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Judgment: approved by the Court for handing down | *Delivered:* **19/04/2013**

*(subject to editorial corrections)**

IN THE CROWN COURT IN NORTHERN IRELAND

_____

THE QUEEN

V

PAUL GREATBANKS

_____

HORNER J

Introduction

[1] On the 4th of March 2013 the defendant pleaded guilty to the murder of Patrick Joseph Harkin ("the deceased") and the attempted murder of Paul Mythen. I sentenced the defendant to life imprisonment for the murder of the deceased as I was obliged to do by law and adjourned the hearing to determine:

(a) the minimum term that the defendant should serve for the murder of the deceased; and

(b) the appropriate period of imprisonment for the attempted murder of Paul Mythen.

Facts

[2] The defendant is aged 48 years. He was born on 20th of November 1964 in Kent, England. He could be described as having had an itinerant existence as an adult. He has worked in different countries before making his way up from Dublin to Londonderry. His lifestyle was described by Professor Davidson, Consultant Clinical Psychologist, as "rather chaotic, transient and random". It would seem that he was drinking on the streets of Dublin and was basically homeless. He appears to have developed over the years an alcohol dependence syndrome which he has been unable to break. He does have a number of convictions for criminal offences which I will come to. On his own admission all these convictions were "to do with drink". It would appear that when he consumes alcohol he is prone to develop "a bad

temper but that it is drink related". Professor Davidson has recorded at 8.1 of his report the following:

> "He said at times he has a history of **exploding with anger.** He would describe a few fights again drink related."(emphasis added)

[3] Dr Bownes, Consultant Psychiatrist, who reported for the defendant, has also recorded:

> "It was also apparent that from the information Mr Greatbanks disclosed that alcohol abuse was a central feature of his lifestyle from a relatively early age and that was liable to contribute to his failure to sustain stability regarding his employment and relationships and to further narrowing of his personal repertoire and resources for coping appropriately with negative emotional states such as unhappiness and frustration and adjusting to demanding life circumstances."

[4] Dr Bownes goes on to discuss the fact that the effects of alcohol on his higher cerebral functioning have adversely affected the defendant's capacity to "exercise self-control, foresight and judgment".

[5] On the 20th of February 2011 at 1.25 am the defendant presented himself at Strand Road Police Station. He was covered in blood. He reported having killed two people in Bayview Terrace which was close by. Police attended 4 Bayview Terrace to find the deceased lying dead in his flat at 4C Bayview Terrace. There was a bloody claw hammer close by which the defendant admitted was his and that he had used it in the attack on the deceased. The evidence of Ms Beck of FSNI was that Mr Harkin was on the floor or close to the floor when he was struck by an object. The post mortem report from Dr Ingram, records that the deceased "suffered a multitude of injuries including fractures of the jaw, facial and nasal bones". He was covered with widespread lacerations consistent with being struck by the claw hammer. Dr Ingram also concluded that the deceased had been punched and kicked as well.

[6] Paul Mythen was the next victim of the defendant. He was attacked in his flat at 4H by the defendant who used the claw hammer on him. It is a miracle he survived the attack. He suffered life threatening injuries including a significant brain injury. He is now permanently disabled as a consequence. He currently uses a wheelchair and will receive long term support with 24 hour supervision if he is to live independently. He has been assessed as being incapable of giving evidence by reason of his injuries.

[7] I have had an opportunity to view the photographs of the injuries inflicted on the deceased and Paul Mythen by the defendant with the claw hammer. Each of these attacks must have been carried out with the outmost viciousness and savagery. The photographs demonstrate acts of unspeakable brutality on the part of the defendant.

[8] It is acknowledged by the defendant that both the deceased and Paul Mythen were entirely innocent men who did nothing to deserve what happened to them. The defendant bears full responsibility for these violent and vicious attacks resulting in the deceased's death and Paul Mythen's profound physical and mental incapacity. Effectively, two innocent, decent men have had their lives, in one case ended, and in the other case destroyed by the defendant.

