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*Judgment: approved by the Court for handing down (subject to editorial corrections)**	*Delivered: 30/7/2018*

IN THE CROWN COURT FOR THE DIVISION OF FERMANAGH AND TYRONE

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SITTING IN BELFAST

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-v-

DARIUS SIKORSKAS, DMITRIJUS INDRISIUNAS AND MARIUS DZIMISEVICIUS

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McBRIDE J

Introduction

[1] On 10 April 2018 Darius Sikorskas ("the first defendant") pleaded guilty to manslaughter as an alternative to murder, contrary to common law, grievous bodily harm with intent, contrary to Section 18 of the Offences Against the Person Act 1861 and possession of a firearm with intent to cause fear of violence, contrary to Article 58(2) of the Firearms (Northern Ireland) Order 2004. The remaining counts of murder and false imprisonment were left on the books.

[2] On 11 April 2018 Dmitrijus Indrisiunas ("the second defendant") pleaded guilty to a charge of withholding information, contrary to Section 5(1) of the Criminal Law Act (Northern Ireland) 1967, namely information about the first defendant knowing that the information would be of material assistance to the police. A count of assisting an offender was left on the books.

[3] On 10 April 2018 Marius Dzimisevicius ("the third defendant") pleaded guilty to a charge of withholding information, contrary to section 5(1) of the Criminal Law Act (Northern Ireland) 1967, namely information about the first defendant knowing that the information would be of material assistance to the police. The remaining count of assisting an offender was left on the books.

[4] Mr David McDowell QC appeared with Mr David Russell for the prosecution. Mr Gavan Duffy QC appeared with Mark McGarrity for the first defendant, Mr Jim Gallagher QC appeared with Mr Craig Patton for the second defendant and Mr Gregory Berry QC appeared with Mr Patrick Taggart for the third defendant. I am grateful to all counsel involved in this case for their helpful written and oral submissions which proved to be of great assistance to the court.

Background

[5] The deceased Gediminas Staukas ("the deceased") was a Lithuanian national who was killed on 14 October 2015. His body was discovered on 15 October 2015 at a garage at 1 Moor Road, Coalisland, by the second defendant. Police attended the scene and recovered the deceased's body from the upstairs area of the garage.

[6] A post mortem revealed that the cause of death was a severe head injury. Alcohol and cocaine was found in his system. The deceased had injuries to his scalp and face together with a fractured skull which indicated that he had been punched and substantial force trauma had been inflicted to his head. As a result he developed a sub-dural haematoma which led to unconsciousness and death over a period of some 8-12 hours.

[7] The events leading up to the death of the deceased took place at 1 Moor Road, Coalisland, where the second defendant ran his business as a motor mechanic. The deceased and the first defendant had been living rough at this location from in or around Wednesday 7 October 2015. Prior to this they had been residing at the home of another Lithuanian national Grigorius Sviridoras ("the complainant"). After the complainant was arrested for handling stolen goods and then imprisoned the first defendant and the deceased resided at the garage where they consumed large quantities of alcohol and drugs over a number of days.

[8] On Tuesday 13 October 2015 the deceased and the first defendant demanded the attendance of the complainant at the garage as they had not believed he had been in prison and demanded proof thereof. The complainant travelled to the garage by taxi and arrived at approximately 4.00 pm that afternoon. The first defendant insisted that the complainant remain with them in the office of the garage where all three men proceeded to consume drink and drugs and the complainant took cocaine and smoked heroin. During the period from his arrival on Tuesday 13 October 2015 until the early hours of Wednesday 14 October 2015 the complainant was subjected to a prolonged assault at the garage and sustained numerous injuries. Both the defendant and the deceased punched, kicked and struck the complainant with iron bars. The first defendant told him that he was assaulting him to rehabilitate him from drugs and at one stage made him telephone his former girlfriend and tell her he was being rehabilitated and would get back to live with her. The first defendant also made the complainant go down on his knees in the corner and say that he loved his family. The first defendant had in his possession a gun with a silencer. At one

stage during the prolonged assault the first defendant pointed the gun at the complainant so that he thought he might be shot. The first defendant then forced the complainant's hand onto the gun so that he shot himself in the leg. The shot went through the back of his right thigh and the bullet stuck out the front of his leg. The first defendant then used a bandage the complainant already had on him as a tourniquet to stop the bleeding. After this he took a knife washed it in brandy heated it with a lighter and cauterised the wounds.

[9] The agreed basis of plea for the offence of grievous bodily harm and the firearm offences is as follows:

> "Sviridovas was struck by both the deceased and the defendant whilst in a garage. It is difficult for the complainant to be exact as to which injuries were caused by which man. Injuries were caused by punches, kicks and metal bars.
>
> At one stage the defendant was in possession of a gun with a silencer and it was being presented in a way which made Sviridovas believe he might be shot. That action gives rise to the charge under Article 58 of the Firearms (Northern Ireland) Order 2004. At one stage whilst the defendant was heavily under the influence of drugs he had forced the complainant's hand on the gun and it was then that the complainant sustained a gunshot to the leg. This gives rise to the offence of GBH with intent. When the defendant came out of the influence of drugs, he attempted to assist the complainant by cleaning and cauterising the wound."

[10] The complainant was allowed to leave the garage on 14 October 2015. After he arrived home he was conveyed by ambulance to Craigavon Area Hospital. Although there was no medical report before the court but it was accepted that the complainant sustained a gunshot wound to his right thigh and that the bullet had fractured his right femur. He also sustained burns to his neck and shoulder and several cuts to his hands and body which required a period of admission in hospital.

[11] Sometime in the early hours of Wednesday 14 October 2015 the deceased and the first defendant were involved in an altercation which led to the death of the deceased. The basis of plea to manslaughter is as follows:

> "The defendant and the deceased had been known to each over a number of years.

