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Judgment: approved by the Court for handing down | *Delivered:* **03/07/2006**

(subject to editorial corrections)

IN THE CROWN COURT IN NORTHERN IRELAND

THE QUEEN

v

McCULLOUGH AND BRATNEY

MORGAN J

[1] Both accused pleaded not guilty at arraignment on a single count that they murdered Eric Joseph Atkinson on 5 March 2004. On 17th May 2006 they were re-arraigned and entered a plea of guilty to manslaughter which the Crown have accepted.

[2] Both accused are men with long histories of alcohol-related problems. Sometime after 10 p.m. on 2 March 2004 both men were admitted to the Lee Hestia Hostel for homeless people in Brunswick Street Belfast. They were directed to the crash room which is a room providing overnight accommodation for persons who have not been provided with a permanent room. There are a number of beds in one big room. The other occupants of the crash room were Edward Beattie, Robert Bradley and the deceased Eric Atkinson. Contrary to the rules of the hostel it appears that some of the men had brought drink into the crash room and it seems clear that all of those in the crash room were are severely intoxicated. Sometime around midnight there was a confrontation which began between Beattie and the deceased. I approach this case on the basis that neither of these accused was initially involved in that confrontation but that both of them thereafter struck the deceased with fists. In the case of McBratney he has further admitted kicking the deceased in the chest and there is evidence of contact between the sole of his boot and the ear of the deceased indicating a stamping motion. The defendant points out, however, that there is no sign of injury other than bruising caused by that movement. After the attack McCullough took clothing belonging to Beattie and McBratney out of the hostel with a view to avoiding incrimination.

[3] A post-mortem established that the cause of death was blunt force trauma of the head and neck. There were some 54 injuries to his head and neck noted but these accused were not responsible for all of these. The pathologist also recorded that acute alcohol intoxication had significantly contributed to his death. The deceased's blood alcohol level was 440 mg of alcohol per 100 ml of blood.

[4] McCullough is a 43-year-old man. He has a very minor criminal record which is of no significance in the context of this case. Prior to this he would not have been regarded as giving concern of risk of harm to the public. He had an unsettled childhood with physical abuse and for the greater part of the last 20 years has been a street drinker. I have had the benefit of two reports from Dr Bownes and a pre-sentence report. These establish that a brain scan has shown evidence of the onset of generalised cerebral atrophy consistent with toxic effects of chronic alcohol abuse. He has been diagnosed as suffering from alcohol dependency syndrome. Because of his involvement in this offence there is an increased concern of risk of harm to the public. He appears to be genuinely remorseful. He has worked as an orderly in the prison and apparently saved a prisoner's life by cutting him down when the prisoner apparently attempted to kill himself. His alcohol problems are likely to continue to give cause for concern after his eventual release and the pre-sentence report suggests the possibility of custody probation with a view to requiring him to seek alcohol counselling and requiring him to reside in a probation approved hostel.

[5] McBratney is a 42-year-old man. His early childhood was influenced by his father's abuse of alcohol and violence towards his mother and the children. He soon developed a criminal record for offences of dishonesty and car crime. In 1991 he was imprisoned for paramilitary offences of false imprisonment, carrying a firearm with intent and wounding with intent. A sentence of four years imprisonment was imposed. Thereafter he lived as a professional beggar and street drinker being convicted of dishonesty and public order offences. In October 2004 he was convicted of possession of an imitation firearm with intent to cause fear of violence. It appears that he entered a restaurant with a plastic imitation gun seeking to obtain money for a drink. He received a custody probation order of two years imprisonment and probation for 12 months. In December 2005 the custody probation order was revoked because probation hostels were unwilling to take the accused. In prison he has availed of education classes and acquired GCSE passes in English and mathematics.

[6] The relevant aggravating features in this case are that each of these accused visited several blows upon the deceased. In the case of McBratney he also used his boot. In the case of McCullough he sought to assist the others to avoid detection by removing incriminating clothing. In both cases the infliction of violence was gratuitous. The deceased had done nothing to

provoke either of them or give either of them any reason or excuse to behave in this appalling fashion.

[7] In mitigation each accused is entitled to credit for his plea of guilty. Although each broadly admitted their involvement at police interview neither of them pleaded guilty at the first opportunity and their discount must accordingly be limited. Neither of them was the instigator of the attack. No weapon was used. None of the blows individually was of such force that it could be said to have caused the death. It does not appear that there was any element of premeditation or preplanning. Each of them has indicated an intention to address his alcohol difficulties.

[8] There are no guideline cases for manslaughter because of the variety of circumstances which can give rise to this charge. There is no sentence which the court can pass which can reverse the tragic consequences of what occurred on this night. There are, however, cases which can assist the court in determining the trend of the authorities in this area. In R v McCullough [1998] NICA 1 the accused was convicted after a trial of manslaughter. The incident occurred outside a public house and it appeared that the accused had used a metal gas cylinder to inflict blows upon the deceased. He was sentenced to 13 years imprisonment which was reduced by the Court of Appeal to 10 years. More recently in R v Donnell [2006] NICA 8 the accused pleaded guilty after his trial had started to manslaughter involving a death as a result of forceful blows from a weapon with a projecting component. A sentence of 14 years imprisonment and two years probation supervision was reduced on appeal to one of 10 years imprisonment and two years probation supervision. The decision in McCullough was noted with apparent approval.

[9] The Crown have indicated in this case than in terms of the force of the attack this is a case which is less serious than either McCullough or Donnell. Donnell also had a lengthy criminal record.

[10] Having regard to the difference in their criminal records and the fact that McBratney used his boot in the course of the attack I consider that there should be some distinction between these defendants. Giving appropriate discount for the fact that they have pleaded guilty I consider that in the case of McBratney the appropriate sentence is one of eight years imprisonment and in the case of McCullough the appropriate sentence is one of seven years imprisonment. In each case I have considered the question of custody probation. In the case of McBratney he has an extensive criminal record and in my view the risks in his case are such as to make it inappropriate to place him under probation supervision as part of his sentence. I take a different view in McCullough. His record is relatively minor and if he consents I will impose in his case a sentence of six years imprisonment followed by 12 months probation supervision. In his case the probation supervision will contain the additional requirements that he should seek alcohol counselling as

directed by his probation officer on release from prison and that he shall reside in a probation approved hostel as directed by his probation officer on release from prison. Breach of either of these conditions would result in his return to prison.