeared with Mr Martin Morgan for James Turner. Mr Ciaran Murphy QC appeared with Mr David Russell for the prosecution. Counsel made helpful written and oral submissions for the assistance of the Court.

**Background**

[4] The learned trial judge set out the factual background in his sentencing remarks which we set out here for ease of reference.

“[5] On 23 December 2014 William Turner, now aged 37 and his younger brother, James Turner now

aged 30, had been consuming large quantities of alcohol and cocaine. They then visited a local bar, the King Richard. Whilst there, Gareth Grattan and a friend went to this bar at about 10pm. Gareth Grattan was asked about playing a game of doubles with two men who were already in the bar playing pool. They started to play. Gareth Grattan was then attacked by William Turner and Mr Grattan ended up on his back on the ground. William Turner then jumped on him and gouged his eye. At some stage William Turner was pulled off his victim. Gareth Grattan was brought eventually to the Royal Victoria Hospital where he had major surgery on his eye.

[6] Mr Grattan who was aged 39 at the time of this vicious attack has been left blind in his left eye. He also sustained cuts and bruises over the rest of his face, neck and legs. One of the doctors who examined the injured party reports that he is now totally blind in his left eye with no prospect of recovery. The eye is shrunken. He has constant discomfort and has difficulty wearing a cosmetic shell to cover the damaged eye. He may require further treatment. The consequences of this attack for Mr Grattan have obviously been profound and life changing.

[7] Following this attack the Turners left the King Richard Bar and visited a cousin's house where more alcohol and drugs were consumed. They then left their cousin's house and made their way to the home of Matthew Goddard at 18 Chobham Street, which was about five minutes walk.

[8] William Turner claims that at this stage he had intended to challenge Mr Goddard about an alleged derogatory comment made by the deceased about William Turner's younger brother, James. William Turner told police that he wanted to go around and give Matt a good slap. During interview with the police he said he also wanted to humiliate him and he admitted that he was intent on violence. After they had secured entry to Matthew Goddard's house, William Turner and James Turner subjected the victim to a sustained, merciless and brutal attack, using fists, feet and smashing an electric guitar over

his head with such ferocity that it smashed into pieces.

[9] I am satisfied that the Turner brothers took turns to stamp on Mr Goddard's head whilst he lay at the bottom of the stairs. The forensic evidence indicates that William Turner's footprint was on the victim's head and that considerable leverage was used by the attacker who in stamping on the victim's head at the staircase subsequently dislodged the bannister.

[10] Mr Jason Bennett, Forensic Scientist, examined the extensive blood staining in Mr Goddard's premises and concluded that the deceased had been attacked in the living room, ending up on the floor close to the radiator. He then made his way towards the kitchen, making contact with the wall opposite the radiator. This contact was with a heavily blood stained item and suggests that Mr Goddard may have been crawling or had fallen on to the floor. He was then once again assaulted at the foot of the stairs where his body was subsequently found.

[11] The pre-sentence report notes that when challenged William Turner could provide no rational explanation why he engaged in such a brutal and sustained attack upon the victim or why he failed to request medical assistance for the victim whom he stated was still alive when he left Mr Goddard's home. The defendant left the victim lying in a pool of blood and proceeded with James Turner and Christian Walker to go home and consume yet more alcohol and drugs. William Turner then disposed of evidence by burning most of the clothing and shoes worn during the murder.

[12] Although the murder occurred on 23 December 2014 the body of the deceased was not found until the evening of the following day, shortly after 9pm, when a concerned friend, Mr Carson, looked through the letter box and saw a body lying on its back at the bottom of the stairs. The pathologist found the cause of death to be blunt force trauma of the head and neck compression. He found extensive injuries, including extensive fracturing of the bones of the nose and the left side of the face. These injuries

indicated multiple forceful blows such as punches, kicks or blows from a blunt weapon or a combination of these mechanisms. There was extensive bruising and some of the bruises had well defined linear components indicating impacts with a patterned surface suggesting the sole of footwear and indicating stamping on the face and head.”

