

*Judgment: approved by the Court for handing down  
(subject to editorial corrections)\**

Delivered: 27/3/07

IN THE CROWN COURT OF NORTHERN IRELAND

THE QUEEN

-v-

SARAH DELANEY

GILLEN J

[1] On the 14 February 2007 Sarah Delaney you were convicted by a majority verdict of the murder of William James Shaw. The precise circumstances in which that murder took place are not, and may never be, known but it is clear that the deceased died at your hand as a result of over sixty blows to his head and face struck by you probably with a spanner or similar implement. Thereafter you set fire to the property where the attack occurred and the jury have convicted you of the offence of arson.

[2] On the first count I have already sentenced you to imprisonment for life and I now must consider an order under Article 5 of the Life Sentences (Northern Ireland) Order 2001 ("the 2001 Order") and fix the minimum term which you are to serve before the release provisions are to apply to you.

[3] I make it clear that when a defendant in a criminal trial such as you is sentenced to imprisonment for life, that does not in practice mean that you will be detained for the whole of the rest of your life. You will ordinarily be released after a period has elapsed which is regarded as appropriate to reflect the elements of retribution and deterrence, provided it is no longer necessary for the protection of the public to detain you. The 2001 Order now provides for the fixing by the trial court of the minimum term which a person sentenced to imprisonment for life must serve before he is considered by the Life Sentence Review Commissioners for release from prison. The material portions for present purposes are found at paragraphs (1) and (2) of the 2001 Order:

"5-(1) When a court passes a life sentence, the court shall, unless it makes an order under paragraph (3), order that the release provision shall apply to the

offender in relation to whom the sentence has been passed as soon as he has served the part of his sentence which is specified in the order.

(2) 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] When the minimum term has elapsed, the Secretary of State will refer your case to the Commissioners under Article 6 of the 2001 Order. By Article 6(4)(b) the Commissioners must be satisfied that it is no longer necessary for the protection of the public that you should be confined and if they are so satisfied they will then direct your release pursuant to Article 6(3)(b), whereupon it will be the duty of the Secretary of State to release you.

[5] Following the authority of the Court of Appeal in Northern Ireland in The Queen v McCandless and Others (2004) NICA 1 (9 January 2004), as commended and approved in Attorney General’s Reference Number 6 of 2004 (Conor Gerard Doyle) (2004) NICA 33(Doyle’s case), this court should take into account the practice statement issued by Lord Woolf CJ on 31 May 2002 reported at (2002) 3 AER 412 in which he dealt in more detail with the appropriate minimum terms for adult and indeed young offenders. It replaced the previous normal starting point of fourteen years by substituting a higher and a normal starting point of respectively sixteen and twelve years. These starting points then have to be varied upwards or downwards by taking account of aggravating or mitigating factors. Doyle’s case makes it clear that this is the correct approach to adopt notwithstanding the implementation of Sections 269 and 270 of the Criminal Justice Act 2003 and Schedule 21 to the Act. I have approached this case on the basis advocated by Carswell LCJ who said at paragraph 8:

“We think it important to emphasis that the process is not to be regarded as one of fixing each case into one or two rigidly defined categories, in respect of which the length of term is firmly fixed. Rather the sentencing framework is, as Weatherup J described it in paragraph 11 of his sentencing remarks in R v McKeown (2003) MACC5, a multi-tier system. Not only is the practice statement intended to be only guidance, but the starting points are, as the term indicates, points to which this sentencer may start on

his journey towards the goal of deciding upon a right appropriate sentence for the instance case.”

[6] I considered it helpful therefore I set out the practice statement in order to indicate the approach that I have adopted in respect of the accused in this case and I quote paragraphs 10-19:

*“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 unupportable 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."

### The Starting Point

[7] So far as the murder in this case is concerned, I consider that the starting point will be 15 years. Although the crime involved the killing of an adult victim arising from what I suspect to have been a quarrel between two people known to each other, paragraph 12(j) of the Practice Statement refers to "extensive and/or multiple injuries being inflicted on the victim before death" in the context of a case where the offender's culpability was exceptionally high. The deceased had been struck more than sixty times. Although I consider that this was in the nature of a frenzied attack by you when under the influence of alcohol and did not involve fracturing to the skull of the deceased, nonetheless it cannot be regarded as in the same category of an incident where a disagreement suddenly ignited leading to an exchange of blows which would be the locus classicus of a case within the normal starting point found at paragraph 10 of the Practice Statement (see Doyle's case at paragraph 29). In short the number of blows, some of which may have been struck when he was helpless to defend himself, render your culpability exceptionally high.

### Aggravating Factors

[8] I believe there is evidence, by virtue of your conviction on the second count, that you attempted to destroy the crime scene by setting the premises

on fire. However for the removal of doubt I state I am satisfied that this was the only aggravating factor. I do not believe that this crime was planned and in my view you did not arm yourself with a weapon in advance but acted on the spur of the moment to strike the deceased with what was instantly available.

### Family Impact Statement

[9] I have received and read the statement of the sister of the deceased. I have taken into account the consequences suffered by the family of this deceased not least the grief suffered by his young daughter and his elderly mother. I am profoundly conscious of the pain and anguish his passing has caused to all his family members, a trauma exacerbated no doubt by the length of time it took to bring you to justice because of your flight and the trial itself.

