

**Neutral Citation No: [2019] NICC 1**

**Ref: COL10851**

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

**Delivered: 29/01/2019**

**THE CROWN COURT AT DOWNPATRICK**

**SITTING AT LAGANSIDE BELFAST**

**THE QUEEN**

**-v-**

**ALAN JAMES WILSON  
RYAN GRAHAM SMYTH  
JOSEPH BLAIR  
ROBERT RALPH  
ADRIAN GORDON PRICE  
TERRIE AICKEN**

[1] On Sunday 28 May 2017, at around 2.45 pm, Colin Horner, aged 35, was shot dead in the car park of Sainsbury's shopping centre on Balloo Link in Bangor. He was standing by his car when he was shot, in the presence of his three year old son, Oscar.

[2] The gunman, who was dressed in black and had the lower part of his face covered, had emerged from a burgundy Ford Mondeo situated in another car park across Balloo Link. He jumped over low hedging and ran across the road to the Sainsbury's car park, approaching Horner and shooting him a number of times at close range with a handgun, continuing to shoot him when he fell to the ground.

[3] After the shooting, the gunman ran back across the road, again hurdling the hedge. He got back into the burgundy Mondeo which made off at speed. It was later found, having been set on fire, on Kerr's Road near the Six Road Ends, a few miles away. Police received a call to that effect just before 3.00 pm.

[4] Emergency first aid was immediately administered by members of the public. CPR was commenced and continued by paramedics who arrived soon after. Bullet wounds were noted to the right side of the deceased's back, two wounds to his right buttock and another to his right groin. There was also a graze mark to his right shoulder. The deceased was removed by ambulance to the Ulster Hospital where life was pronounced extinct at 4.15 pm.

[5] During the post mortem examination it was found that he had been hit by at least five, and possibly six, bullets. Professor Crane thought it likely that a bullet which passed through the right thigh struck first and that, after he had collapsed to the ground, further shots were discharged into the back of his body. Three bullets were recovered from the abdomen and chest area of the deceased. The cause of death was determined to be “bullet wounds of the trunk”.

### **The indictment**

[6] The first five defendants, that is Alan James Wilson, Ryan Graham Smyth, Joseph Blair, Robert Ralph and Adrian Gordon Price were jointly charged on the first count on the indictment with the murder of Mr Horner, contrary to common law. On the second count the same five were jointly charged with possession of a firearm and ammunition with intent contrary to Article 58(1) of the Firearms (Northern Ireland) Order 2004. On the third count Terrie Aicken was charged with doing an act tending and intended to pervert the course of justice contrary to common law with the particulars of the offence being that on 16 June 2017, with intent to pervert the course of public justice, she did an act which had a tendency to pervert the course of public justice, in that she provided a false statement to police.

[7] Each of the defendants pleaded not guilty at arraignment on 11 September 2018.

[8] A trial date was fixed for Monday 14 January 2019. At the request of counsel the trial did not commence on that date to facilitate discussions between the legal representatives involved in the case. On Wednesday 16 January, before any trial commenced, the first four defendants, that is Alan James Wilson, Ryan Graham Smyth, Joseph Blair and Robert Ralph applied to be re-arraigned on the first and second counts. On re-arraignment, each of the defendants pleaded guilty to the first and second counts.

[9] On the same date the prosecution applied to add two further counts to the indictment. On the fourth count Terrie Aicken was charged with the offence of withholding information, contrary to Section 5(1) of the Criminal Law Act (Northern Ireland) 1967.

[10] On the fifth count Adrian Gordon Price was charged with the offence of withholding information, contrary to Section 5(1) of the Criminal Law Act (Northern Ireland) 1967. When arraigned on these counts the defendants Aicken and Price respectively pleaded guilty.

[11] On entering those pleas the prosecution indicated that it would not proceed with the first and second counts against Adrian Gordon Price or with the third count against Terrie Aicken. These counts were to be “left on the books”, not to be proceeded with without the leave of this court or the Court of Appeal.

## **The sentencing exercise**

[12] Having pleaded guilty to the offence of murder the court imposed a mandatory sentence of life imprisonment on Wilson, Smyth, Blair and Ralph.