> In the days leading up to the death of the deceased both men had been consuming considerable amounts of alcohol and drugs.
>
> There had been a number of drunken and drug induced verbal and physical altercations between them over this period.
>
> In the course of one such physical altercation, in the heat of the moment, the defendant struck the deceased to the body with considerable force with the palm of his hand knocking the deceased to the ground. The deceased fell forcefully to the floor and struck his head.
>
> The defendant accepts that his actions were unlawful in that he used force in excess of what was either reasonable or necessary to defend himself. Whilst the defendant had not intended to cause death or serious harm he nevertheless accepts that his actions were unlawful and led to the head injury which resulted in the death of the deceased.
>
> The defendant attempted to aid the deceased by placing tape around his head so as to stop the bleeding. This defendant was not involved in the later wrapping and moving of the body to the upstairs in the garage."

[12] The first defendant evaded the attention of the police until he was arrested on 20 October 2015 at an address at 177 Churchill Park, Portadown. A number of firearms and ammunition were recovered following a search of these premises and these are the subject of separate criminal proceedings. The court was informed that the first defendant has entered guilty pleas in respect of possession of three loaded handguns in suspicious circumstances. He has not yet been sentenced in respect of these charges as one charge is outstanding and is due to heard as a contested matter in September 2018.

[13] When interviewed on the 22 and 23 October 2015 the first defendant gave his name and thereafter made no response to all questions asked.

Appropriate sentence – First Defendant

[14] The offences with which the first defendant is charged, namely manslaughter, causing grievous bodily harm with intent and possession of a firearm with intent to

cause fear of violence are all 'serious' and 'specified' violent offences for the purposes of the Criminal Justice (Northern Ireland) Order 2008 ("the 2008 Order"). Accordingly the question of dangerousness arises.

[15] The test of dangerousness is set out at Article 13(1) of the 2008 Order and is met where:

(a) A person is convicted on indictment of a serious offence committed after 15 May 2008;

(b) The court is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences.

[16] In making this assessment, in accordance with Article 15, the court:-

> " (a) Shall take into account all such information as is available to it about the nature and circumstances of the offence;
> (b) May take into account any information which is before it about any pattern of behaviour of which the offence forms part; and
> (c) May take into account any information about the offender which is before it."

[17] The Court of Appeal in Northern Ireland in *R v EB* [2010] NICA 40 at paragraph [10] indicated that the following passage in *R v Lang* [2005] EWCA Crim. 2864 constituted helpful guidance to judges when making an assessment of dangerousness. In *R v Lang* the court held as follows:

> "(i) The risk identified must be significant. This is a higher threshold than mere possibility of occurrence and could be taken to mean "noteworthy, of considerable amount or importance".
>
> (ii) In assessing the risk of further offences being committed, the sentencer should take into account the nature and circumstances of the current offence; the offender's history of offending including not just the kind of offence but its circumstances and the sentence passed, details of which the prosecution must have available, and, whether the offending demonstrated any pattern; social and economic

factors in relation to the offender including accommodation, employability, education, associates, relationships and drug or alcohol abuse; and the offender's thinking, attitude towards offending and supervision and emotional state. Information in relation to these matters will most readily, though not exclusively, come from antecedents and pre-sentence probation and medical reports. The sentencer would be guided, but not bound by, the assessment of risk in such reports. …

(iii) If the foreseen specified offence is serious, there would clearly be some cases, though not by any means all, in which there may be a significant risk of serious harm. For example, robbery was a serious offence. But it can be committed in a wide variety of ways, many of which do not give rise to a significant risk of serious harm. Sentencers must therefore guard against assuming there was a significant risk of serious harm merely because the foreseen specified offence was serious. …

(iv) If the foreseen specified offence was not serious, there would be comparatively few cases in which a risk of serious harm would properly be regarded as significant. …"

Assessment of dangerousness

[18] The court had the benefit of a pre-sentence report prepared by Terry McLaughlin dated 15 May 2018. The pre-sentence report was based on three interviews with the defendant; case dispositions; the first defendant's criminal record in this jurisdiction, the Republic of Ireland and Lithuania; discussion with the investigating police officer; attendance at a PBNI risk management meeting conducted on 23 April 2018, and discussions with PBNI psychologist and PBNI Area Manager. The report notes that the defendant is aged 36 years old. He is from Lithuania and has resided in Northern Ireland since 2005. The defendant was assessed as posing a high likelihood of re-offending. This was based on the following factors:

(i) The defendant's extensive criminal records in this jurisdiction and the Republic of Ireland and Lithuania.

(ii) The defendant's misuse of alcohol and other substances.

(iii) The defendant's apparent failure to learn from past experiences and court sanctions.

(iv) The defendant's inability to demonstrate consequential thinking regarding his offending behaviours.

(v) The limited insight demonstrated by the defendant regarding victim awareness.

(vi) The serious violent nature of the current offences.

[19] The report further confirms that at a risk management meeting held on 23 April 2018 and attended by PSNI and PBNI psychology, it was agreed that the first defendant presents as a serious risk of serious harm to others at this time. In coming to this conclusion the following factors were taken into account at the meeting:

(i) The premeditated nature of these serious offences, sustained use of orchestrated violence over a prolonged period.

(ii) The significant and graphic level of violence and degradation used by the defendant towards the injured parties which resulted in serious injuries being inflicted to both parties and the death of Mr Gediminas Stauskas.

(iii) The defendant's apparent inability to evidence learning from past experiences.

(iv) The defendant's lack of insight into his behaviour and the impact of his behaviours on others.

(v) The defendant's misuse of alcohol and other substances.

(vi) The defendant's evidenced use of weapons including firearms.

(vii) The defendant's criminal record in this jurisdiction and confirmation of previous convictions in the Republic of Ireland and Lithuania.

(viii) The defendant's minimisation of his role in the index offences and his attempt to focus the blame on the deceased man.

[20] When this case was first listed to hear the pleas in mitigation, counsel for the first defendant applied to adjourn sentencing on the basis the first defendant wished

to challenge the finding of dangerousness made in the pre-sentence report. It was also indicated that a report would be obtained from an expert in this regard. When the matter was listed for sentencing Mr Duffy QC indicated to the court that the first defendant was no longer challenging the finding of dangerousness.