### Mitigating Factors

[10] 1. You have a very modest criminal record with no previous convictions for violence.

2. Despite the fact that you struck this man so many times, I remain unconvinced that you intended to kill him. Rather I believe you intended to cause him serious grievous bodily harm. The apparent spontaneity and lack of premeditation in this attack is another factor which I consider points in that direction. Whilst I do not consider your evident consumption of alcohol prior to these crimes is a mitigating factor, it probably did contribute to your loss of control and serves to fuel my belief that this was not a premeditated attack.

3. I have carefully read the probation officer's report, your medical records and the report of Dr Bownes, consultant forensic psychiatrist dated 7 December 2006. Whilst I recognise that personal circumstances of an offender will not normally rank high in terms of mitigation, particularly where the offence is as serious as murder, such is the inextricable connection of your history with this crime. I am satisfied that the following mitigatory factors emerge from this material.

(a) Your childhood development has been influenced by unsatisfactory parenting and I accept that you have engaged in self-destructive behaviour from early adolescence consistent with personality based deficits. In this context you have engaged in substance misuse and you have failed to sustain stable employment or satisfactory relationships to date.

(b) You have regularly sought medical advice regarding symptoms of anxiety and depression over the last ten years. Although you have repeatedly

failed to engage consistently with counselling that has been offered to you nonetheless I consider this to be part of your personality deficit.

(c) You have persistently involved yourself in alcohol and illicit drug abuse from your early teens causing you to be bereft of the normal guiding hand afforded by family and friends.

(d) I am satisfied that you have been a victim of incidents of domestic violence and have two experiences of serious assault during the two years immediately preceding this murder, the latter not at the hands of the deceased. I accept the view of Dr Bownes that your feelings of ineffectiveness, anger and stigmatisation ensuing from the experiences of serious assault to which I have just referred have been aggravated significantly by the absence of criminal prosecutions in either instance. I also recognise that your reaction to whatever occurred during the course of this quarrel may well have been exacerbated by your recollections of experiences as a victim of domestic violence and its cumulative injurious psychological effects which may have served to impair to some limited extent your capacity to exercise self-control and judgment at the time.

(e) I am satisfied that you had been the victim of domestic violence at the hands of the deceased. There was clear evidence before me from the police together with corroborative medical evidence that only 12 days before the tragic events of this murder, you had been subjected to a violent attack by him. Whilst the jury, properly in my view, dismissed your defences of self defence and provocation on the evidence before them, nonetheless I harbour the suspicion that the seeds of this killing may lie in your continuing proclivity to engage in volatile and violent relationships with men. Your relationship with the deceased may have been but one more chapter in this unfolding saga.

(f) Your life to date has lacked focus or direction embracing as it did a number of destructive and abusive relationships. I believe that you do present as a very vulnerable lonely friendless woman who has experienced a great deal of trauma over the past years prior to committing these offences. Excessive consumption of alcohol, abuse of a wide cocktail of drugs and living the life of a homeless vagrant have been your staple daily diet and has punctuated your feckless and unstructured existence for many years .

(g) I have read the reports of The Very Reverend Fr S McBrearty, senior Catholic Chaplain in the NI Prison Service and the assistant Chaplain Sister Oonagh Hanrahan in Hydebank. I am convinced that these experienced counsellors are not easily impressed and I am therefore prepared to adopt their conclusion that you have expressed genuine contrition and shown deep remorse for these crimes.

[11] Your counsel Mr McDonald has drawn my attention to a number of authorities in the Court of Appeal in Northern Ireland and elsewhere together with a report of the Lord Chief Justice, The Right Honourable Lord Phillips, dealing with the potential reform of murder/manslaughter. In particular he urged on me the fact that the ingredients of murder may come in many guises and in this instance may have amounted to a gross overreaction to events that merited some measure of physical response on your part albeit not to the level engaged by you. In looking at the authorities drawn to my attention by Mr McDonald (two of which were on the basis of a plea to manslaughter and another on a plea to murder), I bear in mind what Carswell LCJ said in McCandless and Others at paragraph 20:

“We might say at this stage that we will refer to a number of decisions on minimum terms given by trial judges, but, as in most other sentencing appeals, we find such comparisons of limited assistance and we not propose to set them out here. We consider that trial judges imposing life sentences in future and counsel advancing submissions to them would derive more assistance from the practice statement and this and future judgments of this court.”

### Conclusion

[12] Having regard to all the circumstances in this case outlined by me earlier in this judgment I have decided to depart from the higher starting point in the practice statement and I fix the minimum period for punishment and deterrence to be served by you as 12 years. That is the equivalent of a determinate sentence of 24 years. Had you more readily faced up to your true involvement in this killing and evinced some degree of culpability and remorse at an earlier stage thus sparing the relatives of the deceased of even part of the trauma of this trial the reduction might conceivably have been somewhat greater. I remind the family of the deceased that the accused has been sentenced to life imprisonment and it will be for the Life Sentence Review Commissioners to decide what period you will serve. Accordingly having sentenced you to life imprisonment, I fix a minimum term or tariff in your case at 12 years, to include periods of remand in custody in Northern Ireland.

[13] On count 2 namely arson contrary to Article 3(1) and (3) of the Criminal Damage (NI) Order 1977 I sentence you to 6 years imprisonment to run concurrently with the sentence on count one.