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(subject to editorial corrections)**

ICOS No: 20/86443/A01

Delivered: 10/05/2024

IN HIS MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE KING

v

SARUNAS NAUBURAITIS

**Mr David McDowell KC with Mr Richard McConkey KC (instructed by Holmes &
Moffitt Solicitors) for the Applicant**
**Mr Ciaran Murphy KC with Ms Rosemary Walsh KC (instructed by the PPS) for the
Crown**

Before: Keegan LCJ, Colton J and McFarland J

KEEGAN LCJ (*delivering the judgment of the court ex tempore*)

Introduction

[1] This is a renewed application for leave to appeal a sentence imposed for murder, fraud and theft on the applicant, leave having been refused by the single judge. On 7 October 2021 the trial judge, Mr Justice O'Hara, sentenced the applicant to a life sentence for murder with a minimum tariff of 18 years' imprisonment and six months' imprisonment on the other counts to run concurrently.

[2] The sole point on appeal is whether the 18-year minimum term is manifestly excessive and wrong in principle as it is contended that the judge's starting point of 22 years prior to a reduction for a guilty plea was too high and out of step with what have been described as more serious cases.

Factual background

[3] At 9:50pm on 23 May 2020, the applicant attended at Musgrave Police Station and said that he had killed a man in his home. When the police went to his address they found the body of the deceased, Mr Ludborzs, on the kitchen floor covered with a sleeping bag with a plastic bag attached to the top of his head. The only item of

clothing on his body was his boxer shorts, a toy rat skeleton had been placed inside them and the letters PIG carved into his chest with a knife. It was clear from the decomposition of the body that the murder had taken place some days before. The exact timescale is not known but is estimated to have been in and around a week, hence the charge that the murder occurred between 14 and 24 May 2020.

[4] At the scene there was dry blood around his head and blood splatter on the wall and radiator. It is also noted in terms of the factual background that the deceased has no family in Northern Ireland. He was identified by his fingerprints. The scene inside this house was one of squalor, with empty bottles and cans of alcohol scattered around different rooms.

[5] A post-mortem report was compiled by Dr James Lyness. This report referred to the deceased's own medical history which included alcoholism and a previous head injury in 2007. The decomposition of the body had caused some difficulties for the pathologist, but Dr Lyness was able to identify lacerations on the right and left side of the back of the scalp, within both eyebrows, on the right side of the forehead through the upper part of the left ear and on the inside of the left upper lip.

[6] The number of injuries and their distribution was consistent with multiple blunt impacts during an assault. The black plastic bag attached to the head and shoulder of the deceased caused the pathologist to consider the issue of asphyxiation, but he was not sure that he could make a diagnosis on that issue. Other injuries found included five areas of bruising to the back, the abrasions I have already mentioned which spelt PIG on the deceased's chest and various minor injuries. The concentration of alcohol in the deceased's blood stream was high, three and a half times over the driving limit, described as very heavy intoxication.

[7] Dr Lyness' conclusion in all the circumstances, caveated by the decomposition of the body, was that death resulted from blunt force trauma of the head and possible plastic bag suffocation with acute alcohol intoxication as a potential factor.

[8] The content of the police interviews is recited by the trial judge in his sentencing remarks. In summary, we can see that during interviews the applicant said that he and the deceased had been friendly from around 2020. There is reference to issues arising following the Covid-19 pandemic and lockdown with a haphazard lifestyle ensuing including rough sleeping. It appears that the applicant at some stage did invite the deceased to stay in his home on occasions. At some point in May 2020 the deceased arrived at the applicant's home, again, he was drunk, and matters spiralled out of control to the extent that shortly after the arrival this murder occurred.

[9] No clear reason for this brutal murder is apparent throughout police interviews or in the papers that we have read. There is a working narrative that after the deceased arrived at the applicant's home, there was consumption of alcohol, there were issues with clothing and washing of clothing, there were issues in relation

to urination, and there were issues in relation to a debt of £10. It appears likely that the deceased did, at some stage, on this date, try to get out by the back door of this house into the garden because of some of the issues that arose between him and the applicant. It appears likely that the applicant stopped him and closed the door. Thereafter it appears and is recorded in the interviews that the deceased started to urinate through his underwear. The applicant then reacted by, on his own account, kicking the deceased from behind to begin with and thereafter, many times, perhaps 20 to 30 times.

[10] During interview the applicant himself described the deceased's head ricocheting off the radiator and how the deceased reacted to this. The applicant also, volunteered that he "finished him off with his heel." When there were no more sounds or noises from the deceased, the applicant put the plastic bag over his head to be sure he was dead and could breathe no more. This applicant told the police that he really wanted the deceased to die and that the kicks that he inflicted were intended to kill him. Having achieved that he used the knife to carve the letters PIG on his chest, and the toy rat was placed on him to symbolise that he was a thief.

[11] Thereafter, the applicant behaved in the following way. Firstly, he left the body of the deceased in his home and attended the Mater hospital, as is recorded on 17 May 2020, for a Covid test. He also admitted desecrating the body of the deceased by pouring bleach on his face to make it harder to identify the deceased. He stole the deceased's bank card and used it up to three times in different shops to buy beer, wine and tobacco. He destroyed the sim card from the deceased's phone and disposed of that phone, his wallet and some personal documents. The sentencing judge records that there was a bizarre discussion with the police in relation to the applicant's interest in satanism. This led him to being asked if the killing was a ritual one, he said it was not. But, in any event, we note that the judge did not sentence on the basis that this was a satanic killing.

