

IN THE CROWN COURT IN NORTHERN IRELAND

THE QUEEN

v

THOMAS CAWLEY

STEPHENS J

Introduction

[1] Thomas Anthony Steven Cawley on the morning of your trial you pleaded guilty to the following offences:-

- (a) On 17 September 2007 wounding Kevin Curran with intent to cause him grievous bodily harm contrary to Section 18 of the Offences Against the Persons Act 1861.
- (b) On 20 September 2007 assaulting a police constable, Gerard Keenan, in the execution of his duty.
- (c) On 20 September 2007 assaulting a police constable, Darren James Hamilton, in the execution of his duty.

Factual background in relation to the Section 18 offence

[2] On Monday 17 September 2007 in flat 1 at 66 Fitzroy Avenue, Belfast, you stabbed Kevin Curran, then 19, now 21(dob 5 October 1987) twice with a knife. The second stab caused the blade of the knife to become disconnected from the handle. The blade remained lodged in Kevin Curran's body. You and your victim had been drinking in flat 1 which was your victim's flat from about 4.30 pm on that Monday afternoon. Two others joined you. An altercation subsequently occurred at about 7.15 pm when there was a disagreement between you and your victim as to whether more people should come to the flat. Your victim did not want any more people coming to his flat as he had to

get up in the morning. The incident developed when others did arrive and you and your victim started to punch each other and to fight in the hallway of the house just outside the flat. This went on for a number of minutes. Both you and your victim then went back into the flat and sat down at which stage your victim says that you made various verbal comments to him and you started to fight again. Your victim hit you with a vodka bottle on the head causing a cut. Following this you said, "Did you smash a bottle over my head?". At this point with your right hand you grabbed a knife. You came at your victim with a knife and you stabbed him to the left hand side. Your victim describes two quick stabs. After the last time he was stabbed he remembers you holding the knife, which at this stage had no blade, and he shouted to you, "What did you do, you stabbed me, you stabbed me?".

[3] After your victim was stabbed he made his way towards a flat upstairs in the house shouting for them to phone an ambulance. He then went back downstairs and out of the house into Fitzroy Avenue. He again shouted for an ambulance to be phoned. He staggered up Fitzroy Avenue and into Sandhurst Road. Your victim then made his way to University Street where he knocked on the window of a friend's house. At this stage your victim felt that he was getting weaker and weaker. He was rushed to the Royal Victoria Hospital where he was treated for his injuries.

[4] On arrival at hospital your victim was pale but able to talk. He had low blood pressure and his breathing was reduced on the left hand side of his chest. He had a wound over the left posterior chest wall. A needle was inserted into the left side to relieve a possible collapsed lung. The chest x-ray showed that he had a foreign body inside his chest and it was thought that that was a knife blade. He had a chest drain inserted to relieve any collapsed lung. He also had a 2 centimetre wound over the left triceps area. A CT scan demonstrated that your victim had a very small pneumothorax. He required surgery to remove the knife blade from the inside of his lung. The lung was repaired and re-inflated. Your victim was fortunate that he did not suffer any more serious lung injury. The potential for damage was obvious with injuries of this nature.

Factual background in relation to the assaults on police constables

[5] After the incident on 17 September 2007 you went to an address at 5 Cussick Street, Belfast. On 20 September 2007 the police attended at that address in order to arrest you. When they arrived you were in the roof space and there was a lot of banging and someone shouting abuse. The police obtained a ladder and they observed that you were in the roof space waving a metal bar. As Constable Hamilton stepped on to the ladder you were witnessed trying to push the ladder backwards off an exposed joist. You swung the metal bar towards Constable Hamilton's head. You were shouted at on a number of occasions by the police and warned that they would use CS

spray. You continued to swipe the metal bar at Constable Hamilton who then used CS spray as he climbed into the roof space.

