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Judgment: approved by the Court for handing down | *Delivered:* **22/11/2013**
*(subject to editorial corrections)**

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

-v-

JACKIE ALLEN

Before: Morgan LCJ, Higgins LJ and Stephens J

MORGAN LCJ (delivering judgment of the court)

[1] This is an appeal against a determinate custodial sentence of six years comprising three years imprisonment and three years on licence imposed by McLaughlin J at Craigavon Crown Court on 27 April 2012 as a result of the appellant's plea to the unlawful killing of Thomas James Heasley in October 2010.

Background

[2] The deceased was a 70-year-old retired man. As was his custom on the evening of Saturday 16 October 2010 he was enjoying a night out at the Racing Pigeon Club in Lisburn. As he was sitting at the bar another patron bought a pint of beer and then went to the toilet. Just after he left the appellant got up, went over to the bar and started drinking the pint. The deceased reprimanded the appellant and the barmaid became concerned that the appellant might hit the deceased. The appellant continued to make a nuisance of himself as a result of which he was asked to leave the premises. He did so without any further difficulty. The appellant maintains that he has no recollection of the events of the evening having regard to the large amounts of alcohol that he had consumed.

[3] This incident occurred towards the end of the evening. The appellant remained in the vicinity of the club premises and was still there when the deceased left. The learned trial judge considered that he could not conclude that the appellant waited for the deceased but having had the benefit of seeing the CCTV he found that the appellant saw the deceased leaving and then decided to follow him. The

appellant crossed over the road behind the deceased and followed him into Manor Park.

[4] There were no witnesses to what occurred next but an agreed statement of facts set out the basis of the plea.

> "On 17 October 2010 around midnight and shortly after both men left the Pigeon Club in Lisburn, Jim Heasley, followed by Jackie Allen, walked around the corner of Longstone Street into Manor Park. In Manor Park Allen administered a forceful push to Mr Heasley causing him to fall in an accelerated manner to the ground and strike his head violently against the kerbstone. That fall and that impact caused Mr Heasley to sustain a severe head injury and in particular a severe, traumatic, diffused, axonal injury to his brain. As Mr Heasley lay on the ground Allen subjected him to a further assault which occasioned further injuries to Mr Heasley's person. Mr Heasley was removed unconscious to hospital. He did not regain consciousness and died on 29 October 2010. The aforesaid brain injury was the cause of Mr Heasley's death."

[5] In addition to the brain injury the deceased sustained a fracture of the left clavicle or shoulder bone, bruising of the right forearm and right hand, abrasions of the chin and the left and right sides of the head and scalp and significant bruising to the left side of the head. Some of the injuries to the head were consequent upon the fall and the fracture of the shoulder bone was probably the product of the deceased trying to break his fall. The learned trial judge concluded that the appellant picked upon a 70-year-old man who was defenceless by reason of his age, his physical build and also because he was tipsy. Having put him to the ground and assaulted him the appellant then made off leaving the deceased lying on the street.

[6] The appellant was originally charged with murder and pleaded not guilty. His trial commenced on 12 March 2012. On 20 March 2012 he was re-arraigned and pleaded guilty to manslaughter. This plea was accepted by the Crown on the basis of the statement of facts set out at paragraph 4 above.

[7] The appellant is a 50-year-old man with a significant criminal record. As a teenager he had more than 30 convictions for offences of dishonesty including burglary. Of more concern are convictions for malicious wounding involving the use of a knife and assault occasioning actual bodily harm arising from an incident on 9 March 1982 as a result of which the appellant was sentenced to a period of four years imprisonment. He had a further conviction for assault occasioning actual bodily

harm on 27 February 1988 for which he received a suspended sentence. Despite that he was again convicted of assault occasioning actual bodily harm arising out of an incident of 11 November 1989 as result of which he received a sentence of four months imprisonment and a consecutive sentence of three months imprisonment following the implementation of the suspended sentence.

[8] During the 1990s he was convicted on a number of occasions of driving offences usually associated with the consumption of alcohol. In 2009 he was convicted of making off without paying which apparently relates to his failure to pay a taxi fare and again appears to be alcohol-related. The pre-sentence report indicates that he was dependent on alcohol at the time of this offence and there is no doubt that he had consumed considerable quantities of drink at the time of the commission of the offence. One of the features of this case is that he was found by police after the attack and they considered him so drunk that they left him home.

