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**IN THE CROWN COURT OF NORTHERN IRELAND
SITTING AT LAGANSIDE COURTHOUSE**

THE QUEEN

v

DAWID LUKASZ MIETUS

**Mr N Connor QC with Ms F O’Kane BL (instructed by the Public Prosecution Service) for
the Crown**

**Mr P Lyttle QC with Mr J Browne BL (instructed by Wilson Nesbitt, Solicitors) for the
Defendant**

SENTENCING REMARKS

O’HARA J

Introduction

[1] The defendant has pleaded guilty to the murder of Patrycja Wyrebek, his girlfriend or partner. That murder was committed on 2 August 2020. She was just 20 years old. He was then 23 and is now 25.

[2] The defendant was arraigned on 3 December 2021 and pleaded not guilty to the sole count of murder. The trial was listed for 3 May 2022. In advance of the trial, on 8 April 2022, the defendant was re-arraigned and pleaded guilty to the murder. It is fair to note that he would most probably have pleaded guilty some weeks earlier but due to an unfortunate misunderstanding he was not brought from prison to the courthouse on two separate occasions to meet his legal representatives. When he was brought on the third occasion, the guilty plea followed.

[3] On 8 April 2022 when the defendant pleaded guilty to the murder I sentenced him, as required by law, to life imprisonment. In addition, however, Article 5(1) of the Life Sentences (NI) Order 2001 requires me to decide the minimum period which

the defendant must serve in prison before he can be considered for release. Article 5(2) states:

“The part of a sentence specified in an order under paragraph (1) shall be such part 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] Two points should be understood. The first is that the period which I set must be served in full before the defendant’s release can be considered. The second point is that when that period has expired the decision as to whether he can be released is made by the Parole Commissioners. They will consider all of the information which is available to them and form a view about whether it is still necessary for the protection of the public from serious harm that the defendant should be confined in prison – see Article 6(4) of the 2001 Order.

[5] The release of the defendant will not therefore be automatic. Furthermore, if and when he is released he will remain subject to licence conditions for the rest of his life. If he breaches them he faces the prospect of being returned to prison for a further period.

The Murder

[6] At 1:55am on 2 August 2020 the defendant’s aunt, Ms Dawidek, received a message from the defendant asking if she knew where Ms Wyrebek was because she was not at their home in Newry. He messaged his aunt again at 7am to say she was still not at home and that he could not locate her. He referred to Ms Wyrebek as “a slut.”

[7] A short time later he cycled to his aunt’s house which was nearby. On arrival he said “Auntie, I’ve done that, I’ve killed her.” His aunt noticed blood stains on his shoes. The defendant’s right hand appeared to be injured. When asked what had happened he said he had punched and hit her as much as he could and that he had choked her for 20 minutes. He also said that he took pleasure in the killing. During this time he showed his aunt a photograph on his phone of Ms Wyrebek taken after her death.

[8] The defendant then left his aunt’s house and went back to his own. The aunt told her partner, Mr Farbotko, what had occurred. This prompted him, along with two others, to walk the short distance to the defendant’s home where the door was opened to them. They found Ms Wyrebek upstairs dead in the bath, naked save for a pair of pants. There was blood around her mouth. The police were then called.

[9] When the police arrived at 8:20am they saw the deceased in the bath. They also saw heavy bloodstaining and spatter on the floor and walls of one of the bedrooms. The bedsheets, pillow and duvet were all bloodstained. There was a bottle of bleach in the bedroom, suggestive of an attempt to clean up the scene.

[10] In the bathroom there was a trail of blood on the floor and bloodstained clothing in the sink. There was no water in the bath.

[11] The police noticed a cut to Ms Wyrebek's lips and bruising to her nose and chest.

[12] The defendant was not in the house at this stage. He was found by the police at 11am behind an oil tank in the rear garden of a house just a few doors away. As the police approached he put a kitchen knife to his throat. When told to drop it he said "20 years, 25 years" and refused to drop it. There was a stand-off for some time during which the defendant appeared to be very distressed, crying and sweating and working himself into a frenzy with the knife repeatedly pointed at his throat. It appears that at an earlier point he drank, or may have drunk, some bleach. In any event the stand-off came to an end when he was shot with a Taser.