[9] I have no doubt that the defendant did have much to drink prior to committing these attacks. It is impossible to know exactly how much he had consumed. Earlier that evening he had been ejected from Wetherspoons for misbehaving and that appears to have been drink induced. On one account he had five doubles of Jack Daniels and beer as well. However, I note at 2.26 am after the attacks Dr Thomasius found him to be bright and alert and that both pupils "were prompt reacting". His memory of what happened is fragmentary and he cannot remember being ejected from Wetherspoons. As Mr McCrudden QC said on his behalf, if he had been dissembling, it would have been much more likely that he would have claimed to have forgotten what happened at Bayview Terrace, not what had occurred at Wetherspoons. I conclude that this was an occasion when the defendant "exploded" following his consumption of alcohol. I also conclude that when he entered both flats he had the claw hammer with him and intended to use it on first the deceased and then Mr Mythen.

[10] I have had an impact statement from the deceased's older sister and an impact report from Dr Curran, Consultant Psychiatrist, on the deceased's 13 year old son, Sean. I have read a report from Dr Hogan, Clinical Neuropsychologist on the present condition of Paul Mythen, who is aged 41 years. I will not embarrass or cause further upset to the family by setting out what is in the statement and the report save to record the deceased's older sister when she commented:

> "The savage way he ended my brother's life is incomprehensible. Not only will I never experience hearing my brother's voice again but to think his son will grow up without his father being there for him, without his father's guidance or loving care is inexcusable."

[11] On a personal note I hope that Sean Harkin is able to continue with his education and go on to train and ultimately qualify as a plumber as he had planned prior to the deceased's death. Mr Mythen's life has been irrevocably altered by the defendant's actions and he is now and will be dependant in the future on others to assist him in order for him to live independently.

The Murder

[12] Where a life sentence has been imposed as here, the relevant statutory provisions applicable are as follows:

> "**Determination of tariffs**
>
> 5.—(1) Where a court passes a life sentence, the court shall, unless it makes an order under paragraph (3), order that the release provisions shall apply to the offender in relation to whom the sentence has been passed as soon as he has served the part of his sentence which is specified in the order.
>
> (2) The part of a sentence specified in an order under paragraph (1) 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.
>
> (3) If the court is of the opinion that, because of the seriousness of the offence or of the combination of the offence and one or more offences associated with it, no order should be made under paragraph (1), the court shall order that, subject to paragraphs (4) and (5), the release provisions shall not apply to the offender."

[13] It is important to stress that the sentence must satisfy the requirements of "retribution and deterrence having regard to the seriousness of the offence, or of the culmination of the offence and one or more offences associated with it". It is also important to understand that the effect of the minimum term is that this is the shortest period the defendant will serve in prison before the Parole Commission considers whether the defendant should be released on licence based on its assessment of any risk and when that release should take place. The defendant will remain liable to be recalled to prison if at any time he fails to comply with the conditions of the licence. Further, that unlike a fixed term of imprisonment, good behaviour on the part of the defendant will not attract any remission.

[14] The way in which these provisions are applied by the courts in Northern Ireland was explained by Carswell LCJ in R v McCandless and Others [2004] NICA 1. At paragraph 2 of the judgment he said:

> "[2] When a defendant in a criminal matter is sentenced to imprisonment for life, that does not in practice mean that he will be detained for the whole of

> the rest of his life, save in a few very exceptional cases. He will ordinarily be released after a period has elapsed which is regarded as appropriate to reflect the elements of retribution and deterrence, provided it is no longer necessary for the protection of the public to detain him. The factual background of murder cases is infinitely variable and the culpability of individual offenders covers a very wide spectrum. Reflecting this variation, the terms for which persons convicted of murder have actually been detained in custody have accordingly varied from a relatively few years to very long periods, even enduring in a few cases to the rest of the offender's life. The statutory provisions and practice relating to the fixing of minimum terms have changed very rapidly over the last few years, largely to reflect the requirements of the European Convention on Human Rights as interpreted by the European Court of Human Rights in their decisions."

