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*Judgment: approved by the Court for handing down (subject to editorial corrections)** | *Delivered:* **15/06/07**

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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THE QUEEN

v

STEPHEN MAGEE

_____

Before Kerr LCJ and Girvan LJ

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KERR LCJ

Introduction

[1] This is an application for leave to appeal against a sentence imposed by Deeny J at Newry Crown Court on 2 December 2005. The applicant, who was originally charged with murder, had pleaded guilty to a charge of the manslaughter on 15 July 2004 of Christopher James Finnegan, a youth of seventeen. He was sentenced to a custody probation order comprising 9 years' imprisonment and 3 years' probation.

[2] The judge indicated that if the applicant did not consent to the custody probation order he would have received a sentence of 10 years' imprisonment. As part of the custody probation order the applicant was also ordered to participate in the violence programme of the Probation Board for Northern Ireland and to undergo any drug or alcohol counselling treatment directed by the probation officer.

Factual background

[3] The applicant had lived with Natalie Donaldson at 1 Erinvale Terrace, Banbridge for some weeks. That relationship had come to an end some short time before 15 July 2004 and he left that address and moved in with his sister who lived next door at 2 Erinvale Terrace.

[4] At approximately 2.00am on 15 July 2004 the applicant went to Ms Donaldson's home. She had brought a group of young men back to her home

from a local public house. The applicant asked Ms Donaldson whether she was going out with any of the young men and she said that she was not but, on further questioning from him, she said that she had kissed one of them. The applicant grew angry at this and went into the house and demanded of the group of young men that they reveal who had kissed his 'girlfriend'. At a later stage, according to one of the young men, he said, "First person to kiss her is dead". A short time after this he entered the room where the young men were. As he entered the room the applicant was brandishing a broomstick and, for no discernible reason, he struck Christopher Finnegan with it. He then ran out of the room and was pursued by some of the young men but he held the back door closed and they were not able to get out. A number of them, including the deceased, left the house by the front door and it is obvious that they intended to pursue and, quite possibly, attack the applicant.

[5] The picture that emerges from the statements as to what occurred after these events is not entirely clear. One of the young men at the house, Jonathon Samuel Wallace, stated that the applicant ran into the house and Christopher Finnegan then returned to the house via the front door. Mr Wallace could see that Christopher had a knife in his hand with the blade pointing parallel to his forearm. He also observed that the applicant had a large knife in his hand. Shouts were exchanged between the applicant and Mr Finnegan and then the applicant moved forward and stabbed him. Another young man, Gary Murphy, gave a broadly similar account. Yet another of the youths, Peadar Mulligan, suggested that Christopher Finnegan had dropped the knife that he had been holding and said that he did not want to start any trouble and at that point the applicant leapt forward and stabbed him. The suggestion that Christopher Finnegan had dropped the knife and said that he did not want trouble is not supported by any other witness.

[6] The appellant gave a markedly different account from that of the youths and Ms Donaldson. He claimed that he had offered no provocation whatever to the young men but that they had evinced an intention to attack him and that, before he had lifted a knife, he saw that two of the youths were armed with knives and that one of these had lunged towards him repeatedly with the knife that he held. He claimed that he tried to remonstrate with the young men but that this was to no avail. He then saw a knife on the ground and picked it up and he tried to use this knife to flick the knife from the grasp of the youth who was lunging at him. At no time did the applicant admit stabbing the deceased. He appeared to imply that the flicking of the knife somehow resulted in the wound that led to Mr Finnegan's death. This implausible, not to say preposterous, suggestion does not appear to have been pursued on his behalf on trial and the learned trial judge unequivocally found that the applicant deliberately struck the deceased with the knife.

[7] The plea to manslaughter was on the basis that he did not intend to kill or cause really serious harm and it is right to record that the deceased was stabbed in the region of the armpit and that merely moderate force would have been required to cause the fatal wound. We are in no doubt, however, that the applicant deliberately stabbed the deceased with a substantial knife, capable of inflicting (as it did) a deep wound. The track length of the wound suggested that a knife of some twenty three centimetres was used.

