Neutral Citation No: [2018] NICC 6	*Ref:* **COL10651**
*Judgment: approved by the Court for handing down (subject to editorial corrections)**	*Delivered:* **11/5/2018**

IN THE CROWN COURT IN NORTHERN IRELAND

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ANTRIM CROWN COURT SITTING AT LAGANSIDE COURTS, BELFAST

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THE QUEEN

-v-

CHRISTOPHER PATRICK KEENAN

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SENTENCING REMARKS

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COLTON J

[1] The defendant is charged with the murder of Anthony McErlaine on 28 January 2016.

[2] He pleaded not guilty at first arraignment on 12 January 2018.

[3] The trial was listed for 9 April 2018. The defendant applied to be re-arraigned and on 23 March 2018 he pleaded guilty.

[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 was born on 20 March 1982. He was born and raised in the Ballycastle area.

[6] The murder occurred in the home of John Keenan, the defendant's uncle and former co-accused, on 28 January 2016.

[7] Both John Keenan and the deceased, Anthony McErlaine, suffered from alcoholism. Angela Harris lived next door to John Keenan and during the afternoon of 28 January 2016 she was drinking cider with a number of other persons, including David Brady, in a flat adjacent to John Keenan's flat.

[8] Mr McErlaine arrived in the flat and told the assembled group that he had been drinking in Bungy's (nickname of John Keenan) house and that after an altercation there he had jumped out of the window of the property to escape. Both Ms Harris and Mr Brady observed a cut to the top of his head which was bleeding. Another person Roberta, who was in the flat, dressed his wound with Germolene and Mr McErlaine left indicating he would be back in a few minutes.

[9] Later that evening Mr Brady and Ms Harris were still drinking although by now they had moved to Ms Harris's flat. Sometime after 8.30 pm John Keenan came into her flat. She thought he did not seem himself. He had clearly been drinking and was "white as a ghost". She asked him if he had seen Anthony McErlaine and he replied that he had.

[10] A few minutes later he said that Anthony McErlaine was lying dead in a pool of blood. Two members of the group then went to Mr Keenan's flat where they discovered Mr McErlaine's body and contacted the police.

[11] The police attended and took photographs of the scene. Mr McErlaine's body was removed and a post mortem examination was carried out.

[12] The pathologist, Dr Parsons, noted 24 separate injuries to the head and neck area of the deceased and a further 20 separate injuries to the small arms and trunk (though some of these were not associated with the assault). He had sustained extensive swollen bruising to the face and to the right side of the scalp including both abrasions and lacerations and broken nose. He suffered two full thickness lacerations through his lower lip associated with the position of the front teeth. He also suffered patterned bruising to the left hand side of the head consistent with striking an abrasive surface. Dr Parsons stated:

> *"Overall the pattern of injuries to the skin surface is typical of multiple blows to the face including fists and feet."*

[13] Mr McErlaine also suffered three ragged incised wounds to the front and left side of his neck together with a broken neck bone. The largest of these was 6 cm in length and at least 3 cm deep and it tracked upwards into the deep muscles of the base of the tongue. Although these wounds did not traverse any major blood vessels they are likely to have caused heavy blood loss. In Dr Parsons' opinion these wounds are unlikely to have been caused by a knife and are more likely to have been caused by an irregular object such as the broken ceramic teapot found at the scene.

[14] An examination of the inside of Mr McErlaine's skull revealed evidence of traumatic brain injury, both recent and old. There was evident of sub-dural and sub-arachnoid haemorrhage. There was also recent bleeding in the cortex and ventricles of the brain and swelling of the brain which reflected recent trauma to the head. The complexity of the pathological findings was such that Dr Parsons was unable to determine the exact cause of death. He concluded that it was caused by the injuries inflicted to the head and neck combined with acute alcohol intoxication.

[15] Anthony McErlaine had a blood alcohol reading of 323 mg per 100 ml of blood.

[16] Footwear analysis revealed the defendant's footprints in the deceased's blood were present in extensive numbers around the body of the deceased.

[17] For the sake of completeness I should add that Christopher Keenan's uncle John Keenan was also charged with the murder of Anthony McErlaine but due to an insufficiency of evidence against him a "no bill" was entered in respect of the count he faced.

