Neutral Citation no. [2006] NICC 24

Ref: **DEEF5469**

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

Delivered: **20/01/06**

THE QUEEN

-v-

ALAN JOSEPH BROWN

AND

CHRISTOPHER FRANCIS MARTIN McKINNEY

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DEENY J

[1] Alan Joseph Brown and Christopher McKinney are arraigned on two counts on an indictment charging that on 17 day of April 2004 they attempted to murder Lee Ryan Paul Benis, or in the alternative that they unlawfully and maliciously wounded him with intent to do him grievous bodily harm contrary to Section 18 of the Offences Against the Person Act 1861.

[2] On 23 November 2005 their counsel asked for them to be re-arraigned on the second count and they pleaded guilty to the Section 18 offence. The Crown accepted that plea and did not proceed with the charge of attempted murder which was left on the books not to be proceeded with without the leave of the court or the Court of Appeal. Mr Richard Weir QC who appeared for the prosecution with Mr David McAughey stressed two things about those pleas of guilty. Firstly they should be treated by the court as made at the earliest opportunity, he having only then got instructions not to proceed with the attempted murder. Secondly the plea was of great assistance to the Crown in the light of the apprehensions of the Crown witnesses and of the fact that they had been consuming alcohol and/or drugs at the time of the offences which may have impaired their reliability as witnesses. I take these comments into account in due course.

[3] The offences arose from the presence of the two accused with Lee Benis at a party in the early hours of 17 April 2004 at the flat of a Mr Alan Leckey at 80 Slieveshan Park, Kilkeel. It was the Crown case that both drink and illegal drugs were being consumed at this party. The defendants formed the view that the injured party had offered or given cocaine to one or both of their girlfriends who were also present at the party. He certainly admits having

cocaine at that time. Initially they remonstrated verbally with the injured party in robust terms about this. They then left the party and went to Burns flat downstairs where they consumed more alcohol and in the case of McKinney some diazepam to which he was apparently to an extent habituated. They then returned to the party upstairs. McKinney had a hunting knife of some description which was not subsequently found and Brown had a kitchen bread knife. I am satisfied on the evidence of the Crown witnesses that they then attacked the injured party in an entirely unprovoked fashion. His own use of cocaine and any alleged offer of it to the teenage girls did not remotely justify this deliberate attack upon him. They appeared to have caused some 15 lacerations to his face and body. At least one wound must have been of the nature of a puncture wound as it penetrated his lung causing a pneumothorax. The crime scene investigator found bloodstaining evident in the flat on floors, walls, doors and the sofa. Benis struggled into a bedroom. The two accused then left without pursuing him into the other room. Brown was found nearby and arrested later the same day but McKinney was not. He came voluntarily to a police station in July of 2004.

[4] This is a serious offence. Fortunately Benis has made a full physical recovery save for some scarring. The use of knifes is alarmingly common in our society. The fact that you were intoxicated to a greater or lesser extent does not excuse it. Indeed almost everyone one has the painful duty to sentence has committed their offences under the influence of drink, usually combined with one drug or another. It is manifestly clear that a custodial sentence is called for.

[5] In your case Christopher McKinney your culpability must be seen in the light of a substantial criminal record. Crown counsel acknowledged that this is mostly for offences of dishonesty but there are a number of offences of violence as well. When I enquired about the detail of those little assistance was forthcoming. However it would appear that the most relevant and significant offences of wounding were all committed on a single night, 2 June 2001 when you were only seventeen. I was informed by Mr Eugene Grant QC that you were in the company of an older person at that time. You were sentenced to four years imprisonment with two years custody probation at Downpatrick Crown Court on 28 September 2004 for those offences and are still serving that sentence. I take into account that if this case had been brought to trial sooner you would already be serving the sentence I must now impose.