[13] The remaining tasks for the court are to:

- Determine the length of the minimum term that each of these four defendants will be required to serve in prison before becoming eligible for release on licence pursuant to Article 5 of the Life Sentences (Northern Ireland) Order 2001.
- To sentence these four defendants in respect of the second count.
- To sentence the fifth and sixth defendants Adrian Gordon Price and Terrie Aicken in respect of the counts to which they have pleaded guilty.

[14] After the pleas were entered, having canvassed the matter with defence counsel, it was agreed that this was not a case in which pre-sentence reports were necessary, given the background to the case and the very limited role for personal mitigation (in the case of the four defendants who pleaded guilty to murder) in the sentencing exercise.

[15] The legal representatives for Price and Aicken also agreed to enter pleas in mitigation in the absence of pre-sentence reports.

[16] I made it clear that should the court or any of the defendants decide that in fact a pre-sentence report was necessary or would be of assistance in the sentencing exercise that I would adjourn sentencing to allow such reports to be obtained, but no such issue arose.

[17] Accordingly, the court heard pleas in mitigation on Tuesday 22 January.

[18] I wish to acknowledge the focused and concise submissions of all defence counsel instructed in this case, which were of great assistance to the court.

[19] Mr Gavan Duffy QC led Mr Denis Boyd for Wilson.  
Mr Brendan Kelly QC led Mr Paul Bacon for Smyth.  
Mr Frank O'Donoghue QC led Mr Aaron Thompson for Blair.  
Ms Eilis McDermott QC led Ms Rachel McCormick for Ralph.  
Mr Gregg Berry QC led Mr Richard McConkey for Price.  
Mr Borelli QC led Mr Stephen Toal for Aicken.

## **Factual background**

[20] The court has already referred to the circumstances of Mr Horner's murder.

[21] The case against each of the accused was set out in an impressive and comprehensive opening on behalf of the prosecution by Mr David McDowell QC who led Mr Sam Magee. For completeness I will append a copy of the prosecution opening to the written version of these sentencing remarks. In short form the evidence against each of the four defendants convicted of murder was based on a detailed analysis of the movement of two motor vehicles namely, a burgundy Mondeo, from which the gunman emerged and a Ford Focus Estate which was connected to the defendant Wilson. The prosecution also relied on phone contact between the defendants on Saturday 27 May and Sunday 28 May 2017. In addition to this, cell site analysis was used to place the defendants, Wilson, Smyth and Blair at various locations in the Newtownards and Bangor area on the day of the killing.

[22] Through a combination of CCTV footage, text message traffic between the defendants and cell site analysis of their mobile phones the prosecution presented a picture of contact between Smyth and Wilson on 27 May whereby Wilson agreed to pick up Smyth on the following morning. The data collected by the investigating police officers established on-going contact between the four defendants throughout 28 May 2017 and tracked their movements up to the point of the murder. The prosecution says that the inescapable inference is that the defendants were jointly involved in the targeting, following and ultimately the murder of Mr Horner.

[23] In addition to this material the prosecution relied on forensic evidence.

[24] The scene of the burnt out burgundy Mondeo car, at Kerr's Road was forensically examined. A cigarette butt was recovered from that area which later was found to have DNA on it matching that of Smyth.

[25] Examination of the Ford Focus resulted in the recovery of a mixed DNA profile from the front passenger clasp and the belt button release. The major contribution present matched that of Blair.

[26] Various empty drink cans and bottles found within the Ford Focus had DNA matching that of Wilson.

[27] There was also evidence that there may have been an effort to target Mr Horner on 17 May 2017 at his home in Bangor. Two photographs of Mr Horner's car, parked outside a Euro Spar on 17 May were subsequently found on Smyth's mobile phone. The photographs appear to have been taken from the front passenger window of a Volkswagen Tiguan. At the relevant time Smyth's partner owned a black Tiguan. Later that evening shortly before midnight a number of cars were seen in the proximity of Mr Horner's home accompanied by about 20 or 30 males standing in the middle of the road. Police were contacted and the men left before they arrived. A little earlier a burgundy Ford Mondeo with a missing rear hub cap, matching the description of the vehicle involved in Mr Horner's murder on 28 May

had been seen in this immediate area. There were three males inside, all of whom wore woollen hats or balaclavas rolled up onto their heads.

[28] Each of the four defendants were arrested and interviewed by the PSNI. All denied involvement in the murder. A summary of the interviews is included in the prosecution opening to which I have referred above.