[21] Notwithstanding this concession, in accordance with the 2008 Order, the court must assess whether the test of dangerousness is met. In carrying out this assessment I have been guided, but not bound by the pre-sentence report especially as I am aware it was prepared at a time when the writer did not have the benefit of the agreed basis of plea and did not have the benefit of submissions which were made before this court in relation to the defendant's criminal record.

[22] Having regard to the agreed basis of facts, the first defendant's criminal record and the contents of the pre-sentence report I am satisfied that the tests set out in *Lang* are met and I therefore conclude that the first defendant is a dangerous offender. In coming to this conclusion I have taken into account the factors considered in the pre-sentence report and in particular the fact the present offences involved sustained use of a significant level of violence over a prolonged period of time which resulted in serious injuries being inflicted to the complainant and the death of the deceased. In addition I have taken into account the criminal record of the defendant. Whilst it does not contain a history of serious violent crime I note that the defendant has been involved in criminal activity not only in this jurisdiction but also in the Republic of Ireland and in Lithuania. His offending in this jurisdiction spans a three year period from September 2006 to April 2009 and includes convictions for assault on police, possession of an offensive weapon, theft and a number of motor vehicle related matters. I accept that the conviction in the Republic of Ireland relates to making off without payment for petrol. I also note that he has convictions in Lithuania and in particular offences in 1999 when he was involved in a number of thefts which involved at least threats of violence and or use of weapons. I accept that in 1999 the defendant was a young man aged 18 and I further note that he was granted an amnesty from the sentence imposed for these offences. Nonetheless I note that none of the disposals, which have ranged from fines through to custody, have impacted on the defendant's propensity to engage in offending behaviour thereby demonstrating the defendant's inability to learn from past experience. I also take into account the fact that his offending involves a range of weapons and note that there is an escalating level of violence in his offending. The defendant has used weapons including firearms and this continues even to the extent that a number of firearms were found at his address after his arrest and he has now been charged and pleaded guilty to a number of firearm offences. The defendant continues to have ongoing significant misuse of alcohol and drugs and demonstrates a lack of insight into his behaviour and its impact on others and has sought to minimise his role in the index offences. I am therefore satisfied that the first defendant satisfies the provisions of Article 13 (1) (b) and that he is dangerous.

[23] As the dangerousness test is now passed the court is required to impose in descending order of precedence either a life sentence, or, an indeterminate custodial sentence, or, an extended custodial sentence.

[24] Life sentences, as appears from paragraph [18] of the *Kehoe* [2008] CLR 728 are reserved to a small category of exceptional cases. Having regard to the totality of the nature of the offending I consider that the seriousness of the index offences are not so exceptionally high that just punishment requires that the defendant should be kept in prison for the rest of his life.

[25] Accordingly in accordance with Article 13(3) of the 2008 Order I must now consider whether an extended custodial sentence would be adequate for the purpose of protecting the public from serious harm occasioned by the commission by the offender of further specified offences. In the event I find that it would not be adequate for that purpose I must then impose an indeterminate custodial sentence.

[26] Morgan LCJ gave guidance in respect of when it was appropriate to impose an indeterminate custodial sentence in *R v Pollins* [2014] NICA 62. At paragraphs [26] and [27] he stated as follows:

> "[26] … Apart from a discretionary life sentence an indeterminate custodial sentence is the most draconian sentence the court can impose. A discretionary life sentence is reserved for those cases where the seriousness of the offending is so exceptionally high that just punishment requires that the offender should be kept in prison for the rest of his life. It is not a borderline decision. … An indeterminate custodial sentence is primarily concerned with future risk and public protection. …
>
> [27] However, in a case in which a life sentence is not appropriate an indeterminate custodial sentence should not be imposed without full consideration of whether alternative and cumulative methods might provide the necessary public protection against the risk posed by the individual offender. In that sense it is a sentence of last resort. The issue of whether the necessary public protection can be achieved is clearly fact specific. That requires, therefore, a careful evaluation of the methods by which such protection can be achieved under the extended sentence regime."

[27] The question therefore is whether an indeterminate custodial sentence is the only way of dealing with the future risk presented by the first defendant or whether an extended custodial sentence would be adequate for the purpose of protecting the public.

[28] Before determining this issue it is useful to set out the definition of an extended custodial sentence. As appears from Article 14 (3) of the 2008 Order it comprises of two parts namely:

> "(a) The appropriate custodial term; and
>
> (b) A further period of ("the extension period") for which the offender is to be subject to a licence and which is of such length as the court considers necessary for the purposes of protecting members of the public from serious harm occasioned by the commission by the offender of further specified offences."

[29] The extension period under paragraph 3(b) shall not exceed five years in the case of a specified violent offence.

[30] In determining whether the court should impose an indeterminate custodial sentence or an extended custodial sentence I have been greatly assisted by the reports of Dr Loughrey, consultant psychiatrist dated 15 March 2018 and the report of Dr Weir, consultant clinical psychologist dated 17 June 2018.

[31] Dr Loughrey in his comprehensive report, reports that the first defendant described a difficult family background linked to his father's drunken and violent behaviour. He left school without qualifications and whilst in Lithuania had psychiatric problems related to his misuse of alcohol and drugs. When he came to Northern Ireland he found employment and then met the mother of his daughter. The first defendant reported that his consumption of alcohol and drugs moderated after he came to Northern Ireland but later he began to again abuse alcohol and drugs and again developed significant psychiatric problems. In or around 2013 he was admitted as an in-patient to St Luke's and thereafter was seen by the Addictions Team. On both occasions he was discharged due to failure to attend. He later attended a private counsellor in 2014 but was unable to maintain sobriety to the extent that in 2015 he was admitted to Craigavon Emergency Department with alcohol intoxication and related seizure. His Glasgow Coma Scale was 7 over 15 which indicates a worrying state of unconsciousness. The first defendant informed Dr Loughrey that he had decided to change his ways. In 2012 his girlfriend had given him an ultimatum that the relationship had no future if he did not sever his criminal associations. It appears that the parties then separated in or around 2014. He informed Dr Loughrey that he had now made undertakings to his girlfriend and

was motivated to reconcile with her so that he could continue to live as a family and provide care to his daughter. Dr Loughrey opines that at the time of the offending the first defendant was addicted to alcohol and drugs and he considers that his main problem is alcohol and drug misuse and notes that if he relapses there is a risk of depression and self-harm. Dr Loughrey opines, "it does seem clear that the determination to reconcile with his girlfriend is the principle motivation for this man, and, without this prospect, the prognosis for his drug use is poor".

