

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

Delivered: **3.06.2009**

IN THE CROWN COURT IN NORTHERN IRELAND

—————
THE QUEEN

-v-

**TRACEY ANNE McHUGH
and
DAVID MARK HILDITCH**

—————
BILL NO. 08/020821

WEIR J

[1] Tracey McHugh and David Hilditch, on 4 December 2008 you pleaded guilty to counts relating to a brutal attack committed against Fergus Craney at about 6.00 am on 2 July 2007. You, McHugh, pleaded guilty to withholding information about the attack and the identity of the assailant and you, Hilditch, to an added count of assault occasioning grievous bodily harm with intent, contrary to Section 18 of the Offences against Person Act 1861. That count was added to the indictment in addition to the count of attempted murder laid against both you. Your pleas of not guilty to that count were accepted by the prosecution.

[2] The background to the offences to which you have pleaded guilty is that Mr Craney was formerly the partner of you, McHugh, and with him you have had two children. That relationship had come to an end and you had subsequently begun living with Hilditch. As the result of a disagreement between the two of you, you Hilditch moved your belongings out of McHugh's house at Carrickfergus and went back to living at Ballycarry.

[3] On Sunday 1 July 2007 both of you seem to have spent a good part of the day drinking separately around Carrickfergus. There were minor incidents between the two of you and one between you Hilditch and Mr Craney but ultimately you Hilditch went home to Ballycarry and in circumstances that are not altogether clear you McHugh ended up at your home in bed with Mr Craney.

[4] For some reason you Hilditch then returned to Carrickfergus during the night and let yourself into McHugh's house where you found McHugh and Mr Craney in bed together. You seized a lump hammer that was in the bedroom and subjected Mr Craney to a violent assault with it as he lay in bed, striking him several blows to the head. You then dragged him from the house and left him in the street. Neither you nor McHugh did anything to summon medical help. Fortunately he was seen by a man who was leaving his home for work and help was summoned.

[5] It is clear from the Victim Impact Report by Dr Caldwell of the Regional Acquired Brain Injury Unit that Mr Craney's brain injuries are severe and permanent. He is 34 years of age and will be left with grave disabilities including no functional use of his left arm, marked visual impairment of the right eye, post traumatic epilepsy, cognitive impairment and low mood. He lives with his parents and needs help with his personal care. His mobility is very restricted and he is unlikely ever to be able to take up employment nor is he allowed to drive. In short Hilditch, because of your violent loss of control on seeing Mr Craney in bed with McHugh and the fact that the lump hammer was to hand, Mr Craney's enjoyment of life has been gravely and permanently compromised. Apart from his physical handicaps he suffers from ongoing cognitive, emotional and behavioural difficulties as described in the Clinical Psychological Report of Dr Colin Davis. As a result of physical and other handicaps he will always be seriously disabled and need help and support in everyday living. His life has been substantially ruined.

[6] I deal firstly with you Hilditch as yours was by far the most serious part in this matter. You are now just 26 years old and were 24 when you committed this crime. You have a good working record as a welder and prior to your arrest were working off-shore on oil rigs. Your employer speaks well of your work and behaviour whilst there.

[7] However it is clear from the reports available to me and indeed from your own admissions to the various consultants who have examined you on your behalf that you have a long history of behavioural problems and explosive temper. Dr Harbinson, Consultant Psychiatrist, felt that you have a minimal degree of brain damage although that does not appear to have been confirmed by any subsequent investigations and your solicitors have informed the court that subsequent EEG and MRI scans did not reveal abnormality in the brain. The signs of ADHD are present and all the experts agree that you require intervention in the self-management of your aggressive behaviour. To compound matters you also have a problem with the misuse of alcohol and drugs and when under the disinhibiting influence of alcohol you become even more impulsive. Dr Harbinson considers that you need treatment for your alcohol abuse and there are also indications that you misuse illegal drugs.

[8] You have a criminal record which, while not extensive, bears out the general picture of a tendency to violent aggression although, by comparison with the gravity of the present offence, your previous offences are relatively minor.

[9] The probation officer expresses the view that you need to undertake alcohol and drug counselling and to address your anger control problem while in custody and recommends work with the Prison Psychology Service. I hope that this work will be made available to you and that you avail of it both for your own sake and also, importantly, for those with whom you will come in contact when you are released from prison.

[10] In the course of his temperate submissions on behalf of the prosecution, Mr Magill drew my attention to a number of sentencing precedents for offences of this nature and, in particular, to R v Daniel McArdle [2008] NICA 29, a decision of the Court of Appeal in which, at para [28], the Lord Chief Justice expressed the view of the Court that for offences of wounding with intent to cause grievous bodily harm the sentencing range should be between 7 and 15 years imprisonment following conviction after a trial and that an appropriate reduction on this range should be made where the offender has pleaded guilty. That guidance was re-affirmed by the Court of Appeal in the subsequent appeal of R v Alan Stewart [2009] NICA 4 and I am obliged to and do follow it. Mr Gallagher QC for your defence did not submit otherwise.

