

Judicial Communications Office

8 October 2020

COURT DISMISSES APPLICATION FOR LEAVE TO APPEAL AGAINST SENTENCE FOR MANSLAUGHTER OF CHRISTOPHER MELI

Summary of Judgment

The Court of Appeal¹ today dismissed applications for leave to appeal against sentence by Lee Smyth and Caolan Laverty were convicted of the manslaughter of Christopher Meli in the early hours of 12 December 2015. Both entered a not guilty plea at arraignment and on 15 November 2019 in each case a plea to manslaughter was entered on re-arraignment. The factual background to the offence and the trial judge's sentencing remarks can be found [here](#).

Smyth

Smyth pleaded guilty to manslaughter, two counts of Assault Occasioning Actual Bodily Harm ("AOABH") and one count of affray. Balancing the aggravating and mitigating factors the trial judge concluded that the appropriate sentence before discount for the plea was 11 years. He noted this was a late plea although it was welcomed by the prosecution. He imposed a determinate custodial sentence of 9 years with concurrent sentences on the other counts.

Laverty

Laverty pleaded guilty to manslaughter and one count of AOABH on Woods. Balancing the aggravating and mitigating factors the trial judge considered that the appropriate sentence before discount for the plea was 6 years. The plea was late but welcomed and the judge imposed a determinate sentence of 5 years and a concurrent sentence on the other count.

Manslaughter Sentencing Guidance

The guideline authority on sentencing and manslaughter cases in this jurisdiction is *R v Magee* [2007] NICA 21. It noted that offences of manslaughter typically cover a very wide factual spectrum and it was not easy in those circumstances to prescribe a sentencing range that would be meaningful. It considered, however, that certain common characteristics of many offences of wanton violence committed by young men on other young men were readily detectable and these called for a consistent sentencing approach. In *R v Magee* the court noted that the level of violence meted out often goes well beyond that which might have been prompted by the initial dispute and that those who inflict the violence display a chilling indifference to the severity of the injury that their victims will suffer. Typically, great regret is expressed when the offender has to confront the consequences of his behaviour but it is frequently difficult to distinguish authentic regret for one's actions from unhappiness and distress for one's plight as a result of those actions.

¹ The panel was the Lord Chief Justice, Lord Justice McCloskey and Mr Justice Horner. The Lord Chief Justice delivered the judgment of the Court.

Judicial Communications Office

The court determined that the range of sentence after a not guilty plea should be between eight and fifteen years' imprisonment in the case of manslaughter where the charge has been preferred or a plea has been accepted on the basis that it cannot be proved that the offender intended to kill or cause really serious harm to the victim and where deliberate, substantial injury has been inflicted. It noted, however, that because of the potentially limitless variety of factual situations where manslaughter is committed, it is necessary to recognise that some deviation from this range may be required and said that in some cases an indeterminate sentence will be appropriate.

This subject was reviewed extensively in a paper presented to the Judicial Studies Board for Northern Ireland on 13 September 2013 by Sir Anthony Hart dealing with sentencing in cases of manslaughter, attempted murder and wounding with intent. The paper noted that whilst sentences range from 6 years on a plea to 14 years in a contest, pleas in cases at the upper end of the spectrum attract sentences of 10 to 12 years, with sentences of 12 years being common. Sentences of 6 to 8 years tend to be reserved for cases where there are strong mitigating personal factors, or the defendant was not a principal offender.

Youth

Article 4 of the Criminal Justice (Children) (Northern Ireland) Order 1998 provides that in any proceedings for an offence the court shall have regard to the welfare of any child brought before it; and the general principle that any delay in dealing with the child is likely to prejudice his welfare. Neither accused in this case was a child at the time of sentencing but Lavery was 16 years and eight months old at the time of the commission of the offence and Smyth was some months over 18 years old. The statutory provisions on children are intended to reflect among other things that immaturity may be a substantial factor in relation to culpability, that stigmatisation of children should be avoided and that rehabilitation should be a primary objective in the sentencing of young people. These factors have to be balanced against the requirements of retribution and deterrence.

The Court of Appeal was satisfied that this was a case of substantial violence to the victim consisting of punches and kicks while he lay on the ground which resulted in injuries to his face and to his body:

“The attack had clear elements of cowardice and defencelessness and was entirely consistent with the trial judge’s assessment of a revenge mission. It therefore qualifies as a case of substantial violence to the victim ... we are satisfied that the range put forward by Sir Anthony in those cases is appropriate.”

Delay

In determining whether a breach of the reasonable time requirement in Article 6 ECHR has been established the court will consider “in particular but inexhaustively the complexity of the case, the conduct of the defendant and the manner in which the case has been dealt with by the administrative and judicial authorities concerned. The first and third of these factors may overlap. Particular caution is required before concluding that an accused person maintenance of a not guilty stance has made a material contribution to the delay under consideration”.

The Court requested the PPS to prepare a chronology of investigation and prosecution and invited submissions on whether the delay in this case breached the reasonable time guarantee. It said that an explanation was required since the period between the commencement of the investigation and

Judicial Communications Office

sentencing was just over four years. This was, however, a case in which the history of the events was confused as a result of the number of people involved and the differing recollections and perspectives of potential witnesses describing a series of events. The trial papers comprised some 4000 pages and there were 160 witnesses. In addition to that many others were interviewed. In respect of the timeline the only criticisms related to a period between June 2016 and April 2017 when the PPS made further requests for evidence to the police and a further period of 2 months between March and May 2018 when authority was sought for enhanced fees for the defence teams from the Legal Services Agency which properly reflected the complexity of the case.

The Court acknowledged that the complexity of the case was not in dispute and in its view the periods in respect of which complaint was made neither individually nor cumulatively amounted to a breach of the reasonable time guarantee provided by Article 6. The Court accepted, however, that it is proper to take into account that each of those convicted was subject to bail conditions and were left in a state of doubt for a substantial period as to the consequences for them as a result of their conduct.

Conclusion

The Court said that Smyth played a leading role in the attack upon the deceased:

“He delivered multiple blows by punching and kicking him. He returned to punch him further when he was on the ground. His only substantial mitigating factor was his remorse. Given his age he must have realised the seriousness of what he was doing so that his personal circumstances will not be strong mitigating factors. He spent a great deal of time in custody on remand as a result of which he has a limited period to serve. Delay is not a significant factor in his case.”

The Court was satisfied that the sentence of 11 years identified by the trial judge before applying discount for the plea was consistent with the authorities and entirely appropriate. The plea was late. In his defence statement in January 2019 Smyth made the case that he acted in self-defence and it was only 10 months later that he acknowledged his guilt. The Court said that a discount of two years leading to a determinate custodial sentence of nine years comprising four years and six months in custody and the same on licence cannot be criticised. It refused his application for leave to appeal against his sentence.

The Court noted that Laverty was a secondary party and was under 18. The trial judge accepted that his participation to an extent was as a result of peer pressure and immaturity which caused him to run with the group which attacked the deceased. The Court said that in light of his youth the delay in coming to trial ranked somewhat higher in his case. The most obvious aggravating factor in his case was the kicking of the deceased as he lay on the ground after the attack showing total indifference to the victim's plight. In his favour was his genuine remorse:

“Had he been of full age the appropriate sentence on a contest would have been about nine years before discount for a plea. In adopting a starting point of 6 years the learned trial judge made allowance for his youth, the delay, his remorse and to some extent his personal circumstances. He also maintained a denial of his responsibility in his defence statement in January 2019 and cannot complain about the 1 year reduction for the plea. His appeal is dismissed.”

Judicial Communications Office

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>).

ENDS

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