[32] Dr Weir in her helpful report opines that the first defendant was alcohol and drug dependent for 2 to 3 years prior to the index offending and at the time of the index offending he was addicted to drug and alcohol and his ability to function in any logical way was severely compromised. She notes that over the past 2½ years since being on remand the first defendant has been abstinent from all substances and this has been confirmed by drug testing. In addition he has undertaken courses in prison to improve his educational level and he told Dr Weir that he was "doing well" with his subjects. She concludes as follows:

> "It is difficult to know how his mental health will fair over the next few years. He has set himself goals regarding abstinence and education and he told me his incentives are linked to his partner and seven year old child. It is not possible to comment on the likelihood that his long term relationship will continue while he serves a sentence but at this present time he is confident that it will. His success with abstinence in an environment where drugs are readily available is hopeful and he has reported enthusiasm and success in undertaking educational courses. This is an indication of hope on his part. Before being released it is essential that preparations are made and precautions taken as to his possible mental health problems and release. Furthermore it should be possible to set up the provision of relapse counselling even though he may on release have been abstinent from substances for a number of years."

[33] The court also had a reference from AS, the defendant's partner and mother of his daughter. She indicates that she first met the defendant in Northern Ireland in March 2008 and that they had a daughter in 2011. She described the first defendant as supportive and caring to her and his daughter. She states that she has visited the defendant in prison every week with her daughter and concludes that she will never leave the defendant. She states that he has been a great dad to his daughter and great partner to her. After the court case is over she indicates they would like to make plans for their future as a family and that they plan to get married as soon as possible.

[34] Having regard to all the material before the court I am satisfied that an extended custodial sentence is adequate for the purpose of protecting the public from serious harm occasioned by the commission by the offender of further specified offences. In these circumstances I consider that it is not therefore necessary to impose an indeterminate custodial sentence.

[35] As appears from the reports of Dr Loughrey, Dr Weir and also the pre-sentence report the defendant has demonstrated insight into the need to change. He appears to be highly motivated by the hope of reconciliation with his partner and the prospect of living together as a family with his daughter. He has given certain undertakings to his girlfriend and appears to have demonstrated the will and capacity to change. In particular he has begun to address his alcohol and drug misuse. He has remained abstinent for the past 2½ years. This has been confirmed by prison records which show he has passed all drug tests while in custody. He has also demonstrated a willingness to engage in education and has undertaken a number of courses in prison.

[36] The first defendant now appears to have a degree of insight into his need to address his offending behaviour and the underlying problems he has from drug and alcohol abuse. I accept that in the past, even with professional help the defendant has failed to adequately address his drug and alcohol abuse and Dr Loughrey opines that the prognosis for his drug use is poor without the motivation of reconciliation with his girlfriend. Given that the first defendant now has strong motivating factors; in particular his desire to reconcile with his partner and to live as part of a family with his child, which hope is strengthened by the reference from his partner; his proven desire and ability to engage in education programmes, which means he is likely to engage in programmes available in and outside prison for alcohol and drug misuse; together with his abstinence from drugs and alcohol for a period in excess of 2 years satisfies me that an extended custodial sentence is adequate to deal with the risk presented. Programmes for change can be delivered where the defendant is subject to supervision both within and without the prison and as noted by Dr Weir provision can be made for relapse counselling and preparations and precautions can be taken as to his possible mental health problems upon his release.

[37] The two elements within an extended custodial sentence consist of the appropriate custodial term and the extension period.

Term

[38] The term, in accordance with Article 14(4) and Article 7 of the 2008 Order, is one which is commensurate with the seriousness of the offence.

Manslaughter

[39] Before dealing with the appropriate sentence for manslaughter it is important that I first consider the victim impact statement I have received. It consists of a letter from Detective Constable Lorraine Dougherty in which she records what was said to her when she visited the deceased's sister Nevinga Stanskaite on 18 April 2018. She indicated that the deceased had to come to Northern Ireland for a better life and that this had now been denied him. Ms Stanskaite was the deceased's only sibling and she indicated that she found her brother's death very difficult. In fact the whole family was devastated by his death and Ms Stanskaite is now isolated in Northern Ireland as no other family members live here.

[40] In determining the appropriate sentence I intend to take into account the impact the needless and tragic death of the deceased has had on his family. I wish to stress however, that no term of imprisonment can equate to or restore human life. Neither can it alleviate the profound grief, pain and loss that the deceased's family now have to live with.

[41] The offence of manslaughter covers a wide spectrum of infinitely varied circumstances and as a consequence there are no rigid sentencing guidelines. In *R v Magee* [2007] NICA 21, nonetheless the court provided what it termed the most general of guidelines and at paragraphs [26] and [27] Kerr LCJ said as follows:

> "[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. …
>
> [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."

[42] Sir Anthony Hart in his authoritative paper for the Judicial Studies Board for Northern Ireland dated 13 September 2013 analysed a wide number of decisions of the Court of Appeal and courts at first instance and identified seven broad sub-categories. Two are relevant for the purposes of the index offending, namely cases involving substantial violence and single punch cases. In cases involving substantial violence to the victim Sir Anthony Hart states,

> "Whilst sentences range from 6 years on a plea to 14 years on a contest, pleas in cases of the upper end of the spectrum attract sentences of 10 to 12 years, with sentences of 12 years being common. Sentences of 6 to 8 years tend to be reserved for cases where there are strong mitigating personal factors, or the defendant was not a principal offender."

