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ICOS No:

Delivered: 20/09/2023

IN HIS MAJESTY'S CROWN COURT IN NORTHERN IRELAND  
SITTING IN DUNGANNON

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THE KING

v

NIALL COX  
and  
KAREN McDONALD

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SENTENCING REMARKS

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**FOWLER J**

*Introduction*

[1] I want to commence my sentencing remarks by assuring Mrs Ellen Ward, Patrick's widow, their four children and Patrick's father Thomas Ward, his wife Brigit and Patrick's brothers and sisters, that I have read with close attention everything they have said in their victim impact statements.

[2] I commend Mrs Ellen Ward for her courage and dignity throughout the trial and the composed and compelling way she gave evidence in the trial. It could not have been easy for you. No one could be anything but moved by the content of her statement to the court. What she has had to cope with would break many people. She was left with four young children between the ages of 11 and 14 months when Patrick as murdered. I can only image how difficult this was and still is for her. The impact has been far reaching for her and her children. It has impacted every aspect of her and the children's lives. It has impacted on Patrick's parents and siblings.

[3] Nothing I can say and no sentence I can impose will replace the void in their lives or ease their grief. It is not possible to measure the loss of a much-loved husband, father, son, and brother, far less to try and measure it in terms of years in a prison sentence.

[4] All I can do is hope that with the passage of time and the conclusion of these proceedings, some measure of closure will be afforded to them.

### *Introduction*

[5] The defendant Niall Cox pleaded guilty to the murder of Mr Patrick Ward and on his confession to murder the only sentence permitted by law for that offence, one of life imprisonment was imposed. It is now my responsibility in accordance with Article 5 of the Life Sentences (Northern Ireland) Order 2001 to determine the length of the minimum term that he will be required to serve in prison before he will first become eligible to have his case referred to the Parole Commissioners for consideration by them as to whether, and if so, when he is to be released on licence. I make it clear however that if and when he is released on licence he will, for the remainder of his life, be liable to be recalled to prison if at any time he does not comply with the terms of that licence.

[6] Importantly, I want to emphasise to the defendant, and explain to the general public, that the period I shall fix will not qualify for any remission. Consequently, he will be required to serve, in its entirety, the tariff period that I determine.

### *Factual Background*

[7] The detailed evidence in this case was given before the jury in public over the course of McDonald's trial lasting several weeks. The prosecution, at the sentencing hearing on Monday 18 January 2023 again outlined to the court the detailed background to this case. Accordingly, I intend to provide only a brief summary of the facts.

[8] In the early hours of the morning of 9 February 2019 Patrick Ward was savagely attacked in 17 McCrea Park in Clogher. This was the home of the accused Karen McDonald and her partner Niall Cox. The only persons in this house at the time of the attack were Patrick Ward, Karen McDonald, and Niall Cox. We know that Patrick Ward died of numerous and severe injuries after being dragged to an alleyway between houses 8 and 9 McCrea Park. He had been beaten, kicked, and stabbed.

[9] The movements of persons in and around McCrea Park were captured on CCTV located at Number 15. From that CCTV footage and CCTV from the Centra Store in Clogher it was possible to establish the movements of Karen McDonald, Niall Cox, and Patrick Ward over the course of the evening of 8 February into the morning of the 9 February. Including a recording of Niall Cox dragging Patrick Ward from the front door of number 17 to the roadway, accompanied in close proximity by Karen McDonald. Where Karen McDonald lifted Patrick Ward's legs up off the ground and then quickly dropped them and returned into her house. After that Niall Cox continues to drag Patrick Ward, eventually disappearing down the alleyway where Patrick Ward's dead body was later discovered.

[10] Professor Crane, pathologist, carried out a post-mortem which indicated Mr Ward died from multiple injuries including a subdural haemorrhage – a bleed to the brain – and stab wounds. Externally he had 43 sites of injury. Internally, he had bleeding over the surface of the brain and three rib fractures. He had been struck to the head a number of times with a heavy blunt elongated object, kicked, and stabbed. He had bruising to the chest consistent with being struck with a bar bell and patterned bruising consistent with being kicked by a shoe or trainer with a patterned sole. He had numerous incised wounds caused by a bladed weapon. Many of the wounds would have bled extensively. Changes in the brain were consistent with survival of a least 30 minutes after the attack. Professor Crane accepted that the pathology evidence makes it clear that it is a reasonable possibility that all the injuries sustained by the deceased could have been caused by one person and in more than one location. He also noted spontaneous movement of Mr Ward as he is being dragged across to the alleyway and it was his view Mr Ward was still alive at that point.