[6] Constable Keenan heard you shouting that you would hit and stab the first person that came up to the roof space. While police were standing below you dislodged the attic hatch door and dropped it down on to Constable Keenan causing it to smash on to his head. It shattered around him and covered him in debris. You continued to shout abuse and indicated that you would stab any one if they came near you. You kicked through the plasterboard and then swiped with some metal piping through the holes in the roof continually threatening the police with violence. You again received a warning from Constable Hamilton that force would be used if you did not desist from trying to strike him. At this you swiped and poked the piping in the direction of Constable Hamilton's head as he stood at the bottom run of the ladder. Constable Hamilton then aimed CS spray at your upper chest and face. This enabled Constable Hamilton to enter the roof space and to effect your arrest though you continued to struggle violently with the police as you were brought out. You were put in the police vehicle and at this stage you began to spit inside the vehicle.

Response to the police at interview

[7] You were interviewed by the police but made no comment. A written statement was provided by your solicitor. In that statement you recount how your victim had struck you with a vodka bottle on the forehead. You then stated that you feared for your life because your victim was in a rage and was going to continue to attack you. You accept that you punched him with both your left and right hand to his body but you contended that you were unaware that you had a knife in your hand and you also contended that you had no intention of seriously harming anyone or trying to kill him. You said that you didn't realise you had stabbed your victim as he immediately took off and left the flat.

Sentencing guidelines in respect of Section 18 of the Offences Against the Persons Act 1861

[8] In fixing the sentence to impose in relation to the offence under Section 18 of the Offences Against the Persons Act 1861 I have sought to follow the guideline contained in the decision of the Court of Appeal in the case of *R v Daniel McArdle* [2008] NICA 29. In that case the Lord Chief Justice having referred to the case of *R v Stephen Magee* and the guideline for manslaughter appropriate in that case after a not guilty plea of 8 - 15 years then stated at paragraph [28] in relation to an offence under section 18 that -

“In cases such as the present where there can be no question that the grievous bodily harm was inflicted

deliberately and that the appellant intended that his victim should sustain grievous injury, we do not believe that the range of sentences should be significantly different simply because, fortuitously, a fatal injury was not sustained. This is particularly so because, we are satisfied, if Ms Doherty had not intervened, the appellant would have stabbed Mr Sumner again, quite possibly with fatal consequences. We have concluded, therefore, that for offences of wounding with intent to cause grievous bodily harm the sentencing range should be between *seven and fifteen years' imprisonment, following conviction after trial*. An appropriate reduction on this range should be made where the offender has pleaded guilty but in the present case that cannot be significant. The appellant maintained his innocence virtually until trial, despite overwhelming evidence against him. Any reduction on this account must be modest." (emphasis added)

If between seven and fifteen years imprisonment is the range following conviction after trial then between approximately four and a half and thirteen and a half is the range for a plea. I say approximately for a number of reasons including of course that all the mitigating and aggravating factors have to be taken into account in each individual case.

Sentencing principles in relation to the assaults on police officers

[9] Police in investigating crime require protection from assault by offenders. As you have assaulted two police officers who arrived at a separate address some three days later to arrest you I consider that I should impose two concurrent sentences in relation to the assaults on the police officers but that they should be consecutive to the sentences that I impose in relation to the section 18 offence. The assaults on the police constables were separated sufficiently by time and circumstances to justify this approach. Thus there should be an appropriate extra punitive element over and above the element in respect of the section 18 offence. I have borne in mind the decision of the Court of Appeal in *Attorney General's Reference (No 1 of 1991) (Gallagher)* [1991] NI 218. I have also borne in mind the observations in *R v Samuel Robinson* [1999] 2024, [2001] 8 BNIL 85. The maximum sentence on conviction on indictment under section 66(2)(b) of the Police (Northern Ireland) Act 1998 is to imprisonment for a term not exceeding 2 years or to a fine, or to both. I bear in mind the totality principle when considering the overall effect of the sentences that I impose.

Injuries sustained by the victim and victim impact

[10] I have set out the injuries which were sustained by the victim. One of the stab wounds was superficial. Your victim has made a good recovery. He has permanent scarring. Your victim did not desire to make a victim impact report.

Personal circumstances

[11] I take into account your background. You were born on 24 March 1986 and are 22 years of age. You spent most of your childhood and adolescence in care settings both institutional and foster placements. You attended St Joseph's secondary school but did not gain any qualifications and left at the end of 4th year. You subsequently enrolled at Springvale Training Centre to train for electrical engineering but left after a few months and then enrolled in training as a warehouse operative but lost this placement. For a brief period in 2005 you worked in a call centre but you had no record of consistent employment. You have experienced significant difficulties in obtaining stable accommodation having lived in a variety of temporary supportive hostels. You have increasingly misused alcohol and abused drugs. You have lived an unstructured life. Your usage of alcohol has been problematic since the age of 16. I have also read and taken into account the statement from your sister Kathleen Cawley which sets out the considerable difficulties that you have faced in your life.