In single punch cases he states,

> "Sentences range between 2 and 5½ years, with sentences of 4 to 5 years reserved for cases where there are many aggravating factors and few mitigating factors."

[43] Mr McDowell QC for the Crown referred me to a number of relevant authorities and submitted that this case came within the category of cases involving substantial violence to the victim. He indicated that the court should have regard to the context in which the manslaughter occurred, namely where other serious offences were being committed by the first defendant including the discharge of a firearm which caused injury. He further indicated that there were a number of other aggravating features including the consumption of alcohol and drugs, failure to seek medical treatment and the defendant's criminal record, although he accepted that it was not a substantial criminal record for offences of violence. Whilst accepting all cases of manslaughter are very fact specific he submitted that the facts of *R v Donnell* [2006] NICA 8 were sufficiently similar to merit consistency in sentencing for the index offence.

[44] Mr Duffy QC in his well-reasoned submissions submitted that on the agreed basis of a plea this case was more properly categorised as a single punch manslaughter. He referred to *R v Quinn* [2006] NICA 27 in which the Court of Appeal endorsed a starting point of two years rising to six years where there were significant aggravating features. He indicated that this was a case where there was no use of a weapon; no evidence that it was an unprovoked attack; the first named defendant did not have a substantial criminal record and that there was only one blow. He submitted that the defendant's consumption of drugs and alcohol was not an aggravating factor but rather a mitigating factor because he was addicted. He further submitted that the defendant did not show an indifference to the deceased after he struck him because his judgment was affected by the consumption of drugs and alcohol.

[45] I consider that the cases cited are of limited assistance given their fact specific nature. It is therefore more useful for the court to carefully consider all the circumstances including the nature and quality of the defendant's acts.

[46] On the basis of the agreed facts this was a one punch case which did not involve the use of a weapon and where there was no premeditation. Further it appears that the attack took place in the context of physical and verbal altercations between the deceased and the first defendant and there is no evidence that the attack was unprovoked. I do not take into account the fact other serious offences were being committed prior to this offence as that would lead to double accounting for the other offences. Nonetheless, I consider that the following aggravating features are present:

(i) The first defendant administered a blow of "considerable" force which caused the deceased to fall forcibly to the floor. As a result of the force used the deceased sustained a fracture to his skull with consequent bleeding to his brain which ultimately led to his loss of consciousness and death.

(ii) Although the first defendant rendered some limited assistance by placing tape around the deceased's head he demonstrated indifference by failing to seek any professional medical assistance for the deceased over a period of some 8 to 12 hours when the deceased remained alive.

(iii) Whilst I accept the first defendant's judgment was impaired arising from his consumption of drugs and alcohol nonetheless he was able to leave the scene and take steps to avoid police detection for a period of five days. During all this time he continued to show a callous disregard for the plight of the deceased.

(iv) Although the defendant does not have a substantial criminal record for offences of violence he nonetheless has a criminal record and therefore is not a person of good character.

(v) The defendant was under the influence of alcohol and drugs at the time of offending. Mr Duffy QC submitted this should be a mitigating factor in light of the defendant's addiction and indicated there was a first instance decision in this jurisdiction where the court accepted addiction as a mitigating factor. The case referred to was not provided to the court but I note that Sir Anthony Hart refers to a case of *Hunter* [2007] NICC 33 in which the court appears to have accepted addiction as a mitigating factor. Notwithstanding this, I do not accept the submission that addiction is a mitigating factor. The sentencing guidelines provide that committing a crime whilst under the influence of drink or drugs is an aggravating factor. Further there are 2 cases in

this jurisdiction in which the Court expressly indicated that addiction was not a mitigating factor. In *R v Stalford & O'Neill* (unreported 3 May 1996) MacDermott LJ stated:-

"(f) The Appellant's Addiction

This is not a mitigating factor. We would repeat the forceful observation of Simon Brown J (as he then was) in R v Lawrence 10 CAR(S) 463 at 464:-

> "We cannot make too plain the principle to be followed. It is no mitigation whatever that a crime is committed to feed an addiction, whether that addiction be drugs, drink, gambling, sex, fast cars or anything else. If anyone hitherto has been labouring under the misapprehension that it was mitigation, then the sooner and more firmly they are disabused of it the better."

In *R v Henderson*, (unreported 8 March 1996) Carswell LJ adopted a similar approach.

[47] If I am wrong in my view that addiction is not a mitigating factor, I would not give it any significant weight in any event. This is because the index offence calls for deterrent sentencing and addiction, which is a personal mitigating factor would be given limited weight. By way of mitigation I take into account the defendant's plea which was made at the first available opportunity, that is, when he knew his plea to manslaughter would be accepted as an alternative to the murder charge. His plea reflects the remorse demonstrated by the first defendant, set out in the pre-sentence report, which reports he regretted the death and felt sorry for the deceased man's family. I note however that this was very belated remorse as the first defendant did not express any such sentiments at police interview.

[48] Having regard to all the aggravating and mitigating circumstances and the circumstances of the offending; in particular the fact this was a single punch with an open hand, I consider that the appropriate starting point is one of 8 years. I give the defendant full credit of one third for his guilty plea and I therefore consider that the appropriate custodial term is one of 5 years and 4 months imprisonment.

Grievous bodily harm

[49] Before dealing with the appropriate sentence in respect of the offence of GBH with intent and the firearms offence I have considered a statement provided by the complainant outlining the impact the offending has had upon him. In his statement he sets out in detail the physical and psychological problems he now suffers as a result of the injuries sustained as a result of the attack. He states that his knee is not "working properly" and he finds difficulty going up or down stairs, he limps and he cannot do sports. He states he has already had three surgeries and is unable to work

and now requires strong painkillers. As a consequence of the offences he lives in constant fear, cannot relax and has even tried to commit suicide.

