Judicial Communications Office

21 February 2025

SENTENCING GUIDANCE ON NON-FATAL STRANGULATION

Summary of Judgment

R v Darryl Haughey

The Court of Appeal[1] today, in dealing with an appeal against sentence by Darryl Haughey, ("the appellant") issued guidance for judges when sentencing for the offence of non-fatal strangulation ("NFS"). This is a relatively new offence in Northern Ireland about which no guidelines currently exist.

BACKGROUND

The appellant was convicted and sentenced to a determinate custodial sentence of 32 months following a plea of guilty to four charges:

- Non-fatal strangulation contrary to section 28 of the Justice (Sexual Offences and Trafficking Victims) Act (NI) 2021 ("the 2021 Act") for which he received a determinate custodial sentence of 32 months (14 months in custody followed by 18 months on licence).
- Assault occasioning actual bodily harm ("AOABH") – determinate custodial sentence of 24 months (12 months in custody followed by 12 months on licence).
- Threatening to kill – determinate custodial sentence of 18 months (nine months in custody followed by nine months on licence).
- Criminal damage – determinate custodial sentence of 18 months (nine months in custody followed by nine months on licence).

The background to the offending was that the appellant arrived at the injured party's ("IP") home on 23 August 2023, intoxicated and being verbally abusive to her and her sister. He ordered the IP's sister to leave following which he grabbed the IP by the throat and headbutted her causing her nose to bleed. He then grabbed her by the throat again pushing and holding her on the sofa by the throat and causing her to have difficulty breathing. The IP accepted that she grabbed at his face and scratched his jaw in an attempt to get free from him. As she did so the appellant stood over her and told her "I'm going to kill you." The appellant then grabbed her by the hair and dragged her to the stairs grabbing her by the throat once again and pinning her to the stairs. He then headbutted her again and punched her in the mouth splitting her lip. When the IP got away the appellant went upstairs to bed. The IP then lay on the sofa. She said she was afraid and didn't know what to do as the appellant had earlier taken her phone and said he had thrown it in the bushes.

The next morning the appellant came downstairs and was apologetic. However, he went out to get more alcohol, resumed drinking and became aggressive again. He grabbed the IP by the hair and pinned her to the sofa again by the throat, squeezing her neck. When she managed to get

[1] The panel was Treacy LJ, Horner LJ and Kinney J. Treacy LJ delivered the judgment of the court.

away, the appellant went on a smashing spree, destroying property belonging to the IP and trying to pull the television off the wall. The ordeal ended when the IP's sister returned and together the women made the appellant leave. Police were called and he was arrested on 24 August.

When questioned by the police the appellant made no admissions and said he did not remember anything about the matters alleged. He was initially charged with nine offences including four counts of NFS over the two days. Each of the counts on the indictment were aggravated by reason of involving domestic abuse, contrary to section 15 of the Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021 ("the 2021 Act") ("the statutory aggravator"). The appellant was arraigned on 23 April 2024 and entered not guilty pleas in relation to all counts, however, he pleaded guilty on 10 May 2024 to the four counts listed above. His plea was entered at a time when the appellant knew the main prosecution witnesses, the IP and her sister, had withdrawn from further participation in the proceedings. In these circumstances he would have understood that his plea would be of great assistance to the prosecution in proving the case against him. During discussions giving rise to the plea, it was conceded by the prosecution that injuries were at the lower level and conceded by the defence that two of the instances where hands were laid on the neck of the IP would form part of the AOABH charge to which he would plead guilty.

THE APPEAL

The main grounds of appeal were:

- the starting point was too high because of the way the judge approached the aggravating and mitigating features.
- the judge erred in the way she applied the statutory domestic abuse aggravator resulting in an excessive uplift to sentence and double counting of aggravating features.
- the reduction given for the plea should have been more than one third in this case.

STARTING POINT TOO HIGH

The appellant asserted that the starting point of 36 months selected by the trial judge was too high referring to caselaw on NFS from England & Wales and New Zealand. The court, however, noted that the versions of NFS that exist in those jurisdictions are significantly different from the Northern Ireland version, particularly in regard to the sentencing regime that applies in each case. In England & Wales the maximum sentence for NFS is five years, in New Zealand the maximum is seven years and in Northern Ireland the maximum is 14 years. The court said it was therefore clear that the sentencing regime in Northern Ireland is not comparable between the jurisdictions. It agreed with the trial judge that the cases she had been referred to were not helpful for sentencing purposes because of the differences in the sentencing regimes. The court commented:

> "It is the duty of sentencing judges in Northern Ireland to give effect to the legislative intent of our own Assembly which brought in this legislation. It has applied a maximum penalty of 14 years to the offence of NFS in an effort to improve protection for victims of attacks like this. It has done so to reflect public concern that domestic violence has become such a pervasive scourge on society in this jurisdiction … One way to protect vulnerable people from abusive behaviours is to have available high sentences designed to deter offenders from engaging in abuse … We have no doubt

> that the Assembly intended to deter such behaviour by giving the option of imposing a deterrent sentence on those who engage in it."

