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

Ref: COL10629

Delivered: 18/04/2018

IN THE CROWN COURT OF NORTHERN IRELAND

ANTRIM CROWN COURT SITTING AT LAGANSIDE COURTS, BELFAST

THE QUEEN

-v-

RICHARD HUGH JACKIE DALZELL

SENTENCING REMARKS

COLTON J

[1] The defendant is charged with the following counts on the indictment:

- (i) The murder of Mark Anthony Lamont on 11 October 2016.
- (ii) Intimidating a witness contrary to section 39(1) of the Criminal Justice and Police Act 2001.

[2] He pleaded not guilty to both counts at arraignment on 24 November 2017.

[3] The trial was listed for 8 March 2018. Before the commencement of the trial the defendant applied to be re-arraigned and pleaded guilty to the first count of murder. The second count was left "on the books" on the basis that the facts giving rise to that count were subsumed within the main charge of murder.

[4] Having pleaded guilty, the court accordingly imposed upon the defendant the only sentence permitted by law for that offence, one of life imprisonment. It is now the responsibility of the court in accordance with Article 5 of the Life Sentences (Northern Ireland) Order 2001 to determine the length of the minimum term that the defendant will be required to serve in prison before he will first become eligible to have his case referred to the Parole Commissioners for consideration by them as to whether, and if so, when he is to be released on licence. I make it clear however that

if and when he is released on licence he will, for the remainder of his life, be liable to be recalled to prison if at any time he does not comply with the terms of that licence.

Factual background

[5] The defendant, who is from Newtownards, was born on 18 December 1980. He was aged almost 36 at the time of this offence.

[6] The victim of the murder, Mark Lamont, was born on 11 August 1962 and was aged 54 at the time of his death. He lived in Coleraine.

[7] The murder charge arises from an incident which took place in the early hours of 26 September 2016 at Ballycastle Road, Coleraine. On Sunday 25 September 2016 the defendant had been in the company of Deborah Ramsey at the Forge Bar, Coleraine from about 12 noon onwards. They left the bar at about 11.30 pm.

[8] Whilst they were in the bar both the defendant and Ms Ramsey were involved in verbal exchanges with three men who were also present in the bar, one of whom was the deceased. The other two men were Lee Campbell and Lee McConnell. Ms Ramsey had previously been in a relationship with Lee McConnell.

[9] It is unclear what the exact nature of the exchanges was but it is clear that both the defendant and Ms Ramsey were very drunk when they left the bar at approximately 11.30 pm.

[10] CCTV evidence shows them returning to Ms Ramsey's home. They appear to be arguing with one another at times and at one point the defendant kicks out at a shop shutter in the town.

[11] Not long after the defendant and Ms Ramsey returned to her house the three men entered the house through the unlocked front door. They found the defendant and Deborah Ramsey engaged in sexual intercourse in the kitchen. The men appear to have left the bar at 00.16 hours and made their way to Ms Ramsey's home. When they entered the home they were wearing hooded tops with the hoods and collars pulled up to obscure their faces.

[12] Ms Ramsey recognised Campbell and McConnell as being two of the three men. There was a relatively minor physical and verbal altercation between the defendant and the males who were ushered out of the house.

[13] When they left the house it appears that the deceased broke a flower pot belonging to another resident of Ballycastle Road. The men parted company and the deceased returned alone to Ms Ramsey's house in Ballycastle Road.

[14] On his return the defendant emerged from Ms Ramsey's home and engaged in a physical altercation with the deceased.

[15] In her statement Ms Ramsey says that she saw the defendant punching the deceased while he was on the footpath and causing him to fall to the ground. She went over and got between them shouting for the defendant to stop. She indicates that the defendant kicked the deceased with his right foot. She says that the defendant was shouting and then left in his black Audi car, shouting to her that it was her fault.

[16] The depositions contain statements from Sean Hunter and his partner Terri Peden who live a short distance away on Ballycastle Road. Mr Hunter describes a well-built male, the defendant, repeatedly stamping on the head of a male on the ground. He did so while holding on to a concrete pillar. He also saw a female nearby shouting at the defendant.

[17] Terri Peden also observed the scene from her home. She saw the defendant "jumping" on the deceased's head. She says he was "putting a lot of effort into what he was doing" while the deceased lay on the ground. She went outside and phoned for an ambulance. At that point the defendant came down to her and said that "she had not seen anything" and to "put her phone away". He also said to her that he was in the UDA. (This formed the basis of the second count). In her statement she said that at one point the defendant walked back from his car to the deceased and stamped on his head before returning to his vehicle that he drove off shortly thereafter.