[13] The report from Dr Turner, the pathologist, identified the cause of death as "compression of the neck in association with blunt force injuries of the head." Blunt force injury to the face was noted with extensive bruising on the right side along with a fracture of the nose and the right cheekbone. There was extensive injury to the mouth also, with lacerations of both lips. There was also bruising to both sides of the scalp consistent with multiple blows, probably punches.

[14] Dr Turner identified signs of asphyxia with petechial haemorrhages over the face, extending to the upper neck. There was also bruising across the neck and an abrasion over the lower right neck consistent with the use of a ligature such as a mobile phone charging cord. In addition, there was bruising to the arms consistent with gripping. A moderate concentration of alcohol was found in Ms Wyrebek's blood which might have impaired her ability to defend herself but did not contribute to her death.

[15] It emerged during the police investigation that the police had been called to the house which the defendant and Ms Wyrebek shared with his mother in March 2020. Ms Wyrebek was recorded on the body worn camera complaining that the defendant had hit her on the head, had raised a knife to her and had made threats to kill her. She was in a distressed state. He was arrested.

[16] The defendant's aunt, Ms Dawidek, informed the police that Ms Wyrebek had lived with her for a few weeks after an argument with the defendant. Subsequently, in July 2020 during a barbeque at the aunt's house, they had argued again. The defendant accused Ms Wyrebek of having a lover. He broke her phone and then his

own. Back at their own house later on he broke his mother's phone, the television, a microwave and a computer.

[17] There was also evidence that the defendant's mother, who has issues with alcohol, encountered the police in Newry. She was drunk and emotional and alleged that her son had strangled her and destroyed items in their home. She said that she was scared of him. At the time of the murder, charges in relation to this were still outstanding.

[18] During police interviews the defendant gave an entirely different account of what caused Ms Wyrebek's death to the one which he gave to his aunt at 7am on 2 August. No longer had he punched and hit and choked her. Instead, he said that she had introduced him to erotic asphyxiation in which they developed a shared interest. On this occasion they had both drunk a lot of alcohol and during their sex game she had not given the pre-arranged safe signal or shown any sign of discontent. After the intercourse he claimed to have blacked out and when he woke some hours later she was lying dead beside him.

[19] On this version her death was an accident as a result of a sex act gone wrong and at no time had he any intention to cause her serious harm, never mind kill her.

[20] The defendant was seen twice by Dr G Loughrey, consultant psychiatrist, on 17 December 2020 (four months after the murder) and 25 November 2021 (15 months after the murder). The version of events he gave Dr Loughrey was again the "sex act gone wrong" with no intention to cause her harm.

[21] The case overview filed for the defendant with the court on 30 November 2021 made the same case though it was noted that a report was awaited from Dr Loughrey on mental capacity and diminished responsibility. This was, however, in the context of the consensual sex gone wrong contention.

[22] The account given to Ms O'Loughlin, of the Probation Board for Northern Ireland, in the pre-sentence report abandoned the sex act gone wrong explanation. Instead, the defendant told her that they had been drinking and that they had an argument. He alleged that during this argument she accused him of having had a gay relationship (which she knew from him to have been the case) and she spat at him. He then started to punch her in the face. She screamed and asked if he was going to kill her. He then grabbed her by the neck and squeezed her throat until she went quiet. Someone then knocked at the door and she started to scream again so he grabbed her by the neck once more but harder. She then went quiet again.

[23] On this version he then went to the window and downstairs to see who was at the door but found nobody. When he went back upstairs she was not moving or talking and he got no reaction even when he shook her and tried to revive her. At no time did he seek any help.

[24] While this version is closer to what his aunt told the police about their conversation at 7am, it is still quite different in that he admits killing her but denies any intention to do so whereas his aunt says that he admitted to her a prolonged and deliberate assault and choking. In addition, he denied to Ms O'Loughlin that he had ever said that he took pleasure in the killing.

[26] The prosecution case is that from the CCTV footage which is available from the houses of some neighbours there is no sign that anyone approached the defendant's home and knocked on the door as suggested by him in this version of events.

