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Judgment: approved by the court for handing down (subject to editorial corrections)*	*Delivered:*	**28/01/2025**

IN HIS MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE KING

v

BARRY DONNELLY

Mr Gavan Duffy KC with Ms Caitríona Keenan (instructed by KRW Solicitors) for the Appellant
Mr Ciaran Murphy KC with Ms Laura Ievers KC (instructed by the Public Prosecution Service) for the Crown

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Before: Keegan LCJ, Rooney J and Fowler J

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

Introduction

[1] In this judgment we provide guidance as to sentencing for manslaughter in cases of diminished responsibility.

[2] This appeal with leave of the single judge is in relation to the minimum term of nine years imposed on the appellant for manslaughter on grounds of diminished responsibility. The sentence was imposed by Mr Justice O'Hara ("the judge") on 4 July 2023 after a guilty plea. The judge imposed an indeterminate custodial sentence ("ICS") and made a finding of dangerousness before setting the minimum term. It is only the length of term that is under appeal on the ground that it is manifestly excessive.

History of the court proceedings

[3] The appellant was dealt with under two bills of indictment. Under the first bill he was charged with murder and possession of offensive weapons (two knives). This is the indictment that related to the death of Mr Aidan Mann. Under the second

bill of indictment, he was charged with two counts of assault occasioning actual bodily harm and possession of an offensive weapon, a golf club. This related to a prior attack on two victims, the Addeys.

[4] On 11 November 2022, the appellant pleaded not guilty to all counts. On 28 April 2023, the appellant pleaded guilty to all counts on the bills of indictment, save that he offered a plea of manslaughter on the grounds of diminished responsibility which was accepted by the Crown.

Background

[5] The first offending occurred on 20 June 2021. On this occasion the appellant attacked and punched Jordan Addey and his mother Denise Addey. This was an unprovoked attack which took place in Church Street, Downpatrick. A short time later the appellant attacked the same victims at Bridge Street with a golf club. As a result of these attacks the victims sustained injuries which required hospital treatment. At interview the appellant alleged that the victims were the aggressors as they had tried to enter his home.

[6] The Addeys' property backs onto a communal courtyard which is shared by the properties at 42 and 42B Church Street, Downpatrick. The victims were therefore neighbours. The appellant, when arrested by police, surrendered golf clubs which were his property. There was also blood found in the area of the courtyard. However, at interview he denied assaulting both Jordan and Denise Addey with a golf club. Specifically, he said they both tried to climb through his bedroom window, and he had stopped them getting in by pushing them back out through the window and that he had never left his property. He said that they had punched him in the face when trying to get through the window and that Jordan had used a white stick to reach in and hit him. No white stick was found as part of the police investigation. The appellant was charged with these offences and bailed. He was therefore on bail when the second set of offending took place.

[7] The second set of offending happened on 3 January 2022 at 11am on the public street in Downpatrick. The appellant attacked and killed Mr Mann who was also a neighbour. As the prosecution point out, CCTV shows Mr Mann leaving his flat. The appellant followed and chased him down the street and then caught him causing him to fall to the ground. The appellant then straddled and repeatedly stabbed Mr Mann inflicting wounds to his legs, torso and chest. One of the stab wounds to the chest proved fatal and the victim was pronounced dead at 11:42am.

[8] Members of the public intervened to restrain the appellant and whilst restrained, the appellant continued to shout abusive comments including, "I want to watch him die" and "Let him die." When police arrived at the scene, they observed the appellant being restrained as he continued to engage in aggressive behaviour. The police also observed two knives lying on the ground close by. When arrested for murder the appellant made no reply after caution. He was further arrested on

suspicion of attempted murder and made no reply. He was then conveyed to Musgrave Street police station.

[9] The appellant was not deemed fit for interview until 4 January 2022. An appropriate adult was present throughout interview. In essence, at interview he admitted taking the knives from his home and having an altercation with Mr Mann outside his flat. He admitted chasing and stabbing Mr Mann, only stopping when there was intervention. He said he had been having problems with neighbours and that he had "snapped and lost control and had not set out to murder Mr Mann."