[5] The prosecution agreed that James Turner pleaded guilty to the murder on the basis of a joint enterprise. The prosecution case was that he intended to kill. The appellant contended that he intended to cause grievous bodily harm. The presence of the zig-zag shoe pattern on the face of the deceased emanated from a pair of shoes associated with William Turner. The prosecution also accepted that James Turner could not be fully advised until receipt of medical reports from Dr Bownes dated 4 May 2016 and Dr Rauch dated 29 April 2016 and received shortly thereafter. He and his brother having pleaded not guilty on 26 February 2016 William was re-arraigned and pleaded guilty on 6 May 2016 and James similarly pleaded on 11 May 2016.

#### **Circumstances of William Turner**

[6] William Turner has 26 previous convictions, including assault occasioning actual bodily harm in 1996 in respect of which he appeared before Ards Magistrates’ Court and was fined. He has one conviction for common assault in 2001 for which a probation order was imposed. The majority of his offending relates to motoring offences. His pre-sentence report provides that there was a significant gap in his criminal record between 2004 – 2011, reflecting a more settled period in his life when he was employed and in a relationship.

[7] The pre-sentence report described a stable upbringing and there was no evidence of significant trauma in his background. His involvement in offending was mainly in the context of alcohol and drugs which commenced when he was 15 years old. The report states he had been assessed at a high level of alcohol intake indicating a harmful dependence. The misuse of alcohol and cocaine were both major contributory factors in the index offences. A psychiatric report indicated that in the months preceding the offences, he had been under significant stress emanating from his mother’s terminal illness from cancer. He did not, however, suffer from any mental impairment or mental health problems of a nature that would fulfil the criteria defined under the Mental Health Order.

[8] William Turner claimed Mr Grattan had been threatening his younger brother and, subsequently, he became involved in a fight with Mr Grattan but he denied attempting to gouge out the victim’s left eye. The report states this account contradicts the evidence and substantial victim injuries which resulted in the victim losing sight as a direct consequence of the assault.

[9] Making his way to the next victim's flat, he stated he intended to challenge him about an alleged derogatory comment made about his younger brother. At the flat, the victim apologised for making the comment but William Turner admitted he was intent upon violence and encouraged the other two males to initiate the assault. He said he struck the victim about the head with an electric guitar, he completely lost all control and kept on hitting him. He denied stamping on his head while he was on the ground. The report states this is at odds with forensic evidence that his footprint was on the victim's head and that considerable leverage was used by the attacker who in stomping on the victim's head subsequently dislodged the bannister. William Turner said the assault lasted a matter of minutes and he left the victim in a barely conscious state and shouted in his face to apologise to his brother.

[10] He could not provide a rational explanation why he engaged in such a brutal and sustained assault upon the victim or why he failed to request medical assistance for the victim whom he stated was still alive when he left his flat. He disposed of the evidence by burning most of the clothing and shoes worn during the murder demonstrating a rudimentary forensic awareness and intent to avoid detection and any link to the crime.

[11] William was assessed as presenting a high risk of re-offending and a significant risk of serious harm to others. Whereas the initial offence of GBH appeared to be impulsive the murder was premeditated.

### **Circumstances of James Turner**

[12] James Turner has 85 previous convictions. Although the majority relate to illegal vehicle use or car crime, thefts and criminal damage he has convictions relevant to the present offending. The pre-sentence report specifically referred to his conviction for aggravated burglary with intent to inflict GBH in 2006 when he appeared before Downpatrick Crown Court and was sentenced to a Custody Probation Order of 12 months custody and 18 months' probation. He was also convicted of assault occasioning actual bodily harm in 2003 when he appeared before Newtownards Magistrates' Court in 2008 and was sentenced to 3 months imprisonment concurrent. In addition, he had a conviction for robbery in 2004. This related to the robbery of a newsagent when the applicant was in possession of an iron bar. He appeared before Downpatrick Crown Court in 2005 and was sentenced to a custody probation order of 3 years custody and 18 months' probation. The pre-sentence report stated that his most recent convictions in 2009 and 2012 related to motoring offences and goes on to say there was a significant gap in his offending between 2009 up to the time of the present offences which he attributed to becoming a father and a conscious effort to avoid negative influences and risk situations.

