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IN THE CROWN COURT IN NORTHERN IRELAND

BELFAST CROWN COURT

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THE QUEEN

v.

TERENCE GERARD McGEOUGH

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STEPHENS J

Introduction

[1] Terence Gerard McGeough, for the reasons set out in my written judgment of 18 February 2011 [2011] NICC 7 you have been found guilty of four offences:-

(a) On count 1 of the attempted murder of Samuel John Brush on 13 June 1981.

(b) On count 2 of possession of two firearms namely a Webley Mark VI revolver and a Colt revolver and ammunition on 13 June 1981 with intent contrary to Article 17 of the Firearms (Northern Ireland) Order 1981.

(c) On count 3 of membership of the Irish Republican Army between 1 January 1975 and 1 June 1978 a proscribed organisation contrary to Section 19(1) of the Northern Ireland (Emergency Provisions) Act 1973.

(d) On count 4 of membership of the Irish Republican Army between 31 May 1978 and 14 June 1981, a proscribed

organisation, contrary to Section 19(1) of the Northern Ireland (Emergency Provisions) Act 1978.

Factual Background

[2] I set out the factual background to all of these offences in my judgment of 18 February 2011. I will not rehearse the details which can be found in full in the appropriate parts of that judgment. In essence on 13 June 1981 you, along with another gunman, attempted to murder Samuel John Brush, a postman and part time member of the Ulster Defence Regiment on his postal delivery round at a remote country location approximately 4 ½ miles from Aughnacloy in the townland of Cravenny Irish. Your victim was isolated, outnumbered, taken by surprise, shot, wounded, disabled but had the courage and presence of mind to defend himself against your murderous onslaught and to escape. This was a terrorist attack and two firearms were in your possession as part of that attack. You were a member of the IRA between late 1975 and 14 June 1981. You agreed with that organisation's philosophy of murder and violence. You were under no pressure to join. You have recounted how you formed and led an IRA group, how you were a recruiter and trainer for the IRA providing political motivation for others to participate in your philosophy of murder and violence.

Sentencing Guidelines

[3] In *R v. McCann* [1996] NIJB 225 Hutton LCJ in delivering the judgment of the Court of Appeal stated:-

> "That the normal level of sentence for the attempted murder of a member of the security forces is in the region of 25 years imprisonment and in some cases a sentence in excess of 25 years may well be proper."

[4] In *R v Cunningham* (unreported 13 September 1995) MacDermott LJ in giving the judgment of the Court of Appeal referred to the observations of Lord Taylor in *R v Cruickshank and O'Donnell* [1995] 16 CAR(S) 728 at 731. In that case Lord Taylor said

> "The court's approach to terrorism is that it must be severely punished. The fact that any particular group may be in the ascendant at any time, or may at any particular time constitute a lesser threat to the community is not a matter that the court ought to take into account. Where offences of this kind are committed for political purposes, and with the object of putting a community in terror, then the punishments which must be imposed must reflect not

> only a need to deter those who were acting in the particular cause, but anyone who may be minded to act on behalf of any other cause. "

Accordingly the impact of the deterrent element of a sentence is not only on you, the particular offender but also on others who may have such offences in contemplation. Furthermore it is deterrence of terrorism rather than of a particular terrorist group.

[5] *R v Cunningham and another* [1989] NI 350 is authority for the proposition that sentences for terrorist crimes such as you have committed should give effect primarily to the principles of deterrence (of the accused and also of other potential offenders), retribution and prevention. In relation to prevention Hutton LCJ stated

> "The risk of an offender's determination to continue in terrorist crime must always be a relevant and proper consideration for a sentencing judge in this jurisdiction. Long sentences, are intended to protect the public from the repetition of the crime."

He also stated that

> "in assessing the appropriate sentence to be imposed for a dangerous crime of violence the court is fully entitled to take account of the determination of the accused to commit further offences if he became free in the future to do so, and of the need to protect the public against the commission of such further offences."

I consider that a distinction should be drawn between those who are determined to commit further offences and those who are not. In your case you have made it clear that you support the peace process. That you will not commit further offences or seek to persuade others to do so.

