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IN HIS MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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THE KING

v

WILLIAM HUTCHISON

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Mr Hunt KC with Mr S Mullan (instructed by Hunt & Co, Solicitors) for the Appellant
Mr T Mooney KC with Ms L Ievers (instructed by the Public Prosecution Service) for the Prosecution

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Before: Keegan LCJ, Treacy LJ and McAlinden J

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

This judgment serves as a guide for sentencing in murder cases which involve domestic violence and are characterised by a prior, prolonged history of domestic violence.

Introduction

[1] On 20 January 2023 we dismissed this appeal for reasons given in an ex-tempore ruling as follows.

[2] The applicant makes a renewed application for leave to appeal against a 21 year minimum term imposed upon him in connection with a mandatory life sentence on 22 October 2021 following his late plea of guilty to a single count of murder. Leave to appeal was refused by the single judge, Mr Justice Fowler, in a detailed ruling which we adopt in many respects.

History of proceedings

[3] The applicant was arraigned on 10 January 2020 and pleaded not guilty to the murder of Alice Morrow. A trial date was fixed before His Honour Judge Miller KC ("the judge") sitting in the Crown Court at Laganside on 7 June 2021. On this date

the applicant pleaded guilty to murdering Alice Morrow with whom he had been in an intimate relationship for approximately 11 years. This is a femicide case involving significant domestic violence.

[4] A life sentence was imposed on the admission of guilt by the applicant and the case was adjourned to 22 October 2021 to enable the preparation of a pre-sentence report by the Probation Board of Northern Ireland ('PBNI'). Psychiatric and psychology reports were provided to the court including reports from Dr Christine Kennedy, Consultant Psychiatrist, and Dr Devine, Consultant Forensic Psychologist. We have had the opportunity to consider all of these reports along with the helpful legal submissions filed in advance of today by both the applicant and the Public Prosecution Service.

The grounds of appeal

[5] There are essentially two grounds of appeal which we distil as follows:

(i) that the judge erred in law when determining the appropriate sentence prior to adjustment for a plea. Core to this argument is the claim that the judge double counted factors when deciding on the higher starting point category and aggravating factors with the result that the sentence is manifestly excessive.

(ii) that the judge failed to take into account certain factors as mitigation and made insufficient allowance for a guilty plea.

Factual Background

[6] The horrific circumstances of the offending are explained in detail in the judge's sentencing remarks. In summary, Alice Morrow was murdered by the applicant on the evening of Sunday 10 March 2019. The applicant called emergency services at 11:10pm that night. Police officers arrived at the scene at 11:21pm. They found Ms Morrow lying on the bedroom floor, naked and lifeless with multiple injuries.

[7] Ms Morrow was confirmed dead at 11:25pm. She was 53 years of age when she died. A post-mortem examination established that her death resulted from a sustained blunt force assault. External examination of her body revealed no fewer than 71 single or groups of injury. There was extensive bruising to her body which is detailed in the trial judge's remarks. There were rib fractures sustained which would have impaired her ability to breathe. Significantly, there were finger marks and bruising to Ms Morrow's jaw and throat which support a conclusion that the applicant tried to strangle or otherwise asphyxiate her. It was also noted that Ms Morrow was frail and underweight. She was five feet tall, weighed about seven stone and was slightly built.

[8] Of further significance is the prosecution evidence of telephone conversations on the night in question between the applicant and another person, a Ms Woods, prior to the calling of the ambulance by the applicant. The applicant is recorded in these telephone conversations as saying, *inter alia:*

> "I never hit her this bad before, I haven't hit her in two years, I fucked up this time, this is the worst I've hit her."

He said that he did not want to call an ambulance as he did not want to go back to jail, before concluding his conversation with the words:

> "If she doesn't wake up, I'm going to have to bury her."

[9] We have also considered the police interviews which are helpfully summarised in the prosecution skeleton argument. The applicant was interviewed eight times between 11 and 13 March 2019. These interviews are characterised by denial of responsibility or even presence at the scene at the relevant time and minimisation of responsibility.

[10] We briefly summarise the content of the interviews as follows. First, we note that the applicant told police that he had just arrived at the house to find the deceased on the floor and that he did not know how she had sustained her injuries. He maintained this position in his defence statement repeating he did not know how the injuries had occurred. Despite his guilty plea, the applicant continued denying the offence's commission. Significantly, in the pre-sentence report records that the applicant told the interviewing probation officer that he woke up in bed beside the deceased and that she did not appear to be breathing. He denied any knowledge of the substantive injuries as seen by police at the scene and confirmed in a post-mortem examination. The applicant continued to deny the offences regardless of having pleaded guilty in court, a matter to which we will return.

