

Judicial Communications Office

20 December 2018

COURT SENTENCES FOR MURDER OF STEPHEN CARSON

Summary of Judgment

His Honour Geoffrey Miller QC, sitting today in Belfast Crown Court, imposed a minimum term of 20 years imprisonment on David Smith and Michael Smith for the murder of Stephen Carson. He also imposed a determinate custodial sentence of seven years and six months on Francis Smith for possession of a firearm and ammunition used in the attack.

Background

David Smith, Michael Smith and Francis Smith were found guilty by a jury on 8 November 2018 of the following offences:

David Smith	Murder of Stephen Carson
Michael Smith	Murder of Stephen Carson and possession of a firearm with intent to commit murder
Francis Smith	Possession of a handgun without a certificate; possession of a firearm in suspicious circumstances; possession of ammunition in suspicious circumstances; and assisting an offender by storing the murder weapon and ammunition.

The Court heard that in 2012, Stephen Carson (“the deceased”) was involved in an altercation during which Michael Smith was attacked with a sword leading to a serious injury. Thereafter, the Smith family engaged in a campaign of intimidation and threats which resulted in the deceased moving home. During the afternoon of 25 February 2016, the three defendants were together. At 10.00 pm that evening, David and Michael Smith forced their way into the deceased’s home. Michael Smith was armed with a sawn-off shotgun and David Smith was armed with a hammer. A third man entered the property with them and a fourth man remained outside. The deceased ran and hid in the bathroom. Michael Smith assaulted the deceased’s partner and David Smith sprayed her and the deceased’s nine year old son in the face with an incapacitate spray. David Smith located the deceased who was on the telephone to the police begging for assistance. Michael Smith shot him in the head at close range through the bathroom door. The men left the property. Francis Smith was arrested the following day when the gun and ammunition were discovered in a bag in his wardrobe. The defendants made no comment during police interviews.

Judge Miller said he had received heartfelt statements from the deceased’s mother, Mrs Bernadette Murphy, and partner, Ms Naomi Smyth. He said that each spoke with great dignity and eloquence of the impact upon them both of the manner of Mr Carson’s death and the consequential and ongoing sense of grief and loss they continue to experience. Both were witnesses at the trial and attended throughout the proceedings, something each felt compelled to do notwithstanding the harrowing details given of the events of 25th February 2016. The judge commented that the pain each feels at their individual and collective loss is palpable and showed the deceased to be a much loved son and partner and of a caring father.

Judicial Communications Office

The court also received a report on the impact upon his son, Ryan then only 9 years of age, who not only experienced the loss of his father but witnessed his murder in brutal and callous circumstances. This report observed that Ryan continues to revisit the dreadful events of that night on an almost daily basis and it has had a lasting effect upon his mood. The report concludes that he has developed PTSD as a direct consequence of what he witnessed; something which will take years to settle and most likely will never be fully erased. On the positive side he has the benefit of a loving and stable environment with his mother, paternal grandmother and aunts all providing strong and consistent support.

The judge also noted that reference was made throughout the trial to the deceased's own criminal antecedents. He was, as his mother acknowledged, "*No Angel*", with a significant record for a variety of offences including drug dealing. He had only been released from prison a matter of months at the time of his death but Judge Miller said these facts have no bearing on either the culpability of the defendants or the sense of loss caused to his family by his murder.

FRANCIS SMITH

Francis Smith was acquitted at direction of the Court of the principle charge of murder. He was, however, unanimously convicted of four charges relating to the possession of the sawn-off shotgun and ammunition found in his flat 25 hours after the murder of Mr Carson and to assisting his co-accused after the event by storing the weapon.

The court received two reports from a Consultant Clinical Psychiatrist. The first set out the defendant's history of alcohol dependency, which is linked in part to a series of serious assaults resulting in both physical injury and considerable emotional upset and anxiety issues. She concluded that he is a chronic alcoholic who drinks to manage his marked PTSD following the most serious attack upon him when he was struck several times to the head with a hatchet. The reports asserted that his heavy drinking results in him making poor decisions, as exemplified by his purchase of the rifle and ammunition. In her second report, the psychiatrist provided an update on the defendant's mental state. She noted his claim that alcohol is no longer an issue for him and that he cites his two year old child and the prospect of gaining access to him as being an incentive to him in changing his lifestyle. She observed that his mental and physical health is much better than when she last saw him and concludes by stating that he "*continues to present more of a threat to himself particularly when he is drinking, than to the general public*"

Francis Smith had 33 previous convictions, including those relating to the find of the rifle and ammunition in the attic on 26th February 2016. For those offences he was sentenced to a determinate custodial sentence of 18 months. Most of his offending, however dates back to when he was a youth with dishonesty, fraud and motoring related offences making up the bulk of the record. Judge Miller said that the offences detected on the 26th February 2016 including the current charges clearly represent the most serious matters to appear on his record and mark a significant upturn in his offending behaviour.