The court said that the judiciary in Northern Ireland understand the problem and will play its part in countering it. It also said the new approach to sentencing adopted by the Assembly is intended in part to reflect better understanding of the impacts on victims and of the growing appreciation of the seriousness of this type of offending, the frequency of it within our societies and its effects: "The role of judges going forward will be to implement the approach that the local legislature has chosen."

Loss of consciousness

The appellant also claimed the starting point was too high because of the way the judge treated the aggravating factors. Specifically, he said that the IP in this case "did not lose consciousness or suffer any of the other distressing sequalae of strangulation such as loss of bladder or bowel control." He said that while "some harm is implicit in every instance of NFS, the sentencing process must leave room for an uplift where the harm is more significant."

The court rejected this argument and stressed that evidence of loss of consciousness or other sequalae of strangulation are **not** prerequisites for a finding of high harm in cases of NFS. Part of the reason that NFS has been introduced as a freestanding offence in various jurisdictions is the recognition of the inherent harm that the experience of strangulation causes to victims particularly at the psychological level. It is also intended to reflect the new understanding that 'harm' has for a long time been wrongly categorised by reference only to the visible marks strangulation leaves on the body[2]. Finally, the court noted that the maximum penalty of 14 years available in Northern Ireland for this offence allows plenty of room for an uplift in cases where the harm suffered is more severe.

Repeated strangulation

The appellant asserted that the trial judge listed 'repeated strangulation' as an aggravating factor. The appellant was originally charged with three counts of NFS but during plea discussions it was agreed that two instances where 'hands were laid on the neck of the IP' would be treated as part of the AOABH charge. That left only one charge of NFS in play. As a result of these changes in the charges the appellant asserted that it could not be said that there was repeated strangulation in the strict legal sense. The court rejected this argument saying it was plain from the trial judge's sentencing remarks that she was fully aware she was sentencing principally for one count of NFS and one count of AOABH. The court said that the act of 'strangulation' as described in case law can be part of a common assault and of an AOABH every bit as much as it will be part of an NFS assault. The unchallenged evidence in this case was that on three occasions hands were laid on the neck of the victim and sufficient force was used to 'pin her' into positions of the appellant's choosing. The court held that the trial judge was both entitled and obliged to have regard to these facts when assessing the sentence and there was no suggestion that she wrongly sentenced him for three counts of NFS: "[The trial judge] sentenced [the appellant] for a sustained and violent

[2] The court encouraged reading of the judgment in *R v BM* [2023] NICC 5 as well as the written evidence submitted by the Centre for Women's Justice to the Domestic Abuse Committee when considering the need for an offence of NFS in England and Wales which gives a useful summary of relevant research on the harms caused by strangulation.

attack that included NFS and AOABH, and strangulation behaviour was a repeated part of this attack."

Previous offending and double counting

The appellant asserted that the trial judge listed as separate aggravating factors the facts that he had a relevant record and had done probation courses before. He contended this involved double counting because 'anyone who has previous convictions will have received a previous sentence' and their 'very presence before a criminal court again shows that, in some way, they have failed to respond to those earlier sentences.' The court rejected this argument. It said that in this case the appellant's record showed offences of violence including offences of violence against two previous partners, but despite what he had learnt about the damage this type of misbehaviour causes to himself and to other people, he was back before the court for the same offences. The court noted that the appellant had the benefit of courses about alcohol abuse and domestic violence and had the tools for behavioural change yet, so far, he had shown himself unable or unwilling to make the change which was another separate fact that the court may take into account.

Mitigating factors

The appellant complained that the judge did not list his personal circumstances as a mitigating factor meriting any reduction in sentence. These circumstances include his ADHD, his PTSD as a result of being injured as a child in the Omagh bomb, his mental health issues and his alcohol addiction, all of which were before the court. The court said that sentencing judges have wide discretion in how they treat adverse personal circumstances:

> "A useful approach when exercising that discretion is to weigh the personal circumstances against the criminal behaviour they are said to have contributed to. In the present case the criminal behaviour in question included the extremely dangerous behaviour of strangulation of a vulnerable woman. In this case the sentencing judge was fully aware of and set out in some detail the adverse personal circumstances of the appellant. She also had the benefit of an expert report and a very full pre-sentence report. She was not required to identify in a mechanistic way the precise impact that this had on her approach to sentencing. His circumstances and any impact they had has to be seen in the context of the serious nature of the offending and the statutory response in this jurisdiction to such offences. We discern no legal error in the manner in which the judge treated his personal circumstances."

Remorse

Finally, the appellant complained that the trial judge listed 'remorse' as a mitigating factor but given the sentence said she 'must have' placed an under-emphasis on this mitigating factor. The court considered only two pieces of evidence of remorse were present. The first was the evidence that on the morning of 24 August 2023 the appellant was apologetic about his abuse of the IP the previous day (which the trial judge referred to but felt this 'remorse' was not genuine and did not deserve any reduction). The second piece of evidence was the appellant's guilty plea in circumstances where the Crown might have had difficulty proving the case against him. The court said the treatment of this plea was a separate ground of appeal in this case and it would deal with it, including this aspect of remorse within the section below.