[13] The pre-sentence report refers to how James Turner suffered serious head injuries when he was 10 years old when he was struck by a vehicle when out riding his bicycle. He had to repeat a year in primary school and was excluded from secondary school for behavioural issues in third form. His parents separated and he

did not get on with his mother's new partner. At 15 he moved in with his sister. He described having problems with alcohol and his mental and emotional health during his late teens and early twenties. He stated these issues continued to affect him in the months prior to his arrest in 2014, linked to his mother's terminal illness. He described experiencing mood swings, coping problems and self-harm thoughts.

[14] He has tried to use his time constructively while in prison and has passed all drugs tests. The report writer felt James attempted to minimise his role by placing much of the blame on Christian Walker. He expressed regret for what occurred. He claimed, when he first entered the victim's home, he did not intend to kill him or cause serious harm. He claimed when they left his home they did not realise how badly he was hurt. He acknowledged feeling angry towards the deceased and made reference to the earlier fight in the bar which agitated and upset him. He described being the target of abusive and derogatory comments from various individuals over the years, linked to his cognitive difficulties and how these upset, angered and depressed him. He placed his behaviour in this context and in the context of what he described as his "mental problems".

[15] The report states that James Turner's behaviour gave rise to a number of clear risk factors and reflected a significant loss of self-control, inability to control his anger and capacity to act in a violent reckless manner without regard to consequences. He was assessed as presenting a high likelihood of re-offending. He was assessed as fulfilling the criteria to be considered as a significant risk of serious harm.

[16] The neuropsychological report of Dr Rauch dated 29 April 2016 refers to James Turner sustaining a moderately severe brain injury in a road accident on 19 August 1996 when he was 10 years of age. A CT scan of the brain showed structural injury to the brain characterised by haemorrhage and contusion (bruising) to Left Temporal and Parietal Lobes. He was admitted to Intensive Care and remained in hospital for 21 days following injury. Dr Rauch states that he appears to have developed epilepsy post injury. There were indications from the medical report that this may now have been resolved. Reference was made to early post injury assessment of impairment in memory and speed of information processing. Reference was made to him fatiguing rapidly. Also, his education was significantly disrupted and this was associated with disturbance in behaviour post injury. He had no qualifications and he had not been able to sustain employment.

[17] Testing of cognition at almost 20 years post injury showed intact visuo-spatial skills. Verbal comprehension skills were in the "Borderline" range of functioning and at the 5<sup>th</sup> percentile for his age. There was evidence at interview of limited verbal skills and early fatigue on cognitive exertion. This was evidence of impaired memory for verbal material. This profile of cognition was broadly in keeping with the long term consequences of injury to the left temporal lobe of the brain. Dr Rauch expected him to have a limited repertoire of social problem solving skills.

## **Victim impact report**

[18] Dr Paterson's report indicates that the deceased's mother suffered a huge sense of loss and symptoms of increased physiological and emotional arousal. It was suggested that she ask her GP for a referral to the practice counsellor and, if that did not help her cope, there were certain psychological therapies which were effective working with traumatic memories. The final section of the report provided that the death of the victim also impacted on the victim's half-brother. There was clearly an impact on his mood with a loss of interest in activities and loss of appetite. In addition, there was emotional pain when thinking of the victim's death.

## **Judge's sentencing remarks**

[19] In respect of the sentencing for the murder the learned trial judge correctly relied upon the guideline case of R v McCandless [2004] NI 269. He noted that the higher starting point would apply in cases where the offender's culpability was exceptionally high or the victim was in a particularly vulnerable position. He considered that two such factors were unquestionably present being use of gratuitous violence and the infliction of extensive and/or multiple injuries on the victim before death. He noted but did not comment upon the prosecution submission that the victim was vulnerable having regard to the fact that these two men had come into his house to commence this beating. There is no challenge to the learned trial judge's conclusion that this was a case with a higher starting point of 15/16 years in respect of each of the brothers.

[20] Having identified this as a higher starting point case Treacy J recognised that the Practice Statement, approved in McCandless, was only intended to be guidance and the starting points were there to help the sentencer towards the goal of deciding upon the right and appropriate sentence for the instant case. He considered that this was a case where more than one of the factors justifying a higher starting point were present but did not accept the prosecution submission that this brought the case into a category where a tariff of up to 30 years might be appropriate.