[6] Mr Barry McDonald QC SC, who appeared with Mr Vaughan on your behalf, submitted that rather than applying the guidance of the Court of Appeal in *R v. McCann* the correct approach to sentencing for attempted murder is to calculate the appropriate minimum term that would have been imposed had the victim been murdered ("the notional minimum term") and then make a reduction of 50% to reflect that the victim had survived. He relied on the decision of the Court of Appeal in England and Wales in *R v. Ford* [2005] EWCA 1358 as authority for this approach and for the proposition that the reduction to the notional minimum term should be 50%. In the alternative Mr McDonald submitted that this approach should be carried out as a check to

ensure that a sufficient distinction in sentence is being drawn between the lesser offence of attempted murder and murder.

[7] Mr Kerr QC, who appeared on behalf of the prosecution with Mr McDowell, whilst accepting that it is appropriate to carry out such a check submitted that the sentencing guideline which I should seek to apply, is contained in *R v. McCann*. Accordingly that an appropriate sentence to impose on you for the offence of attempted murder "is in the region of 25 years" albeit that "in some cases a sentence in excess of 25 years may well be proper."

[8] In essence three questions arise from those submissions:-

(a) Is Mr McDonald correct in inviting the court not to apply the guidance in *R v McCann* but rather to calculate the notional minimum term and then make a reduction of 50% to reflect that the victim had survived?

(b) If the correct approach is to apply the guidance in *R v McCann* then should the court carry out a check on the proposed determinate sentence for attempted murder by reference to the notional minimum term if the victim had died and the offence was one of murder?

(c) If it is appropriate to carry out such a check then should the check be based on a 50% reduction on the notional minimum term?

My decision in relation to all of these questions relates to the specific category of attempted murder with which I am dealing. That is a terrorist attempting to murder a member of the security forces for political motives.

[9] In relation to the first question I consider that I am bound by the sentencing guideline decision of the Court of Appeal in *R v McCann*. That is the guideline which I am required to and will apply in your case. I reject Mr McDonald's primary submission that the correct approach to sentencing for the offence of attempted murder which you committed is to calculate the notional minimum term and then make a reduction of 50% to reflect that the victim had survived. I consider that the correct approach is to sentence for the offence that you have committed in accordance with the guidelines set by the Court of Appeal.

[10] In addition to being bound by the sentencing guideline decision of the Court of Appeal I would observe that to adopt the approach suggested by Mr McDonald leads a sentencer to embark on an initial sentencing exercise in relation to an offence which has not been committed and then to make an adjustment at the end of that exercise. Accordingly the whole structure of the

sentencing exercise concentrates on the wrong offence. This is not only potentially distressing or offensive to the victim whose death is being contemplated but it distracts the sentencer from features such as deterrence and risk in relation to the offence that has been committed. For instance such is the scourge of terrorism that the element of deterrence in relation to an attempt to murder a member of the security forces *may* not be far removed from the element of deterrence where a death results. In addition risk of further offences and serious harm is not a factor in fixing a minimum term whereas it is a factor in a determinate sentence for attempted murder.

[11] In relation to the second question it is common case between the prosecution and the defence that there should be a check though the prosecution and the defence differed in relation to the degree of detail involved in such a comparative check. It is superficially attractive to accept that it is appropriate to carry out a detailed check. In *R v. Robson* (unreported) May 6, 1974 Megaw LJ observed that it would be "at least unusual that an attempt should be visited with punishment to the maximum extent that the law permits in respect of a completed offence". In *R v. Joseph* [2001] 2 Cr App R (S) the general principle was stated that an attempt normally carries a lesser sentence than the full offence. However I consider that it is obvious that the Court of Appeal in issuing guidance in *R v McCann* has borne in mind the relationship between the sentences for murder and attempted murder and that is unnecessary for this court to undertake a detailed comparison.

[12] In the event that I am incorrect in concluding that it is unnecessary to carry out a detailed comparison between the proposed determinate sentence for attempted murder with the notional minimum term if the victim had died and the offence was one of murder, then in carrying out such a comparison a number of differences between a minimum term for murder and a determinate sentence for attempted murder should be borne in mind. Those differences are:-

(a) The mandatory sentence for murder is life imprisonment whereas in your case a determinate prison sentence is appropriate for attempted murder.