Governing statutory provisions

[10] This appellant fell to be sentenced within the framework of the Criminal Justice (Northern Ireland) Order 2008 as amended ("the 2008 Order"). Manslaughter is both a specified offence and a serious offence for the purposes of the 2008 Order. Article 13, which is the operative provision, states:

> "13.—(1) This Article applies where—
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> (a) a person is convicted on indictment of a serious offence committed after the commencement of this Article; and
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> (b) 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.
>
> (2) If—
>
> (a) the offence is one in respect of which the offender would apart from this Article be liable to a life sentence, and
>
> (b) the court is of the opinion that the seriousness of the offence, or of the offence and one or more offences associated with it, is such as to justify the imposition of such a sentence,
>
> the court shall impose a life sentence.
>
> (3) If, in a case not falling within paragraph (2), the court considers that an extended custodial sentence would not be adequate for the purpose of protecting the public from serious harm occasioned by

the commission by the offender of further specified offences, the court shall—

(a) impose an indeterminate custodial sentence; and

specify a period of at least 2 years as the minimum period for the purposes of Article 18, being such period 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.

…

(4) An indeterminate custodial sentence is—

(a) where the offender is aged 21 or over, a sentence of imprisonment for an indeterminate period,

(b) where the offender is under the age of 21, a sentence of detention for an indeterminate period at such place and under such conditions as the Secretary of State may direct,

subject (in either case) to the provisions of this Part as to the release of prisoners and duration of licences.

(5) A person detained pursuant to the directions of the Secretary of State under paragraph (4)(b) shall while so detained be in legal custody.

(6) An offence the sentence for which is imposed under this Article is not to be regarded as an offence the sentence for which is fixed by law.

(7) Remission shall not be granted under prison rules to the offender in respect of a sentence imposed under this Article."

[11] Pursuant to Article 13 of the 2008 Order the court imposed an indeterminate custodial sentence. As we have said, the appellant takes no issue with the imposition of the ICS, rather the duration thereof. In accordance with the legislation, the court was obliged to set a minimum period of at least two years which the appellant had to serve before being eligible for release. This minimum period as such, as the court considers appropriate, is to satisfy the requirements of retribution and deterrence. The ultimate decision as to when the appellant is released is, however, a matter for the Parole Commissioners who themselves must be satisfied

that it is no longer necessary for the protection of the public that the appellant remains in custody. In other words, at the end of the minimum tariff point, the Parole Commissioners decide whether ongoing custodial detention is necessary for the protection of the public or whether the appellant can be released on licence.

Judge's sentencing remarks

[12] The judge had the benefit of materials which informed his sentencing remarks which we summarise as follows. First, he had a pre-sentence report in relation to the appellant. This explained that the appellant had been brought up by his maternal grandmother who died in 2017. He had lived in Belfast and had been the victim of a paramilitary assault intended for his brother. He had also been attacked by a crowd when aged 18. The appellant left school with limited qualifications and had worked casually for a few years as a painter and decorator and in various retail outlets. The appellant had two children by two different partners with whom he had no contact. He also had two half-brothers with whom he had no contact.

[13] Unsurprisingly, the pre-sentence report stressed the fact that the appellant had been a chronic user of cannabis since approximately aged 15. It also pointed out that when he moved to Downpatrick, approximately 10 years before the index offending, he did not register with a GP and had not attended a doctor for at least 10 years. He had also not been in employment for many years. The pre-sentence report opined that the appellant should be assessed as a medium likelihood of reoffending but not as posing a risk of significant harm. This latter assessment was predicated upon the appellant remaining substance free and compliant with his treatment. Ultimately, this assessment was not accepted by the judge and the defence take no issue with the fact that the judge departed from this aspect of the pre-sentence report.