Attitude to the offence and risk of further offending

[12] You informed Alan Darnbrook, probation officer, that you deeply regretted and were remorseful for your conduct. You have expressed a wish that your victim makes a full recovery. You presented as someone being shocked by his own level of violence when under the influence of alcohol and other substances. Alan Darnbrook however considered that until you address the issue of alcohol misuse the capacity to commit acts of violence will remain and you are currently assessed as posing a serious risk of harm to the public. In addition that the likelihood of reoffending has been assessed as high.

Procedural requirements for a custodial sentence

[13] As I have indicated a pre sentence report has been obtained from Alan Darnbrook and I have considered it in accordance with the provisions of Article 21 of the Criminal Justice (Northern Ireland) Order 1996. In determining your sentence I have born in mind the provisions of Article 19(2)(a) and Article 19(4) of the Criminal Justice (Northern Ireland) 1996. I consider that the offences which you have committed are so serious in their content that only a custodial sentence is justified and that, given that your offence was a violent offence. I also consider that only such a sentence will be adequate to protect the public from serious harm from you. I am of that

opinion for the reasons set out in this judgment. I emphasise that you have committed a serious offence. You are both a danger and a risk to others.

Aggravating features in relation to the section 18 offence

[14] You used a knife which carries a high risk of serious injury though I accept that there is no evidence that you went to collect the knife or that you deliberately brought the knife to the flat to use it. Your use of a knife was not planned or premeditated but rather was spontaneous. It is a serious aggravating feature though the extent of the aggravation is limited by the matters which I have just set out.

[15] There was more than one stab wound but as one of the wounds was entirely superficial I do not consider this to be a feature of any significance.

[16] You had consumed drink and used drugs. I consider that your consumption of alcohol and the use of drugs made it more likely that you would attack your victim and would not limit your attack. I consider that you fall into the category of an aggressive, and generally younger, binge drinker who indulges in excessive consumption thereby fuelling his or her aggression rather than into the category of a long-term alcoholic whose condition impairs his ability to react to and defend himself against an attack, see *R v Mark John Rush* [2008] NICA 43. I accept however in this case that your victim had also consumed large quantities of alcohol thereby fuelling his aggression and that I should not treat this feature as one of any significance.

Mitigating factors in relation to the section 18 offence

[17] You had been struck on the head with considerable force with a bottle by your victim. This was a vicious attack on you by a person who had consumed large quantities of alcohol.

[18] The prosecution have accepted that your victim was also willing to participate in a fight and has a criminal record including convictions for violent offences.

Aggravating features in relation to the assaults on the police constables

[19] You armed yourself with a weapon.

[20] As the sentences in relation to the assaults are to be concurrent I take into account as an aggravating feature that you assaulted two constables so that the sentence for one offence is of sufficient length as to ensure that you do not escape punishment entirely for the second offence, see *Attorney-General's Reference (No. 1 of 1991)* [1991] NI 218.

Mitigating features in relation to the assaults on the police constables

[21] No injuries were sustained.

Aggravating features in relation to the offender

[22] You have a somewhat extensive criminal record which contains relevant convictions for assault on police, criminal assault, serious assault and having an offensive weapon. Your most recent convictions for violence occurred on 19 March 2008 and 13 May 2008. On 19 March 2008 you were convicted of assault occasioning actual bodily harm, common assault and possessing an offensive weapon in a public place. You were sentenced to a total of 5 months imprisonment. On 30 May 2008 you were convicted of aggravated assault on a female or boy under 14 years and common assault and you were sent to prison for a total period of 2 months.

Mitigating factors in relation to the offender

[23] I take into account your personal circumstances however in doing so I emphasise that this does not weigh heavily in reduction of penalty.

[24] I accept that you have remorse for your actions.