[21] The judge noted that William Turner had a relatively minor criminal record. He had never served a sentence of imprisonment. William initially denied any involvement in the matter but on 8 January 2015, at his seventeenth interview, he had a change of heart and admitted both the assault on Gareth Grattan at the King Richard bar and the murder of Matthew Goddard. Furthermore he stated to police that while his brother and Christian Walker were present at both incidents they did not take part in the attacks. He maintained he was solely responsible for them. Given that his brother subsequently pleaded guilty to murder in the light of all the evidence against him it can be seen therefore that William's admissions were not wholly candid but, if believed, would have tended to pervert the course of justice.

[22] William Turner was given "appropriate discount" for his early admission to police and his subsequent plea of guilty. The judge noted, however, that in the pre-

sentence report he denied stamping on the victim's head when there was compelling evidence that he did so. Although he expressed regret for the loss of life and the impact on the victim's family the writer of the report rightly observed that it was apparent that neither compassion nor empathy were evident at the time of the attack.

[23] Dealing with the submissions in relation to whether there was an intent to kill the judge indicated that whatever the Turners' intention may have been before they entered the deceased's home, whilst they were both there they formed an intention to kill. If they had not formed such an intention there was no explanation as to why they did not summon help for the deceased who was lying in a pool of blood and apparently still alive when he left the house. The judge indicated that if the case had been contested the tariff would not have been less than 20 years. Taking everything into account he assessed the period to be that 17 years.

[24] The judge considered that a discretionary life sentence was appropriate for the attack the subject of count two. He was satisfied that William Turner had been convicted of a very serious offence and there were good grounds for believing that the offender may remain a serious danger to the public for a period which could not be reliably estimated from the date of sentence. Although Mr Grant took issue with that conclusion we consider that the learned trial judge was entitled on the unchallenged information before him in the pre-sentence report to come to that view.

[25] In respect of James Turner the judge also considered that this was a higher starting point case requiring a variation upwards to reflect the fact that there were a number of features identified as attracting the higher starting point. He was satisfied that James Turner formed an intention to kill the deceased while in his home. That conclusion was based on the nature, degree, severity and cause of the injuries as set out in the autopsy report. In any event he considered that the absence of an intention to kill did not necessarily provide any or very much mitigation. James Turner had an atrocious record with some 85 previous convictions including relevant offences of violence.

[26] The learned trial judge noted the contents of the report from Dr Rauch but was not persuaded that there was any basis for distinguishing between James and William who acted in concert in subjecting the deceased to a sustained, pitiless and horrifically savage attack. He accordingly imposed a tariff of 17 years in his case also.

### **Reduction in tariff for guilty plea**

[27] In both cases it is submitted that the learned trial judge gave inadequate discount for the guilty pleas. This case gives us an opportunity, therefore, to review how the court should approach a reduction in the tariff for a guilty plea to the offence of murder. Before turning to the particular provisions governing sentencing



in this jurisdiction it is helpful to review the approach that has been taken in the other jurisdictions in the United Kingdom which have considered this issue. Needless to say those particular approaches reflect the manner in which sentencing law has developed in those jurisdictions and it does not follow that guidance or guidelines that may have been thought appropriate in those jurisdictions should translate automatically to this jurisdiction.

[28] For more than 10 years guidance on this issue has been provided in England and Wales by the Sentencing Council. The latest guidance is effective from 1 June 2017. The sentence for murder is imprisonment for life and the offender will remain subject to the sentence for the rest of his life. The guidance notes that the Criminal Justice Act 2003 (“the 2003 Act”) prescribes the starting point for the minimum term to be served by an offender. The legislation does not, of course, apply in this jurisdiction. The court is required to weigh carefully the overall length of the minimum term taking into account other reductions for which the offender may be eligible so as to avoid a combination leading to an inappropriately short sentence. Where it is appropriate to reduce the minimum term having regard to a plea of guilty the reduction will not exceed one-sixth and will never exceed five years. The maximum reduction should only be given when a guilty plea has been indicated at the first stage of proceedings, in other words at first arraignment. When a guilty plea is given on the day of the trial a maximum of one-twentieth should be allowed.