[14] In terms of antecedents, the judge knew that the appellant had a limited criminal record with only one entry for assault occasioning actual bodily harm in 2009 for which he received a community service order.

[15] Of most significance in this case were the medical reports that had been prepared by experts instructed on behalf of the prosecution and the defence. These were variously prepared to address issues regarding fitness to plead, fitness to stand trial, insanity and diminished responsibility. Dr Christine Kennedy, Consultant Forensic Scientist, reported on behalf of the prosecution and filed three reports dated 26 January 2023, 29 March 2023, and 2 June 2023. Dr Ian Isaac, Consultant Psychiatrist and Neuropsychiatrist was retained on behalf of the defence. He filed two reports dated 10 November 2022 and 27 March 2023. In fact, there was not much divergence between the prosecution and defence experts in relation to medical diagnosis. Both doctors agreed that the appellant suffered from schizophrenia and was floridly psychotic at the time of the killing. They both agreed that his ability to control his actions was substantially impaired at the time of the offending in January 2022 but noted that he "retained some level of control over his behaviour."

[16] Of note is that the appellant, provided a history, to Dr Kennedy that he had used cannabis chronically from age 16-17 up to the index charges. The appellant said, "this caused him paranoia and social anxiety which has been very bad at times." It was plain that the appellant never reported his symptoms and said that he had not been registered with a GP for more than 10 years when interviewed by Dr Kennedy. The appellant also said that he now realises that cannabis is part of the problem and thinks it might have triggered his mental health problems. To summarise the point, Dr Kennedy opined at para 8.10 of her second report that, "cannabis use could have triggered a severe and enduring mental illness." She also noted that he had a history of alcohol use to excess and of chronic cannabis use in a probably harmful way.

[17] When arrested the appellant was admitted to the Shannon Clinic which is a facility for inpatient psychiatric care. He was assessed as presenting with his first episode of psychosis. The doctors also indicated that the duration of the appellant's condition was uncertain. An update on the appellant's position is contained in an email to his solicitor, Kevin Winters & Co, dated 13 January 2025 from Dr Paul Devine, the appellant's treating clinician. It states as follows:

> "Your client, Barry Donnelly, is currently undergoing treatment for schizophrenia and post-traumatic stress disorder in Shannon Clinic. His medical treatment is almost completely optimised, and he is in the process of completing some high intensity psychological interventions. At present, my clinical global impression of progress is that he is mildly to moderately unwell (from severely unwell); is much better; with decided improvement with treatment. I would expect that he will no longer require treatment in hospital in a few months and can return to prison at that time. He is engaging very well with treatment and is also able to enjoy and take part in many meaningful activities and leisure."

[18] The judge referred to the personal impact statements which we have also seen as part of his sentencing. The judge references a tribute to Aidan Mann who was also known as Zen Black. Mr Mann describes himself in the video as a tattoo artist, sailor, model and craftsman among other things. The judge describes him as a talented young man, and he also said.

> "The damage to the extended family is clear from the fact that Mrs Mann describes how she feels unable to help look after her grandchildren anymore, all as a direct consequence of the killing of her son."

[19] The judge records that whilst the Addeys suffered less injury, their statements also refer to the terrible effect that attacks like these can have on the public. The judge emphasised that the psychological impact may be more than the lasting effects of the physical injuries. As stated by the judge "what is striking from their statements is the loss of confidence which remains and makes their life so much more difficult than it was before."

[20] We agree with the overall assessment made by the judge of the devastating impact of these crimes, particularly the loss of Mr Mann's life in such brutal circumstances.

[21] Having considered all the materials available, the judge did not accept the pre-sentence report's finding on dangerousness. The judge considered that the appellant was dangerous within the meaning of the legislation, namely the 2008 Order. We consider that the judge was entirely correct to take this course. If a reminder were needed, this case illustrates the fact that a judge must make his or her own assessment of dangerousness based on the totality of the material before him/her after giving all parties an opportunity to comment. Testimony to the judge's approach is that Mr Duffy KC takes no issue with the finding of dangerousness which he described as entirely appropriate in this case.