Christopher Keenan's interviews

[18] The defendant told the police that he had been drinking along with his uncle and the deceased on 28 January 2016. He said that an argument developed and that John Keenan began fighting with Anthony McErlaine. He said:

> "*I got up, assaulted Akkie too. John was hitting him, I was hitting him, I hit him about 5 or 6 punches to the head and he went down hit him a lot of kicks to the head but it was a blood bath and then I freaked out …*"

[19] He clarifies that the punches he had thrown were with his right hand and that they connected with the left side of Anthony McErlaine's face and head. He also clarified that he had kicked Mr McErlaine on the ground. He admitted the kicks had been levelled with his right foot and that they had been aimed at Mr McErlaine's head. He said that he kicked him "*loads of times*" and that the beating lasted for no more than a minute and as a result Mr McErlaine began to make a gargling noise.

[20] Mr Keenan stated that initially his involvement had been to defend his uncle but accepted that by the time he was kicking Mr McErlaine in the head that he did not even know where his uncle was. Mr Keenan was asked whether as a result of this punching and kicking, Mr McErlaine had sustained injuries and he stated:

> *"It was a bloody mess … the place soaked in blood, I'm soaked in blood, he's soaked in blood."*

He said that he realised at this point he had gone too far.

[21] Christopher Keenan then described John Keenan smashing a ceramic pot over Mr McErlaine's head, he stated this happened after he stopped beating Mr McErlaine.

[22] Mr Keenan stated that he then left the flat and panicked. He tried to make contact with his Aunt Catherine and then went back to John Keenan's flat to discover the police were already there. He returned to Catherine's flat where he was arrested.

[23] After being arrested Mr Keenan asked various questions of police like:

> *"How long do you get for murder these days?"*

[24] It is clear that from the outset at the time of arrest and throughout interviews the defendant accepted he had assaulted the deceased and did not seek to resile from his account.

The relevant legal principles

[25] 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.

[26] 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."*

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

[28] 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

[29] 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. Ms Jackie Orr QC appeared with Mr Michael Chambers on behalf of the prosecution. Mr John McCrudden QC appeared with Mr Seamus McNeill on behalf of the defendant. Ms Orr presented the case on behalf of the prosecution with her customary clarity and fairness. Mr McCrudden presented the defendant's case with great skill whilst demonstrating sensitivity to the plight of the deceased's friends and relatives.

[30] Before determining the appropriate tariff it is essential that I highlight the victim impact statements that I have received from the deceased's family.

[31] I have received written statements from six of Anthony's brothers, two from his sisters and one from his father. I have also received a short comment on how the death affected another of his sisters who did not feel able to submit a statement because of her distress at the entire incident. Each of these statements in their own individual and eloquent way demonstrates the profound personal grief of each of the authors. His siblings describe a gentle, well-read man who unfortunately had an affliction with alcohol. He was clearly deeply loved by his immediate family and by the younger generation in his family. All have suffered greatly as a result of his death. These statements are important in reminding the court of the impact of

Mr McErlaine'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 Mr McErlaine's traumatic and unnecessary death. In coming to a determination of the appropriate tariff I bear these statements fully in mind.

[32] I recognise that the loss of Mr McErlaine'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

[33] I have received the following additional material:

(a) A pre-sentence report from the Probation Board for Northern Ireland in respect of the defendant dated 4 May 2018.

(b) Medical reports from Dr G Loughrey FRCPsych, consultant psychiatrist dated 16 November 2017, 18 December 2017 and 21 December 2017 – obtained on behalf of the defence.

(c) Medical report from Dr Richard Bunn MRCPsych, consultant forensic psychiatrist dated 21 March 2018 – obtained on behalf of the PPS.

[34] The pre-sentence report indicates that the defendant had an unsettled childhood and early adolescence. He was born and raised in the Ballycastle area. He was cared for by his mother and maternal grandmother. Because his mother worked full-time his grandmother adopted the main role of carer in his life. Although the defendant knew the identity of his biological father they never established a relationship and indeed he first met him whilst serving a custodial sentence. His mother re-married when the defendant was 11 years old and this was something he found difficult to accept. He was left to reside with his grandmother in Ballycastle for educational reasons when his mother and step-father relocated to the Draperstown area.

[35] Around this time his behaviour began to give cause for concern and whilst he was reunited with his mother and step-father for a period in Draperstown the relationship between him and his step-father deteriorated with a result that he was admitted to St Patrick's Training School in August 1996 on a place of safety order after he was deemed beyond parental control. He made little progress in the training school. He was moved from the care side to the youth criminal side and thereafter was moved to Lisnevin.