[18] The defendant fled the scene in his black Audi A4 convertible. He was then detected speeding by a camera on the Upper Newtownards Road, Belfast at 1.48 am on 26 September. Police attempted to pursue and stop that vehicle in the Newtownards area. The vehicle stopped at a bus stop but then made off as police officers were getting out of their vehicle. Police gave chase but as a result of the speed reached the pursuit had to be stopped due to fears for public safety.

[19] The police and ambulance services attended at the scene and the injured party Mr Lamont, was brought to hospital. Due to a severe brain injury he subsequently died on 11 October 2016 at 17.30 hours at the Royal Victoria Hospital Belfast as a result of the injuries sustained during the assault.

[20] The defendant attended Coleraine Police Station on Monday 26 September where he was arrested for attempted murder of Mark Lamont, as at that stage Mr Lamont was still alive.

[21] The defendant was interviewed on a number of occasions. He admitted being involved in an altercation initially with Mr Lamont and two others in the house at Ballycastle Road. He also admitted a short time later assaulting Mr Lamont outside

the house. He stated "He's about to hit me and I am not going to let myself get hit." He says that there was punching and that they wrestled. He admitted hitting Mark Lamont around the head. He stated that he believed at the time that he remained under threat from Mark Lamont. He said he was acting in self-defence. He was asked if he kicked him to which he replied "I'm not 100% sure if I did or I didn't". He stated that he had no recollection of stamping on Mark Lamont's head but said "It is possible, but I have no recollection". He said "It was a fight and you do these things in the heat of the moment". He said that Mr Lamont was breathing and trying to get up. He said he was doing what he could to keep him down "I won, I got the better of him ... We had a fight, he lost". He said he had no recollection of kicking Mr Lamont.

[22] He said that he panicked and drove towards his home and admitted that he evaded police when they attempted to stop his vehicle.

[23] On 27 September 2016 he was charged with attempted murder.

[24] After Mr Lamont's death on 11 October 2016 the defendant was re-arrested and charged with murder. He was interviewed again and mostly made no comment throughout the interviews.

Post Mortem

[25] An autopsy examination was carried out on 12 October 2016 at the Northern Ireland Regional Forensic Mortuary by Professor Crane. The cause of death was found to be "traumatic axonal injury of the brain associated with the depressed fracture of the skull". Professor Crane confirmed that death was due to a head injury. There were some injuries on the face including bruising around the left eye and patterned bruising on the right of the forehead. There was some bruising of the right cheek and a little bruising on the penna of each ear. It was Professor Crane's opinion that the bruising on the right side of the forehead could have been caused by the pattern sole of footwear.

[26] The under surface of the scalp was bruised, particularly on the right side above the ear where, adjacent to this bruising, was the depressed fracture of the skull.

[27] There had been slight bleeding over the brain surface - subdural haemorrhage - and a small area of bruising on the under surface of the left half of the brain.

[28] There were fractures of the right cheekbone and part of the bony sockets of the right eye.

[29] Brain examination revealed reactive swelling or oedema and severe diffuse damage of a type known as traumatic axonal injury typically caused by acceleration and/or deceleration of the brain with a cranial cavity.

[30] Professor Crane comments that the nature of the skull fracture and the severity of the brain injury would indicate that considerable force had been applied to the head probably by kicking or stamping, or a combination of both, whilst the deceased was lying on the ground.

The defendant's plea

[31] The defendant pleaded guilty on the following basis:

“The defendant’s actions in relation to the deceased were initially in self-defence following the deceased’s return to the scene to fight the defendant.

The defendant accepts he got the better of the deceased and that his actions went beyond what was reasonable or which constituted self-defence.

The defendant’s actions were substantially provoked by the actions of the deceased at the time of the fight and by those of the deceased and his associates by their earlier intervention into the home where the defendant was present.”

The relevant legal principles

[32] As indicated earlier, the task for the court is to fix the minimum term the defendant must serve before the Parole Commissioners will consider whether it is safe to release him on licence.

[33] Article 5(2) of the Life Sentences (Northern Ireland) Order 2001 provides that the minimum term:

“... 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.”

[34] The legal principles that the court should apply in fixing the minimum term are well settled.

[35] In R v McCandless & Ors [2004] NICA 1 the Court of Appeal held that the Practice Statement issued by Lord Woolf CJ and reported at [2002] 3 All ER 412 should be applied by sentencers in this jurisdiction who are required to fix tariffs under the 2001 Order. The relevant parts of the Practice Statement for the purposes of this case are as follows:-

“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 paragraph 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 unsupportable 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 8/9 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 a 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) that extensive and/or multiple injuries were inflicted on the victim before death;
- (k) the offender committed multiple murders.