[8] Mr Barry Macdonald QC, who appeared for the applicant, informed the court that it had been accepted by the Crown that he had acted in self defence but had gone beyond the use of reasonable force. For the prosecution Mr Terence Mooney QC put the matter rather differently. He said that it was considered that the possibility of the jury accepting that there had been an element of provocation and self defence could not be excluded.

[9] A *Newton* hearing (*R v Newton* (1983) 77 Cr App R 13) was not held in this case. Such inconsistencies as may exist between the accounts given by the applicant and the other witnesses have not been formally addressed by the calling of witnesses. We consider, however, that the evidence available from the committal statements unmistakably favours the conclusion that the applicant was the instigator of the confrontation that arose between him and the deceased. Thereafter, while there was a certain amount of "squaring up" to the applicant by Christopher Finnegan, we are satisfied that the applicant's stabbing of the deceased was a wholly disproportionate response to this. Moreover, such actions of the deceased as immediately preceded his being stabbed were in reaction to the wholly unwarranted attack on him.

Previous convictions

[10] The applicant has an extensive criminal record dating back to 1995. In addition to seventy-two convictions for road traffic offences he has a conviction for hijacking, one for common assault, twelve for theft, eleven for burglary, thirteen for criminal damage, five convictions for serious assault and six convictions of assault on police. He was the subject of Training School Orders in 1995 and 1996 and was also detained in the Young Offenders Centre for 16 months in 1997 on charges of attempting to cause grievous bodily harm with intent. In 1999 he was sentenced to a further term in the Young Offenders Centre for taking and driving away and other motoring offences and again in 2000 was sentenced to detention in the Young Offenders Centre for 6 months for burglary, taking and driving away, theft and various related matters. He had further spells in the Young Offenders Centre in 2001.

[11] On 5 October 2001 the applicant was convicted at Craigavon Crown Court of causing grievous bodily harm with intent and sentenced to 12 months' detention and probation for 2 years. In August 2002 he was sentenced to further periods of imprisonment on various charges of assault

and police obstruction, criminal damage, theft and driving offences. Further periods of imprisonment were imposed in October 2002, and in October, November and December 2003. On 8 January 2004 he was sentenced to imprisonment for four months on a charge of assault occasioning actual bodily harm and aggravated assault. Later in the same month he received a further sentence of 6 months' imprisonment for burglary and theft of a dwelling and on 26 April 2004 he was sentenced to 3 months' imprisonment for burglary with intent to steal from a dwelling. He had been released from prison just a few weeks before the present offence was committed.

Pre-sentence report

[12] The applicant is the third youngest of six children. He was brought up largely by his mother since his father had left the family when he was very young. His three older brothers were taken into care and the applicant also spent time in a children's home. His mother died in February 2001. The applicant left school at 16 with no qualifications and has had no employment experience. This is principally due to the fact that from 1996 until 2004 he spent periods of detention or custody in training school, the young offenders centre or prison each year. He has abused cannabis and other drugs such as ecstasy since he was 12 or 13 years old and was smoking up to 20 joints of cannabis per day prior to this offence. He has made two attempts of suicide in the past although neither attempt seems to have been a serious one. He has had no long term relationships although he fathered a child who is now aged seven years and who has been adopted. The applicant was judged by the probation officer to have shown limited awareness of the impact of his behaviour on others or of just how violent a person he was.

[13] In relation to this offence the applicant gave the probation officer an account that he had been smoking cannabis and had taken diazepam earlier in the evening. He claimed to regret what had happened and stated that he had not set out to hurt anyone and had picked up the knife as a response to the victim brandishing a knife.

[14] The applicant was assessed as being at a high risk of causing harm in the future and of reoffending because he had committed a number of serious assaults in the past. The probation officer concluded that his upbringing had lacked structure and stability. He had had no positive role model in his life. As a teenager he misused alcohol and drugs and associated with other regular offenders. As a consequence, he had a totally aimless and unstructured lifestyle punctuated by frequent periods of incarceration.

