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29 January 2019

COURT SENTENCES FOR MURDER OF COLIN HORNER

Summary of Judgment

Mr Justice Colton, sitting today in Downpatrick Crown Court sitting in Belfast, sentenced six people for their part in the murder of Colin Horner on 28 May 2017.

Colin Horner was shot dead in the car park of Sainsbury's shopping centre on Balloo Link in Bangor on 28 May 2017. He had been standing by his car with his three year old son at the time. The gunman shot him a number of times at close range, continuing to shoot him when he fell to the ground. The pathologist thought it likely that he was initially shot in the right thigh and had collapsed to the ground when further shots were discharged into the back of his body. The cause of death was determined to be "bullet wounds of the trunk".

On 16 January 2019, just before a trial was due to commence, Alan James Wilson, Ryan Graham Smyth, Joseph Blair, and Robert Ralph pleaded guilty to the murder of Colin Horner ("the first count") and possession of a firearm and ammunition with intent ("the second count"). Terrie Aicken and Adrian Gordon Price pleaded guilty on the same date to the offence of withholding information.

Having pleaded guilty to the offence of murder, the court imposed a mandatory sentence of life imprisonment on Wilson, Smyth, Blair and Ralph. Today Mr Justice Colton fixed the length of the minimum term that each of the defendants must serve in prison before becoming eligible for release on licence by the Parole Commissioners. He also sentenced the four defendants in respect of the second count and sentenced Aicken and Price for withholding information.

The prosecution case was based on a combination of CCTV footage, text message traffic between the defendants and cell site analysis of their mobile phones. The prosecution also relied on forensic evidence found in or close to the two cars involved in the incident, namely a cigarette butt, DNA from the seat belt and empty drink cans and bottles. The court heard there was also evidence that there may have been an attempt to target Mr Horner on 17 May 2017 when around 20 or 30 men gathered outside his home but they dispersed before the police arrived. The prosecution case was that each of the four accused were part of a joint enterprise involving the targeting and deliberate killing of Colin Horner. The prosecution was unable to identify the gunman and accepted that it was probable that others were involved in the murder.

Before fixing the appropriate minimum term, Mr Justice Colton highlighted the victim impact statements he received from Mr Horner's mother, sister and partner. He said that each statement set out the devastating impact that the death had on them but also on other members of the family, not least of all, his son Oscar who witnessed the murder.

Determination of minimum sentence for Wilson, Smyth, Blair and Ralph

Mr Justice Colton set out the relevant legal principles that the court should apply in fixing the minimum term¹. Before considering each defendant individually he analysed the case on a general

¹ See Notes to Editors.

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basis. He said he had no hesitation in saying that the appropriate starting point in this case was the higher one of 15/16 years noting the prosecution view that this was a “professional” or a contract killing. Counsel for Blair argued that this was not such a killing but accepted that there were sufficient aggravating factors to take the starting point beyond the normal one of 12 years. Mr Justice Colton commented:

“I consider that a clearly planned and targeted murder of this type which appears, in the words of prosecuting counsel, to have “*paramilitary overtones*” clearly justifies the higher starting point of 15/16 years. If it was not in the nature of a “*professional*” or contract killing it was committed on behalf of either a paramilitary organisation or a similarly organised crime gang.”

The judge further noted that there were significant aggravating features present: “A firearm was used. This murder was carried out in the presence of the deceased’s three year old son. It was carried out in a public area and innocent bystanders witnessed both the shooting and its aftermath”. The judge concluded that those involved in such a murder should attract a minimum sentence of 20 years before consideration of mitigation. He then dealt with each of the individual defendants.

- **Alan James Wilson:** Counsel for Wilson submitted that he was neither the gunman nor the organiser of the killing. He suggested that he was prevailed upon to become involved in this venture by other more sinister persons and it was contented that he was a reluctant participant. In terms of personal mitigation, Wilson has only one previous conviction for a minor road traffic offence. He claimed to have no previous connection or knowledge of the deceased. Counsel also argued that there was a lack of sophistication in his participation as he used his own car which meant that he was easily identified as a suspect. The court also heard that he was the sole carer for one of his children.
- **Ryan Graham Smyth:** Counsel for Smyth submitted that he was not the gunman and that others were involved who are not before the court who may have included the gunman. He pointed to evidence suggesting Smyth was reticent about being involved. Smyth only has two prior court appearances in 2007 and 2008 for relatively minor road traffic offences.
- **Joseph Blair:** Counsel submitted, and it was accepted by the Crown, that Blair’s role was a lesser one to that of Smyth and Wilson and that he was merely “keeping dick” for the others. The suggestion was that he too was under the influence of others not before the court and it was accepted by the prosecution that he did not play a leading or leadership role in the murder but that he was a voluntarily participant. Blair has a criminal record of 36 previous convictions between 2002 and February 2018, including two robberies committed in 2003 and 2004.
- **Robert Ralph:** Counsel for Ralph contented that he had the least involvement of the four defendants as he became involved at 11:00 am on the day of the murder. He had not replied to eight telephone calls that morning which Counsel said would suggest he was either not expecting to receive calls or not responding to them. It was accepted nonetheless that he assisted in the plan knowing that murder was a potential outcome and that a firearm was to be used. He was not travelling in any of the cars involved. Ralph has 30 criminal convictions including one in April 2018 of putting up flags of a paramilitary nature.