[29] The rationale for this limitation on the extent of the reduction, which has been in place since the 2003 Act was passed, was considered in Last and others v R [2005] EWCA Crim 106. The court noted that for offences other than murder a maximum discount of approximately one-third of the length of the sentence that would otherwise have been imposed could be allowed depending upon the circumstances. The purpose of granting such a reduction was to recognise that an early plea normally reduced the impact of the crime upon victims, saved victims and witnesses from having to testify and was in the public interest in that it saved public time and money on investigations and trials.

[30] The court noted that murder had always been regarded as the most serious criminal offence and the sentence prescribed was different from other sentences. The decision whether to release the offender from custody during his sentence is taken by the Parole Board which considers whether it is safe to release the offender on licence. Parliament had set starting points and identified aggravating or mitigating factors including an obligation to have regard to any guilty plea although it did not limit the court's discretion in that regard.

[31] The most important difference, it was suggested, between the usual fixed term sentence and the minimum term set following the imposition of the mandatory life sentence for murder was that a reduction for a plea of guilty in the case of murder will have double the effect on time served in custody when compared with a determinate sentence. Because of that difference and the special characteristics of the offence of murder and the unique statutory provision of starting points the

maximum reduction should be one-sixth and the reduction should never exceed five years. The reduction for a late guilty plea should be 5%.

[32] There are two further differences with this jurisdiction which need to be noted. The guidance specifically makes clear that the discount for the guilty pleas should not take into account admissions at interview, cooperation with the investigation and demonstrations of remorse. These are, therefore, separate mitigating factors which, if present, may further reduce the sentence in England and Wales. In this jurisdiction at least the first two of those matters are taken into account in assessing the discount for the guilty plea. It is sometimes said that an acceptance of responsibility in itself is an indicator of remorse but we recognise that compelling evidence of remorse can be a separate mitigating factor.

[33] In Scotland the High Court of Justiciary considered the appropriate discount for a guilty plea in murder cases in HM Advocate v Boyle and others [2009] HCJAC 89. The 2003 Act does not apply in Scotland and there is no equivalent legislation. The court noted the guidance for the reduction in sentence for a guilty plea which applied in England and Wales. There was some discussion around the equivalence between a period identified as the tariff and a determinate sentence of the same length. The court concluded that a strict mathematical approach may be inappropriate. Because murder was a special case the maximum discount should be about one-sixth with a maximum of five years.

[34] Article 5 of the Life Sentences (Northern Ireland) Order 2002 provides that the tariff period shall be such part of the sentence 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. Once the tariff period has been served the prisoner is eligible for release on the direction of the Parole Commissioners for Northern Ireland where they are satisfied that it is no longer necessary for the protection of the public from serious harm that the prisoner should be confined.

[35] The argument apparently accepted by the English Court of Appeal in Last was that there was some equivalence between the tariff period and a determinate custodial sentence. Accordingly, when a determinate custodial sentence was discounted for a guilty plea, the reduction applied to both the custodial period and the licence period, usually resulting in the same discount for each. In a tariff case the discount would be applied to the entire custodial period. The effect, therefore, would be to give at least twice as much reduction in the custodial period for a tariff as would be given for a determinate custodial sentence of the same number of years.

[36] Attractive as that argument may appear at first blush we do not accept that there is an equivalence between a tariff period and a determinate custodial sentence of the same length. The tariff period is only one part of the sentence imposed upon a person convicted for murder. The other part of the sentence is a licence period which lasts for the rest of the offender's life if he is considered suitable for release. If there is

any equivalence with determinate custodial sentences it would be with a determinate custodial sentence which had a custodial period of the same length as the tariff period. Such a sentence would also have a very long licence period and might, therefore, be characterised as having some equivalence with a life sentence since the minimum custodial period would be the same in each case although the mandatory life sentence prisoner may never be released. Where such a sentence was subject to a reduction for a guilty plea a discount of up to one third would apply to the same custodial period. We do not accept, therefore, this argument advanced in support of the proposition that the discount in the tariff period for a murder plea should not exceed one-sixth.