[15] The applicant admitted his addiction to cannabis and his aggressive and violent temper, claiming that he recognised that these problems "would need to be resolved". The probation officer recommended that a custody probation order would be appropriate as it would be crucial that the applicant

be given help with his difficulties after serving his sentence. He advised that the applicant would be suitable to participate in the Probation Board's violence programme and that he should undergo drug counselling.

The report of Dr Ian Bownes

[16] Dr Bownes, a consultant psychiatrist, examined the applicant on 5 June 2005. He also had some background information supplied by the applicant's solicitors. The applicant told Dr Bownes that he had used cannabis and prescription drugs such as benzodiazepam since the age of 16 and often in conjunction with alcohol. At the time of the offence he had consumed a litre bottle of cider, six valium tablets and a fair amount of cannabis over a three hour period but had "been in a pretty all right mood". When he had gone to see his former girlfriend Natalie, he was annoyed by the presence of the other men in her house. He was hoping to try and get back with Natalie but felt that the other men were butting in and threatening. He said that he had felt scared for his own safety because the other men had knives and he was worried he would be stabbed. He stated: -

> "I started feeling really panicky, I then produced a knife and started waving it to scare them off – this fellow that got stabbed kept coming towards me – we both clashed and my knife went into him – when that happened I ran – I never meant to hurt him – I only wanted him to back off and for me get out of there as quickly as possible . . . I am very sorry it got to the point it did …"

For the reasons that we have given earlier, we are satisfied that this was an untruthful account.

[17] Dr Bownes did not detect any confused or delusional thinking on the part of the applicant and felt that he understood and accepted that his behaviour had been wrong. There was no evidence that the applicant was suffering from any mental impairment or mental health problem. He expressed feelings of regret and remorse which Dr Bownes was disposed to accept as genuine. This opinion must be viewed against the assessment of the probation officer, however. This was to the effect that the applicant had "limited awareness of the impact of his behaviour". It should also be remembered that the applicant has maintained what we consider was a lying account of the incident, minimising his own culpability. This does not rest easily with the claim that he is genuinely contrite. In our judgment the claim that he is genuinely remorseful is not supported by objective evidence.

Victim impact reports

[18] Christopher Finnegan was just 17 years old when he died. His parents were divorced and he had lived with his mother and sister Ciara. One other child of the family, a boy, John, had died at birth. The victim had attended Bridge Integrated Primary School and then Newbridge Integrated College in Loughbrickland. He had just obtained employment in the customer service department of Smith's Garage in Newry before he died.

[19] Statements were provided by Arlene Finnegan and Cearon Finnegan, the parents of the deceased. His mother said that Christopher had been "a very trusting boy and a wonderful son and brother". He had never been in trouble with the police nor had he ever appeared in court for any offence. In her written submission she stated: -

> "My pain without my son Christopher is unbearable and my life [is] not worth living, the only thing that keeps me on this earth is my daughter Ciara. That person did not only kill my son Christopher but he took my life as well."

[20] His father said: -

> "I feel my own life has ended since this evil deed took place. All members of the family circle are grieving deeply and have all aged before their time. As for my daughter Ciara . . . her life has been destroyed too, like us all she is a changed person mentally".

He also stated that his son was a pleasant and gregarious young man who was popular with everyone and well thought of in the community and had never given his family any trouble. If he had lived he would have had a positive and influential impact on society.

The appeal

[21] Mr Macdonald submitted that the sentence imposed was manifestly excessive, being plainly out of line with a number of sentences in similar cases in this jurisdiction and in England and Wales. While acknowledging the necessarily limited value to be derived from comparisons with other cases, Mr Macdonald nevertheless drew our attention to a number of sentencing decisions which, he claimed, demonstrated that the sentence chosen by the judge in the present case was substantially greater than in those instances.