[22] The judge then went on to determine the sentencing option for the appellant. He decided to impose an ICS as he considered that this was most appropriate in the circumstances. Again, Mr Duffy takes no issue with that disposal.

[23] Hence, we turn to the crux of this appeal which is the determination of the minimum period. At para [24] the judge sets out the mitigating factors as follows:

> "(a) His limited criminal record, notable for the fact that this is his first appearance before the Crown Court.
>
> (b) His expressions of remorse.
>
> (c) The extent of his responsibility for his actions.
>
> (d) His plea of guilty."

[24] Continuing with his analysis, the judge records that "I cannot state that his culpability is low." At paras [21], [23] and [25] the judge highlights various aspects of the case affecting the appellant's culpability as follows:

> "[21] Before he killed Mr Mann the defendant had not received any medical treatment for 10 years. He was not even registered with a GP. In addition, he was using cannabis freely."

Further, at para [23] he stated:

> "He appears to be an isolated individual with no strong family ties and no history of employment, either of which might be a stabilising factor. He has also been grossly negligent about taking care of his own health in the manner described at para [21] above."

Finally, at para [25] he stated:

> "At this point I pause to note that the crime of manslaughter by reason of diminished responsibility does not mean that a defendant does not carry any responsibility for his actions. In my judgment, the state which this defendant was in, when he was paranoid and hearing voices, was the result in significant measure of his own failure to seek any medical treatment or counselling, his use of cannabis and his failure to do anything with his life other apparently than drift. He was 36 years old when he assaulted the Addeys and killed Mr Mann, yet he had not worked for 10 years since he moved to Downpatrick."

[25] The agreement of the consultant psychiatrists in relation to the appellant was summarised as follows:

(i) The defendant was suffering from an abnormality of mental functioning.

(ii) That abnormality came as a result of a recognised medical condition, schizophrenia.

(iii) That abnormality substantially impaired his ability to form a rational judgment and to exercise self-control.

(iv) That provides an explanation for the defendant's acts and being involved in the killing of Mr Mann.

(v) There was some residual culpability retained by Mr Donnelly.

Grounds of appeal

[26] The notice of appeal pleads the following.

(a) The judge was wrong to conclude that the appellant's culpability was not low.

(b) It was unfair and wrong in principle to assess the appellant's culpability by reference to his failure to lead a productive existence in the 10 years prior to the offence.

(c) It was unfair and wrong in principle to regard the appellant's failure to seek medical or counselling intervention for his mental illness in advance of the killing, particularly since this appellant has no insight into the fact that he was mentally ill, such a lack of insight being a feature of the illness itself.

(d) Whilst sentencing cases vary, any analysis of the comparative guideline cases of *R v Hackett* and *R v Dolan* demonstrates that the selection of a nine-year period was manifestly excessive.

(e) The appellant had complied fully with all treatment and expert intervention. Despite some residual symptoms he was fit to be returned to custody and showed good compliance. There was no basis to conclude that he would not continue to be compliant with that regime and the period of nine years was well in excess of what was required to fulfil the object of an indeterminate custodial sentence.

[27] In the course of his submissions Mr Duffy refined the above points into an overarching submission that whilst the judge made no error of law, he effectively misjudged the appellant's culpability and reached a sentence which was manifestly excessive as a result. It also became apparent from these submissions that we should provide some updated guidance in this area given the issues which have arisen.

Our analysis

[28] These are extremely difficult and tragic cases given the fact that deaths are caused by people who suffer from mental impairment. The harm element will always be high. Some account is also made for the mental impairment in the offence itself given that a murder charge is reduced to manslaughter in these circumstances. Furthermore, diminished responsibility does not mean no culpability deserving of punishment in custody. Thus, a sentence must be tailored to meet the individual facts of each case considering the seriousness of the case and the residual culpability of the offender. A sentence must also be clearly explained by a judge in order that the public can understand the sentencing rationale and what happens to an offender with mental impairment by way of court disposal and by way of the Parole Commissioners' processes.