#### *Fixing the appropriate tariff in respect of Cox*

[11] The task for the court is to fix the minimum term the defendant Cox must serve before the Parole Commissioners will consider whether it is safe to release him on licence.

[12] Article 5(2) of the Life Sentences (Northern Ireland) Order 2001 provides that the minimum term:

“... 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.”

The legal principles that the court should apply in fixing the minimum term in Northern Ireland are well settled.

[13] *R v McCandless* [2004] NICA 1 remains the leading authority in this jurisdiction on the principles to be applied when the court is fixing the appropriate tariff in a life sentence case. The practice statement introduced by Woolf LJ and adopted by our Court of Appeal substituted a higher and normal starting point of respectively 15/16 and 12 years, these starting points are to be varied upwards or downwards by taking account of aggravating and mitigating factors.

[14] Carswell LCJ stated in *McCandless*:

“[9] The Practice Statement set out the approach to be adopted in respect of adult offenders ([2002] 3 All ER 412

at 413-415, [2002] 1 WLR 1789 at 1790-1792 (paras 10 to 19)):

### **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 para12. Exceptionally, the starting point may be reduced because of the sort of circumstances described in the next paragraph.

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.

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.

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.

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."

[15] The approach in *McCandless* requires the court to identify:

- (i) the starting point;
- (ii) the **aggravating** factors of the **offence**;
- (iii) the **aggravating** factors of the **offender**;
- (iv) the **mitigating** factors of the **offence**; and
- (v) the **mitigating** factors of the **offender**.

[16] In considering the appropriate tariff I should impose I am grateful for the helpful written and oral submissions I have received from counsel in this case.

*The appropriate starting point*

[17] In terms of setting the appropriate starting point there was disagreement between counsel as to the appropriate starting point. Mr Hunt KC argues that this is a classic case involving the killing of an adult victim arising from a quarrel or loss of temper between two people known to each other. He submits that the normal starting point of 12 years should apply. However, Mr Orr KC for the prosecution argues that Mr Ward was subjected to gratuitous violence given the nature and extent of his injuries. In light of the way he was treated after the attack upon him by being stripped almost naked, dragged along a public road, and left to die in an alley way on a cold wet night, provides evidence of humiliation or degradation of the victim before his ultimate demise. These factors clearly bring the sentence into the higher starting point of 15–16 years.

[18] In applying the practice statement endorsed in *McCandless*, I bear in mind that it is not to be interpreted as a straitjacket designed to create a rigid, compartmentalised structure into which each case must be shoe-horned. As the Court of Appeal said in *McCandless*:

"The sentencing framework is, as Weatherup J described it in paragraph 11 of his sentencing remarks in **R v McKeown** [2003] NICC 5, a multi-tier system. Not only is the **Practice Statement** intended to be only guidance, but the starting points are, as the term indicates, points at which the sentencer may start on his journey towards the goal of deciding upon a right and appropriate sentence for the instant case."

[19] Selecting a starting point is not a mechanistic or formulaic exercise. The guidelines are there to assist the court to proceed to, what in the circumstances of the case, it considers is a just and proportionate sentence having regard to the guidelines.

[20] In this case the defendant Cox pleaded guilty to murder absent an agreed basis of fact. The prosecution rejected the basis of fact put forward by the defence which was in effect the case made out in his defence statement. The prosecution case is that Cox pleaded guilty on the prosecution facts as disclosed by the statements. The decision in *R v Cairns (James Philip)* [2013] 2 Cr App R (S) 73 at para 4 sets out the principles to be followed by a sentencing judge absent an agreed basis of plea, it is as follows:

“The position is no differed when an offender pleads guilty the admissions comprised within the guilty plea. The admission comprised within the guilty plea is to the offence and not necessarily to all the facts or inferences for which the prosecution contend. Once again, however, the responsibility for determining the facts which inform the assessment of the sentence is that of the judge. In the normal course, when the contrary is not suggested, that assessment will be based on the prosecution facts as disclosed by the statements. If, however, the offender seeks to challenge that account, the onus is on him to do so and to identify the areas of dispute in writing, first with the prosecution and then with the court.”