Variation of the starting points

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 features 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 combination 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; or
- (b) spontaneity and lack of premeditation.

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."

The appropriate tariff

[36] In considering the appropriate tariff I should impose I am grateful for the helpful written and oral submissions I have received from counsel in this case. Mr Ciaran Murphy QC appeared with Mr Michael Chambers on behalf of the prosecution. Mr Martin O'Rourke QC appeared with Mr Mark Farrell on behalf of the defendant.

[37] Before determining the appropriate tariff it is essential that I highlight the victim impact statements and material relating to the deceased's family that I have received. I have read a medical report from Dr Michael C Patterson, consultant clinical psychologist, arising from his examination of Karl Lamont, the son of the deceased. It is clear from the contents of that report that his father's traumatic and unnecessary death has had a devastating impact on his well-being. Not only has the

death had a severe impact on him but it has also had a significant impact on his eldest son who was very close to his grandfather.

[38] Kai Lamont, who is aged 17 and is also the son of the deceased, has expressed in a written statement the devastating impact of his father's death. It is to his credit that notwithstanding the interruption the death and its aftermath has had on his education he has continued with his AS level studies and it is to be hoped that he will achieve his ambition of going to university.

[39] Ms Brenda Doherty, who was in a relationship with the deceased before his death, has also made a written statement. She describes the impact the death has had on her and in particular their child born in November 2013 and her two other children, one aged 10 and the other 9, all of whom enjoyed a close relationship with the deceased. The fact that she had to attend the deceased's hospital bed while he lay on a life support machine before his death has added greatly to her trauma. Understandably she describes the whole situation as being "life changing" for her and her boys. She describes herself as "broke". These statements are important in reminding the court of the impact of Mr Lamont's death on those who were close to him. It is important that the court and the defendant understand the extent of the damage that has been caused by the defendant's actions. In coming to a determination of the appropriate tariff I bear these statements fully in mind.

[40] I recognise that the loss of Mr Lamont's life cannot be measured by the length of a prison sentence. There is no term of imprisonment that I can impose that will reconcile his family and friends to his loss, nor will it cure their anguish. Equally I bear in mind the guidance of the Court of Appeal in Nunn [1996] 2 Cr App R (S) 136 (reiterated in R v Norman McKenzie [2017] NICA 29):

"The opinions of the victim, or the surviving members of the family, about the appropriate level of sentence do not provide any sound basis for reassessing a sentence. If the victim feels utterly merciful towards the criminal, and some do, the crime has still been committed and must be punished as it deserves. If the victim is obsessed with vengeance, which can in reality only be assuaged by a very long sentence, as also happens, the punishment cannot be made longer by the court than otherwise would be appropriate. Otherwise cases with identical features would be dealt with in widely differing ways leading to improper and unfair disparity ...

If carried to its logical conclusion, the process would end up by imposing unfair pressures on the victims of crime or the survivors of crime resulting in death, to

play a part in the sentencing process which many of them would find painful and distasteful. It is very far removed from the court being kept properly informed on the anguish and suffering inflicted on the victims by the crime.”

Additional material

[41] I have received the following additional material.

- (a) A medical report from Dr Paul Devine, a registered medical practitioner currently on the specialist register as a specialist in general adult psychiatry and psychiatry of learning disability.
- (b) A pre-sentence report from the Probation Board for Northern Ireland dated 10 April 2018.

[42] Dr Devine’s report arises from an examination of the defendant on 29 November 2017 in HMP Maghaberry. It is Dr Devine’s opinion that at that time the defendant was suffering from post-traumatic stress disorder. The symptoms related to significant nightmares, anxiety, panic attacks and difficulty in coping. He feels he is under threat. He has been seen by the mental health team within the prison and has been prescribed antidepressants.

[43] The probation report sets out the defendant’s background. He has an unstable upbringing characterised by exposure to his mother’s alcoholism, domestic violence, parental separation and physical abuse perpetrated by his mother’s partner.

[44] The defendant has 22 previous convictions dating back to 1998. Five previous court appearances are linked to the defendant’s misuse of alcohol/drugs. These convictions are for public order offences, drug possession and motoring offences including drink driving. He had been previously subject to a range of court disposals including a suspended sentence. He has no previous convictions for serious violence although he has a previous conviction for assault on the police in 2004 which was dealt with by a period of being bound over for two years. There are significant gaps in his offending which the defendant attributes to more settled periods in his life and being a parent.