[25] I take into account the mitigating factor that you have pleaded guilty. I make it clear that the sentence I am now imposing is less than I would have imposed had you not pleaded guilty at the stage which you did. In assessing the degree of discount to be given to you for your plea of guilty in relation to the section 18 offence I take into account that by pleading guilty at an earlier stage to that offence you would have been depriving yourself of any potential to raise a defence of self defence. However it was not until the morning of trial that you enquired as to whether the prosecution would accept a plea to section 18. I also take into account that your plea of guilty was made in circumstances where there was a basis upon which you could have put forward a defence of self defence though you now recognise that you over reacted and the degree of force that you used was wholly disproportionate. You are not entitled to a full discount for your plea of guilty in relation to that offence though substantially more than would be ordinarily the case for a plea entered at the start of a trial. I afford you the usual degree of discount in respect of your pleas of guilty in relation to the assaults on the police constable that I would afford to a person pleading guilty on the morning of his trial.

Custody probation

[26] As you must receive a substantial period of imprisonment in excess of 12 months I am required by Article 24(1) of the Criminal Justice (Northern Ireland) Order 1996 to consider whether I should impose a custody probation order. In considering that issue I have sought to apply the principles set out by

the Court of Appeal. That is that a custody probation order should only be made where it is considered that an offender would benefit from probation at the conclusion of a period of custody and that it is deemed necessary to enable him to reintegrate into society because of the risk that he would otherwise pose. I have decided to impose a custody probation order. I have reached that decision by virtue of the fact that you will require assistance in view of your problems in relation to alcohol and drugs and the risk that those problems pose to the public.

Conclusion

[27] If you consent to a custody probation order then I will sentence you as follows:-

- (a) For the offence of wounding Kevin Curran with intent to cause him grievous bodily harm contrary to Section 18 of the Offences Against the Persons Act 1981 5 years imprisonment followed by 24 months probation.
- (b) For the offence of assaulting a police constable, Gerard Keenan, in the execution of his duties, 3 months imprisonment consecutive to the sentence in respect of the section 18 offence.
- (c) For the offence of assaulting Darren James Hamilton, a police constable, in the execution of his duty, 3 months imprisonment concurrent to the sentence in (b) above but consecutive to the sentence in respect of the section 18 offence.

The overall effect of those 3 sentences is that you will be imprisoned for 5 years and 3 months followed by 24 months probation.

[28] I make it clear that in respect of the probation element of the Custody Probation order it will be a requirement that -

- (a) You will reside in the petty sessions district set out in the order of this court throughout the whole period of probation.
- (b) You will reside at such accommodation as is specified by your probation officer and at no other address. If there are any rules that apply in relation to that accommodation then you will comply with those rules.

(c) You will develop an involvement in such constructive and purposeful activity as is directed by your supervising probation officer.

(d) You examine the consequences of your behaviour both on yourself and in particular on victims as directed by your supervising probation officer and you will attend such course or courses for counselling as directed by your supervising probation officer.

(e) You will keep all appointments with the probation officer as are notified to you.

(f) You will present yourself in accordance with instructions given by your supervising probation officer to participate for eight sessions on the RATSDAM programme and while there comply with the instructions given by, or under the authority of, the person in charge. You must also attend any further drug treatment as directed by your supervising probation officer.

[29] I am obliged by statute to explain to you that if you fail to comply with any of the requirements of the probation element of the Custody Probation order then the court has power to deal with any such failure by for instance revoking the probation element and imposing a further period of imprisonment or fining you and requiring your future compliance with the probation order or imposing a further community service order upon you and requiring your compliance with that order. I am also obliged by statute to explain to you that the court has power to review the probation element of the Custody Probation order on your application or on the application of your supervising probation officer.

[30] I make it clear that the 24 months probation period does not equate to the reduction in the period that you will spend in custody for the section 18 offence. I consider that you require 24 months probation in view of your abuse of alcohol.

[31] If you do not consent to a custody probation order then I will sentence you to 6 years imprisonment in relation to the section 18 offence and the sentences for the other offences would be the same. Thus the overall effect of all 3 sentences would be that you would be sent to prison for 6 years and 3 months.

[32] I must now enquire from you as to whether you consent to a Custody Probation Order. Do you consent to a Custody Probation Order being made?

[33] I understand that you consent. Accordingly I sentence you as I have indicated.