[21] The court gave Mr Cox the opportunity to challenge the evidence contained in the statement under oath and be cross-examined on his account in a Newton hearing. He declined this offer. In these circumstances it is my responsibility to determine the facts in respect of Cox which will inform my assessment of the appropriate sentence. There has been no basis of plea and the submissions made by Mr Hunt KC are based on Mr Cox’s unsworn and untested instructions and are wholly self-serving.

[22] I am satisfied to the criminal standard that Niall Cox involved himself in a brutal and savage attack on Mr Ward within 17 McCrea Park. There is forensic connection between Cox and the deceased. There is blood found on Cox’s trainers from the deceased and there was patterned bruising on the deceased’s chest which could have been caused by kicks. There is a forensic connection in respect of Cox’s DNA and the bar bell found in the bathroom linked to the injuries inflicted on Mr Ward. Cox has confessed in his PSR that he struck Mr Ward to the head with a wooden shaft and dragged his unconscious body to the bathroom. That while in the bathroom he further assaulted the deceased. I am satisfied he stripped the deceased’s body, dragged him from the house and abandoned him in the alleyway at a time when Mr Ward was still alive but unconscious. Thereafter, he had the presence of mind to attempt to clean up the scene and destroy evidence. I am satisfied he had numerous weapons including knives/machetes strategically placed around the house and he had attempted to obtain a further machete which was intercepted in the process of delivery to his house. From the forensic and circumstantial evidence, I am satisfied he inflicted stab wounds on Mr Ward. Given



the distribution of blood in 17 McCrea Park I am satisfied Cox engaged in a brutal and sustained attack on Mr Ward with a variety of weapons. The viciousness and persistence of the attack satisfies me that it was his intention to kill Mr Ward. I am not satisfied that at the time of the killing he was acting in self defence or provoked to any significant degree.

[23] What then is the appropriate tariff? I am satisfied that the defendant's culpability is exceptionally high. There are present at least two of the suggested indicators set out in para 12 of the Practice Statement. First, there is evidence humiliation and degradation of the victim before the killing. The deceased was stripped and dragged across a public street virtually naked and abandoned. Secondly, there is evidence of protracted infliction of extensive and multiple injuries on Mr Ward before his death by Cox. In these circumstances this case inevitably falls within the higher tariff with a starting point of 15-16 years.

[24] Para 14 of the Practice Statement permits variation of the starting point upwards or downwards to account for aggravating and mitigating factors. Regarding aggravating factors relevant to the present offence, I rely on para 14(d) of the Practice Statement. This allows, for concealment of the body and/or destruction of the crime scene to be considered as a relevant aggravating factor. I am of the view that Cox attempted to destroy evidence to connect him to the murder by his efforts to clean up blood in the house, remove the deceased's clothing and dispose of them. Further, he removed Mr Ward from the house to divert attention away from himself as a suspect. I also consider the use of multiple weapons to inflict injury to be an aggravating factor relating to the offence.

[25] I take into account, concerning variation of the starting point, factors relating to the offender. The offender's previous convictions for assault and failures to respond to previous sentences to the extent that this is relevant to culpability. He has breached a suspended sentence and was on bail for a serious offence at the time he committed this murder.

[26] In terms of personal circumstances, I note he now 28 years and was 23 at the time of the offence. He had a stable family life as a child and was intelligent. He appears to have started taking drugs from the age of 13 and this had remained a problem for him. He had failed drug tests while in custody and has one adverse adjudication against him for assault while in prison.

[27] In terms of mitigation the main point that can be made is his plea of guilty, albeit at a relatively late stage and after a trial date was fixed. It is also likely this was a spontaneous outburst of violence as opposed to a premeditated and planned attack. I consider this a neutral factor. This must be looked at in the context of a sustained and brutal attack that left Mr Ward just clinging to life when he was stripped, dragged across the street and abandoned in an alleyway in the cold and rain. Both Cox and McDonald were supremely indifferent to Mr Ward's fate. I do not regard the defendant's consumption of drugs and alcohol on the evening of the

murder to be mitigation, indeed, I regard his substance misuse as an aggravating factor.