(b) In relation to a life sentence for murder the court is required in accordance with Article 5 of the Life Sentence (Northern Ireland) Order 2001, to determine the length of the minimum term that the offender is required to serve in prison before he becomes eligible to be released on licence by the Parole Commission. A determinate sentence for attempted murder is not a minimum term. It is a finite sentence that will come to an end on a particular date without any reference to the Parole Commission.

(c) A minimum term for murder is fixed by reference to retribution and deterrence without reference by the court to risk. In relation to the offence of murder risk is to be assessed at the end of the minimum term by the Parole Commission in deciding whether to release the offender on licence. By contrast in fixing a determinate sentence for attempted murder risk is one feature to be taken into account by the court, as opposed to by the Parole Commission and this is to be taken into account at the stage of fixing the determinate sentence rather than at the end of that sentence.

(d) A minimum term for murder does not attract remission. A determinate prison sentence for attempted murder does. In order to achieve a proper comparison the minimum term would have to be adjusted to take account of the impact of remission, see *R v. Thompson (tariff recommendations)* [2001] 1 All ER 737 at 740 and paragraph 3 of the *Practice Statement* issued by Lord Wolff on 31 May 2002 and reported at [2002] 3 All ER 412. Accordingly any comparison of a minimum term for murder with a determinate prison sentence for attempted murder has to take into account that a minimum term is the equivalent of a determinate sentence of twice its length.

(e) If and when an offender who has committed murder is released on licence by the Parole Commission then for the remainder of his life he will be liable to be recalled to prison if at any time he does not comply with the terms of that licence. Again by contrast in relation to a determinate sentence for attempted murder there is no question of any licence conditions at the end of the sentence or of any recall.

[13] In stating that I do not consider that there is a need for a detailed comparison as between the sentence for attempted murder and murder I am not suggesting that there should be no comparison. In imposing any sentence the overall gradation of offences is borne in mind and therefore compared and this is particularly so, for instance in your case, when the offence for which sentence is being imposed is an attempt. I have undertaken such a comparison but I do not consider that it requires a whole secondary sentencing exercise demonstrating that the comparison has been undertaken.

[14] The third question does not arise in view of my ruling in relation to the first two. However in case I am wrong in relation to the first two questions I will give consideration as to whether the reduction as between the notional minimum term for murder and the determinate sentence for attempted murder should be 50%.

(a) Counsel has been unable to refer me to any practice in Northern Ireland or to provide me with any decided case in Northern Ireland that supports the proposition that there should be a discount of 50%. Whatever may be the practice in England and Wales there is no authority for such a practice in Northern Ireland.

(b) There is a spectrum of attempts to murder from a factual situation that is just more than mere preparation to a factual situation which involves a most determined assault which for instance, is frustrated by providence or alternatively courage and ability. An example of providence frustrating an attack being the sub machine gun jamming in *R v. Cunningham* (13 September 1995 unreported). An example of courage and ability frustrating an attack being this case. How close the attempt comes to taking the life of the victim should bear on the discount. A standard discount does not allow sufficient flexibility to reflect the varying factual scenarios.

(c) A standard discount does not allow sufficient flexibility for the element of deterrence. Depending on the circumstances of each individual case an automatic 50% discount on the deterrent element of a notional minimum term *may* be insufficient to protect the wider community. I consider that the impact of a death on the elements of retribution and deterrence *may* be in different proportions. Greater retribution is required for an actual killing as opposed to an attempt to kill. The need to deter murderous terrorist's assaults *may* not be as greatly affected by whether the victim was actually killed.

(d) A standard discount of 50% from a minimum term in respect of murder does not allow for any assessment of the risk of further offending in respect of attempted murder. Risk is a consideration in the imposition of a determinate sentence for attempted murder but is not to be taken into account in fixing the minimum term for murder. Accordingly if one applied a discount of 50% to the minimum term then there would have been no regard to risk of further offending.