[45] The pre-sentence report expresses the opinion that alcohol misuse and the use of anabolic steroids were relevant factors in the commission of this offence. In the course of his interview with the Probation Service the defendant expressed remorse for his offending, stating that the victim did not deserve to have been killed and that he regrets the loss of life and the devastating impact on the victim’s family. He acknowledges that he has “ruined” a lot of lives, not least those of his own

immediate family including his young son who he says has been victimised at school.

[46] The PBNI assess the defendant as being at medium likelihood of reoffending and, although not relevant for this sentencing exercise, someone who is at significant risk of causing serious harm.

Application of the principles

[47] At the sentencing hearing counsel agreed that the appropriate starting point was the “normal” one of 12 years. On behalf of the defendant Mr O’Rourke submits that the court should have regard to paragraph 11 of the Practice Statement which provides for the downward adjustment of the “normal starting point”. The relevant portion provides:

“11. The normal starting point can be reduced because the murder is one where the offender’s culpability is significantly reduced, for example, because:

.....

- (c) The offender was provoked (in a non-technical sense), such as by prolonged and eventually unsupportable stress; or
- (d) The case involved an over-reaction in self-defence ...

These factors could justify a reduction to 8/9 years (equivalent to 16/18 years).”

[48] It is submitted on behalf of the defendant that this is a case which involved an over-reaction in self-defence and that the defendant was clearly provoked by the conduct of the deceased by firstly invading the privacy of the defendant and Deborah Ramsey with two others when he initially entered her home and by secondly the deceased’s action in returning to the house with the apparent intention of assaulting the defendant.

[49] In applying the Practice Statement I bear in mind that it is not to be interpreted as a straitjacket designed to create a rigid compartmentalised structure into which each case must be shoehorned. As the Court of Appeal said in McCandless:

“... The sentencing framework is, as Weatherup J described it in paragraph 11 of his sentencing remarks in R v McKeown [2003] NICC 5, 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 at which the sentencer may start on his journey towards the goal of deciding upon a right and appropriate sentence for the instant case.”

[50] I fully accept that the court should take into account the background and lead up to the offence. The defendant initially acted in self-defence in circumstances where he had been provoked by the actions of the deceased and others. Whether this factor reduces the starting point or is something to be taken into account by way of mitigation is immaterial. What the court has to assess is the culpability of the defendant. That means the defendant must be sentenced on the basis of the actions which led to the death of the deceased when he went beyond what could be viewed as self-defence.

[51] The most compelling feature of this case for the court is the conduct of the defendant which caused the death of Mr Lamont. I am particularly influenced by the descriptions of the independent witnesses who describe the defendant repeatedly stamping on the head of the deceased whilst he was on the ground. One witness describes him holding on to the concrete pillar of the gate whilst he did so. The other independent witness describes the defendant “jumping” on his head and that he was “putting a lot of effort” into what he was doing.

[52] This conduct is entirely consistent with the findings at autopsy. An over-reaction in self-defence can cover a multitude of actions from unnecessary additional punches, or a gratuitous single kick to repeated assaults long after any issue of self-defence arises.

[53] I take the view that this was a particularly serious assault which went well beyond that which could be considered self-defence or a fight or for which there was legitimate justification. The assault is aggravated by the fact that the victim was clearly vulnerable as he was lying on the ground when his head was stamped upon repeatedly.

[54] Mr O'Rourke argues that the defendant should be sentenced on the basis that he did not intend to kill the deceased but rather that his intention was to cause serious harm.

[55] In this regard it is extremely difficult to assess the precise intentions of the defendant at the relevant time. Clearly his actions were sufficient to establish that he had the necessary intent in law for murder. At the very least he intended to cause serious injury to the deceased. Overall in the context of this case I do not consider that there is any significant mitigation in terms of the defendant's intent.

[56] In summary therefore in terms of the offence the following matters are relevant in terms of mitigation:

- (a) The defendant's actions were initially in self-defence in circumstances where he had a reasonable belief that the deceased intended to and could have inflicted violence on him.
- (b) The defendant's initial actions were substantially provoked by the actions of the deceased and others.
- (c) The initial fight was spontaneous and not pre-planned or premeditated.

[57] These mitigating features have to be judged in the context of what I consider to be a serious, sustained and senseless assault upon a victim who was in a vulnerable position. I consider that the actions of the defendant went well beyond anything that could be considered self-defence for which there was a legitimate justification. It was at the most serious end of the spectrum for an over-reaction. Any reflection at all by the defendant on his conduct must inevitably lead to the conclusion that he would have caused at the very least very serious injury and potentially the death of the victim.

