

IN THE CROWN COURT IN NORTHERN IRELAND

BELFAST CROWN COURT

THE QUEEN

-v-

JOHN CROLLY

MORGAN J

[1] The defendant initially pleaded not guilty to the sole count on the indictment that he murdered Daniel Whyte on 2 February 2007. A jury was sworn on 20 April 2009 and the accused then asked to be re-arraigned. When the count was put to him he entered a plea of not guilty to murder but guilty of manslaughter on the basis of diminished responsibility. That plea was accepted.

[2] The deceased was a 59 year-old man at the time of his death. In his younger years he had been active in athletics but was severely affected by the death of both of his parents in his mid-20s. He developed agoraphobia characterised by panic attacks when he tried to leave his house. There appears to have been associated depression. Over the last nine or 10 years his condition had also become complicated by reason of his use of alcohol. I am satisfied on the basis of the victim impact report that he remained a gentle and considerate brother and uncle who had a particular commitment to animal welfare. I also acknowledge the pain felt by his sister at having to identify her brother in difficult circumstances and without any opportunity to say goodbye. It is important to remember that an offence of this kind places immense stress and strain on the relatives of victims.

[3] On 2 February 2007 the deceased was staying at the flat of the defendant just off Dublin Road Belfast and had been there for the previous two nights. The deceased and the defendant were drinking heavily. An analysis of a blood sample obtained from the deceased showed a concentration of alcohol of 375 mg per 100 ml. They were friends. In the earlier part of the day the defendant had accompanied the deceased to

hospital for medication. During the early part of the evening they appear to have been watching television without evidence of animosity or difficulty. On several occasions the defendant spoke to neighbours seeking help with a DVD player and also looking for cigarettes. The last of those occasions prior to the death was at 8 p.m. At approximately 8:30 p.m. the defendant called one of his neighbours and asked him to dial 999 because he said that his friend had been glassed or bottled in the throat and needed ambulance assistance. Police and ambulance personnel arrived at the scene shortly thereafter and found that the deceased was already dead. He had a stab wound to his neck and there was evidence of a broken vodka bottle with substantial quantities of blood on it. At the scene the defendant said that the bottle just went into his neck twice. He was noted to have blood on his hands, clothes and shoe.

[4] The defendant was subsequently interviewed and made the case that the injuries were in some way self inflicted. He then maintained that he could not remember what had happened. At that stage he was charged. On 27 April 2007 he again asked to speak to police and indicated that he had killed the deceased accidentally. He said that there was a broken bottle which had a shard of glass on it. He described how he picked up the bottle and jabbed it towards the deceased. He said that the room had been in darkness and he had not judged the extent of the shard. He said that he had done this because the deceased had irritated him by going on about how he was going to kill himself.

[5] The defendant is an alcoholic with an established diagnosis of alcohol dependency syndrome. He entered the care system when he was 5 with his twin brother who died aged 16 from solvent abuse. He has convictions in 1991 and 1995 for possession of drugs with intent to supply and several convictions for possession of drugs. He has a history at least from 1997 of multiple drug abuse and a well-documented history of alcohol abuse with associated depression. He has demonstrated craving for alcohol, inability to resist alcohol, primacy of his drinking and tolerance. His alcohol dependency syndrome, which in his case is an abnormality of mind, appears to have been of prolonged duration leading to significant liver damage, cognitive impairment and poor living conditions. He was leading a chaotic lifestyle at the time of the offence. A neighbour described how his flat was covered with bags, bottles, papers, flies and junk mail and had a very strong smell. This evidence is relied upon by Dr Briscoe to sustain his opinion that the behavioural and psychological consequences for the defendant of his alcohol dependency are reasonably attributable to prolonged alcohol usage which constitutes the abnormality of mind. In 2003 his right arm became infected apparently as a result of an assault in consequence of which he had a right below elbow amputation. His immune system had been damaged by his contraction of hepatitis C.

[6] The evidence in this case is that the defendant at the time of the killing was unable to function without alcohol. When he woke in the morning the urge to drink was such that without drinking he could not move or get out of bed. Thereafter he would start to feel physically ill and the urge to drink to relieve it would be irresistible. This indicates that his dependency was serious and his ability to control his drinking or choose whether to drink or not was very significantly reduced. The plea in this case is entered on the basis that his consumption of alcohol as a result of his alcohol dependency syndrome is such that it substantially impaired his mental responsibility for the killing.

[7] I have referred to the defendant's criminal record. He has a substantial record for dishonesty principally involving offences of burglary as a result of which he has served sentences of imprisonment. His last conviction for dishonesty was in January 1999. I have already referred to his convictions for drug related offences and his last conviction for possessing a class B controlled drug was on 30 July 2004. He has more recent convictions for criminal damage and disorderly behaviour. He has a small number of convictions for assault on police the last of which was in November 2001. It seems likely that these have reflected his alcohol related lifestyle. He has a conviction for robbery in 1985 but of more concern is his conviction for wounding in May 2002 when he received a custody probation order of 30 months in prison and followed by 12 months probation. The circumstances of that offence were that the defendant stabbed another man with a kitchen knife. In his account of the incident in the probation report the defendant suggests that he was acting in self defence but it is clear from his conviction and sentence that his actions were considered significantly culpable. I recognise, however, that this was not a plea to wounding with intent.