The pre-sentence report

[11] The pre-sentence report prepared by PBNI sets out the applicant's history. It also records the fact that the applicant had several partners in his life and that he has nine children from four of these relationships. Regrettably, as described by the probation officer, there is a domestic violence history in respect of these relationships which led to the applicant being referred to the Public Protection Arrangements for Northern Ireland. Despite this, the applicant denied aggression in these relationships, save for one incident, where he accepted that he had assaulted a previous partner in 2005 and was convicted.

[12] The pre-sentence report details how the courts have dealt with the applicant in various ways including fines, custody probation orders, determinate custodial sentences and probation supervision. It also appears that the applicant completed the Men Overcoming Domestic Violence programme with PBNI. The pre-sentence

report noted that the applicant claimed to have ongoing mental health problems since the 1980s along with alcohol and drug misuse.

[13] Despite the evidence against him and his guilty plea, the pre-sentence report records that the applicant continued to deny the offending. This is set out in the pre-sentence report, which states :

> "Despite the evidence against him and his own plea of guilty, Mr Hutchison continues to deny his guilt. The defendant provided his account of the circumstances surrounding the death of his partner."
>
> "The defendant denies any argument or altercation between him and the victim prior to her death. Mr Hutchison states that on following the instruction of the ambulance service he moved the victim from the bed on to the floor and administered CPR. The defendant states he may have harmed the victim when completing CPR."

[14] The applicant maintained to the probation officer that he could have accidentally caused the death. The pre-sentence report's summary of the applicant's presentation is as follows:

> "The defendant lacked victim awareness both in terms of the suffering the victim experienced and the impact on her family as a whole. The victim statements provide an insight into the trauma the family have endured and ongoing daily struggles as a result of the death of the victim. Mr Hutchison spoke primarily of his own feelings of loss relating to the victim stating that the death of his partner was not something that he wanted. Mr Hutchison displayed no remorse."

[15] The applicant has 51 previous convictions which are detailed in the pre-sentence report. His offending commenced when he was 18 years old, these included drugs, driving offences, dishonesty. Of particular significance for present purposes is the applicant's prolonged history of violence committed against female partners which we summarise as follows:

(i) In 2003 grievous bodily harm on a female.

(ii) In 2005 assault occasioning actual bodily harm against a previous partner.

(iii) In 2007 assault occasioning actual bodily harm against a previous partner.

(iv) In 2013 assault occasioning actual bodily harm and possession of an offensive weapon on a previous partner.

(v) In 2014 assault occasioning actual bodily harm on the adult son of the deceased.

[16] The above offences are explained in more detail in the pre-sentence report. The report highlights the fact that on some of these occasions implements were used including the shaft of a hammer, a claw hammer, and the metal pole of a vacuum cleaner. Also of significance is the domestic violence history regarding the deceased. This was accepted as accurate by Mr Hunt. That history includes allegations of domestic violence made by the deceased in the immediate run up to her murder.

[17] The pre-sentence report concludes that the applicant presented as posing a significant risk of serious harm, particularly, in the domestic context.

Arguments on appeal

[18] Mr Hunt, who appeared with Mr Mullan, presented this appeal with commendable clarity and left no matter unaddressed on behalf of the applicant. The skeleton argument on behalf of the applicant is critical of the judge's starting point in sentencing and makes the case that it was arrived at by double counting. Reliance is placed upon the case of *R v Robinson* [2006] NICA 29 in this regard. There is also some ancillary criticism of the sentencing in terms of the explanation of how the 24 years' point was reached prior to reduction for the plea. We also note that the applicant has sought to compare this sentence with other cases as part of his argument. Finally, the argument was made that the sentence was manifestly excessive without regard to mitigation.

[19] At this point, we pause to observe that the judge has applied great care to this case in providing comprehensive written sentencing remarks which we have had the opportunity to consider. We deal with the criticisms made of the judge as follows.

Discussion

[20] In assessing the legal arguments, our starting point is the decision of the Court of Appeal in *R v McCandless and others* [2004] NICA 1. In this decision the Court of Appeal held that the Practice Statement from 2002 issued by the Chief Justice of England & Wales, Lord Woolf, should be applied by judges in Northern Ireland who are required to fix minimum terms under Article 5 of the Life Sentences (Northern Ireland) Order 2001.