Ms Wyrebek

[27] Ms Wyrebek came to Northern Ireland in or about 2006. She was the eldest of five children and lived with her father and long-time stepmother until she moved to Newry to be with the defendant. They met in December 2019 and she started to live with him in January 2020.

[28] I have read victim impact statements from her father, her stepmother and two of her siblings - Kamil who is seven and Maja who is ten. They have been and remain overwhelmed by her loss which they cannot comprehend. They describe what a cheerful and happy young woman Ms Wyrebek was, close to her family, caring and loved. They miss her laughter and how she helped them in many different ways. Life without her is clearly a trial for them and will be for many years to come, especially because of the way she died.

The Defendant

[29] Mr Mietus came to Northern Ireland in February 2019 from Poland, he had a miserable childhood with his father abandoning the family when he was very young. As already noted his mother is reported to have longstanding problems with alcohol which the defendant says he can recall from when he was only 12.

[30] The defendant got some guidance from his grandparents who are now both dead. He came to Northern Ireland to join his mother who was already here. Their relationship is uneasy according to both Dr Loughrey and the pre-sentence report. While she has her problems, he also abuses alcohol to the extent that he took it almost every day. He accepted that this frequently resulted in him being aggressive but he did not intend to do anything about it until he had children.

[31] He described the deceased as his "first love" but in that relationship he appears to have been constantly jealous and immature as well as volatile and violent.

[32] Dr Loughrey's report confirms that the defendant used alcohol on a harmful basis but he had no abnormality of mind which substantially impaired his ability to

understand what he was doing or to exercise self-control. While Dr Loughrey thought the defendant might have a personality disorder, he was unwilling to diagnose one on the basis of the information available to him.

[33] At the end of his report Dr Loughrey stated:

“There is no indication of any bizarre or paranoid ideation. He bitterly regrets what he has done, blaming himself for what happened and looking upon it as a dreadful mistake.”

[34] Of course, the obvious difficulty about accepting this part of the report is that it was written in the context of a death by accident during consensual sex rather than a prolonged and violent assault on and choking of Ms Wyrebek.

The pre-sentence report

[35] This report has already been referred to above. Ms O’Loughlin correctly notes that only the defendant knows what actually happened and that his versions of events have varied significantly. She noted some emerging protective factors in her assessment of the defendant but concluded, inevitably, that for a multiplicity of reasons he presents a significant risk of serious harm. Her report concludes with a list of appropriate licence conditions which might be imposed on him when he is ultimately released from prison.

Sentencing Principles

[36] I turn now to the sentencing principles which apply when judges are fixing the minimum term which the defendant must serve in prison before being considered for release. There is no dispute between the parties as to those principles which are designed to ensure a level of consistency in sentencing while maintaining scope for judges to exercise some level of discretion in light of the endless variables which become apparent, even in cases which appear similar.

[37] The leading authority in this jurisdiction is *R v McCandless* [2004] NI 269 in which the Court of Appeal adopted the Practice Statement issued by Lord Woolf CJ reported at [2002] 3 All ER 412. The principal sections of the Practice Statement are set out at paragraphs 10-19 and are as follows:

“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.”

[38] As has been repeatedly emphasised these paragraphs are guidelines which help the sentencing judge towards the goal of deciding what is the right sentence in each case. They do not pretend to capture every variable or every aggravating or mitigating feature given the infinite number of ways in which murders are committed.

[39] For the prosecution it was contended that the higher starting point of 16 years is appropriate in this case because Ms Wyrebek was vulnerable by reason of previous episodes of domestic violence and threatening and destructive behaviour by the defendant. In addition, it is clear that multiple injuries were inflicted on her.

[40] It was then submitted that there are further aggravating features which make it appropriate to vary the sentence upwards. Those include the background of domestic violence, the false and now abandoned attempt to rely on accidental death by reason of a sex act gone wrong, interference with the crime scene, consumption of alcohol and the commission of the murder in the defendant’s own home.

[41] On the mitigation side the prosecution accepted that recognition should be given to the guilty plea though within the strictures set by the Court of Appeal in *R v Turner* [2017] NICA 52. It was also acknowledged that there was a lack of pre-meditation.

[42] For the defence it was accepted that there are aggravating features which justify a higher starting point of 15/16 years but that those features should not be double counted so as to raise the sentence any further.