[50] In *R v McArdle* [2008] NICA 29 the court concluded 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 trial. In *DPP's Reference (Nos 2 and 3 of 2010) McAuley and Seaward* [2010] NICA 36 the Court of Appeal endorsed the sentencing range identified in *McArdle* and stated that the place within this bracket will generally be determined by the extent of the harm caused and any other aggravating and mitigating factors.

[51] Mr Duffy QC on behalf of the defendant accepted this was a case of high culpability given the use of weapons, the prolonged nature of the attack and the fact no professional medical help was sought. He further accepted that the complainant sustained multiple injuries. He submitted that in terms of mitigation the defendant was entitled to credit for his plea. He accepted that he would not be entitled to full credit but submitted that he was entitled to significant credit because the plea was of assistance to the Crown as they were not required to call a civilian witness. He also indicated that there was an issue in respect of the credibility of the main Crown witness. He further submitted that the defendant's addiction was a mitigating factor.

[52] He conceded that the proper range was between 7 and 15 years. He accepted that the case was not at the bottom end of this range but submitted it was not at the top end of the range and submitted that unlike in the *McArdle* case, the complainant had not sustained catastrophic injuries.

[53] Having regard to the agreed facts in respect of grievous bodily harm with intent I find the following aggravating features are present:

(i) The defendant summoned the complainant to the premises and therefore this was a pre-planned attack.

(ii) The attack was entirely unprovoked.

(iii) The attack took place over a prolonged period namely from approximately 4.00 pm on 13 October through to the early hours of the 14 October, probably in or around 7 - 8 am.

(iv) The attack involved extreme violence which included punches, kicks, use of iron bars and a gun to inflict injury. Although the injuries were inflicted by both the defendant and the deceased, the defendant was involved in a joint enterprise.

(v) The complainant was subject to degradation as he was made to telephone his former girlfriend and tell her he was being rehabilitated

from drugs and in addition was made to get down on his knees and say he loved his family.

(vi) The use of a multiplicity of weapons including metal bars and a gun.

(vii) The complainant was forced to shoot himself in the leg.

(viii) The defendant failed to seek professional medical help. The medical help administered was amateurish and in all likelihood inflicted further pain and injury.

(viii) The defendant went to the premises armed with a gun which he subsequently used to threaten the complainant and later used to cause serious injury the defendant.

(xi) The offence was carried out whilst the defendant was under the influence of alcohol and drugs.

[54] In terms of mitigation the only mitigating factor is his plea. It was accepted by Mr Duffy QC that it was a late plea only being made on the first day of trial and at a time when the main prosecution witness had attended court. I accept some credit should be given because it obviated the need for the main Crown civilian witness to be called.

[55] In assessing harm there is no medical evidence before the court, although it is clear that the complainant sustained serious injuries including a fractured femur as a result of the gunshot wound which necessitated in-patient treatment at hospital. Further he suffered a number of more superficial injuries and has now been left with on-going physical and psychological problems as outlined in his victim impact statement.

[56] I consider in light of the many serious aggravating features and limited mitigation that this case falls towards the upper end of the range. This was a most brutal crime carried out with premeditation involving gratuitous violence and degradation of the victim. I consider that the appropriate starting point is one of 13 years and 6 months. Having regard to his plea I reduce the sentence to one of 11 years imprisonment which equates to a reduction of approximately 18.5% for his plea.

Firearms offence

[57] In accordance with Article 70 of the Firearms (Northern Ireland) Order 2004 the offence with which the defendant is charged carries a mandatory sentence of 5 years, save in exceptional circumstances. The defendant did not argue that any

exceptional circumstances existed. The relevant guideline case in Northern Ireland is *R v O'Keefe* (unreported 3 March,2000) which adopted the guidance in *R v Avis* [1998] 2 Cr App R (S) 178 in which Lord Bingham stated at page 181 that a sentencing court should ask itself four questions. *R v Sheen* [2011] EWCA Crim 2461 has added an additional two questions which the sentencing court should ask. The questions are as follows:

> "(1) What sort of weapon is involved? Genuine firearms are more dangerous than imitation firearms. Loaded firearms are more dangerous than unloaded firearms. Unloaded firearms for which ammunition is available are more dangerous than firearms for which no ammunition is available. Possession of a firearm which has no lawful use (such as a sawn-off shotgun) will be viewed even more seriously than possession of a firearm which is capable of lawful use.
>
> (2) What (if any) use has been made of the firearm? It is necessary for the court, as with any other offence, to take account of all circumstances surrounding any use made of the firearm: the more prolonged and premeditated and violent the use, the more serious the offence is likely to be.
>
> (3) With what intention (if any) did the defendant possess or use the firearm? Generally speaking, the most serious offences under the Act are those which require proof of a specific criminal intent (to endanger life, to cause fear of violence …). The more serious the act intended, the more serious the offence.
>
> (4) What is the defendant's record? The seriousness of any firearms offence is inevitably increased if the offender has an established record of committing firearms offences or crimes of violence.
>
> (5) Where was the firearm discharged, and who and how many were exposed to danger by its use or their use?
>
> (6) Was any injury or damage caused by the discharge of the firearm or firearms, and if so how serious was it?"

[58] In *O'Keefe* the court indicated that a sentencer should keep a flexible approach to the particular case as circumstances vary widely.

[59] In respect of the six questions, five can be answered adversely to the defendant. The only mitigating factor is the plea but again this was a late plea. I consider however that some credit should be given because his plea assisted the Crown in that they did not have to call a civilian witness.

[60] Both counsel for the prosecution and the defendant indicated that the facts in respect of the offence of GBH and the firearms offence were so intertwined that the two should be dealt with together. I agree with this approach but I note that there is a maximum sentence of 10 years for this offence. Accordingly I consider that the appropriate starting point is 8 years and I reduce this to 6 ½ years to reflect the guilty plea. I therefore impose a determinate custodial sentence of 6 ½ years.