[21] Following from *McCandless* the higher starting point for murder is one of 15-16 years. This starting point is explained in para [12] of the Practice Statement as follows:

"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."

[22] No issue is taken with application of the higher starting point on the facts of this case. It will clearly apply to cases where the offender's culpability was exceptionally high or the victim was in a particularly vulnerable position.

[23] The Practice Statement goes on to consider variation of the starting point and states that whichever starting point is selected in a particular case it may be appropriate for the judge to vary the starting point upwards or downwards to take account of aggravating or mitigating factors. The factors to take into account are found in the Practice Statement as follows.

[24] Paras [14]-[17] refers to various aggravating and mitigating factors as follows:

> "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 premeditation.
>
> 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."

[25] There is also reference to "very serious cases" in para [18] as follows:

> "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."

Within the above rubric are cases if there are several factors identified as attracting the higher starting point present.

[26] With these principles in mind we turn to the judge's application of the Practice Statement to the present case. The judge approached the sentencing exercise in three stages:

(i) The choice of the higher or lower starting point;

(ii) The variation of the starting point by factors relating to the offence; and

(iii) The variation of the starting point by factors relating to the offender.

[27] The above follows the logical sequence set out in the Practice Direction. Therefore, we find no error in the methodology applied by the judge. Turning to the choice of the higher or lower starting point, at para [44] of his sentencing remarks the judge concluded that the present case falls within the higher bracket starting point of 15-16 years. He identified at least three of the suggested indicators in the Practice Statement as being present. In summary these features were as follows: (f) the victim was vulnerable; (i) there was evidence of gratuitous violence; and (j) there were extensive and multiple injuries inflicted on the victim before death.

[28] Selection of the higher starting point was inevitable and entirely correct. Ms Morrow was diminutive in stature, frail and underweight. This made her particularly vulnerable to the applicant's violence and she was no match for his power and intoxicant-fuelled aggression. The number and nature of the injuries themselves also drives this case to the higher starting point. In addition, we can readily see why the judge found there to have been gratuitous violence. It is clear from para [12] of the Practice Statement that any one of these features is capable on its own of bringing this case to the higher starting point.

[29] At this point, we observe that the starting point is, however, just that - a starting point. It may move up or down depending on the aggravating and mitigating factors in a particular case. This is a fact-specific exercise. In this case, variation of the starting point is determined by the trial judge in his sentencing remarks in two ways. Firstly, he refers to factors relating to the offence. In this regard the trial judge correctly identifies that para [14] of the Practice Statement permits variation of the starting point upwards or downwards to account for the factors, aggravating or mitigating. As to aggravating factors the judge relied on para [14](e) of the Practice Statement. This allows, in a domestic violence case, the fact that the murder was 'the culmination of cruel and violent behaviour of the offender over a period of time' to be considered as a relevant factor. This is a specific consideration which by use of the phrase 'over a period of time' refers to a history of domestic violence.

[30] Mr Hunt does not, in fact, dispute that in this case para [14](e) is made out. He simply says that it was not an aggravating factor as it was taken into account in reaching the higher starting point. We do not agree. The judge used the history of domestic violence as an aggravating feature in addition to having established the higher starting point. In our view, this was entirely correct. This factor does not, on the face of it, duplicate any of the features chosen from para [12] in setting the starting point. It refers to an accepted culmination of domestic violence incidents over a period of time. This relates to a prior history or campaign of domestic violence. In this case the domestic violence is accepted against the deceased and also against a series of other partners. We consider, in agreement with the single judge, that behaviour towards the deceased and previous female partners can be taken into account to establish a culmination of cruel and violent behaviour over a period of time.

[31] The wording of para [14](e) distinguishes it from the other factors (i) and (j) which have gone into the choice of the higher starting point in this case. Accordingly, we reject the submission that the judge has committed any error in terms of how he has applied para [14](e) of the Practice Statement. In this regard reliance upon the case of *R v Robinson* [2006] NICA 29 and particularly para [8] is misplaced and does not alter our assessment of the correctness of the method applied by the judge.

[32] It is important to read the decision of *Robinson* in full to understand the comments of Kerr LCJ. In para [8] of *Robinson,* reference is made to the fact that the culmination of cruel and violent behaviour of the offender over a period of time will usually warrant the higher starting point and not be confined to aggravation of the lower starting point. In this case there were three factors which merited the higher starting point independent of the history of past domestic violence. The judge was therefore entitled to take this factor into account as aggravation. He was alive to double counting but to our mind has not fallen into error given the additional aggravation of prior domestic violence over a period of time. In this case the domestic violence was over years against different partners at a significant level. This represented significant aggravation which had to be reflected in an increase in sentence beyond the starting point. There is no double counting.

