

IN THE CROWN COURT IN NORTHERN IRELAND
(Bill Number 11/55868)

DUNGANNON CROWN COURT
(sitting at BELFAST)

THE QUEEN

-v-

STEPHEN McCREA

His Honour Judge McFarland
14th September 2012

- [1] The defendant was originally charged with the attempted murder of Tracey Monteith. A jury was sworn for his trial but on the 28th May 2012 he applied to be re-arraigned and he pleaded guilty to maliciously wounding her with intent to cause her grievous bodily harm and this plea was accepted by the Crown.
- [2] McCrea was born on the 5th April 1980. Despite the benefit of a good upbringing and stable family life, he commenced offending behaviour in his teenage years and was a heavy alcohol and substance abuser. He had accumulated 57 previous convictions by October 2010. The vast majority were dealt with in the Petty Sessions, although there was a drugs conviction in Antrim Crown Court for which he received a suspended prison sentence in May 2001. There was one conviction for assault occasioning actual bodily harm in 1995 and two assaults on police the same year.
- [3] On the evening of the 7th August 2010, by coincidence there were two unconnected house-warming parties taking place in the Omagh area. McCrea had attended the one at his brother's house. On his own evidence he

had consumed a substantial amount of alcohol and had smoked cannabis (he says to help him cope with a planned reduction over the past few weeks of his methadone use). The observation of a witness that McCrea had a strange look in his eyes at the time of the attack would tend to confirm McCrea's story. McCrea claims to have no memory of the events of the evening after he left his brother's party. It is highly likely that he walked the distance of about a mile back to his parents' home in Omagh, where he was staying. This would have brought him to the location of the other house-warming party.

- [4] That party had all the appearances of being conducted in good spirits. Alcohol was present, but there was no report of over-consumption by anyone, and the mood of the party goes was pleasant. As a result of her injuries, the hostess, Tracey Monteith, has been unable to remember much of the detail of the evening. From what can be pieced together from the evidence of others at one stage she had answered knocking at the front of the house, and it is highly probable that she spoke to McCrea who was attempting to join the party, and she had told him to leave. McCrea however returned a short time later, and Tracey Monteith went to the front door again. Nobody witnessed this incident but it is clear that she would have been reinforcing the earlier message for McCrea to leave as an uninvited person, and McCrea took offence to this. At this stage McCrea was armed with a kitchen knife which he had removed from his parents' kitchen. With a single blow to her temple, he thrust the knife into her skull. This penetrated the skull up to a depth of about several inches. The commotion brought several people to the door, and they were able to chase McCrea and apprehend him.
- [5] Tracey Monteith was taken to Altnagelvin Hospital and later transferred to the Royal Victoria Hospital in Belfast. After removal of the knife it was noted that the brain was swollen and she had a haemorrhagic temporal lobe. This required transfer to the Intensive Care Unit to monitor the intracranial pressure through deep sedation and muscle relaxation. She was weaned from the mechanical ventilation and eventually transferred to the neurological ward on the 16th August. Even now, two years after the incident, she continues to suffer both physically and mentally from the incident. She had difficulty opening her jaw, suffered headaches and numbness, and had increased tiredness and fatigue. She has shown a reasonable physical recovery, but permanent scarring from the injury and the surgery will be a constant reminder to her of this horrific incident. She continues to suffer from a cognitive deficit and this has resulted in increased agitation, irritability, frustration and anger.
- [6] There is very little that can be said in mitigation, save for his plea of guilty, which, given the original charge, was entered at the first opportunity and he will get full credit for it.