[29] In this case the judge did set out the mitigating factors which we will not repeat. The judge did not set out the aggravating factors with the same clarity. Nevertheless, it is our view that the aggravating factors are to be found within the body of the sentencing remarks, namely:

(a) The manslaughter was committed whilst the appellant was on bail for an assault.

(b) Weapons were used in the commission of the offence.

(c) This offence occurred in public in circumstances where the victim was trying to escape and where members of the public were exposed to a very frightening experience.

(d) The appellant has not obtained any medical help, on his own account, for a chronic addiction to cannabis since age 15/16 and has not registered with a general practitioner for at least 10 years.

[30] Having set out the aggravating and mitigating factors, a sentencing judge must consider the case a whole. It is trite law to say that each case is fact specific and that a sentencing judge has a unique feel of any case. In this jurisdiction a sentencing paper by Sir Anthony Hart has been utilised in many of these cases to give some indication as to where the tariff may lie. We do not disagree with the submission that this is a useful guide, but care should be taken with any comparative analyses of cases. It must also be borne in mind that the cases mentioned in the paper are all prior to the implementation of the 2008 Order.

[31] To our mind the most relevant sentencing decisions which counsel have referred us to are the recent decisions *R v Gingles* [2022] NICC 12; *R v Dolan* [2020] NICC 7 and *R v Hackett* [2015] NICA 57. Core to all of these cases, is a consideration of culpability. In each case the medical evidence has informed residual culpability. Illustrative of the point is that in *Hackett* the Court of Appeal was only prepared to reduce a 10-year minimum tariff to seven years on the basis of fresh medical evidence which evidenced lower culpability.

[32] In cases of this nature the degree of residual responsibility can be high, medium or low. In this regard, the England & Wales Sentencing Guidelines on manslaughter by reason of diminished responsibility provides some assistance in terms of the methodology to be followed by a sentencing judge. Drawing from that guidance we approve the following steps that should be taken:

(i) The court should determine what level of responsibility the offender retained: high, medium or low.

(ii) The court should consider the extent to which the offender's responsibility was diminished by the mental disorder at the time of the offence with reference to the medical evidence and all the relevant material available to the court.

(iii) The degree to which the offender's actions or omissions contributed to the seriousness of the mental disorder at the time of the offence may be a relevant

consideration. For example: where an offender exacerbates the disorder by voluntarily abusing drugs or alcohol, or by voluntarily failing to seek or follow medical advice, this may increase responsibility. In considering the extent to which the offender's behaviour was voluntary, the extent to which a mental disorder has an impact on the offender's ability to exercise self-control or to engage with medical services will be relevant.

(iv) The degree to which the mental disorder was undiagnosed and/or untreated may be a relevant consideration. For example, where an offender has sought help but has not received appropriate treatment, this may reduce responsibility.

[33] We venture that point (iii) above will be the focus in most cases of this kind. Unlike the scenario where the mental disorder is known, in this case the mental disorder was diagnosed after the offence. In that circumstance, utilising point (iv) of the guidance above, the guidance states by way of example that there may be circumstances where this reduces responsibility. The language used in this guidance properly allows for flexibility as a variety of circumstances may arise and outcomes will depend on the facts of a particular case. Here the offender continued cannabis use for 20 years, knowing that it caused paranoia, he did not register with a GP for least 10 years, and he committed a serious assault on other people a short time before the fatal assault. Such persistent lack of self-care can increase responsibility as the judge found. We entirely agree with his assessment.