TREATMENT OF THE GUILTY PLEA

The third ground of appeal is that the reduction for the guilty plea "should have exceeded the 1/3 discount applied." The basis for this claim was that the appellant made his plea when the main witnesses had withdrawn from participation in the prosecution and the appellant knew that this withdrawal could pose difficulties for the Crown in securing a conviction.

The court said that pleas of guilty serve many purposes. From the appellant's point of view, they provide a tangible way to express genuine remorse for wrongdoing. Guilty pleas also have more mundane benefits. In this case, the plea reduced the legal jeopardy faced by the appellant and was a tangible benefit that accrued to him as soon as he entered the plea. Another tangible benefit was that he placed himself in a good position to request a generous reduction in sentence in return for his act of admitting responsibility when he knew all about the Crown's difficulties. In the sentencing hearing no argument for more than the usual maximum reduction appeared to have been made and the trial judge granted him a one third reduction even though his plea did not strictly qualify for that level of reduction because of its timing. The court considered the reduction to be generous on the facts of this case and that the trial judge made no legal error in her assessment.

THE DOMESTIC AGGRAVATOR

The statutory aggravator introduced by section 15 of the Act provides that it 'may be specified as an allegation alongside a charge of an offence against a person ("A") that the offence is aggravated by reason of involving domestic abuse.' All the charges to which the appellant pleaded guilty had the statutory aggravator attached to them. The court noted that he made his plea knowing this to be so and therefore admitting that the statutory aggravator applies. The trial judge confirmed in her judgment that the conditions for applying section 15 are fulfilled. The only dispute about this aggravator therefore related to the way the judge applied it in this case.

When sentencing for an offence to which the statutory domestic aggravator applies section 15(4) requires the court to:

> "(a) state on conviction that the offence is aggravated by reason of involving domestic abuse,
>
> (b) record the conviction in a way that shows that the offence is so aggravated,
>
> (c) in determining the appropriate sentence, treat the fact that the offence is so aggravated as a factor that increases the seriousness of the offence, and
>
> (d) in imposing sentence, explain how the fact that the offence is so aggravated affects the sentence imposed."

The appellant asserted that the approach taken by the judge in this case was in error as it risked applying the same aggravator twice. The court was not persuaded by this argument, however said it would have applied the sentencing steps in a different order to the trial judge. It recommended that sentencers should adopt the following approach:

Step 1: identify the lead offence (in this case NFS).
Step 2: calculate the starting point having regard to all applicable aggravating and mitigating features EXCEPT the statutory aggravator and the plea.
Step 3: apply the plea reduction to the starting point as per the standard approach in *R v Stewart*.
Step 4: calculate an uplift for the statutory domestic abuse aggravator and apply it to the outcome of step three.

The court said that in light of this new approach, the appellant had benefited from an unwarranted reduction of some four months in his overall sentence. However, given all the circumstances of this case and especially the fact that sentence was passed in the absence of relevant guidance, it would consider it unfair to change the sentence imposed. Accordingly, the court made no changes to the sentences issued in this case.

SENTENCING GUIDELINES

A gap in sentencing guidance was identified in relation to the new offence of NFS. The court said that a starting point of 36 months is appropriate for NFS cases where the harm is assessed as 'medium.' Where harm is assessed to be 'high', the starting point will likely exceed 36 months as is necessary and justified by the level of harm actually inflicted in the case. The court said it did not want to set a precise figure for this because the research evidence shows that the harms caused by NFS are multiple and highly variable: "Our judges are fully aware that they must arrive at sentences which properly reflect the facts of the individual case in hand."

Guidance was also said to be necessary in relation to 'the appropriate methodology to be adopted when applying the domestic abuse aggravator.' The court's comments in this judgment reflect the new methodology sentencing judges should use. This methodology reflects the fact that this aggravator is a creature of statute introduced by the Assembly as part of a multi-pronged attack on the 'scourge of domestic violence in Northern Ireland.' It is intended to be used to specifically identify, penalise and deter violent behaviour in a domestic context where its effects and consequences may be materially different from violence and abuse in other contexts. The court considered that these objectives are best achieved by imposing one clearly identified period of time within the sentence and labelling it as the 'extra' time the offender must serve because he was abusive in a domestic setting triggering the statutory aggravator:

> "It is important to note that the deterrent penalty imposed for that specific purpose should not then be diluted by any reduction given in relation to a plea. The punishment for committing domestic abuse should be whatever is judged necessary on the facts of the individual case, but once it is calculated it should remain intact and not be diluted by plea reductions. This approach will also make it easier for judges to comply with their new recording obligations under section 15(4) of the 2021 Act, especially the obligation in section 15(4)(d)."

NOTES TO EDITORS

1. 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://www.judiciaryni.uk/).

ENDS

If you have any further enquiries about this or other court related matters please contact:

Alison Houston
Lady Chief Justice's Office
Royal Courts of Justice
Chichester Street
BELFAST
BT1 3JF

Telephone: 028 9072 5921
E-mail: LCJOffice@judiciaryni.uk