[36] He has no experience of gainful employment other than sporadic periods assisting his step-father in a steel erecting business.

[37] He developed issues with substance misuse from an early age. He has a particular problem with alcohol addiction. Psychology reports indicate that he had experienced previous difficulty with his mental well-being having been assessed in the Acute In-Patient Unit in Holywell on two occasions in 1999 and 2000 following intentional overdoses. This lifestyle is associated with a very significant criminal record. He has 100 previous convictions including a conviction for a Section 18 wounding on 19 October 2011 and 15 convictions for assault on the police, 5 common assaults, 12 criminal damages, 3 robberies, 5 serious assaults including a Section 18 assault and 5 threats to kill. In relation to his criminal record the probation report records as follows:

> "*It records robbery, hijacking, assaulting police, AOABH, wounding with intent and aggravated assault. It appears that despite the sanctions of the court including three previous periods of probation supervision, which were all breached due to non-compliance and further offending, Mr Keenan continues to offend in a violent and aggressive manner. Mr Keenan's offending behaviour appears driven by his egocentricity and a pro-offending attitude and lifestyle. These characteristics are primarily disinhibited through his abuse of alcohol and drugs. He appears to offend without thought for the impact on the victims. His violent offending is often disproportionate to the presenting circumstances and the vulnerability of the victim. It would*

> *appear that he has not developed the ability to respond to difficult situations in a pro-social manner. Mr Keenan has essentially spent the majority of his adolescence and early adulthood in custody. It appears that he has been unwilling to appropriately manage his life in the community. He accepts he has not been willing to draw upon the services on offer to him stating 'if I had taken the help years ago, this might have been avoided'."*

[38] The report from Dr Loughrey confirms this background. He diagnoses the defendant as suffering from alcoholism and a possible personality disorder. In his report of 18 December 2017 Dr Loughrey provided an addendum report having had the opportunity to assess the defendant's medical notes and records. He felt that this record confirmed his diagnosis of alcoholism and of a personality disorder. He did not find any evidence of significant major mood disorder or psychosis. His view was that "*it is likely that his ability to form criminal intent was significantly impaired by his intoxication, although not by any other mental abnormality or psychiatric condition.*" In a further report dated 21 December 2017 he was asked to "*give a clearer opinion as to the relationship between any abnormality of mind and the client's actions*".

[39] In that report Dr Loughrey confirms that the defendant did not have any psychiatric diagnosis of any relevance in this case. He took the view that the defendant was not suffering from a relevant abnormality of mental functioning arising from personality disorder. It is his opinion that the defendant was significantly intoxicated at the time of the offending behaviour and that this intoxication was such as to impair his ability to exercise self-control. However he said that "*it does not appear to me that there was a substantial impairment of ability to understand the nature of his conduct or to form a rational judgment.*" His final conclusion was:

> "*It is therefore my view that this man's alcohol dependence syndrome had reached a point where his drinking before the killing was the involuntary result of an irresistible craving for alcohol, which led to a level intoxication that substantially impaired his ability to exercise self-control.*"

The PBNI assess the defendant as representing a high likelihood of re-offending and, although not relevant for this sentencing exercise, someone who currently presents as a significant risk of causing serious harm.

[40] Dr Bunn also provided a detailed psychiatric report having interviewed the defendant and also having had the opportunity to consider the reports from Dr Loughrey. He too confirms the background history set out already. In his conclusion it was his opinion that there was no evidence to suggest that the level of intoxication of Mr Keenan at the time he committed the offence was so extreme as to prevent *mens rea*. He points out that Mr Keenan was used to the intoxicating effects

of alcohol and described "*clear memory*" of the events which corresponds with the account he gave during the course of police interview. He agrees that the defendant fulfils the criteria for alcohol dependence syndrome but was of the view that the defendant's consumption of alcohol prior to the killing was voluntary. He did not accept Mr Keenan's mental responsibility for his actions in killing the deceased was *substantially* impaired as a result of the alcohol consumed. His opinion was that the defendant's actions were deliberate and that "*there is insufficient evidence to suggest that Mr Keenan's alcohol dependent syndrome substantially impaired his ability to understand the nature of his conduct, or form a rational judgment or exercise self-control and should not be considered for diminished responsibility*".