[33] A second aggravating factor in this case concerning the offence pursuant to para [14] of the Practice Statement identified by the judge at paragraph [48] of his sentencing was the applicant's actions after he killed Ms Morrow. We endorse the judge's rationale on this issue. The applicant deliberately chose not to summon medical help at a time when this would have been critical. He subsequently engaged in a cynical pretence that he was a grieving partner to direct attention away from himself. In the case of *Robinson,* Kerr LCJ refers to this issue as follows:

> "Engaging in this type of pretence is not referred to specifically in the Practice Statement as a factor that justifies the selection of a higher starting point but its omission does not preclude that result. We consider that this is a substantial aggravating feature that makes the culpability of the applicant significantly greater."

Accordingly, this is another offence related feature capable of varying the starting point upwards.

[34] We then assess whether there should have been variation of the starting point by reference to factors relating to the offender. In his sentencing remarks, the judge considers para [15] of the Practice Statement regarding aggravating factors relating to the offender. He identifies the offender's previous record and failures to respond to previous sentences to the extent that this is relevant to the culpability rather than the risk. This is specifically referenced as permissible in para [15] of the Practice Statement.

[35] To this end the judge identified the applicant's criminal record and various pre-sentence and psychiatric reports submitted to him. He was, in our view, correct to conclude that the applicant was a man with limited insight into the feelings and needs of others. He was motivated by thoughts of self over the rights and wishes of others. This we consider to be a valid third factor over and above the offence-based factors which justifies the increase in sentence.

[36] We are of the view that there is some force in the prosecution argument that there were potentially other aggravating factors left out of account. In particular, there is evidence in this case of cleaning, changing of clothes and use of a bath which may point towards efforts to conceal the scene of the crime.

[37] In any event, we agree with the single judge that it is difficult to see how the defence can sustain a submission that the judge arrived at his sentence by double counting and allowing aggravating factors to be used twice in determining the starting point or at any stage of the sentencing exercise. The judge, in our view, was correct to place this case within the higher bracket of minimum terms. The brutal nature of this sustained attack on Ms Morrow would alone justify this without resorting to any other factor. The judge correctly identified that at least three factors were present which justified the selection of the higher starting point.

[38] In addition, para [18] of the Practice Statement provides that a substantial upward adjustment may be appropriate where several factors are identified as attracting the higher starting point. This is before any aggravating factors relating to the offence and/or the offender under para [14] and [15] are considered. The judge could have utilised this provision to reach a higher sentence than the two starting points contained within the Practice Statement, up to 30 years. Hence, by this alternative route the judge could also have reached his ultimate sentence.

[39] Overall, we are satisfied that the judge correctly identified the numerous aggravating factors that we have referred to above and that are set out in his judgment.

[40] After making his assessment of the aggravation features of this case the judge also considered mitigation. In conducting this additional exercise, the judge found that there were no mitigating factors, save that he was prepared to make some allowance for the defendant's late plea. Therefore, he concluded that 24 years was the minimum term he would have imposed had the trial been fully contested. We do not see any reason to criticise the judge's rationale for this in substance or by reason of a lack of clarity. We are not attracted to an argument that there was any opacity in relation to his judgment.

[41] In that regard, we echo the words of Carswell LCJ who, at para [8] of *McCandless,* referred to the fact that sentencing should not be overly mechanistic or rigid or explained by way of arithmetical formula.

[42] In this case, it is perfectly clear why, having settled on the 15/16 years higher starting point, the judge increased it to 24 years because of the additional serious aggravating factors. In this case, where there is a past and prolonged history of domestic violence allied to the other factors, such an upward variation is entirely justified.

[43] We are satisfied that the sentence was transparent. Judges do not have to explain what each factor represents in terms of years but rather reach an overall view which meets the gravity of the offence. The judge correctly identified in paras [36] and [37] of his sentencing remarks that the sentencing exercise is part of a journey towards achieving a just and proportionate sentence in any given case. We can entirely understand the judge has reached the conclusion that he did on the basis of aggravating factors.