Sentencing in manslaughter cases

[22] It is not surprising that there are relatively few decisions in this jurisdiction which could properly be described as guideline cases for sentencing for manslaughter. Offences of manslaughter typically cover a very wide factual spectrum. It is not easy in these circumstances to prescribe a sentencing range that will be meaningful. Certain common characteristics of many offences of violence committed by young men on other young men are readily detectable, however, and, for reasons that we will discuss, these call for a consistent sentencing approach.

[23] It is the experience of this court that offences of wanton violence among young males (while by no means a new problem in our society) are becoming even more prevalent in recent years. Unfortunately, the use of a weapon – often a knife, sometimes a bottle or baseball bat – is all too frequently a feature of these cases. Shocking instances of gratuitous violence by kicking defenceless victims while they are on the ground are also common in the criminal courts. These offences are typically committed when the perpetrator is under the influence of drink or drugs or both. The level of violence meted out goes well beyond that which might have been prompted by the initial dispute. Those who inflict the violence display a chilling indifference to the severity of the injury that their victims will suffer. Typically, great regret is expressed when the offender has to confront the consequences of his behaviour but, as this court observed in *R v Ryan Quinn* [2006] NICA 27 "it is frequently difficult to distinguish authentic regret for one's actions from unhappiness and distress for one's plight as a result of those actions".

[24] The courts must react to these circumstances by the imposition of sentences that sufficiently mark society's utter rejection of such offences and send a clear signal to those who might engage in this type of violence that the consequence of conviction of these crimes will be condign punishment. We put it thus in *Ryan Quinn*: -

> "… it is now, sadly, common experience that serious assaults involving young men leading to grave injury and, far too often, death occur after offenders and victims have been drinking heavily. The courts must respond to this experience by the imposition of penalties not only for the purpose of deterrence but also to mark our society's abhorrence and rejection of the phenomenon. Those sentences must also reflect the devastation wrought by the death of a young man …"

[25] The case of *Ryan Quinn* involved the manslaughter of a young man by the delivery of a single blow by a closed fist. This court concluded that the starting point in Northern Ireland for that type of offence was two years' imprisonment and that this should rise, where there were significant aggravating factors, to six years. That was a very different case from the present. In that case there could be no doubt that the applicant did not intend serious injury to his victim although the court was of the view that he should have been aware that this might occur. In the present case the applicant deliberately stabbed his victim with a long knife. He must have known that this would inflict a significant injury. The attack took place because the deceased man took objection to the earlier entirely unprovoked attack on him by the applicant.

[26] We consider that the time has now arrived where, in the case of manslaughter where the charge has been preferred or a plea has been accepted on the basis that it cannot be proved that the offender intended to kill or cause really serious harm to the victim and where deliberate, substantial injury has been inflicted, the range of sentence after a not guilty plea should be between eight and fifteen years' imprisonment. This is, perforce, the most general of guidelines. Because of the potentially limitless variety of factual situations where manslaughter is committed, it is necessary to recognise that some deviation from this range may be required. Indeed, in some cases an indeterminate sentence will be appropriate. Notwithstanding the difficulty in arriving at a precise range for sentencing in this area, we have concluded that some guidance is now required for sentencers and, particularly because of the prevalence of this type of offence, a more substantial range of penalty than was perhaps hitherto applied is now required.

[27] Aggravating and mitigating features will be instrumental in fixing the chosen sentence within or – in exceptional cases – beyond this range. Aggravating factors may include (i) the use of a weapon; (ii) that the attack was unprovoked; (iii) that the offender evinced an indifference to the seriousness of the likely injury; (iv) that there is a substantial criminal record for offences of violence; and (v) more than one blow or stabbing has occurred.

Conclusion

[28] All except one of the aggravating factors that we have identified are present in this case. Apart from the plea of guilty, we find little in the way of mitigating features in relation to the offence or the applicant's personal circumstances. We consider, therefore, that the sentence passed was entirely consonant with what we consider should be the proper disposal in an offence of this seriousness and we dismiss the application for leave to appeal.