The minimum sentences

Mr Justice Colton said he was not persuaded that there should be a significant difference in the appropriate tariff for each defendant as they all voluntarily participated in a joint enterprise

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involving the use of a firearm and the premeditated murder of Mr Horner. Nonetheless, he said he intended to make some distinctions between the defendants based on their involvement in the offences:

“Whilst each defendant has a story to tell I do not consider that there is any significant exceptional or personal mitigation which would justify a reduction in the minimum sentence. It is well recognised in sentencing practice that personal mitigation carries little weight in serious cases such as murder, particularly of the type involved in this case”.

Mr Justice Colton concluded that had the defendants been convicted after a contested trial, he would have imposed a minimum term of 20 years in respect of the defendants Wilson and Smyth; 19 years in respect of Blair; and 18 years and 6 months in respect of Ralph.

Discount for Pleas

It is a long a firmly established principle in sentencing law in this jurisdiction that where an accused pleads guilty the sentencer should recognise that fact by imposing a lesser sentence than would otherwise be appropriate. Mr Justice Colton said there were a number of aspects of the pleas in this case which would apply to all of the defendants:

- The pleas have been of considerable “benefit and assistance” to all involved in the case as a potential trial lasting five to six weeks has been avoided which leads to a significant saving of time and public expense which is in the public interest;
- There were a very large number of witnesses due to give evidence at the trial, some by means of “special measures”. The pleas have avoided the necessity of these persons giving evidence.
- The pleas provide a sense of justice and relief for the relatives and friends of the victim.

The judge said the individual circumstances of each of the pleas are also significant. Counsel for Wilson said his client had asked him a week before the trial started to approach the prosecution in an attempt to resolve issues and avoid a trial. This appeared to be a catalyst for further discussion which enabled all the issues to be resolved between the prosecution and the defendants. Wilson and Smyth were the first to indicate their intention to apply to be re-arraigned. The pleas entered by Blair and Ralph were initiated by them notwithstanding legal advice that they had a reasonable prospect of being acquitted of the murder offence. Mr Justice Colton, however, said the fact remained that the pleas were late in the day and in such circumstances the defendants were not entitled to the conventional credit of between one third to 25% (as a general principle maximum credit is reserved for those defendants who plead guilty at the earliest opportunity).

Mr Justice Colton referred to the decision of the Court of Appeal in R v Turner and Turner [2017] NICA 52 in which the court said that a discount of greater than one sixth in the case where an offender enters a plea on re-arraignment and that a discount for a plea in excess of five years would be wholly exceptional even in the case of a substantial tariff. Where 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.

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Mr Justice Colton concluded that the discounts to which the defendants are entitled to for the pleas should result in the following minimum tariffs: Wilson and Smyth: 16 years; Blair: 15 years and six months; and Ralph: 15 years.

The judge then went on to consider the sentence to be imposed on the second count of possession of a firearm and ammunition with intent. He said this offence was subsumed in the murder count and was an essential element of it. He considered that since each of the defendants is now serving a life sentence and cannot be released unless it is deemed safe to do so by the Parole Commissioners it was not necessary to consider whether there is a significant risk to members of the public arising from the convictions on count two. The court could therefore deal with the offences on the basis of determinate sentences. The judge imposed the following sentences in respect of Count 2: Wilson and Smyth: 12 years' imprisonment; Blair: 10 years' imprisonment; and Ralph: nine years' imprisonment. All sentences are to run concurrently with the life terms imposed.

Adrian Gordon Price

Price pleaded guilty to the offence of withholding information. The prosecution case against him was that he was in phone contact with Blair, Ralph and Wilson in the hour after the shooting. He was made aware of their, and Smyth's involvement in the murder but failed to give that information to the police. Counsel for Price said the offence was committed by his omission rather than any positive act on his part. It was done out of a "misguided sense of loyalty". Importantly, however, was the fact that it had no bearing on the progress of the police investigation.

The court heard that Price has a lengthy criminal record, mainly road traffic offences, but including one previous conviction for a threat to kill in 2013. It was accepted that Price pleaded guilty at the earliest opportunity when it first became available to him and is therefore entitled to significant credit. Mr Justice Colton considered that the custody threshold had been passed but in light of the factors outlined by Counsel he said he proposed to suspend the sentence. He concluded that the appropriate sentence for Price was one of 12 months' custody which is to be wholly suspended for two years.

Terri Aicken

Aicken also pleaded guilty to the offence of withholding information. The prosecution case against her was that she provided a statement to the police on 16 June 2017, the day her partner, Ryan Smyth, was arrested that he was with her until 13:45 on the day of the murder. She said she had then gone to bed sleeping until 16:00. In an interview two days later she said she had slept until 17:45 and that she did not know where Smyth was while she slept. In these circumstances she had failed in her duty to inform the police that she was unable to account for Smyth's whereabouts on the afternoon of the murder. Aicken attended the police station voluntarily on 18 June 2017 and apologised for misleading the police in her statement. Her conduct had no impact on the police investigation.

Counsel for Aicken told the court that she had given birth to her first child on 10 June 2017. She was a person of good character and could be treated as a person with a clear record. She would now have to rear her child in the absence of his father, which the judge said is a further example of how other people have been affected by this "callous murder". Mr Justice Colton considered that the custody threshold had been passed but she was in a completely different category from that of Price. He concluded that the appropriate sentence for Price was one of three months' custody which is to be wholly suspended for twelve months.

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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>).

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

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