The pre-sentence report assessed Francis Smith as presenting a medium likelihood of re-offending based upon factors including his failure to consider the consequences of his offending behaviour on others and himself together with his previous alcohol misuse and negative peer associations. Against that the significant gaps in his offending, his supportive family network and his improved mental state resulting from addressing his alcohol dependency act as protective factors. The report concluded that the threshold of significant risk of serious harm was not passed in this defendant's

Judicial Communications Office

case. The Court therefore considered that it should impose a determinate custodial sentence pursuant to Article 8 of the Criminal Justice (Northern Ireland) Order 2008.

Judge Miller said that whilst the defendant faced sentence on four counts it had to be acknowledged that these all arise out of a single find of the shotgun and associated ammunition. All sentences should therefore run concurrently to each other. The judge also acknowledged that a minimum sentence of 5 years applies in respect of the charge of possessing a handgun without a certificate and a maximum sentence of 10 years is set for the charge of assisting an offender where the primary offence was one that carries a mandatory life sentence. The court therefore had to take care not to double count as the seriousness of the primary offence was already considered by the enhanced maxima that apply. Those same maxima apply in respect of each of the other counts.

Counsel for Francis Smith made a number of points by way of mitigation in relation to the actual offending: there is nothing to suggest that the assistance provided was anything other than of short duration; the assistance was passive rather than active; the family relationship between Francis and Michael Smith may account for the former's actions; assuming that Michael Smith brought the shotgun to Francis Smith's flat the assistance the latter provided involved a single indivisible act rather than two separate acts, as contended for by the Crown. Counsel further argued that the defendant's actions did not in fact impede the arrest of the co-accused, the recovery of the shotgun or the investigation generally. Judge Miller considered that whilst there was merit to some of these submissions he could not lose sight of the fact that on the evening of the murder, the two principal offenders spent upwards of 40 minutes at Francis Smith's flat after which all three left together. This was approximately 4 hours before the murder took place. A little over an hour after the killing David Smith was back at the Kashmir Bar a matter of yards from Francis Smith's flat. The judge said he did not want to speculate as to what discussions took place between the various parties that night nor cannot it be assumed that it was Michael Smith who brought the shotgun back to his cousin's flat still less as to when precisely this was done:

"What is clear, however is that by their verdict the jury accepted that whenever the shotgun was placed in the wardrobe of his bedroom Francis Smith knew that the murder had taken place and that this was the murder weapon. By allowing it to be thus secreted he actively assisted in impeding the arrest of those involved in the actual killing."

In assessing the appropriate sentence, the judge said that those who assist in the aftermath of such a crime must expect condign punishment. He took into account that Francis Smith has already served an 18 month sentence for possession of the Ruger rifle and ammunition, a sentence that would most likely have been made concurrent to that imposed for the present offences had they all been dealt with at one time. The judge considered that the total appropriate sentence is one of **7 years 6 months (45 months custody followed by 45 months on licence)**.

DAVID SMITH & MICHAEL SMITH

The conviction of David Smith and Michael Smith for murder meant that they must receive a sentence of life imprisonment. The court is now required to impose a minimum period which a defendant must serve in prison before he may be considered for release on parole after which he will remain the subject of licence conditions for the remainder of his life. The guiding principles applicable to how a court approaches the fixing of a minimum term are found in R v McCandless &

Judicial Communications Office

Others [2004] NICA 1 which sets out the Practice Statement issued by Lord Woolf, C.J. and reported at [2002] 3 All ER 412¹.

Counsel for the prosecution contended that on the facts in this case each defendant falls to be sentenced within the bracket of cases where the higher starting point applies. Counsel for the defendants, however submitted that the normal starting point is applicable. Paragraph 10 of the Practice Direction outlines the type of case to which the normal starting point applies, that is one involving *“the killing of an adult victim, arising from a quarrel or loss of temper between two people known to each other”*. Judge Miller commented that this was plainly not the situation in this case. Paragraph 12 of the Practice Direction is predicated on a finding that either the defendant’s culpability was exceptionally high or that the victim was in a particularly vulnerable position. The Direction then sets out what are clearly examples of features that *“makes the crime especially serious”*. In submitting that this case falls within the range of the normal starting point counsel accepted that it would be at the upper end of that range and that the Court would be entitled to then consider the aggravating features, which could lead to a determination above the threshold of the higher starting point. Counsel however submitted that if the higher starting point was adopted it was incumbent on the Court not to fall into the error of double counting as aggravating features those factors, which had already been considered in fixing the appropriate starting point.