[37] We recognise, however, that the sentence prescribed for murder is different from every other offence and is intended to reflect the seriousness with which society regards this crime. Until the 1970s this was an offence which attracted the death penalty in some cases. It follows, therefore, that when looking at the aggravating and mitigating factors, including the appropriate reduction for a guilty plea, it is necessary in each case to stand back to see whether the overall figure properly reflects the seriousness and circumstances of the particular offence.

[38] One of the advantages of early admissions and a guilty plea is that it can provide a sense of justice and relief for the relatives and friends of the victim. The earlier this occurs the more benefit there is for those affected. Where the offender is caught red-handed, the sense of vindication is provided by the circumstances of detection. The admission of guilt by the offender in such a case is clearly still of some benefit but not in the same way. Where there is genuine and compelling evidence of remorse the discount may be greater but often in such a case the plea simply represents the fact that the accused has no choice.

[39] As a matter of practice it is often the case that offenders and their representatives will wish to carry out investigations either in respect of aspects of the evidence or the medical background of the offender himself. These may be entirely appropriate investigations to pursue but the longer they go on the greater the effect on family and friends of the victim and prospective witnesses. That effect is properly reflected in a reduction of the discount for the plea when it eventually comes.

[40] We consider, therefore, that there are likely to be very few cases indeed which would be capable of attracting a discount close to one-third for a guilty plea in a murder case. The circumstances of a mercy killing for example might possibly achieve that outcome. Each case clearly needs to be considered on its own facts but it seems to us that an offender who enters a not guilty plea at the first arraignment is unlikely to receive a discount for a plea on re-arraignment greater than one-sixth and that a discount for a plea in excess of 5 years would be wholly exceptional even in the case of a substantial tariff. We have concluded, however, that it would be inappropriate to give any more prescriptive guidance in this area of highly fact sensitive discretionary judgement. Where, however, a discount of greater than one-

sixth is being given for a plea in a murder case the judge should carefully set out the factors which justify it in such a case.

## **Consideration**

*William Turner*

[41] In the case of William Turner the remaining two issues raised in pursuit of the application for leave to appeal concerned the conclusion of the learned trial judge that at some stage within the deceased's home the applicant formed an intention to kill him and secondly, the inadequacy of the allowance for the guilty plea.

[42] The judge noted the nature of the attack upon the deceased including the use of the guitar as a weapon and the stamp with a clod foot on his face by a shoe associated with William Turner. Such a frenzied and vicious attack clearly indicated at the very least indifference as to whether or not the deceased lived. Leaving the deceased after this vicious assault with no means of obtaining assistance was considerable evidence that each was content that the victim should be left to die. As R v Peters and others [2005] 2 Cr App R (S) 101 made clear whether or not the intention only to cause GBH constituted a mitigating circumstance would depend upon the facts of each case. In a case of this sort where gratuitous and extensive violence was used in the course of the attack, including the use of a weapon, the mitigation is unlikely to be material.

[43] The structure of the learned trial judge's sentencing remarks suggests that he first considered the appropriate tariff for the murder and then separately approached the appropriate sentence for the GBH. The appropriate way in which to reflect the GBH sentence was as a cumulative or aggravating factor in the determination of the appropriate tariff. We must assume that this was the process of reasoning upon which the learned trial judge embarked. We consider that the learned trial judge was plainly entitled to view this as a case where a starting point of 20 or 21 years was appropriate.

[44] Turning then to the mitigation for the plea we note that the applicant eventually made a reasonably full admission of his acts in the course of the attack. In the course of that admission, however, he deliberately attempted to pervert the course of justice by suggesting that he was the only attacker. Despite the admission he then pleaded not guilty at arraignment. We accept that some part of the delay in obtaining the medical report from Dr Bownes received on 4 May 2016 was due to the dispute between members of the legal profession and the Department of Justice.