Application of the principles

[41] At the sentencing hearing counsel disagreed on what was the appropriate starting point within the **McCandless** guidelines. Ms Orr argues that the higher starting point of 15/16 years should apply in this case. She argues that the offender's culpability was "exceptionally high" and that the victim was in a "*particularly vulnerable position*". In support she says that this case is characterised by the following features identified in paragraph 12 of the guidelines namely that the victim was "*otherwise vulnerable; there was evidence of gratuitous violence of the victim before the killing and extensive and/or multiple injuries were inflicted on him before death*".

[42] Mr McCrudden countered with a forensic examination of the guidelines. He points out that before elevating the starting point from the normal one of 12 years a case must have the characteristics referred to in paragraph 12. He emphasises that one characteristic alone is insufficient. He focuses on the qualification of the words "high" and "vulnerable" by the use of "exceptionally" and "particularly".

[43] In most murder cases an offender's culpability will be high and the deceased will be vulnerable to some extent. He cautions against "double counting". If the repeated kicking by the deceased while lying prone on the ground constitutes the infliction of gratuitous violence then there must be a significant degree of overlap between that and the infliction of significant injuries prior to death. He further points out that there is an argument that the normal starting point of 12 years could be reduced by virtue of paragraph 11 of the guidelines which permits such a reduction where 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.

[44] 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."*

[45] The Court of Appeal has made it clear that selecting a starting point is not a mechanistic or formulaic exercise. The guidelines are there to assist the court to proceed to, what in the circumstances of the case, it considers is a just and proportionate sentence having regard to the guidelines.

[46] Ultimately not much may turn on the debate as to the appropriate starting point. The particular circumstances of this case may not easily fall in to the specific categories identified in the guidelines. Irrespective of the starting point the matters referred to by counsel can be taken into account by way of aggravating or mitigating factors. Thus the features identified by Ms Orr in her submissions if treated as aggravating factors will have the effect of adjusting the appropriate tariff upwards from the starting point of 12 years before any allowance for the mitigating factors identified by Mr McCrudden on behalf of the defendant.

[47] What then is the appropriate tariff? I propose to approach this determination in the following way.

[48] On the face of it the starting point is the normal starting point of 12 years as this case involves the killing of an adult victim, arising from a quarrel or loss of temper between two people known to each other. However, the offence is significantly aggravated by the conduct of the defendant in the killing of Mr McErlaine. The repeated punching and kicking of the deceased particularly in the head area whilst he lay prone and defenceless on the ground brings into play the characteristics referred to in paragraph 12 of the guidelines. This attack can only be described as senseless, vicious, sustained and frenzied. For me it is the most compelling feature of the case in selecting a starting point before any reduction for mitigating factors. These considerations lead me to the conclusion that an appropriate starting point for the offence is one of 16 years.

[49] I also consider that I should take into account the defendant's criminal record as an aggravating factor in this case. His record is replete with offences involving violence and he has clearly failed to respond to previous sentences for that offending. Having regard to his criminal record I consider that an appropriate starting point before mitigation is a tariff of 18 years.

[50] In terms of mitigation I accept that this offence was a spontaneous one committed without premeditation. Mr McCrudden argues that I should sentence on

the basis that the defendant's intention was to inflict grievous bodily harm and not to kill. In the circumstances of this case where there has been such a clear loss of control one can never know with certainty what was in the mind of the defendant in the course of his assault on the deceased. Clearly his actions were sufficient to establish that he had the necessary intent in law for murder. A moment's reflection by him must surely have led him to the conclusion that there was a very real risk that he would have killed his victim. Given his actual conduct here I do not consider that there should be any significant mitigation in terms of the defendant's intent.

[51] In determining the appropriate tariff Mr McCrudden points to paragraph 11(v) of the guidelines in **McCandless** which can justify, in an appropriate case, the reduction of the normal starting point of 12 years. For the reasons I have set out above I consider that the appropriate starting is beyond the 12 years because of the particular characteristics of this case. Nonetheless I take the view that the court should consider this issue in determining the appropriate tariff. Mr McCrudden points to the fact that both Drs Loughrey and Bunn have diagnosed the defendant as suffering from alcohol dependence syndrome. It was Dr Loughrey's view that this syndrome had reached a point where his drinking before the killing was the involuntary result of an irresistible craving for alcohol and that he had reached a level of intoxication that had substantially impaired his ability to exercise self-control. Dr Bunn did not subscribe to that conclusion. On this issue I prefer the opinion of Dr Bunn, which is reflected in the defendant's plea. I agree with his assessment that the defendant's actions were deliberate and that he had a clear memory of his actions both at interview and when subsequently interviewed by various experts. He has a propensity to violence as indicated by his criminal record and I do not think that his culpability has been significantly reduced by reason of his alcohol dependence.