[15] The touchstone in this jurisdiction for the fixing of the minimum term in life sentence cases remains the Practice Statement issued by Lord Woolf LCJ which is reported at [2002] 3 All ER 412. Carswell LCJ referred to this in R v McCandless when he said at paragraph 10:

> "**[10]** "In a number of decisions given when imposing life sentences and fixing minimum terms, including those the subject of the present appeals and applications, judges in the Crown Court have taken account of the principles espoused by the Sentencing Advisory Panel and by Lord Woolf CJ in his *Practice Statement* and have fixed terms in accordance with those principles and on a comparable level with the terms suggested in them. We consider that they were correct to do so. We have given careful consideration to the level of minimum terms which in our view represent a just and fair level of punishment to reflect the elements of retribution and deterrence. We are not unmindful of the mandatory minimum terms prescribed in England and Wales for certain classes of case by the Criminal Justice Act 2003, but we consider that the levels laid down in the *Practice Statement,* which accord broadly with those which have been adopted for many years in this jurisdiction, continue to be appropriate for our society."

The relevant paragraphs of the Practice Statement 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 para 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 eight/nine 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 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) **extensive and/or multiple injuries were inflicted on the victim before death**; (k) the offender committed multiple murders.

Variation of the starting point

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 factors 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 culmination 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; (b) spontaneity and lack of pre-meditation.

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.

Very serious cases

18. A substantial upward adjustment may be appropriate in the most serious cases, for example, those involving a substantial number of murders, or if there are several factors identified as attracting the higher starting point present. In suitable cases, the result might even be a minimum term of 30 years (equivalent to 60 years) which would offer little or no hope of the offender's eventual release. In cases of exceptional gravity, the judge, rather than setting a whole life minimum term, can state that there is no minimum period which could properly be set in that particular case.

> 19. Among the categories of case referred to in para 12, some offences may be especially grave. These include cases in which the victim was performing his duties as a prison officer at the time of the crime or the offence was a terrorist or sexual or sadistic murder or involved a young child. In such a case, a term of 20 years and upwards could be appropriate."(emphasis added)

[16] Many of the leading authorities contain advice on the importance of not approaching the Practice Statement in a mechanistic way. Instead the guidelines provide a pathway along which the sentencer may proceed to reach a conclusion appropriate in all the variable circumstances of the case. At the end, it is important for a judge to stand back and look at the overall sentence, ensure that it involves no double counting and that it is appropriate in all the circumstances. I have done this.

[17] I should, of course, say that it is open to me to impose a "whole life tariff." In R v James and Others [2005] EWCA Crim 3115 Lord Phillips CJ stated:

> "A whole life order should be imposed where the seriousness of the offending is so exceptionally high that just punishment requires the offender to be kept in prison for the rest of his or her life."

[18] I do not think the present case falls into that category when judged against other cases in which "whole life tariffs" have not been imposed eg see R v Hamilton [2008] NICA 27.

[19] The approach which has been commended by the Court of Appeal in putting into effect the Practice Statement is set out at paragraph 32 by Kerr LCJ. He said:

> "Although the *Practice Statement* is intended to provide guidance, it does prescribe a sequence to be followed in firstly the selection of a starting point and then the variation of that starting part by consideration of various aggravating or mitigating factors. It is, we believe, important to follow this sequence in applying the *Practice Statement* since there may otherwise be confusion as to which factors are to be regarded as operative in the selection of a starting point and which should play a part in bringing about a variation of that starting point. An overarching consideration will also be whether no minimum period should be selected at all but appears to us that this is a question that will normally be addressed after the broad sequence of the Practice Statement has been applied."

[20] In the instant case there can be no doubt that this is a higher starting point case. There were extensive and multiple injuries inflicted by the defendant on the deceased. As I have said, the photographs of the injuries display a truly horrifying picture of what took place. The only consolation for the relatives is that the deceased may have been rendered unconscious early in the attack.

[21] I also have to take into account the other offence committed by the defendant, namely the attempted murder of Paul Mythen, which was carried out with equal depravity, as required by Article 5(2) of the Life Sentences (NI) Order 2001, in deciding what should be the minimum term. In order to prevent double counting I do not take this into account as an aggravating factor.

The aggravating factors I consider to be as follows:

(i) The deceased was attacked in his home, where he could reasonably expect to have been safe and secure. I do not accept the fact that the entry was not forced undermines this aggravating feature. The deceased must have let the defendant into his home without knowing that the defendant came armed with a claw hammer and intent on violence.

(ii) The deceased was in a prone position when he was struck repeatedly by the defendant.