[29] There can be no doubt that the PSNI carried out a thorough and comprehensive investigation into this murder. The comprehensive mapping and forensic detail set out by Mr McDowell in the prosecution opening is a credit to the investigation team. Their efforts have resulted in the conviction of four people for this murder. The investigation team deserves public acknowledgement for its excellent work.

[30] It is the prosecution case that each of the four accused was part of a joint enterprise involving the targeting and deliberate killing of Colin Horner. The prosecution is unable to identify the gunman and it accepts that it is probable that others not before the court were involved in the murder.

### **Victim impact**

[31] Before determining the appropriate minimum sentences in this case it is important that I highlight the victim impact statements I have received. I have read detailed statements from Mr Horner's mother Lesley, his sister Sophie and his partner Natasha. Each of these statements in their own individual and eloquent way bring home to me the devastating impact that Mr Horner's death has had not only on them but on other members of the family, not least of all, Oscar, who witnessed the murder. All of the authors have been devastated by this murder and their lives have been altered irretrievably. They will feel the impact of Mr Horner's death for the rest of their lives.

[32] In passing I also refer to the brave public interview Lesley Horner gave in the aftermath of the defendants' pleas of guilty when she urged all young people to turn away from paramilitary groups.

[33] I recognise that the loss of Mr Horner's life cannot be measured by the length of a minimum term prison sentence.

[34] These statements have brought home to me the impact of Mr Horner's death and I take them fully into account in this sentencing exercise.

### **Determination of minimum sentence for Wilson, Smyth, Blair and Ralph**

[35] Each of the four defendants has already been sentenced to life imprisonment.

[36] I emphasise that they will remain subject to this sentence for the rest of their lives. Any decision to release them from custody during the sentence will be taken by the Parole Commissioners after they have served a minimum term. They will only be released at that time if it is considered safe to do so. If released the life sentence remains and they will be released on licence which will continue for the rest of their lives. A recall to prison is possible at any time.

[37] As I have already said, under Article 5 of the Life Sentence (Northern Ireland) Order 2001 this court must fix the minimum term that each of the four defendants must serve before the Parole Commissioners will consider whether it is safe to release them on licence.

### **The relevant legal principles**

[38] 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 the combination of the offence and one or more offences associated with it.”

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

[40] 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 where 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 religious or sexual orientation;*

- (i) *there were 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 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 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; 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.*

### ***Very serious cases***

18. *A substantial upwards adjustment may be appropriate in the most serious cases, for example, those involved in 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 should 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."*

### **The appropriate minimum sentence/tariff**

[41] Before I consider each defendant individually I propose to analyse the case on a general basis.

[42] In the course of the sentencing hearing counsel urged that the court approach the sentencing exercise in different ways in terms of identifying the appropriate starting point and aggravating and mitigating circumstances. I was also referred to a number of sentencing decisions which feature similar offending, albeit cases involving convictions after a contest. As counsel acknowledged one should be careful about relying on decisions in other cases which are necessarily fact sensitive. Nonetheless the cases to which I was referred were useful in demonstrating how other judges have applied the relevant principles.

[43] In applying these principles I bear in mind that they are not to be interpreted as a straitjacket designed to create a rigid, compartmentalised structure into which each case must be shoe-horned. 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."*

[44] In terms of a starting point I have no hesitation in saying that the appropriate one in this case is the higher one of 15/16 years. The prosecution say that this is the appropriate starting point because in effect this was a “*professional*” or a contract killing.

[45] Mr O’Donoghue in his submissions argued that this was not in effect such a killing but accepted in any event that there were sufficient aggravating features in the case to take the ultimate starting point beyond the normal one of 12 years. What I do accept is that the court should be careful to avoid “double counting” in coming to the appropriate tariff. Thus, if the basis for determining that the case should attract the higher starting point is the fact that this murder was clearly planned then that should not be used subsequently as a factor to vary the starting point upwards. I consider that a clearly planned and targeted murder of this type which appears, in the words of prosecuting counsel, to have “*paramilitary overtones*” clearly justifies the higher starting point of 15/16 years. If it was not in the nature of a “*professional*” or contract killing it was committed on behalf of either a paramilitary organisation or a similarly organised crime gang.

[46] Having determined the appropriate starting point as being one of 15/16 years the court should next consider whether there are any aggravating or mitigating features which would justify varying this starting point.

