

Neutral Citation No: [2024] NICC 36

Ref: OHA12683

ICOS No: 20/059466
21/071278

*Judgment: approved by the court for handing down
(subject to editorial corrections)**

Delivered: 18/12/2024

IN THE CROWN COURT IN NORTHERN IRELAND
SITTING AT LAGANSIDE COURTHOUSE

THE KING

v

ALEXANDER McCARTNEY

Defendant

Mr D McDowell KC with Ms G McCullough KC (instructed by the Public Prosecution
Service) for the Crown

Mr G Berry KC with Mr K O'Hare (instructed by Jarlath Fields Solicitors) for the
Defendant

FURTHER SENTENCING REMARKS

O'HARA J

Introduction

The provisions of the Sexual Offences (Amendment) Act 1992 (as amended) apply to protect the victims of the sexual offences to which this judgment relates. Accordingly, no matter should be reported which is likely to lead members of the public to identify each of those young persons as a victim of one or more offences. The only exception is Cimarron Thomas in respect of whom anonymity has been waived following an application to the Presiding District Judge (Magistrates' Court) allowing her to be identified.

[1] On 25 October 2024, I sentenced Alexander McCartney to life imprisonment for his crime of the manslaughter of Cimarron Thomas, and on 14 counts of causing or inciting a girl under 13 to engage in sexual activity involving penetration. I then imposed a tariff of 20 years, the minimum term which he must serve before the Parole Commissioners consider whether he should be released on licence.

[2] On multiple other counts I imposed determinate custodial sentences. On any view, the time which the defendant will serve in prison on those counts is rendered less important because the life sentence is a tariff of 20 years.

[3] The defendant has applied for leave to appeal to the Court of Appeal against the life sentence and against the tariff.

[4] In the course of considering that application for leave, McFarland J identified a flaw in my sentencing on the other counts, or most of them. I raised that concern with the prosecution and defence who both agree that there is, indeed, a flaw. For that reason, I must correct some of those sentences. I have power to do so, because we are still within 56 days of the original passing of sentence on 25 October 2024.

[5] Because of the complex provisions of the Criminal Justice (Northern Ireland) Order 2008 (the "2008 Order"), I am obliged on most of the other counts to which the defendant pleaded guilty to impose either an indeterminate sentence or an extended custodial sentence (an "ECS"). The 2008 Order does not allow me to pass a determinate custodial sentence in circumstances where I have deemed the defendant to be dangerous and the offences are either serious or specified (or both). During the sentencing process it was not disputed that the defendant was dangerous. At para [63] of my sentencing remarks I described the Probation Board's conclusion on that issue as being inevitable.

[6] Against that background and without any contrary representations from counsel as to the appropriate course, I change the following sentences by reference to para [97] of my sentencing remarks of 25 October 2024:

- (i) For 32 counts of causing or inciting a girl between the ages of 13 and 16 to engage in sexual activity involving penetration – an ECS of nine years on each count with two years on licence.
- (ii) For nine counts of causing a girl under 13 years to engage in sexual activity – an ECS of nine years on each count with two years on licence.
- (iii) For 14 counts of causing a girl aged between 13 and 16 to engage in sexual activity – an ECS of nine years on each count with two years on licence.
- (iv) For 58 counts of blackmail – no change to the determinate sentence of 10 years on each count.
- (v) For 29 counts of making indecent images of children – an ECS of five years on each count with two years on licence.
- (vi) For 11 counts of distributing indecent images of children – an ECS of six years on each count with two years on licence.

- (vii) For two counts of causing a person to engage in sexual activity without consent – an ECS of five years on each count with two years on licence.
 - (viii) For 12 counts of possessing indecent images of children – an ECS of two years six months on each count with one year on licence.
 - (ix) For one count of intimidation – no change to the determinate custodial sentence of three years.
 - (x) For one count of possessing prohibited images of children – no change to the determinate custodial sentence of two years.
 - (xi) For one count of sexual communication with a child – an ECS of nine months with six months on licence.
- [7] I finish by making the following four points:
- (i) I am indebted to McFarland J for his identification of the flaws which have to be corrected. As his retirement is imminent, it is right to acknowledge his perhaps unrivalled knowledge and understanding of the complexities of sentencing law.
 - (ii) I am also indebted to counsel for their co-operation and assistance in confirming which sentences need to be corrected and which can remain unaltered.
 - (iii) It is important to emphasise that there is no reason to believe that the corrected sentences will have any real impact. They will not reduce the time which the defendant will serve in prison.
 - (iv) The equivalent statutory provisions in England and Wales were changed some years ago to avoid the issue which I have just dealt with. It would be helpful if our provisions were considered so that they could also be amended. The need to impose an indeterminate sentence or an ECS in circumstances such as these simply does not make sense.