[6] However there are a number of factors which it is proper for the court to take into account which must significantly affect the proper sentence for you. Firstly and most importantly is your plea of guilty. That is always of significance in a number of respects. It underwrites your counsel's expression of remorse to the court and to the victim for what you did. It means that the injured party and the witnesses avoid the stress of a contested trial. It avoids

wasting the time of the court. And in this case it is acknowledged to be by the Crown of considerable assistance given the confused nature of the scene when these offences were committed. It is clearly my duty to make a significant reduction in the light of that fact.

[7] I note further that you have been serving a sentence since September 2004 and you have not therefore already served any time on remand towards this sentence.

[8] I have had the benefit of a pre-sentence report in relation to you from the Probation Board for Northern Ireland. As is very frequently seen it discloses difficulties in your childhood. You were offending when you were only fourteen years of age and this is linked both by the probation officer and your father with the breakdown of your parents marriage at that time.

[9] Furthermore he has written to the court and disclosed that your elder brother was diagnosed with leukaemia when you were five years old. During the next two years when your brother was terminally ill you were moved from house to house and in your father's view treated badly. That period and the subsequent grief that your parents understandably felt lead him to conclude that you were not given the care and attention that a child at that vulnerable age would normally have received. I take that into account.

[10] I also take into account that while in Her Majesty's Prison you have engaged in a number of courses relating to drug awareness and alcohol awareness, in relation to car crime and a basic City and Guild qualification in painting and decorating. I was informed from the Bar that you were engaged in four further courses. Your counsel therefore had support for his claim that you have an insight into your own difficulties and a re-seeking to reform. I note your youth at the time of this incident.

[11] Nevertheless given the gravity of the original offence and your equal role in it and given your criminal record it is inescapable that you must receive a significant custodial sentence. I believe it would be in the public interest that when released that you remain under statutory supervision. Do you consent to a custody probation order being made? As you do I propose to impose a sentence of 4 years 9 months imprisonment with 18 months probation at the conclusion of the custodial element. This is to run concurrently with your present sentence. If you had not consented I would have sentenced you to 5½ years imprisonment. I also direct that you shall present yourself in accordance with instructions given by the probation officer to participate for eight sessions on the drug treatment programme at NICAS 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 probation officer. You may sit down.

[12] Alan Brown you come before the court as a man of 23, slightly older than Christopher McKinney. The Crown did not draw any distinction between you as to the gravity of the offences, although on your own admission and the observation of one witness you were less intoxicated than McKinney. I take into account your letter to me in which you accept responsibility for the puncture wound.

[13] It is certainly the case that although you do have a criminal record it does not include any previous offences for violence and I take that into account. I have listened to the submissions of your counsel Mr Terence McDonald QC with whom O'Kane appeared. He says, in answer to questions from the court about the most serious offences on your record, that the arson in 1999 was when you set fire to an empty warehouse and the arson in 2000 when you set fire to a cell in Hydebank Young Offenders Centre. I note that you were given custodial sentences for both those offences and for subsequent motoring and burglary offences. However there is no previous offence of violence on your part. I also had the benefit of a pre-sentencing report relating to you. You were a middle member of a family of ten from Londonderry. However you have always had strained family relations. Nor did you wish the probation officer to visit with your family and you withheld your consent to that. Your school career was not a successful one. Earlier psychiatric reports indicate that you are an immature young man with a history of heavy alcohol and drug misuse but with no definite evidence of any mental disorder. You have displayed little remorse or sympathy for the injured party in this case and are considered to pose a risk of re-offending. I take into account relevant authorities on sentencing which counsel drew to my attention.

[14] I bear in mind that you were only 20 at the time of this offence. It seems to me inevitable, nevertheless, that you, like McKinney, receive a custodial sentence. I believe it would be in the public interest that you had a period of statutory supervision of an extensive kind when at liberty. Do you consent to a custody probation order? As you do, bearing in mind all the circumstances and in particular your plea of guilty and your lesser record I have concluded that the proper sentence is one of 4 years and six months imprisonment with eighteen months probation thereafter. I note that you have served a substantial period on remand while awaiting these offences. If you had not consented to custody probation I would have sentenced you to 5 years imprisonment.