- [7] I have received a Pre-Sentence Report from the Probation Board of Northern Ireland, the relevant contents of which I will set out below, together with a report from Dr. Pollock.
- [8] Under the provisions of the Criminal Justice (NI) Order 2008 malicious wounding with intent is a “serious” offence. The provisions of Article 13 of the 2008 Order provide that a judge when dealing with an offender who has committed a serious offence should proceed by first considering whether the offender is dangerous that is, is there a significant risk to members of the public of serious harm occasioned by the commission of further offences of the type specified in the 2008 Order. I have followed the approach suggested by the Court of Appeal in the case of R -v- EB [2010] NICA 40 and the English case of R -v- Lang [2005] EWCA Crim 2864.
- [9] I consider that he does pose a significant risk of serious harm. He does not have a significant record of violent offending, however his actions on this day indicate a man who was unable to cope with the not unreasonable request to leave the party as a stranger and uninvited guest, then dealing with this rejection by arming himself with a knife either to undertake a revenge attack or to use it to force entry, and then returning to inflict a savage blow to a defenceless lady posing no risk to him. The mis-use of alcohol and substances that day may well have influenced his conduct, however he has failed to respond to the numerous engagements with statutory agencies in relation to this problem. An example was his failure to attend an out-patient appointment with the Community Addiction Treatment psychiatrist just a week before the incident. Dr. Pollock in a detailed report has sought to assess dangerousness by applying a formulaic approach using the HCR-20 scheme, and concluding that as a score of 24/40 is achieved this indicates a moderate risk of violent conduct in the future.
- [10] Ultimately the determination of his dangerousness will turn on his ability to abstain from alcohol and drugs. If he remains sober and abstinent, then I accept that he could only pose a moderate risk, but he presents as a person unable, or unwilling, to stop consuming alcohol and drugs. On this occasion without any provocation or excuse he armed himself with a knife and drove it into his victim’s skull. There is little evidence to show that he, despite his current motivation and enforced abstinence under the prison regime, will ever overcome his mis-use of alcohol and other substances. In my view there is a significant risk of serious harm and he is therefore dangerous.
- [11] Having determined that the defendant is dangerous, I must now consider if a life sentence is appropriate in the circumstances. Taking into account the authority of R -v- Gallagher [2004] NICA 11 I am of the view that this is not a case that would merit a sentence of life imprisonment. I am now obliged to

consider if an Extended Custodial Sentence would be adequate to protect the public. This is a sentence under which the defendant will serve at least one half of his sentence, be released at some time thereafter on the direction of the Parole Commissioners, and then serve a period in the community under licence. Such an order is ultimately a finite order. It is impossible at this stage to come to an accurate prediction as to how he may be able to cope with his abuse of alcohol and drugs in the future. Any conclusion would be mere speculation. In the circumstances I am of the view that an Extended Custodial Sentence would be inadequate to protect the public. McCrea will therefore receive an Indeterminate Custodial Sentence. I must now consider the minimum term. The minimum term is not the sentence of the court. That sentence is an Indeterminate Custodial Sentence. The minimum term is the minimum period McCrea will spend in prison before the Parole Commissioners consider releasing him back into the community should it be safe to do so.

[12] The aggravating factors in this case are -

- the defendant had armed himself with a knife
- it was an unprovoked pre-meditated attack on a victim who was unable to defend herself
- the victim has suffered severe physical and neurological injury with related psychological reaction and a reduction in her cognitive functioning.

[13] The mitigating factor in this case is -

- The defendant's plea of guilty which had been entered at the first opportunity given the change of view of the case by the Crown.

[14] There are various guideline cases in Northern Ireland for cases of this, or similar, type. All reflect the seriousness with which the courts take this type of wanton violence perpetrated by young people, usually males, using weapons. The cases of **R -v- McArdle [2008] NICA 29** and **DPP's References 2 and 3 of 2010 [2010] NICA 36** suggest a range of 7 to 15 years' imprisonment for inflicting serious injury or malicious wounding with intent. It is also worth noting that the fact that Ms. Monteith survived had little to do with the actions of the defendant. It was more down to good fortune and the speed and skill of the medical intervention. Had she died, McCrea would have been guilty of murder, and following the guideline in **R -v- McCandless [2004] NICA 269** would have been facing a starting point for the minimum term of 12 years, the equivalent of 24 years imprisonment.

- [15] This is a case of a very high culpability. Taking all relevant matters into account and in particular the aggravating factors I consider that this case, after a contest, would attract a determinate sentence in the region of 14 years, but taking into account the mitigating factors, and in particular the plea of guilty at the first opportunity, the appropriate sentence is one of 9 years. As I am fixing a minimum term, as opposed to a determinate sentence, this period will be reduced by a further 50%, resulting in a minimum term of 4 ½ years, less any spent time on remand.
- [16] The sentence is therefore an Indeterminate Custodial Sentence under Article 13 of the 2008 Order, with a minimum term of 4 ½ years.