[15] In answer to the third question I do not consider that a 50% discount should automatically apply as between the minimum term for murder and the determinate sentence for attempted murder.

[16] In relation to sentencing guidelines for the firearms offence on Count 2 I was referred by counsel to *Attorney General's Reference (No. 3 of 2004)* [2005] NIJB 196. In that case Kerr LCJ stated

> "**[21]** An offence under article 17 is, by definition, a serious offence. On that account, those convicted of such an offence must expect to and should receive substantial sentences and those sentences should contain a significant deterrent element. The deterrent component of the sentence should be enhanced when the crime has, as here, a paramilitary setting. So long as paramilitary violence continues in our society, therefore, those convicted of offences associated with that type of violence should receive more severe sentences, as a general rule, than those whose crimes are committed in a non-terrorist context. We consider, however, that the range of sentences for this type of offence, in order to reflect contemporary conditions, should normally be between 12 and 15 years."

That is the guideline which I seek to apply.

[17] The maximum sentence for the offence of membership of the IRA on Count 3 is 5 years and on count 4 is 10 years. In *R v Crossan* [1987] NI 355 Lord Lowry LCJ stated

> "Now, while most people would have qualified for a sentence of 5 years, when that was the maximum, the same could certainly not be said if the maximum term were life imprisonment, and should not in our opinion be said when the maximum is 10 years. This man, indeed, participated in two very serious and, as it was hoped and intended, deadly offences, but he has been sentenced in respect of those offences and he is not shown to be a longstanding or important member of the IRA or a person in authority. We consider, therefore, that, on principle, the sentence of this particular man for membership of this organisation ought to be 7 years, and we substitute that term for the sentence of 10 years"

That is the guideline which I seek to apply.

[18] *R v. Bird* [1987] 9 Cr App R (S) 77 is the authority for the proposition that in relation to an offence of robbery in which the victim was threatened with a

knife and £20 was stolen from him that a defendant who had changed his way of life from a criminal way of life to a law abiding way of life should be given credit in mitigation of sentence for that change. I consider that a change in the way of life can be compelling evidence of a number of mitigating features. It can for instance be compelling evidence of insight and remorse. Remorse will be a significant mitigating factor especially if it leads to early admissions during police interview and a plea of guilty. It can be compelling evidence that there is no risk of further offending by a particular offender and therefore that there is an absence of a need to deter that offender. Further it can be compelling evidence that there is no need to prevent the particular offender from re offending. The greater the degree of change in the way of life and the longer the duration of the change then as a general proposition the greater the potential impact of such evidence on this courts assessment of those factors. However I do not consider that such a change affects the need to deter others, as opposed to you, from committing terrorist offences of these types. There should be a clear message to others that no matter how long is the time that elapses and no matter what changes occur in a terrorist's way of life that condign punishment will be imposed for committing such offences once they have been brought to justice. There is a continuing and compelling need to deter all other potential terrorists.

Concurrent or Consecutive - Totality

[19] I will be imposing concurrent sentences. I bear in mind that the overriding concern must be that the total global sentence must be appropriate and that separate punishment for your offences must be by the imposition of concurrent sentences of sufficient length as to ensure that you do not escape punishment entirely by subsuming the sentence for one offence into the penalty imposed for the other. The total sentence that I will impose on you will be proportionate to the offending behaviour, properly balanced so that it reflects appropriate and just punishment.

Personal circumstances

[20] You were born on 2 September 1958 and are 52. You are married and have four children who are aged 10, 8, 6 and 2 years old. Other members of your extended family live close to you in Tyrone. Your family has lived in the locality since the 1600s and you are proud of your family legacy. You say, and I accept, that the family are well known in the area and over the years have been regarded as representatives and spokespersons by the community in relation to social and community interests and issues. You are a qualified teacher. You attained a First Class Honours degree in History reading at Trinity University from 1998 – 2002. You also completed a post graduate course. You were employed as a teacher and vice principal at a primary/secondary school in Dublin until 2006. Coinciding with this, you worked as a Journalist with a Catholic paper, "The Irish Family". You are also

the Editor of the "Hibernian Magazine". You are committed to the peace process having been a senior member of Sinn Fein. You were an active member of their ruling body throughout a crucial period of the peace process. You speak frequently about the need for a peaceful solution to the conflict in Northern Ireland. You are involved in cross community work. You devote time to conservation work. Not only have you changed your way of life but also the organisation on whose behalf you committed these offences is no longer involved in acts of violence.