Totality

[61] Having regard to the principle of totality I consider that a total term of 11 years imprisonment is appropriate. This will be reflected by imposing sentences concurrently. I intend that the sentences imposed in respect of manslaughter and the firearms offence will both run concurrently with the sentence imposed for GBH with intent.

The extension period

[62] The role and function of the extension period was explained in *R v Cambridge* [2015] NICA 4 as follows:

> "The extended period will be for such period as is considered necessary to protect the public from serious harm. The protective element should not be fixed as a percentage increase of the commensurate sentence. On the contrary, the protective element should be geared specifically to meet the statutory objective i.e. the protection of the public from serious harm and to secure the rehabilitation of the offender to prevent his further offending. The punishment element cannot dictate the period required to ensure the necessary level of protection. The two aspects of sentence thus serve different purposes."

[63] The effect of an extended custodial sentence is that after the defendant serves half of his custodial sentence the Secretary of State shall release him if the Parole Commissioners direct his release when they are satisfied it is no longer necessary for the protection of the public that he should be confined. The Secretary of State on the recommendation of the Parole Commissioners can revoke the defendant's licence and have him recalled to prison. Thus the defendant may depending on the events

which happen and his behaviour have to serve the whole or part of the extension period.

[64] The defendant will require education, medical assistance and supervision in respect of his drug and alcohol addiction, if the public are to be adequately protected. He will also require relapse counselling and other protective measures to deal with any impact on his physical and mental health. If he is to successfully reduce the risk that he currently presents the defendant will have to apply himself fully and actively engage in the necessary programme of works which will take place over an extensive period of time. Accordingly the public will require protection for a substantial period and I consider that an extension period of four years is appropriate and proportionate for this purpose.

[65] I therefore impose an extended custodial sentence comprising 5 years and 4 months imprisonment with an extended licence period of 4 years in respect of the manslaughter charge and an extended custodial sentence of 11 years imprisonment with an extended licence period of 4 years in respect of the offence of grievous bodily harm with intent. I have already imposed a determinate custodial sentence of 6½ years for the firearms offence. As indicated to reflect totality, I order that the extended custodial sentence in respect of manslaughter is to run concurrently with the extended custodial sentence in respect of grievous bodily harm. Further as indicated the determinate custodial sentence of 6 ½ years in respect of the firearm offence is to be served concurrently.

Appropriate Sentence– Second and Third Defendants

[66] The second defendant faces a charge of withholding information namely information about the first defendant knowing that the information would be of material assistance to the police. The agreed basis of plea is as follows:

> "Dmitrijus Indrisiunas (herein "the defendant") discovered the deceased's body on 15 October 2015. That day he made a 19 page witness statement to police, without the benefit of an interpreter, detailing the movements and activities of Darius Sikorskas and the deceased at the defendant's garage over a number of days. All of that information was accurate, however the defendant omitted to mention that he left the garage with Darius Sikorskas on 14 October 2015 in a car driven by Marius Dzimisevicius and had gone to a flat in Coalisland.
>
> As it appears that Darius Sikorskas left that flat very shortly afterwards there is no evidence that the defendant's omission to mention the journey in fact

> prejudiced the police investigation, although it is accepted that such information may have been of material assistance."

[67] The third named defendant is also charged with withholding information. The agreed basis of plea is as follows:

> "The defendant found out about the death at 1 Moor Road, Coalisland only when he heard about it in the news (thus, on or after 15 October 2015) and he believed at that stage an offence may have been committed which he had information about which was likely to have been of material assistance in securing the apprehension of some other person for that offence. The information was his knowledge of other Lithuanian nationals association with the premises at 1 Moor Road, Coalisland in October 2015. He failed to give this information to a constable within a reasonable time after learning of the death at 1 Moor Road.
>
> It is accepted as a fact that this defendant drove Mr Sikorskas away from 1 Moor Road, Coalisland but at that stage he had no knowledge or suspicions of any offence having been committed. The defendant is 29 years of age and has no previous convictions."

[68] There is limited guidance in respect of sentences for withholding information, which is an offence which does not apply in England and Wales. Counsel through their industries provided the court with four first instance decisions from this jurisdiction namely, *R v Bustard and Others* [2015] NICC 12, *R v Seales and Others* [2014] NICC 12 *R v Rafcz and Czop* [2011] NICC 5 and *R v McHugh & Hilditch* [2009] NICC 42.

[69] In *Bustard* the first defendant was originally charged with murder but pleaded to manslaughter. After the third defendant knew that the deceased had died in an encounter with the first defendant he took no steps to inform the police of the first defendant's whereabouts thereby delaying the first defendant's arrest. The court held that the offence was one of a high degree of seriousness especially given the gravity of the principal offence and that a prison sentence was warranted. Taking into account the third named defendant's personal circumstances, clear record, low risk of re-offending and the fact the offence was unique having only a limited impact on the police investigation and the course of justice, the court imposed a sentence of one year imprisonment suspended for two years. In *R v Seales* a number of defendants were charged with withholding information in respect of a

defendant who was found guilty of murder. Weir J held that withholding information was a serious matter which required the imposition of a custodial sentence. Taking into account their personal circumstances, early pleas and the fact the police investigation was not in fact hampered much if at all, he imposed sentences of 18 months suspended for two years. In *R v Rafacz and Czop*, Czop did not inform the police at the scene that he had seen his sister attack the deceased when he went to her flat in answer to her telephone calls. Hart J opined that the appropriate sentence would normally be one of 6 months imprisonment but imposed a community service order due to the time served.

[70] The case law illustrates that withholding information may occur in infinitely varying circumstances. These first instance decisions however show that the offence attracts a custodial sentence. This is primarily because the nature of the offence is serious as it involves interference with the administration of justice. The degree of seriousness is higher in a case where the principal offence is one of gravity, for example murder or manslaughter. The period of imprisonment in cases where the police investigation was not hampered appears to lie between 6 months and 2 years. The place within this bracket depends on the defendant's personal circumstances and the other mitigating and aggravating factors. I consider that the upper figure may vary significantly upwards in circumstances where the police investigation is actually hampered or the defendant's conduct prevents a successful prosecution of a perpetrator.