[12] Mr Murphy has taken us through other concerning matters that arise as a result of the applicant's interview responses. In summary, the applicant said during his childhood he enjoyed killing animals as it excited him. He said that he had killed the deceased with a cold heart and that he enjoyed it. He said he was a satanist and that he had lived by the rules of satanism since he was fourteen.

[13] That is the background upon which we must consider the sentence imposed by the sentencing judge. In this regard, the first step is to look at the legal principles which should apply to sentencing in murder cases in this jurisdiction.

Applicable legal principles

[14] Both the applicant and the prosecution agree that the guiding authority in this jurisdiction for the imposition of the appropriate tariff in murder cases remains *R v McCandless and others* [2004] NICA 1. This authority that has remained a guide in

this area from our Court of Appeal was recently discussed in a decision of this court in *R v McKinney* [2024] NICA 35.

[15] Sentencing judges here continue to utilise *McCandless* as the trial judge did in this case applying para [9] which reads as follows:

“[9] The Practice Statement set out the approach to be adopted in respect of adult offenders in paragraphs 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 para 12. 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.

19. Among the categories of case referred to in para 12, some offences may be especially grave. These include cases in which the victim was performing his duties as a prison officer at the time of the crime, or the offence was a terrorist or sexual or sadistic murder or involved a young child. In such a case, a term of 20 years and upwards could be appropriate."

[16] In *McKinney* this court reiterated that each murder case is fact specific. Also, that the guidelines that derive from *McCandless* applying the Practice Statement of Lord Woolf should not be applied in a rigid compartmentalised structure. We also said that the benefit of *McCandless* is that in this jurisdiction it allows flexibility in the myriad of different scenarios that have come before the court in murder cases.

Consideration

[17] Turning then from the legal principles which are not in issue from *McCandless* to their application to the facts of this case. Firstly, this was clearly a higher starting point case. There were multiple injuries in this case ([12](j) in *McCandless*) and also, we should say, a clear vulnerability on the part of the deceased which make this a case of exceptionally high culpability bringing it into the higher starting point bracket.

[18] The only question is, therefore, whether the additional six to seven years that the judge applied for aggravation to take the ultimate sentence further than the 15-16 years' starting point was excessive or wrong in principle.

[19] To answer this question we need to turn to how the judge identified aggravating factors. In his judgment at paras [34]-[36] he sets these out as follows:

- (i) Desecration of the body of the deceased which is threefold by carving PIG into the deceased's chest, by the placing of the toy rat skeleton and by pouring bleach on his face.
- (ii) Leaving the body decomposing for a week in his home.

- (iii) The use of the bank card and the destroying of other personal effects of the deceased.

[20] Having read the comprehensive sentencing remarks of the judge, there is clearly, to our mind, no error in terms of the method he applied in establishing these aggravating factors.

[21] What happens next in any sentencing exercise involves the application of judgment. Any sentencing judge must evaluate the aggravating factors and reflect them in an appropriate sentence in accordance with their seriousness. The Court of Appeal will only interfere if a sentencing judge has gone outside the range of permissible sentences or misapplied the law.

[22] For this murder with the unique and disturbing features that we have described which characterise it, we consider that the judge was entitled to reach the sentence that he did by varying the sentence upwards from the starting point based on the aggravating factors that he identified. We are not particularly assisted by other cases that have been drawn to our attention, save in the most general of ways. That is because each case is fact sensitive and this case, we consider, is unique in terms of the cases that have come before our court and been reported. The trial judge did not bring this case into an even more serious category however he was entitled to uplift the starting point because of the serious aggravating features he identified.

[23] Moving from the aggravation in this case, there was, to our mind, no mitigation that could be applied by the trial judge. The trial judge was correct to say at para [38] of his judgment that whilst not pre-planned, the fact that the applicant expressed an utter commitment and enjoyment of murdering this victim means that no mitigation could realistically ever be available to him. There was also no remorse displayed in this case at all. The judge did not err in relation to the absence of remorse as he did not count it as an aggravating factor.

[24] The judge then applied credit for the plea which is not under challenge. Therefore, having reached a 22-year starting point the 18 years that he ultimately arrived at is a sentence which was not manifestly excessive or wrong in principle or law. Rather, it reflects the seriousness and cruelty associated with this crime.

[25] Standing back and looking at all the circumstances of this case, we consider the judge's ruling to be entirely understandable and correct. We agree with the prosecution assessment which is contained in the prosecution skeleton argument. This was a gruesome and disgusting murder; the deceased was subjected to a ferocious attack by way of 20-30 kicks with the deceased's head then ricocheting off a solid object. The body was then desecrated and left to decompose. Thereafter, the applicant in an act of horrific disregard for what he had done used the deceased's personal effects including his bank card. The actions of the applicant were depraved and devoid of humanity.

Conclusion

[26] We note that the deceased had his own frailties, but we have also read the victim impact statement from his nephew which has recorded his horror at how this deceased met his death. No sentence will change that fact.

[27] Accordingly, having considered the arguments we refuse leave to appeal and dismiss this appeal upholding the sentence of the trial judge.