[21] A change in your way of life from a criminal way of life to a law abiding way of life is also evidenced by the character references which I have received. I have borne all of them in mind. They include a reference from Michelle Gildernew, Member of Parliament for Fermanagh and South Tyrone, MLA, and Minister for Agriculture and Rural Development in the Northern Ireland Executive. Writing in March 2007 she stated her firm view that you represent no threat whatsoever to the ongoing peaceful situation. She added that she was aware that you contested the then recent Assembly elections on a clear platform of pursuing your objectives through purely peaceful and political means.

[22] You suffer from significant coronary artery disease. You had a heart attack in July 2009 following which you required two operations to insert stents. You had increasing anginal symptoms in September 2010 and you required re-stenting. You are presently awaiting further coronary investigations. If you have access to exercise and a reasonable diet then imprisonment should not directly affect your cardiac condition.

Risk of Harm to the Public and Likelihood of re offending

[23] The assessment of these risks is of particular importance in imposing sentence on you. In relation to the three elements of retribution, deterrence and prevention the risk that you pose plays particular significance in relation to those elements of the sentence which deter you (as opposed to deterring others) and prevents further offences by you. You have chosen not to assist the probation officer in his attempts to analyse the risks which you pose, however there is material on which I can form an assessment. I have already set out your attitude to the peace process and the work that you have undertaken. I repeat that you are wholly committed to the peace process in Northern Ireland and you undertake cross-community work focussing on integrating the culture of both traditions in the community. You are passionate in your commitment to community work where all cultures and traditions are promoted and embraced. You are devoutly religious. These attitudes together with your ill-health, age, family commitments, and your commitment to obtaining qualifications all support the proposition that you no longer pose a risk of harm to the public and that you will not commit further offences. Such is my

assessment. I consider that this is a significant factor in determining the sentences which I will impose on you in relation to all of the offences.

Victim Impact

[24] As I have indicated on 13 June 1981 Mr Brush demonstrated enormous personal reserves of courage together with an ability to defend himself when presented with the horror of your attack. An insight into his personality may also be discerned from one aspect of the events of that day. As he was making his way back to his post office van and during a time when it would have been perfectly understandable for him to have distrusted everyone, he saw Mrs McGarvey at the door of her house. She was entirely blameless but even in the heat of the moment and without any need for reflection Mr Brush made no accusations against her and placed no blame on her but rather was reliant on himself and relieved her of any obligation saying that he would get help. He is to be commended.

[25] The strong aspects of Mr Brush's character should not however lead one to underestimate the impact of your crime on him. Physically he was seriously injured. One bullet hit him in the chest causing a serious wound which took months to heal. Another bullet penetrated his right shoulder travelled through his right lung and exited at his back. It cut nerves to his right hand which is still partially paralysed. Two other bullets hit him – being stopped by his body armour – but causing bruising. He spent a week in an intensive care unit and a further month in hospital undergoing numerous operations. To adopt Mr Brush's words the injury to his "chest was a real mess".

[26] There were and are other major effects for Mr Brush of your attack. Those are effects on his intimate family members, on his emotional well being, on his work and on his security. He has had to endure years of suffering. These effects are more enduring than the immediate effects on his physical health and they are pervasive. There has been no end to them and he cannot see an end.

Your attitude towards the offences

[27] You have expressed no remorse for the offences that you committed. You perceive yourself to be a leader though there is an element in that leadership of narcissistic disdain for others including disdain for the "rather uninspiring lot" who you remember at one stage to have been your fellow recruits to the IRA. You elevated your political opinions and views over democracy, the rule of law, the existence and bodily integrity of Mr Brush. On a human level you cannot offer any support or consolation to Mr Brush. You have adopted this attitude despite having had many years to reflect.

Aggravating features in relation to the offence of attempted murder

[28] The following are aggravating features in relation to the offence

(a) The offence was a terrorist offence.