[11] I have concluded that the facts of this case place it near the top of the range identified by the court. You did plead guilty to the present charge as soon as the prosecution decided that it would be appropriate to substitute it for the charge of attempted murder that preceded it and I have been informed from the Bar that you expressed through your Counsel a willingness to so plead prior to that present charge being added to the indictment. Mr Magill fairly indicated that in those circumstances I ought to treat this as a case in which your plea was tendered at the first opportunity and I therefore do so. I do not regard your criminal record as an aggravating factor but neither can I give you the credit that a clear or minimal record would have attracted.

[12] Taking everything into account I have concluded that the appropriate sentence in your case is one of 12 years imprisonment.

[13] I now turn to consider whether the imposition of a custody/probation order would be appropriate in your case. In doing so I bear in mind that the Court of Appeal has made clear that the court should look for some material which indicates that there will be a need to protect the public from harm from the offender or to prevent the commission by him of further offences. In this case such material is clearly present. Unless you take whatever help is made

available to you both in prison and on release there is a serious risk of your committing further violent offences and thereby causing harm to others. The probation officer has suggested that a custody/probation order might be considered and expresses the opinion that you are a suitable candidate for such a sentence, subject to additional specific conditions that he sets out in his report.

[14] I have therefore decided to offer you the opportunity, if you wish to take it, of having a custody/probation order made in your case. I want to make it clear to you that it is not an easy option. If you agree to accept such an order you will have to follow any directions that the probation officer may give you and attend any meetings, courses or appointments that may be arranged for you. The Order would contain two additional conditions, namely:

“(1) That he shall engage in alcohol and drugs counselling as directed by his supervising probation officer.

(2) That he shall engage in counselling in respect of anger management if so directed by his supervising probation officer.”

If you fail to comply with any of the directions of your probation officer or to fulfil any of the conditions of the probation order you will be in breach of the order and liable to be punished accordingly.

[15] If you do not wish to accept a custody/probation order I shall impose the sentence of 12 years imprisonment upon you. If you do wish to accept a custody/probation order, having heard all that I have said about the consequences of doing so, the sentence will be one of 10 years imprisonment followed upon your release from prison by 2 years probation.

[16] Mr Hilditch, do you wish me to make a custody/probation order in your case? Very well, as you do so wish I sentence you to 10 ten years imprisonment followed by 2 years probation supervision to commence upon you release from prison.

[17] McHugh, I turn now to deal with you. You have as I have said pleaded guilty to withholding information about this crime from the police contrary to Section 5(1) of the Criminal Law Act (NI) 1967. The prosecution has indicated that there is no suggestion that you were not as surprised as Mr Craney when this attack took place. However your behaviour after it happened was quite inexcusable and you should be thoroughly ashamed of it. You did nothing to get help for Mr Craney, you initially misled the police about the circumstances of the crime and concealed the identity of Mr

Hilditch from them. Fortunately, due to determined, excellent police work, Mr Hilditch's involvement was soon suspected and then established but you could and should have done much more in the aftermath of this attack to help instead of hindering the investigation. I really do not understand why you did not. Had Mr Hilditch not been found by the neighbour he might well have bled to death on the street where he had been dumped.

[18] You are now 30 years of age and were 28 when this crime was committed. You have no previous criminal convictions. It is clear from the probation report that you have had a difficult upbringing with no father at home, limited education and becoming pregnant with your first child at the age of 17. You had your second and third children with Mr Craney but your relationship with him seems to have ended in about 2002 after which, in about 2004, you began the relationship with Hilditch. You appear, however, to have maintained some form of friendship with Mr Craney in relation to the children and, on the night of this attack, you had ended up in bed together after you at least had spent much of the previous day drinking.

[19] I have a letter from the Principal of the primary school that your two younger children attend indicating that they are doing well and are always neatly turned out for school and well behaved. The probation officer said that if I were to send you immediately to prison it would have consequences for you in the care of your children and I accept that that is so.

[20] You have told the probation officer that you regret your failure to act after this attack and have acknowledged to him that Mr Craney's life has, in your words "been destroyed". The prosecution and defence have both informed me that when you saw Mr Craney for the first time after the attack, at your court appearance on 4 December 2008, you displayed evident distress at his condition and would have wished to speak to him to express your regret and sympathy but that your bail conditions prohibited you from doing so. I am satisfied that you do feel a genuine and deep remorse for Mr Craney's plight and that is to your credit. I hope that, once these proceedings are at an end, some arrangement can be made for you to meet him and explain directly how sorry you feel.

[21] You have rightly recognised in your discussions with the probation officer that your offence is serious enough to warrant an immediate prison sentence. However I do not propose to send you to prison immediately because that would involve punishing your children, including those of Mr Craney, as well as you and I am satisfied that the children benefit greatly from your care. I therefore propose to sentence you to 2 years imprisonment but to suspend the operation of that sentence for a period of 3 years. That means that if you keep out of trouble for 3 years you will hear no more about this matter. If, on the other hand, you do commit another criminal offence within those 3 years then, in addition to being dealt with for that further

offence, you will be liable to have the suspended sentence that I am now imposing put into operation and be sent to prison. Do you understand that?

[22] Very well, Hilditch may be taken down. If there is no reason to the contrary, McHugh may be released.