[58] The offence is in my view further aggravated by the conduct of the defendant after the assault. He left the scene immediately and evaded the police. He threatened a civilian witness who came to the aid of the deceased, invoking the name of a paramilitary organisation. Even if I reduce the starting point to say 10 years because of the factors identified in paragraph [56] above the aggravating factors would justify a tariff in excess of the starting point of 12 years.

[59] In terms of mitigating and aggravating features relating to the defendant there is very little to either add or detract from the appropriate tariff. His previous criminal convictions are a concern but there is nothing in the record to suggest a history of any significant violence. There is a concern relating to his abuse of alcohol and drugs which undoubtedly contributed to his conduct in the course of the assault. Mr O'Rourke points out that the defendant has expressed some remorse to Dr Devine and to the Probation Service. Certainly there was nothing in the defendant's conduct in the aftermath of the assault or in the course of his interviews which indicates any degree of remorse. My impression from reading Dr Devine's report is that he tends to see himself somewhat as a victim although the expression of remorse in the probation report is more convincing. Overall I am not persuaded that the defendant is entitled to any significant discount for remorse although I do accept that he has suffered a degree of psychological injury as a result of the incident on the night in question.

[60] Taking all of these matters into account, and having regard to the guidelines set out in the McCandless, I have come to the view that the appropriate tariff is between 14 to 15 years. I consider a medium tariff of 14½ years would be appropriate.

[61] The defendant is entitled to discount for his plea of guilty.

[62] The Court of Appeal has given very clear guidance on this issue in the case of R v Turner and Turner [2017] NICA 52.

[63] In that case the Court of Appeal considered the discount which was appropriate in tariffs in murder cases and came to the conclusion, at paragraph [40]:

“We consider, therefore, that there are likely to be very few cases indeed which would be capable of attracting a discount close to one-third for a guilty plea in a murder case. The circumstances of a mercy killing for example might possibly achieve that outcome. Each case clearly needs to be considered on its own facts but it seems to us that an offender who enters a not guilty plea at the first arraignment is unlikely to receive a discount for a plea on re-arraignment greater than one-sixth and that a discount for a plea in excess of 5 years would be wholly exceptional even in the case of a substantial tariff.”

[64] The court however did go on to state:

“We have concluded, however, that it would be inappropriate to give any more prescriptive guidance in this area of highly fact sensitive discretionary judgement. Where, however, a discount of greater than one-sixth is being given for a plea in a murder case the judge should carefully set out the factors which justify it in such a case.”

[65] As is clear from the history set out above, the defendant pleaded not guilty at arraignment and did not enter a guilty plea until the morning of the trial.

[66] It is a long and firmly established practice in sentencing law in this jurisdiction that where an accused pleads guilty the sentencer should recognise that fact by imposing a lesser sentence than would otherwise be appropriate.

[67] In determining what that lesser sentence should be the court should look at all the circumstances in which the plea was entered.

[68] An important aspect of all the circumstances is the stage in the proceedings at which the defendant has pleaded guilty. Maximum credit is reserved for those defendants who plead guilty at the earliest opportunity. Those who enter guilty pleas at later stages in the proceedings will obviously not be entitled to maximum credit. As a general principle the later the plea in the course of the proceedings, then the less the discount will be.

[69] Before considering the particular circumstances of this case it is important to understand the rationale behind allowing discounts for guilty pleas. A plea of guilty is an indication of remorse. A plea of guilty and an acknowledgement of guilt by a defendant can provide a sense of justice and relief for the relatives and friends of the victim. I note that this relief has been reflected in the victim impact statements which I have received. In addition, no doubt the defendant's guilty plea will also be of enormous benefit to the witnesses, not least Deborah Ramsey, who would have been compelled to give evidence in this case. A plea also leads to a significant saving of time and public expense which is in the public interest.

[70] The Court of Appeal decision in Turner clearly affects the way in which sentencing judges should approach the question of discount for a guilty plea in a murder case.

[71] I do not consider that this is an exceptional case as envisaged in Turner which would justify a reduction in excess of one sixth, but nonetheless I propose to reduce the tariff by one sixth for the plea of guilty in this case. I therefore propose to reduce the tariff from 14½ years to 12 years which approximates to a reduction of one sixth.

[72] The defendant will therefore serve 12 years in custody before he can be considered for release.

[73] He will be given credit for the following periods in custody namely:

- 307 days on remand
- The remainder of the tariff will commence on the date upon which the life sentence was imposed, that is 8 March 2018.