[34] The only issue is that the judge simply stated that "I do not consider his culpability to be low" before setting the minimum tariff. This mode of expression has, we think, led to Mr Duffy's submission that the judge has over-assessed the culpability when settling on the minimum tariff. But, in fact, when the sentencing remarks are examined in their entirety, it is easily discernible what the judge's ultimate assessment of culpability was, *i.e.* whilst the culpability could not be described as high, it was more than low, and so it was in the medium bracket.

[35] This was a brutal attack on a public street which was unremitting. It must have been terrifying for the victim and it was clearly highly distressing for members of the public who observed it and who bravely stepped in to try to stop the attack. If anything, the judge could have expressly emphasised the public nature of this offending.

[36] In any event, the judge properly referred to the other aggravating factors in this case. In addition, he stressed an aggravating factor which, we think, is highly significant namely that the appellant did not, notwithstanding his knowledge of paranoia caused by cannabis, stop his cannabis use over a 20-year period or seek any medical help even after he had assaulted the Addeys six months prior to the fatal attack on Mr Mann.

[37] This was plainly not a case where culpability was low, as we have said. This was a case within the medium bracket of culpability. We think that because of that the judge was entitled to fix on the nine-year point that he did. This was probably as high as he could have gone for this offending within the medium bracket, but we cannot say on an overall view that the sentence is manifestly excessive.

[38] Self-evidently, these cases are characterised by specific often unique features and so other decisions are necessarily of limited value to sentencers. In addition, a trial judge will have a unique feel for a case of this nature. That is why judges should have flexibility in sentencing. However, we consider that the articulation of low culpability of five or six-years found in the historic cases which Mr Duffy relied on is out of date given the change of legislation. Therefore, we take this opportunity to provide some guidance going forward. Low culpability cases should now attract a minimum tariff of somewhere between six and eight years. Medium culpability cases should attract tariffs between eight and ten years. High culpability cases should take a sentencing judge to between ten and twelve years.

[39] The above are guideline figures only from which judges may depart if circumstances demand a higher or lower sentence. The key to a good sentence is that the judge explains their rationale by way of listing aggravating and mitigating factors and providing a clear assessment of residual culpability.

[40] Whilst some judges have used a method of reducing for a guilty plea, we do not believe that is essential in a case of this nature. Rather, a judge should factor that in as a mitigating factor and reach an overall sentence. That said, it is not an error of law to apply a reduction for a guilty plea so long as that is explained.

[41] Finally, Mr Murphy KC suggested to us that a judge should articulate what a likely sentence would be if a murder charge could be sustained, so notwithstanding a mental illness. He also referred to the case of *R v Whitla* [2024] NICA 65 where the Court of Appeal recalibrated the *McCandless* guidelines. We understand the point which is well made given the public interest in knowing what the sentence would have been absent diminished responsibility. We agree that there is utility in this approach. In this case we agree with Mr Murphy that the likely tariff would have been in the region of 20 years.

[42] In addition, we take this opportunity to state that in every case the public should be informed by the judge in simple terms of the following to explain why a lesser tariff applies in cases of diminished responsibility:

(i) The nature of the mental illness which has led to a reduction of a murder charge to diminished responsibility.

(ii) The level of culpability of the offender notwithstanding diminished responsibility.

(iii) The aggravating and mitigating factors.

(iv) The appropriate sentence based upon the residual culpability of the offender.

(v) The fact that this is a minimum tariff before the Parole Commissioners can consider release.

(vi) The fact that once that threshold is met the Parole Commissioners must decide whether it is safe to release a person who has offended in this way into the community.

(vii) If the Parole Commissioners do decide that the person is not safe to be released at the end of the minimum tariff or any time thereafter, the offender will remain in custody. This will be a reality for many dangerous offenders, and so, notwithstanding the application of a minimum tariff there is an added robust protection by virtue of the Parole Commissioners carefully assessing the risk to the public with the benefit of medical and other evidence before considering release.

Conclusion

[43] We understand that no sentence can replace the tragic loss of Mr Mann's life. For the reasons we have given, we affirm the order of the trial judge, and without hesitation we dismiss the appeal.