[45] Where, however, an accused in this situation wishes to obtain full benefit for a plea the arrangements for medical reports should be made long before any arraignment. This man was arrested in early January 2015 and if there was a medical issue in relation to him it should have been pursued thereafter rather than waiting for his arraignment. It is of little comfort to victims to hear that a person who

apparently had made admissions had then entered a plea of not guilty when arraigned. It is also significant that in the pre-sentence report the judge found that he had denied the full extent of his involvement in the attack.

[46] We consider that the learned trial judge was entitled to reflect these qualifications to the guilty plea as relevant features to be taken into account in deciding what discount should be allowed. He did not specify the discount he gave and we would encourage sentencers to do so in future. It appears that the discount was between 15% and 20% and in all the circumstances we consider that such a discount was appropriate. Accordingly we refuse leave to appeal.

*James Turner*

[47] In the case of James Turner there were five matters raised in the appeal. The first concerned the conclusion of the learned trial judge in the sentencing remarks that this appellant and his brother had taken it in turns to stamp upon the deceased. That was an account given by Christian Walker who was present at the scene and made a statement but it was expressly accepted by the prosecution that the statement was not put forward as an account of what occurred. There was forensic evidence by way of blood on the clothing of this appellant to connect him to the attack but there was no forensic or other evidence to indicate that he had been engaged in stamping.

[48] Secondly, as we have indicated the structure of the learned trial judge's sentencing remarks suggested that he looked first at the appropriate tariff figure for the murder and then moved to consider separately the second count on which William Turner only was indicted. We cannot, however, safely conclude that the learned trial judge left out of account the second count when determining the appropriate tariff period for William Turner and that represented, therefore, a significant differentiating factor between the brothers.

[49] Mr Lyttle also raised the issue of the conclusion that the appellant intended to kill the deceased by the time he left the premises but for the reasons given earlier we do not consider that this is a matter of materiality given the nature and savagery of the beating to which the deceased was exposed. In addition he submitted that additional mitigation was appropriate having regard to the contents of Dr Rauch's report. We accept that the appellant suffered a serious injury as a result of the car accident when he was 10 years old but the medical report in our view does not provide a basis for mitigation or explanation in relation to the administration of a beating of this kind upon the deceased.

[50] The final matter concerned the discount for the guilty plea. This appellant made no admissions at interview. It is common case, therefore, that he would not on any view be entitled to full discount. As we have sought to make clear a primary reason for mitigation for a guilty plea is the vindication and sense of justice that it provides for friends and relatives. Where a plea of not guilty at arraignment is

entered the friends and relatives of the deceased are generally deprived of that vindication and sense of justice at that time. That is why an offender who wishes to obtain appropriate discount should make every effort to investigate any medical issues relevant to the offender at the earliest possible stage.

[51] We recognise that this appellant had a more relevant record than his brother but the learned trial judge did not seek to use this as a reason for not differentiating between them having regard to William Turner's involvement in the GBH. We accept that there must be some differentiation. We also accept that the learned trial judge did not have a basis for the conclusion that each brother stamped in turn upon the deceased. This court cannot ignore, however, the involvement of each in this horrendous attack and there is little basis for differentiating between them because of their particular roles. We consider that the appropriate differentiation should be represented by a starting point of 18 years for the tariff in the case of James before applying a discount for the guilty plea.

[52] In considering the appropriate discount for the guilty plea we bear in mind first that this appellant made no admissions at interview. For the reasons given we consider that any medical issues bearing on him should have been dealt with at an early stage before the dispute between the profession and the Department of Justice arose but the prosecution accepted that the plea was timely and it would be inappropriate to reduce the discount further because of that delay. We note, however, that in the pre-sentence report the appellant sought to pass on blame for the attack upon the deceased to Mr Walker who was accused of continuing to assault the deceased on his own after he had been hit with the guitar.

[53] It is apparent, therefore, that the appellant was still trying to minimise his role and shift the blame onto others even after he had pleaded guilty. That inevitably reduces the discount they can be allowed for the plea. Taken together with the fact that there was no admission at interview we consider that the appropriate tariff in his case is 15 years.

## **Conclusion**

[54] For the reasons given we refuse leave to appeal in the case of William Turner but allow the appeal in the case of James Turner and reduce the tariff period to 15 years.