[44] Next, we deal with the argument that the judge left out of account various mitigating factors and did not give sufficient credit for the plea. If there was an omission of mitigating factors, it could alter the point reached by the judge of 24 years. The defence argues that there are some factors that were left out of account as follows. First it is suggested that the killing was not pre-planned, second that there was no intention to kill and third that the applicant's history of mental health issues was a mitigating factor.

[45] We have considered these three points and find no merit in any of them. We essentially agree with the prosecution submission that there was no mitigation in this case, save reduction for the plea. The submission that the killing was not premeditated and planned was accepted as, at least, tenable by the judge. It is clear that he considered the argument. In doing so in his analysis at para [39] he contextualised the potential lack of premeditation and planning against a sustained merciless and brutal attack that left the victim clinging to life. He also took into account how the applicant refused to seek medical aid for the victim until it was too late.

[46] Unsurprisingly, the judge concluded that the applicant was at the very least supremely indifferent to his victim's fate. We consider that this assessment is beyond reproach. It is difficult to view these circumstances as anything other than a neutral factor. Irrespective of the applicant's intention when he began to attack the victim, if he had not formed such an intention to kill it also, in our view, does seem inexplicable why medical help was not summoned. In the present case, where there is gratuitous violence to a vulnerable victim and an indifference as to whether or not a victim dies, we do not consider that the argument made for mitigation gains any traction at all.

[47] The argument that the applicant lacked an intention to kill must also be considered in the context of his mental health and addiction issues. This was dealt with by the judge in his sentencing remarks at paras [39]-[43]. There the judge considered the report of Dr Kennedy who observed:

> "There is no mental health factor impacting his capacity to form an intent from the evidence provided. While the applicant has misused alcohol and drugs for the greater part of his life there was no evidence ascertained by the judge that the applicant's mental state was so impacted

> that he did not understand what he was doing or appreciate the consequences of his actions."

[48] With the benefit of such evidence the judge was entitled to disregard the applicant's circumstances as mitigating factors. He was justified in regarding the applicant's substance misuse as part of the aggravation in this case. Accordingly, we do not consider, that the judge has left out of account any valid mitigating factors.

[49] As far as reduction of the minimum term in respect of a late plea to murder is concerned the judge dealt with this in some considerable detail. We rely upon *R v William Turner and James Henry Turner* [2017] NICA 52. In that case Morgan LCJ said this:

> "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 5 years would be wholly exceptional even in the case of a substantial tariff."

[50] The pre-sentence report indicates that the applicant maintained his innocence notwithstanding his guilty plea. As we have also said, the applicant's guilty plea was not within the terms of the Practice Statement, i.e. "a timely plea." It was a late plea. In these circumstances, we consider that the judge was justified in calibrating the reduction for the guilty plea as below the one-sixth referred to in the case of *Turner*. In fact, we consider that the judge was rather generous in the application of the reduction, because the applicant was devoid of remorse or empathy, the applicant's plea was late and it offered little comfort and vindication to the victim's family. The judge was entitled to reflect these qualifications to any reduction in the guilty plea. A reduction in the minimum term of approximately 13% in this case is well within the discretion allowed to a trial judge in a murder case of this nature. We see no basis for interfering with that assessment.

Conclusion

[51] We find no merit in any of the grounds of appeal that have been put before us. In our view, the sentence imposed by the judge was neither wrong in principle nor manifestly excessive. Rather, it reflects the serious nature of this offence which was characterised by significant violence against a vulnerable woman in a domestic setting by a man with a prolonged history of significant domestic violence against the deceased and other female partners. In addition, the applicant displays no remorse and has thought only of himself throughout this process.

[52] In this jurisdiction we are now more alert to the scourge of domestic violence which has become all too prevalent in our society. It is particularly striking in this case that there is a repeat pattern of domestic violence which escalated to murder. This sentence reflects and recognises society's utter condemnation of such behaviour and should be taken as a signal that offending of this nature will attract commensurate sentences.

[53] Finally, we are aware of the effect upon the family of Alice Morrow of this horrific offence. We have been greatly impressed by the victim impact statements which we have read. We echo the comments of His Honour Judge Miller who in his sentencing remarks said this:

> "There can be no doubt that Alice Morrow's life was ended brutally and most cruelly by the defendant in what was clearly a sustained attack during which she must have suffered most grievously. No words from this court can lessen the pain, hurt and sense of loss felt by her family."

[54] Hopefully, with the conclusion of this appeal, the family may be allowed to properly begin the grieving process and the journey towards rebuilding their lives.

[55] Accordingly, for the reasons we have given we refuse leave and dismiss this appeal.