(iii) The defendant displayed some premeditation in bringing the claw hammer with him into the deceased's flat. I do accept that the defendant's consumption of alcohol will have blunted the defendant's logical thought processes and I take this into account when assessing the premeditation.

(iv) However, the defendant consumed alcohol to excess, knowing that in the past it had led to explosive displays of violence on his part and resulted in other convictions of violence. Despite this he went on what appears to have been, on the night in question, a drunken binge.

(v) The defendant has a criminal record. I do consider it relevant, especially involving as it does convictions for violence, all apparently committed when, according to the defendant, he lost his temper while drunk. These offences are:

    (a) Assault occasioning actual bodily harm in October 1984.

    (b) Assault occasioning actual bodily harm in August 1991.

    (c) Assault occasioning actual bodily harm in December 2010.

    (d) Criminal damage in March 1982.

(e) Criminal damage in December 1991.

(f) Damaging property in February 1996.

(vi) Finally, the effect on the immediate family, and in particular the son, of the deceased's death is, I consider, an aggravating factor which I should take into account: see the comments of Hart J at paragraphs 25-27 in R v Smith [2008] NICC 34.

I consider that the mitigating factors are as follows:

(i) The defendant pleaded guilty which it is accepted by the Crown was made at the first available opportunity.

(ii) The remorse felt by the defendant as evidenced by his guilty plea and the apology offered by the defendant's Senior Counsel to the deceased's family.

(iii) The defendant's alcohol dependency which means that he would have had difficulty in avoiding the consumption of alcohol. It is not possible for me to determine on the evidence whether there was a failure on the part of the defendant to apply himself to breaking his dependency.

[22] I consider that avoiding double counting and taking into account the reason for the higher starting point for this murder, the requirements of Article 5(2) and the aggravating factors, that the term of imprisonment should be 24 years. However, given the mitigating factors and in particular the plea of guilty there should be a one third reduction. This means the defendant will have to serve 16 years before he can be considered for release by the Parole Commission. I stand back as the Court of Appeal has suggested in R v Morrin [2011] NICA 24 to decide whether or not given all of the circumstances this is a proper minimum term to impose. I consider that it is. I also direct that the Parole Commission receive a copy of these sentencing remarks and in particular my remarks about the risk posed to the public when this man consumes alcohol.

The attempted murder of Paul Mythen

[23] It was a miracle that Mr Mythen was not killed by the defendant. Clearly the defendant thought he had murdered him because he volunteered to the police shortly after the accident that he had killed both the deceased and Mr Mythen. It is not surprising that the defendant reached this conclusion given the wide ranging injuries he inflicted on his defenceless victim.

[24] Under the Criminal Justice (Northern Ireland) Order 2008 a specified offence is defined as a serious offence if it is an offence specified in Schedule 1 of the Order. Not surprisingly attempted murder is so specified.

[25] Article 13 provides:

> "Life sentence or indeterminate custodial sentence for serious offences
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> 13.—(1) This Article applies where—
>
> (a) a person is convicted on indictment of a serious offence committed after the commencement of this Article; and
>
> (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.
>
> (2) If—
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> (a) the offence is one in respect of which the offender would apart from this Article be liable to a life sentence, and
>
> (b) the court is of the opinion that the seriousness of the offence, or of the offence and one or more offences associated with it, is such as to justify the imposition of such a sentence,
>
> the court shall impose a life sentence.
>
> (3) If, in a case not falling within paragraph (2), the court considers that an extended custodial sentence would not be adequate for the purpose of protecting the public from serious harm occasioned by the commission by the offender of further specified offences, the court shall—
>
> (a) impose an indeterminate custodial sentence; and
>
> (b) specify a period of at least 2 years as the minimum period for the purposes of Article 18, being such period 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.

(4) An indeterminate custodial sentence is—

(a) where the offender is aged 21 or over, a sentence of imprisonment for an indeterminate period,

(b) where the offender is under the age of 21, a sentence of detention for an indeterminate period at such place and under such conditions as the Secretary of State may direct,

subject (in either case) to the provisions of this Part as to the release of prisoners and duration of licences.

(5) A person detained pursuant to the directions of the Secretary of State under paragraph (4)(b) shall while so detained be in legal custody.