[28] In terms of reduction of the minimum term in respect of a late plea to murder is concerned guidance has been given in the Court of Appeal decision in *R v William Turner and James Henry Turner* [2017] NICA 52 where the then Chief Justice Sir Declan Morgan stated:

“... there are very few cases indeed which would be capable of attracting a discount close to one third for a guilty plea in a murder case ... 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 five years would be wholly exceptional even in the case of a substantial tariff.”

I am of the view that the appropriate reduction for his plea of guilty is one sixth.

[29] In the circumstance of this case the starting point is a minimum tariff of 16 years, however, this is to be adjusted upwards after consideration of the identified aggravating factors by eight years. I do not consider there to be any mitigating factors other than his plea of guilty. Accordingly, the appropriate minimum term had the defendant contested the charge of murder would have been one of 24 years. Applying the appropriate reduction for his plea of one sixth the minimum term will be reduced by four years. The appropriate minimum term I impose is 20 years custody.

[30] Mr Cox has also been assessed as dangerous within the meaning of the Criminal Justice (Northern Ireland) Order 2008 by probation. While not conceding this assessment the defence did not call any evidence in rebuttal.

[31] The test for dangerousness under Article 13(1) of the 2008 order is met where the offence is a serious offence, and the court is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences.

[32] In making this assessment, in accordance with Article 15, the court:

- (a) Shall take into account all such information as is available to it about the nature and circumstances of the offence;
- (b) May take into account any information which is before it about any pattern of behaviour of which the offence forms part; and
- (c) May take into account any information about the offender which is before it.

[33] In *R v EB* [2010] NICA 40 the Court of Appeal approved the approach of the English Court of Appeal in *R v Lang* [2005] EWCA Crim 2864 on how the assessment of the risk of serious harm should be made under these provisions:

“(i) The risk identified must be significant. This was a higher threshold than mere possibility of occurrence and could be taken to mean ‘noteworthy, of considerable amount or importance.’

(ii) In assessing the risk of further offences being committed, the sentencer should take into account the nature and circumstances of the current offence; the offender's history of offending including not just the kind of offence but its circumstances and the sentence passed, details of which the prosecution must have available, and, whether the offending demonstrated any pattern; social and economic factors in relation to the offender including accommodation, employability, education, associates, relationships and drug or alcohol abuse; and the offender's thinking, attitude towards offending and supervision and emotional state. Information in relation to these matters would most readily, though not exclusively, come from antecedents and pre-sentence probation and medical reports. The sentencer would be guided, but not bound by, the assessment of risk in such reports...

(iii) If the foreseen specified offence was serious, there would clearly be some cases, though not by any means all, in which there might be a significant risk of serious harm. For example, robbery was a serious offence. But it could be committed in a wide variety of ways, many of which did not give rise to a significant risk of serious harm ...

(iv) If the foreseen specified offence was not serious, there would be comparatively few cases in which a risk of serious harm would properly be regarded as significant ...”

[34] In assessing the issue of dangerousness in this case I consider the intention and foresight behind the actions was a clear and unequivocal intention to kill given the level of violence inflicted. His record shows an emerging and escalating propensity for violence and a lack of adherence to external controls. He has a history of use of weapons, deep seated drug problem and an overall lack of empathy.

[35] Having considered all matter within the pre-sentence report and the fact specific circumstances of the present offending I am satisfied the test for dangerousness as set out in *R v Lang and R v EB* has been met and I find the defendant dangerous as defined by the 2008 Order.

### *McDonald*

[36] The defendant McDonald was also indicted on the charge of murdering Patrick Ward. She contested the charge of murder before a jury who acquitted her of murder. However, she was convicted, on 22 February 2023, of the manslaughter of Patrick Ward by unlawful act manslaughter. She now falls to be sentence in respect of that offence.

[37] The defendant having been convicted following a not guilty plea, must be sentenced on a factual basis determined by me. The general rule is that the sentencer must form his own view as to the facts of the offence established in the evidence. I must afford the defendant the benefit of any doubt when I resolve any factual dispute (*R v Stosiek* [1982] Cr App r (s) 205). Where the verdict requires interpretation, I must interpret the facts in a way most favourable to the defendant. In relation to the assaults which occurred within the house I cannot be satisfied to the required standard that this defendant was involved in assaulting Mr Ward. While there may be suspicion and speculation that she assaulted Mr Ward inside the house, I have no evidence on oath she carried out any assault and cannot draw such an inference she did from the facts available to me.