Dmitrijus Indrisiunas

[71] The second defendant is a 44 year old Lithuanian national who has lived and worked in this jurisdiction since 2014. He is married with two children aged 15 years and 12 years. He has three previous convictions which relate to alcohol and drug matters and are not directly relevant to the present offence. The pre-sentence report assesses him as posing a medium likelihood of re-offending. He is not assessed as meeting the criteria which would deem him to be a significant risk of serious harm at this time.

[72] Mr Gallagher QC in a well crafted plea submitted that on the basis of plea there was no evidence the police investigation was prejudiced and his client otherwise co-operated fully with the police as evidenced by his 19 page statement. He further submitted that a suspended sentence was appropriate in light of the delay since arrest and the fact his client has a good work record.

[73] I consider that the following aggravating features are present:

- The gravity of the principal offending.
- Delay by this defendant in providing the information even when the matters were specifically put to him at interview in November 2015.
- His actions caused a delay in the arrest of the first defendant.

- He is assessed as posing a medium likelihood of re-offending as appears from the pre-sentence report.

[74] In mitigation I take into account the following:

- There is no evidence that his actions actually prejudiced the police investigation.
- This defendant otherwise co-operated with the police by giving them a 19 page statement which although it omitted the relevant information on which the charge is based, he did nonetheless provide other information which was accurate about the movements and activities of the first defendant and which must therefore have been of some assistance to the police.
- His remorse and regret as expressed in the pre-sentence report where he indicates that he wished he had never allowed himself to get involved and wants to put this episode in his life behind him and return to what he describes as a "normal family life".
- His personal circumstances and work record.
- His plea.

[75] Taking all the aggravating and mitigating factors into account I consider that the appropriate term of imprisonment is one of 16 months.

[76] The defendant pleaded guilty albeit at a late stage. In light of his failure to give the information to the police when the matter was put to him at interview on 2 November, the lack of any working defence and his plea just before the trial commenced, I consider that the appropriate discount is 25%. This reflects the fact his plea saved court time and expense and obviated the need for witnesses to give evidence. I therefore impose a term of imprisonment of 12 months.

[77] I will suspend the sentence for a period of 2 years as I consider that in many ways this was a unique offence given that the police investigation was not hampered and the defendant otherwise co-operated with the police. In addition there has been significant delay in this case since the defendant's arrest in November 2015.

[78] The suspension means that if the defendant keeps out of trouble for 2 years he will hear no more about this matter. If on the other hand he commits another criminal offence within that period then, in addition to being dealt with for that further offence, he will be liable to have the suspended sentence that I am now imposing put into operation and be sent to prison.

[79] I have been advised that the second defendant may face deportation under the UK Borders Act 2007 but such deportation would not be automatic where the sentence imposed is suspended. No representations were made as to whether I should make a recommendation regarding deportation. In all the circumstances I

have decided to make no recommendation in respect of the matter one way or the other.

Marius Dzimisevicius – Third Defendant

[80] The third defendant is 29 year old Lithuanian national who moved to Northern Ireland in 2013. He is married and has no dependents. He is a self-employed barber.

[81] Mr Berry QC in his eloquent and well-reasoned submissions on behalf of this defendant highlighted that at the time the defendant found out about the death of the deceased his knowledge was not of any specific crime but related only to who was present generally at the premises at 1 Moor Road, Coalisland. The failure of the accused to provide the information did not in any way meaningfully thwart or frustrate the investigation as it was apparent the police had identified the main suspect and were able to arrest him on 20 October 2015. In essence once this defendant became aware of the death at the premises on 15 October 2015 he should have then contacted the police but it is debatable as to how much practical assistance this would have provided to the investigation. He submitted that it certainly would not have had a material impact in proceedings given the nature of the other evidence in the case including forensic, CCTV and eyewitness accounts. He further submitted that many of the aggravating features found in the cited cases were not present in the index offending.

[82] It is clear that many of the cited cases are very fact specific, and are therefore of limited assistance. I consider that the aggravating features in this case are as follows:

- The gravity of the principal offence.
- The defendant's actions led to delay in the arrest of the first defendant for a number of days.
- The defendant continued to fail to give information even when stopped on 20 October by police. This persisted even when he was arrested and interviewed on 2 November.

[83] In mitigation I take into account the fact that the police investigation was not hampered, that this defendant has a clear record and is presently employed. I further take into account the fact that he is assessed as posing a low likelihood of re-offending and does not pose any significant risk of serious harm. In addition I take into account his guilty plea and the remorse expressed by him, as appears from the pre-sentence report where he indicates that he is sorry and that he was stupid in not going to the police.

[84] Taking into account all these factors I consider that the appropriate sentence is one of 16 months imprisonment. The defendant pleaded guilty and is entitled to

credit for this. The plea, although only entered on the first day of trial had been intimated some weeks prior to that date but as the prosecution wanted to deal with the case in its entirety this led to the plea only being entered on the first day of trial. I consider in all the circumstances the appropriate discount is one of 25%. I therefore impose a term of imprisonment of 12 months.

[85] I will suspend the sentence in light of the delay since the defendant's arrest (being a period of some 2 years and 9 months); his low risk of re-offending; his clear record and the fact that he has not offended in the intervening period together with the expressions of genuine remorse which he has expressed in the pre-sentence report. I consider that it is useful to have a sentence hanging over his head and I therefore suspend the sentence of imprisonment for a period of 2 years.

[86] I note that this defendant may now be subject to deportation. He has already indicated his intention to return to Lithuania in any event. I therefore make no recommendation in respect of deportation. I have already explained the implications of a suspended sentence which means that this defendant must keep out of trouble for 2 years in which case he will hear no more about this matter. If on the other hand he commits another criminal offence within that period in addition to being dealt with for that further offence he will be liable to have the suspended sentence that I have now imposed put into operation and be sent to prison.