Judge Miller commented that whereas counsel strenuously contested the suggestion that the murder was a professional or contract killing he was in no doubt that it did have characteristics akin to a gangland execution. He was in no doubt that this case falls into the range of cases where the higher starting point applies. It was not submitted that there were any significant mitigating factors in respect of either defendant which could lead the court to vary the starting point downwards. Counsel for the prosecution identified 11 aggravating features although, in discussion, he did concede that there was an element of double counting with respect to several of these factors. Counsel for the defendants submitted there were three aggravating features: the pre-planning; the arming in advance and the use of the firearm. The judge said these were all significant factors. Judge Miller commented:

“This was a cold-blooded, pre-planned murder, which must be seen in the context of what might be considered as a long-running vendetta against the deceased and members of his family. The two defendants crossed town to the deceased’s home off the Ormeau Road with but one thought and intention in mind, namely to kill Mr Carson. They were armed with the sawn-off shotgun, a weapon that has no legitimate purpose or use and one, which if used at close range will inflict horrendous injuries, as was the case here. Furthermore they went prepared for the fact that Mr Carson would not be alone, hence David Smith was armed with the pepper spray, which he used to subdue and disable Ms. Smyth and Ryan. Whilst it may not in strict parlance, have been a professional killing, it was executed with chilling and clinical efficiency and the defendants walked calmly from the house before making their way back to West Belfast. Based on these findings I am in no doubt that this case not only falls within the higher starting point as identified in the Practice Statement but at the upper range of that category”

Michael Smith had 168 convictions, several of which relate to events which occurred after Mr Carson’s murder and at a time when he was still on bail in relation to that offence. The judge said his

¹ See Notes to Editors.

Judicial Communications Office

record indicates someone who has consistently been in conflict with the criminal justice system since the age of 12 with the only gap apparently being between 2011 and 2015. The range of offending is wide with most related to road traffic matters. There are, however two historic convictions for robbery and one of wounding together with several for more minor offences of assault. The judge said the record is clearly indicative of someone who has failed to respond to previous sentences.

David Smith had 28 previous convictions including several offences of violence. The judge said there was a clear progression of offending starting with common assault in 2006, then assault occasioning actual bodily harm in 2011, and wounding with intent to do grievous bodily harm in 2014. This last offence involved a premeditated attack using a machete and was motivated by a family feud and revenge, factors very relevant to this case. He was sentenced in March 2018 to a determinate custodial sentence of five years in respect of that assault, though he has been in custody in relation to the murder of Mr Carson since his arrest on 26th February 2016. The judge said that the progressively more serious level of offending over the years has not been halted by previous custodial sentences and the defendant's engagement with programmes whilst on licence designed to address his underlying issues related to his drug abuse and propensity to violence. The wounding with intent incident occurred during such a period of post-custodial licence and the murder of Stephen Carson took place less than a year after that licence period ended.

The Court was provided with reports from a Consultant Clinical Psychologist which provided a detailed history of his increasingly serious drug and substance abuse, undiagnosed ADHD and OCD and developing pattern of criminality. David Smith, like his co-accused Michael Smith, denied any involvement in the murder and therefore the psychologist had no opportunity to explore triggers, motivations and attitudes behind his involvement. Judge Miller commented that the examination of his record, nevertheless, points to a man with a volatile and aggressive personality who bears grudges and exhibits deeply held resentment, something, which is at the heart of the background to this case.

David Smith was assessed as presenting a high likelihood of re-offending and moreover of presenting a significant risk of serious harm. Judge Miller said he was satisfied that David Smith's recent history of violence only exacerbated the concerns raised regarding his involvement in the murder of Mr Carson and that he could see no basis to view his level of culpability below that of Michael Smith.

Conclusion

Judge Miller said he was satisfied that there are several aggravating and no mitigating factors in this case. Weighing all these factors in the balance he considered that the starting point of 15 years should be increased to **20 years**, which he set as the minimum term that each defendant must serve before he may be considered for parole and release on licence. He sentenced Michael Smith to a concurrent term of 15 years on the count of possession of a firearm with intent to commit murder.

NOTES TO EDITORS

This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available on the Judiciary NI website (<https://judiciaryni.uk>).

Judicial Communications Office

The minimum term is the term that an offender must serve before becoming eligible to have his or her case referred to the Parole Commissioners for them to consider whether, and if so when, he or she can be released on licence. Unlike determinate sentences, the minimum term does not attract remission. If the offender is released on licence they will, for the remainder of their life, be liable to be recalled to prison if at any time they do not comply with the terms of that licence. The guidance is set out in the case of R v McCandless & Others [2004] NI 269.

A Practice Statement, [2002] 3 All ER 417, sets out the approach to be adopted by the court when fixing the minimum term to be served before a person convicted of murder can be considered for release by the Parole Commissioners. It also sets out two starting points. The lower point is 12 years, and the higher starting point is 15/16 years imprisonment. The minimum term is the period that the court considers appropriate to satisfy the requirements of retribution and deterrence having regard to the seriousness of the offence. This sentencing exercise involves the judge determining the appropriate starting point in accordance with sentencing guidance and then varying the starting point upwards or downwards to take account of aggravating or mitigating factors which relate to either the offence or the offender in the particular case.

ENDS

If you have any further enquiries about this or other court related matters please contact:

Alison Houston
Judicial Communications Officer
Lord Chief Justice's Office
Royal Courts of Justice
Chichester Street
BELFAST
BT1 3JF

Telephone: 028 9072 5921

E-mail: Alison.Houston@courtsni.gov.uk