[38] However, it is clear from the CCTV that initially she was in close proximity to the defendant Cox as he dragged Mr Ward out of the front door. She remained close to them until Cox had dragged Mr Ward out onto the street just in front of the house. She is seen to bend down and lift Mr Ward's legs and when there appears to be movement from Mr Ward, she drops them to the ground. A short time later she returns back into the house.

[39] In interview McDonald told police that Mr Ward had told her he wanted to go home and that her actions in lifting his legs was in some way to help him get up and walk home and to stop his feet being injured by the rough ground. That I am completely satisfied was a pathetic lie which the jury rightly rejected, and a lie designed to distance herself from the enormity of what she was engaged in. I am satisfied she well knew Mr Ward had been viciously beaten with weapons and stabbed and left critically injured and both she and Cox were involved in removing his body from her home in the hope no one would ever connect her to the brutal and callous attack on him. She assaulted Mr Ward by lifting his legs and dropping them on the road at a time when he was still alive.

[40] She returned to her house while Cox continued to drag Mr Ward to the alleyway. McDonald had the means and opportunity to call an ambulance and the

police. She knew and in my view at the very least observed the vicious and relentless assault on Mr Ward and was all too well aware of the life-threatening injuries that had been inflicted upon him. To her shame while she was in her house alone, she did nothing to assist Mr Ward. She could have called the police and ambulance. She showed callous and supreme indifference to this dying man's plight. She told police in interview that she was hoping Mr Ward would wake up and walk home and his wife would get him help. That was disingenuous in the extreme.

[41] I am also satisfied on the evidence I have heard that she was involved in the clean-up of the house. On the morning of the murder, McDonald was in the bathroom when police entered her house. She did not come out immediately and when she did her hands were wet and there was a mop, bucket and scrubbing pad in the bathroom. I am satisfied to the required standard from this evidence she was involved in trying to conceal evidence.

[42] In terms of personal circumstances, the defendant is 37 years old and had a difficult childhood. She was placed in adoptive care aged one week old. She had had substance misuse issues and been subjected to domestic violence and suffered serious injuries. Unsurprisingly, she suffered from mental health issues and was afforded the services of a registered intermediary during the trial. I am told that since residing in Hydebank her mental health has improved, and she is taking her medication regularly. I have considered the references provided on the defendant's behalf.

[43] The defendant has 57 previous offences including numerous common assault charges but nothing for serious assault. She has been assessed as a high likelihood of re-offending. However, probation do not consider her to pose a significant risk of serious harm to the public as defined under the 2008 Order. I agree with that assessment.

[44] While I take these personal circumstances into account, they are of limited import in light of the serious offence she been convicted of. However, I do take into account the fact that before trial the defendant offered to plead guilty to unlawful act manslaughter which the prosecution declined to accept.

### *Sentencing in manslaughter cases*

[45] I have been referred to the Judicial Studies Board's paper on sentencing in manslaughter presented by Sir Anthony Hart where he extensively set out the sentencing parameters. It is clear that sentencing in manslaughter cases is highly fact specific and it is seldom if ever helpful to compare cases. However, the guideline case of *R v Magee* [2007] NICA 21 which has been recently positively cited in *R v Smith and Laverty* [2020] NICA 47 is instructive. I have considered the seven broad subcategories of manslaughter as set out in Sir Anthony Hart's paper and have concluded that this case falls into the first and most serious category of a case involving substantial violence to the victim. I have already identified the number

and severity of the deceased injuries, the prolonged nature of the assault within the house and my determination McDonald must have been well aware of this, while accepting I cannot be satisfied, she inflicted those injuries. However, aware of what had happened, and the critical condition Mr Ward was in she assaulted him by lifting his legs when she knew he was still alive and being abandoned to the element on a cold winter night and did nothing. I am satisfied this case comes at the upper end of the spectrum attracting in my view a starting point of 12 years on a contest as this was. However, taking into account mitigating factors already set out and an element of reduction for her offer of a plea prior to trial, I consider the appropriate and proportionate sentence to be a sentence of 10 years. I have also factored into this global sentence the offences of criminal damage, common assault and threats to damage a house for which she will be sentenced to four months custody concurrent with the 10-year sentence for manslaughter.

[46] This will be a determinate custodial sentence split equally between custody and supervised licence. The appropriate offender levy applies.