[8] There is also material evidence within the papers from the caretaker of the accommodation in which the defendant was residing. He describes how the defendant knocked him up out of bed on several occasions asking for a fight. He described how the defendant has tried to attack some of the residents with knives and terrorised elderly people living in flats by kicking their doors and threatening them with violence. An incident was described when one resident had a confrontation with the defendant as a result of which the defendant subsequently appeared with a bread knife and threatened to cut the resident's throat. The caretaker was able to disarm him. The caretaker also says that the defendant would repeatedly cut himself with a knife. It appears as a result of his general behaviour that an eviction order had been obtained in respect of him. His medical notes and records referred to an incident in August 2006 where he was found at his residence brandishing broken bottles, threatening to harm himself and other people and was clearly intoxicated. He had an episode of self harm the previous night in which he slashed his legs again with broken bottles. There had been a previous

incident in June 2006 where he had inflicted numerous lacerations with a broken bottle on himself.

[9] The Pre Sentence Report notes the defendant's alcohol and drug history. He resided in probation approved accommodation in August 2002 after his release from prison and while he did offend during the period of supervision it provided him with some stability and structure in his life. He has no family support and if released from prison it is likely that it would be to probation approved accommodation. The report recognises that there is a high likelihood of re-offending as a result of his extensive record over 27 years, his alcohol dependency and his unstructured lifestyle. In light of the fact that he has two convictions for offences of violence within a period of six years he has been assessed as posing a risk of serious harm to others and in my view the evidence of those who have lived close to him and the medical records provide further support for that conclusion.

[10] The most severe sentence available to the court in a case of this kind is a discretionary life sentence. The circumstances in which such a sentence might be imposed were set out by the Court Of Appeal in *R v Hodgson* [1967] 52 Cr App R 113 and approved in this jurisdiction in *R v William Desmond Gallagher* [2004] NICA 11.

"[21] In *R v Hodgson* [1967] 52 Cr App R 113 the Court of Appeal, dealing with the circumstances in which a discretionary life sentence might be imposed said: -

'When the following conditions are satisfied, a sentence of life imprisonment is in our opinion justified: (1) where the offence or offences are in themselves grave enough to require a very long sentence; (2) where it appears from the nature of the offences or from the defendant's history that he is a person of unstable character likely to commit such offences in the future; and (3) where if the offences are committed the consequences to others may be specially injurious, as in the case of sexual offences or crimes of violence'."

In *Gallagher* the Court Of Appeal emphasised that such a sentence should be reserved for the most serious type of offence and those cases where it was likely that there would be further offending of a grave character.

[11] I accept that this offence was spontaneous and that there was no premeditation or planning. I further accept that it was not the intention of the defendant to kill the deceased. It remains the position, however, that he used a highly dangerous weapon, a broken bottle, and that this incident forms part of a pattern of similar incidents involving the use or threat of the use of knives or bottles either on himself or others. Although I accept that his mental responsibility for his conduct was substantially impaired by his alcohol consumption I consider that he must bear significant responsibility for his actions on this night. I am satisfied, therefore, that this is an offence in itself grave enough to require a very long sentence.

[12] It is abundantly clear from this man's previous history that his inability to control his alcohol intake has historically led to him living a chaotic and unstructured life. Although he has not consumed alcohol since his admission to custody on 2 February 2007 he is at grave risk of a resumption of consumption upon release from custody. In those circumstances there would be a high likelihood of a return to his previous chaotic and unstructured lifestyle resulting in a serious risk of serious harm to others. This is a case in which I consider that the conditions appropriate for a discretionary life sentence are satisfied and that is the sentence which I impose.

[13] By virtue of article 5(1) of the Life Sentences (Northern Ireland) Order 2001 I must now fix the period which is appropriate to satisfy the requirements of retribution and deterrence. I take into account your plea, albeit entered at a late stage, the fact that this was not premeditated or planned and the impairment of your mental state. I also accept that you were noted to be weeping at the scene and that there is evidence of genuine remorse. I consider that the release provisions should apply after you have served the appropriate tariff period which in this case is one of 6 1/2 years, to include the period served to date in custody.

[14] The effect of this sentence is that the decision as to whether you should be released after you serve the tariff period will be made by the Life Sentence Review Commissioners. In coming to that decision they will assess the risk you pose to the public. If they consider it appropriate they may begin the process of allowing you to take part in society but it is inevitable in light of your history that any such process will involve the imposition of strict conditions relating to your previous lifestyle. You have shown evidence of attempting to address your past during your time in custody and it is clearly in your interests to continue to do so.