(b) The attempt to kill was politically motivated.

(c) The victim was providing a public service.

(d) The victim was vulnerable by virtue of being alone in an isolated and remote location.

(e) The offence was planned.

(f) The use of two firearms.

(g) Arming with firearms in advance of committing the offence.

(h) The effect on the victim.

(i) Your enduring commitment over a number of years to terrorism and the leading role which you played as a terrorist.

(j) You absconded after the offence see *R v. Bird* [1987] 9 Cr App R (S) 77.

Aggravating features in relation to the other offences

[29] The duration of your membership of the IRA.

[30] The leading role that you played in the IRA.

[31] In respect of count 4 that membership was accompanied by the other more serious offences in counts 1 and 2.

Mitigating features in relation to all of the offences

[32] There are no mitigating features in relation to any of the offences.

Aggravating features in relation to the offender in respect of all of the offences

[33] There are no aggravating features in relation to you, the offender, in respect of any of the offences.

Mitigating features in relation to the offender in respect of all the offences

[34] You are committed to the peace process and to democracy. You undertake work towards creating peaceful structures in our community. You have demonstrated this in that you have changed your way of life from a criminal way of life to a law abiding way of life. You have long since moved on with your life. You do not pose a risk of re offending or of serious harm to the public. I consider this to be a significant feature in mitigation effecting, as they do, my assessment of the absence of a need to deter you, as opposed to deterring others, and my assessment of the absence of a need to prevent you from committing further offences.

[35] I have taken into account your personal circumstances as significant mitigation in so far as they demonstrate the absence of a need to deter you, as opposed to others and in so far as they demonstrate the absence of a need to prevent you from committing further offences. However in addition it has been submitted on your behalf that your personal circumstances should be taken into account as general mitigation. In that respect I have set out your personal circumstances and take all of them into account but in doing so I bear in mind that in cases of this gravity your personal circumstances are of limited effect in the choice of sentence, see *Attorney General's Reference (No 7 of 2004) (Gary Edward Holmes)* 2004 NICA 42 and *Attorney General's Reference (No. 6 of 2004) (Conor Gerard Doyle)* [2004] NICA 33.

[36] One of your personal circumstances which it has been submitted should be taken into account as general mitigation is your youth, you were 22, at the time that you committed the offences of attempted murder and possession of the two firearms. Connor Gerard Doyle, who was the defendant in the *Attorney General's Reference No 6 of 2004,* was 21 at the time that he committed murder. At paragraph [37] of the judgment of the Court of Appeal in that case Kerr LCJ stated that Connor Gerard Doyle's youth is a matter

> "to be borne in mind but, . . ., the personal circumstances of an offender will not normally rank high in terms of mitigation particularly where the offence is"

as serious as in that case. That is the approach that I adopt in relation to your age when you committed those offences. I also bear in mind and place somewhat more emphasis on your youth when you joined the IRA.

[37] You are married with a very young family who rely on you for financial, practical and emotional support. You paid no regard to the family life of your victim. By way of contrast your own family life is a feature to be borne in mind in passing sentence but again cannot rank high in terms of mitigation in serious offences such as the offences which you committed.

[38] I give weight in mitigation to your medical condition and to those parts of the delay in bringing you to justice which are not attributable to you absconding.

Conclusion

[39] On count 1 for the offence of attempted murder I sentence you to 20 years in prison.

[40] On count 2 for offence of possession of two firearms and ammunition with intent contrary to Article 17 of the Firearms (Northern Ireland) Order 1981 I sentence you to 12 years in prison.

[41] On count 3 of membership of the IRA between 1 January 1975 and 1 June 1978 a proscribed organisation contrary to Section 19(1) of the Northern Ireland (Emergency Provisions) Act 1973 I sentence you to 4 years in prison.

[42] On count 4 of membership of the IRA between 31 May 1978 and 14 June 1981, a proscribed organisation, contrary to Section 19(1) of the Northern Ireland (Emergency Provisions) Act 1978 I sentence you to 7 years in prison.

[43] All the terms of imprisonment are concurrent.