[9] The appellant informed the probation officer that he had not consumed a drink since this incident. He expressed his remorse for the death of Mr Heasley. In light of the lengthy period since his previous convictions for violent offences the probation officer concluded that he presented a low likelihood of reoffending and did not consider him as presenting a significant risk of serious harm. The learned trial judge noted that the psychologist's report from Professor Davidson indicated that the appellant was on the borderline between a normal level of intelligence and the top end of having a learning disability.

Consideration

[10] There are two relevant cases in the determination of the appropriate sentence in this case. The first is R v Quinn [2006] NICA 27. That was a case in which the appellant had been drinking in the course of the evening. He bore a grudge towards the deceased as a result of a previous confrontation. At about 2 am as people were congregating having emerged from the public houses he spotted the deceased and approached him from the blind side. He struck a hard blow to the right side of the head as result of which the deceased sustained a subarachnoid haemorrhage resulting in the severing of his left vertebral artery from which he died. The appellant entered a plea to manslaughter and was sentenced to 4 years imprisonment.

[11] On appeal the court noted that it was now sadly common experience that serious assaults involving young men leading to grave injury and far too often death occur after offenders and victims had been drinking heavily. Where the death was the consequence of a single blow and was not foreseeable the starting point should be two years imprisonment rising to 6 years imprisonment where there were significant aggravating factors.

[12] The second relevant decision is R v Magee [2007] NICA 21. That was a manslaughter case in which a sentence comprising nine years imprisonment and three years on probation was imposed. The appellant had smoked cannabis and taken diazepam and turned up at the home of an ex-girlfriend in the early hours of the morning. He became involved in a confrontation with another young man on the premises as a result of which he stabbed him in the armpit.

[13] The court noted that manslaughter typically covered a very wide factual spectrum. Offences of wanton violence often involving the use of a weapon were becoming even more prevalent in recent years. These offences were typically committed when the perpetrator was under the influence of drink or drugs or both. The level of violence meted out went well beyond that which might have been prompted by any initial dispute. By way of general guideline the court concluded that in a case of manslaughter where the charge had been preferred or a plea had been accepted on the basis that it could not be proved that the offender intended to kill or cause really serious harm to the victim and where deliberate, substantial injury had been inflicted, the range of sentence after a not guilty plea should be between eight and 15 years imprisonment.

[14] The variety of circumstances giving rise to a conviction for manslaughter is demonstrated by the circumstances of this case. The appellant submits that this was a single punch case in which the guideline is found in Quinn. The learned trial judge did not accept that this was a one punch case and we agree that he was right so to conclude. The culpability of the offender in this case lies not just in delivering the push which caused the deceased to suffer the brain injury but also in the subsequent assault delivered upon him as he lay defenceless on the ground. There were substantial aggravating factors. The appellant had behaved aggressively within the confines of the Club. Although he may not have waited for the deceased he saw his opportunity when the deceased emerged from the Club. He did not launch a spontaneous attack at that stage where others might have intervened but followed him and waited until this 70-year-old vulnerable pensioner had entered a quiet street. That shows a measure of deliberation and planning which is significant. Having launched the attack he then left the deceased unconscious on the public street. Such violence on the public street inevitably undermines the confidence and security of those who live and work in the vicinity. Deterrent sentences are required.

[15] He is entitled to credit for his plea of guilty but his plea was entered at a late stage and this court has made clear in Quinn and other cases that the full measure of discount for a plea of guilty is reserved for those who take that course at the earliest opportunity. He has a criminal record for violence although he has no such convictions in the last 20 years. For that reason he is considered to represent a low risk of reoffending.

[16] In our view the broad circumstances of this case which include both the push to the ground, the subsequent assault as he lay unconscious and the aggravating

factors to which we refer in paragraph 14 above together with his criminal record would have entitled the learned trial judge to adopt a starting point of up to eight years imprisonment before considering discount for a plea of guilty. We do not consider, therefore, that the determinate custodial sentence of six years was manifestly excessive.

[17] For those reasons we dismissed the appeal after hearing the oral argument.