(6) An offence the sentence for which is imposed under this Article is not to be regarded as an offence the sentence for which is fixed by law.

(7) Remission shall not be granted under prison rules to the offender in respect of a sentence imposed under this Article."

[26] Accordingly, at the outset I have to determine whether I consider there is a significant risk to members of the public of serious harm occasioned by the commission by the defendant of further specified offences. I am of the view that the defendant in this case satisfies the statutory test and is dangerous because –

(a) There is a significant risk to members of the public.

(b) That risk relates to the risk to members of the public of serious harm occasioned by the commission of further specified offences.

My reasons for so concluding are as follows:

(a) The defendant remains addicted to alcohol as appears from the defendant's own medical evidence. As I have said, he has admitted explosive rages when he drinks to excess. The failure of the defendant to give up alcohol to date provides no confidence for the future that he

will be able to remain sober. While that is the position further violent offences may be expected.

(b) The pre-sentence report prepared for the court by Mr John O'Hagan, probation officer, records at 3.18:

> "The defendant is assessed as of high risk of re-offending with the following factors relevant to his offending behaviour:
>
> - Excessive alcohol consumption
> - Aggression/use of violence
> - Mental health issues
> - Consequential thinking
> - Impulsivity/risk-taking behaviour
> - Victim awareness
>
> These issues need to be addressed in order to reduce the defendant's risk of re-offending."

At 4.2 he records:

> "A multi-agency Risk Management Meeting was convened on 14 March 2013 in light of these offences. The assessment concluded that Mr Greatbanks poses a Significant Risk of Serious Harm to Others and the following factors were considered relevant:
>
> - Death caused to Mr Harkin
> - Seriousness of the injuries inflicted upon Mr Mythen following the nature of the assault perpetrated by the defendant.
> - Escalation and his use of violence from previous convictions.
> - Use of weapons to inflict serious injury.
> - Triggers/situations for harmful offending will still exist as Mr Greatbanks has not addressed his issues with alcohol or anger management through any recognised offence focused programme.
> - Offences evidence a level of premeditation where the defendant had taken a hammer with him when he went to Mr Mythen and Mr Harkin's flats.
> - History of alcohol misuse. The defendant has acknowledged that his alcohol abuse has

influenced the majority of his previous offending.

- Limited level of responsibility for current offences. States that he does not know why he acted in the manner he did during the commission of these offences.
- Poor victim insight. While the defendant expressed a degree of remorse in relation to both victims, he did not express a full understanding of how these offences have impacted on the victims and their families."

This assessment seems reasonable, measured and in accordance with the known facts.

[27] In those circumstances the court has first to consider:

(a) Whether the appropriate sentence is one of life.
(b) If not whether an extended custodial sentence would be adequate to protect the public from serious harm.
(c) If not, then it should impose an indeterminate custodial sentence.

The correct approach about whether or not to impose a discretionary life sentence was considered by the Court of Appeal in R v William Desmond Gallagher [2004] NICA 11. In that case at paragraphs [21] and [22] Kerr LCJ said:

> "[21] In R v Hodgson [1967] 52 Cr App R 113 the Court of Appeal, dealing with the circumstances in which a discretionary life sentence might be imposed said: -
>
> > 'When the following conditions are satisfied, a sentence of life imprisonment is in our opinion justified: (1) where the offence or offences are in themselves grave enough to require a very long sentence; (2) where it appears from the nature of the offences or from the defendant's history that he is a person of unstable character likely to commit such offences in the future; and (3) where if the offences are committed the consequences to others may be specially injurious, as in the case of sexual offences or crimes of violence.'

[22] These conditions were refined somewhat by the judgment in Attorney-General's Reference No. 32 of 1996 (Whittaker) [1997] 1 Cr App R (S) 261 where the court said: -

> 'In our judgment the learned judge was taking an unnecessarily narrow view of the circumstances in which a discretionary life sentence can be imposed. It appears to this Court that the conditions may be put under two heads. The first is that the offender should have been convicted of a very serious offence. If he (or she) has not, then there can be no question of imposing a life sentence. But the second condition is that there should be good grounds for believing that the offender may remain a serious danger to the public for a period which cannot be reliably estimated at the date of sentence'."