[52] Moving on from the offence I have been asked to take into account the defendant's remorse for his actions. Mr McCrudden eloquently drew the court's attention to the defendant's specific instruction to express his heartfelt remorse to the family of the deceased for his actions. That acknowledgment of regret for his behaviour is also clearly expressed in the probation report. The Probation Service expressed some reservations about this remorse given his "emotionally detached" presentation. In terms of his sincerity Mr McCrudden points out that the defendant did demonstrate distress and upset when admitting the offences during interview.

[53] A key feature of the victim impact reports is that the relatives of the deceased do not believe that the defendant has in fact demonstrated remorse. Remorse can be a very difficult issue for the court to assess but it seems to me in a crime of this nature that any mitigation will be low in any event. Because of the defendant's attitude to the offences I am inclined to accept that he does have remorse for his conduct, but overall specifically for remorse it seems to me that any mitigation will be minor.

[54] Having regard to the culpability of the defendant it seems to me that the mitigation for these factors is relatively small. Overall I consider that the tariff I would impose had the defendant contested the matter i.e. the tariff before any mitigation for a plea would be one of 16 years. In reaching this tariff I have taken into account all of the aggravating and mitigating factors to which I have been referred avoiding the temptation for an over mechanistic or formulaic approach. I consider this to be a just and reasonable tariff before considering discount for a guilty plea.

What then is the appropriate reduction, if any, for the guilty plea in this case?

[55] 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. The defendant is clearly entitled to a reduction for his guilty plea in this case.

[56] In considering the appropriate discount for a plea of guilty in a murder case it is necessary to take into account the guidance issued by the Court of Appeal in the case of **R v Turner and Turner** [2017] NICA 52.

[57] 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.*"

[58] The court however did go on state that:

> "*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 has been given for a plea in a murder case the judge should carefully set out the factors which justify it in such a case.*"

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

[60] 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. Conventionally in this jurisdiction a defendant could expect a reduction in the range of one third of his sentence for a guilty plea entered at the first available opportunity – although this could be influenced by the attitude adopted at the police station when first interviewed and whether or not there was an overwhelming case against the defendant.

[61] In approaching the circumstances of this case I take the view that the defendant entered what could be referred to as a "timely plea". Indeed this is accepted by the prosecution.

[62] In my view notwithstanding the fact that the defendant pleaded not guilty at first arraignment this is a case in which a discount of greater than one sixth should be given. The factors which justify it in this case are as follows. From the moment of his arrest and throughout interview the defendant fully admitted his involvement in this murder. Even though he did not plead guilty at first arraignment this was on the express and proper instructions of his lawyers on the basis that there was medical evidence calling into question his mental state at the time he committed the offence. This was made clear by counsel for the defendant at the arraignment and indeed to the prosecution. The medical reports were obtained in an expeditious fashion, bearing in mind that it was necessary to obtain substantial medical notes and records which initially could not be located. As soon as the defendant received the expert report from Dr Bunn on behalf of the prosecution he indicated his intention to plead guilty. Mr McCrudden argues that this was a contestable case on the basis that Dr Loughrey's opinion raised the possibility of a finding of diminished responsibility. He argues that this should also be taken into account in considering the discount for the plea in this case. As set out above I do take into account the history of the obtaining of the medical evidence in looking at the circumstances in which this plea was entered but I am not persuaded that this would justify any significant reduction in the relevant sentence. Nonetheless there is no doubt that the defendant's plea has brought certainty and finality to these proceedings which is to be welcomed.

[63] There was therefore no significant delay between the first arraignment and the defendant's re-arraignment.

[64] In the circumstances of this case I take the view that the defendant should in effect be sentenced as if he had pleaded guilty on first arraignment and is entitled to substantial discount for his plea. I consider that throughout this case the defendant has adopted an entirely realistic approach to the case and has not sought to undermine his involvement in this matter or "played the system" to his advantage.

[65] In light of the decision in **Turner** he is clearly not entitled to discount approaching one third but I take the view that the appropriate discount in this case is one of 25% and I therefore propose to impose a tariff of 12 years which is the minimum the defendant must serve in prison before he can be considered for release.

[66] He will be given credit for the 753 days he has served on remand. The remainder of the sentence will commence from the date upon which the life sentence was imposed namely 23 March 2018.