[43] By way of mitigation the defence relies on the personal circumstances which highlight the defendant’s neglected childhood and the consequences of that as he grew older. In addition, it was submitted that the defendant has shown real remorse not only by his guilty plea but also by his conduct in the neighbour’s garden at the time of his arrest and what he told Dr Loughrey.

[44] In seeking to explain how this murder took place, Mr Lyttle on behalf of the defendant, retracted entirely the sex act excuse which he described as a pernicious lie for which the defendant apologised unreservedly. He suggested that in inventing that explanation the defendant had tried to be cute (or clever) but had instead been stupid.

[45] The suggestion advanced as the true explanation (though not in any way an excuse) was that Ms Wyrebek had mentioned to the defendant his previous homosexual relationship and that this had somehow triggered the gross and fatal attack. In addition, there was reference to him being immature, jealous and unable to control his temper, all in the context of Ms Wyrebek being his “first love.”

Conclusions

[46] In my judgment, this is clearly a case in which a higher starting of 16 years is entirely appropriate by reason of the extent of the injuries which were inflicted on Ms Wyrebek before her death. It is not necessary to repeat what the pathologist said or the scene which the police found – everything points to the conclusion that the attack on Ms Wyrebek was every bit as violent and prolonged as the defendant described it to his aunt at 7am on 2 August 2020.

[47] There are then further factors which in my judgment, require to be recognised:

- (i) While the murder was not premeditated, it was committed in the context of a relationship in which the defendant controlled and was violent to Ms Wyrebek as evidenced by her complaint on 21 March 2020 and what the defendant's own aunt witnessed at the July 2020 barbeque. Understood in this context the murder did not come out of the blue and was instead the culmination of a pattern of behaviour.
- (ii) The defendant's still unexplained conduct after the murder in that the body was moved from the bedroom to the bath thus interfering with the crime scene. It should not be forgotten that this was done by the defendant rather than him seek help or call an ambulance.
- (iii) The assault on the good name and reputation of Ms Wyrebek which the claims of a sex act gone wrong involve. Mr Lyttle described this as pernicious but it is even worse because it was advanced by the defendant through his two meetings with Dr Loughrey long after the police interviews.
- (iv) The victim was murdered in her own home.
- (v) The defendant, who knew the effect alcohol had on him, committed the murder, he says, when he had taken a lot to drink.

[48] I accept that these factors are to some degree variations on the aggravating factors identified in the Practice Statement, but as is repeatedly emphasised, those are only guidelines which cannot possibly catch every variable in the realm of murder cases.

[49] On the basis of the factors identified above I would increase the sentence from 16 years by eight years to 24 years before turning to mitigating factors.

[50] I should add that I have not included as an aggravating factor the defendant's reported assertion to his aunt that he took pleasure from the killing. Dr Loughrey's report was introduced for the purpose of casting doubt on whether he has any such

ideation. No reason has been advanced to explain why Ms Dawidek would lie about this and I certainly do not find that she has lied but in light of the psychiatric report I do not include this possibility as an element in sentencing.

[51] Turning then to mitigation, I accept that the defendant is entitled to have his guilty plea recognised. The value of such pleas has been accepted and reinforced by the decision of the Supreme Court in the recent Northern Ireland case of *Maughan* [2022] UKSC 13.

[52] On the issue of remorse, I do not accept that significant remorse has been shown by the defendant. I do not believe that we yet know what really happened that night, a point made by Ms O'Loughlin in her report. Whilst she noted some emerging signs of guilt it exaggerates the defendant's case to suggest that he has shown true remorse.

[53] Finally, while I accept that the defendant had a deprived childhood featuring neglect and exposure to what might broadly be described as abusive circumstances, he was 23 years old when he murdered Ms Wyrebek who did not draw him further into that world. If anything she appears to have been a force for good.

[54] Taking all of this into account I fix the minimum period which the defendant must serve in prison before he can be considered for release at 20 years. After that time it will fall to the Parole Commissioners to decide whether he should be released on licence subject to specific conditions, probably along the lines suggested by Ms O'Loughlin.

[55] I was invited to consider whether to recommend the deportation of the defendant. I decline to make any recommendation and leave that matter to the relevant authorities.