He then went on to state that he agreed with what the Court of Appeal had said in R v Chapman [2000] 1 Cr. App. R. 77 when he said at paragraph [24]:

> "A discretionary life sentence should be reserved for those cases where an extremely grave offence has been committed. Of course it is true that the criminal record of the offender may affect the view to be taken of the seriousness of the offence since a repeat of earlier offending may indicate a more determined and settled criminal propensity and may cast doubt on any claim that the offence was spontaneous. But it would be wrong to impose a life sentence *solely* because it was considered that the offender is likely to re-offend on release from a determinate sentence for a less than serious offence. As Lord Bingham CJ pointed out in Chapman, a sentence of life imprisonment is the most condign punishment that a court may impose and it is therefore fitting that this should be reserved for the most serious type of offence and where it is likely that there will be further offending of a grave character."

[28] This is an issue that has caused me the greatest anxiety. The offence committed by the defendant was truly dreadful and has had disastrous repercussions for Mr Mythen. But against that:

(a) The defendant admitted to what he had done almost immediately it occurred.

(b) While there was some element of pre-planning, there is no doubt that the defendants reasoning was affected by his alcohol consumption. Of course that consumption has to be seen in the light of the two contradicting factors namely that the defendant knew what effect alcohol could have on him and the fact that he suffered from Alcohol Dependency Syndrome.

(c) It is accepted that he has shown remorse although in the Pre-Sentence Report there is an indication that he has limited empathy with the plight of the victims and their families.

(d) He has pleaded guilty and accepted in full that Paul Mythen was wholly innocent of any blame for what happened and has accepted full responsibility for what took place.

[29] Accordingly in those circumstances I consider that this offence does not merit a discretionary life sentence.

[30] I consider that where there is a choice between an indeterminate custodial and an extended custodial sentence then the latter should be chosen where it would achieve appropriate protection for the public against the risk posed by the offender, see paragraph [20] of the decision of the Court of Appeal in England and Wales in Attorney General's Reference (No. 55 of 2008) (R v C) [2009] 2 Cr. App. R. (S) 22. At that paragraph with adjustment to refer to the terminology used in the Criminal Justice (Northern Ireland) Order 2008 Lord Judge CJ stated:

> "Dr Thomas identified two particular features of potential importance. The first is a difficult problem of identifying the dividing line between (an indeterminate custodial sentence) and an (extended custodial sentence) for a violent or sexual offence. The short and deceptively simple answers provided by our earlier reasoning. As we have emphasised, (an indeterminate custodial sentence) is the last but one resort when dealing with a dangerous offender and, subject to the discretionary life sentence, is the most onerous of the protected provisions. In short, therefore, if an (extended custodial sentence), with if required the additional support of other orders, can

> achieve appropriate public protection against the risk posed by the individual offender, the (extended custodial sentence) rather than a (indeterminate custodial sentence) should be ordered. That is a fact specific decision .."

[31] In the circumstances I consider that a period of imprisonment of 15 years with a further 6 years on licence is the appropriate term of imprisonment. I was asked to fix the conditions of any future licence but I decline to do so. The probation officer recommended that they should include the following :

(a) He should reside in accommodation as approved by PBNI.

(b) He should undertake treatment for his Alcohol Dependency Syndrome.

(c) He should engage with the PBNI psychology in terms of on-going risk monitoring and suitability for programmes to address violent offending behaviour.

At this time they seem entirely reasonable. However the conditions of the licence are a matter for the Parole Commission at the time of release. The Parole Commission should however be given a copy of the report prepared by the probation officer.

Conclusion

[32] I have determined in relation to the offence of murder on Count 1 that the appropriate minimum term of imprisonment that you will be required to serve before you can be considered for release is a period of 16 years. This will include the time spent by you on remand. Whether you spend any further time in prison will be a matter for the Parole Commission to determine. It is important that the Parole Commission should receive a copy of this judgment.

[33] I have determined in relation to the offence of attempted murder in Count 2 that you should serve a period of imprisonment of 14 years with a further period of 6 years on licence.

[34] In respect of any possible future release I direct that the sentencing remarks be drawn to the attention of the Parole Commission, and in particular the comments I have made about the effect of alcohol consumption on the defendant's behaviour and the risk that he then poses to members of the public.