[47] I consider that there are significant aggravating features present. A firearm was used. This murder was carried out in the presence of the deceased’s three year old son. It was carried out in a public area and innocent bystanders witnessed both the shooting and its aftermath.

[48] Overall, I consider those convicted of such a murder should expect a minimum sentence in the region of 20 years before consideration of mitigation.

[49] Having made these general comments I propose to deal with each of the individual defendants before determining the appropriate minimum sentence.

### **Alan James Wilson**

[50] Mr Duffy makes a number of points in relation to Mr Wilson’s involvement in the offence. He submits that Wilson was neither the gunman nor the organiser of the killing. He suggests that the defendant was prevailed upon to become involved in this venture by other more sinister persons and it is contended he was a reluctant participant. In terms of the appropriate starting point before mitigation he contrasts this case with other cases in which a 20 year tariff was imposed. He argues that whilst the case may well attract the higher starting point of 15-16 years the aggravating features are not such as would justify a variation upwards to 20 years, particularly having regard to the factors to which he refers. He concedes the aggravating feature of the use of a firearm but as I have previously indicated I

consider there are other significant aggravating features in the case in particular the fact that this murder was committed in the presence of the deceased's 3 year old son and in a public place where members of the public were going about their ordinary business.

[51] In terms of personal mitigation this defendant has only one previous conviction which relates to a relatively minor road traffic offence which was dealt with by way of a fine.

[52] This defendant claims he had no previous connection or knowledge of the deceased and was prevailed upon to become involved and reluctantly agreed. Mr Duffy argues that there was a lack of sophistication in his participation in the offence and he used his own car which meant that he was easily identified as a suspect.

[53] He is 30 years of age and the father of three children. He was the sole carer for his older daughter aged 4 who now has to be cared for by his sister who has a family of her own. Clearly the consequences of his conviction will have a significant impact on these children.

[54] He is one of four siblings and has had a difficult youth which involved periods in care. He has lived separately with his mother and father due to difficult family domestic circumstances. Although he left school aged 14 with no qualifications he built up his own small business repairing phones and fixing laptops in Newtownards. He enlisted and completed a course in web design and demonstrated a high degree of self-reliance and a good work ethic.

### **Ryan Graham Smyth**

[55] Mr Kelly makes a number of points on behalf of Smyth. He says that Smyth was not the gunman. Others were involved who are not before the court and who may have included the gunman. Smyth, he says, was not the organiser of the killing but was subject to the direction of others. He points to evidence provided by the prosecution in disclosure suggesting that Smyth was reticent about being involved in this murder. In light of these factors it is submitted that the court could reduce the otherwise appropriate starting point in this case.

[56] In terms of his personal circumstances Mr Smyth is 31 years of age and is the father of two young children, the youngest being aged 18 months. He has only two prior court appearances in 2007 and 2008 relating to relatively minor road traffic offences. He should thus be treated as a man of previous good character for the purposes of this sentencing exercise. He has a good work record.

## **Joseph Blair**

[57] Mr O'Donoghue on behalf of Blair echoed some of the points made in respect of Wilson and Smyth but with added force for his client. He submitted that it is accepted by the Crown that his role was a lesser one than that of Smyth and Wilson and to use the vernacular as put to Blair in the police interviews he was merely "keeping dick" for the others. The suggestion is that he too was under the influence of others not before the court. The prosecution accept that he did not play a leading or leadership role in this murder but it is nonetheless accepted that he was a voluntary participant in this joint enterprise.

[58] In terms of the starting point he cautions against double counting and suggests even allowing for the aggravating features in the case the appropriate minimum term before considering mitigation should be less than the 20 years to which I have referred.

[59] He is 35 years of age. He is not currently working and lives a nomadic existence with no family support. He is estranged from his family and has lived in hostels including one in Newry which is referred to in the prosecution opening.

[60] He does have a criminal record of 36 previous convictions in total between December 2002 and February 2018. The previous convictions are primarily Magistrates' Court offences with the majority relating to road traffic offences. Nonetheless, he has a significant previous conviction for two robberies committed in 2003 and 2004 in respect of which he received custody probation orders. He has some convictions for possession of drugs and for resisting police and assaulting police.

## **Robert Ralph**

[61] Ms McDermott emphasises that of the four defendants convicted of murder he had the least involvement. He became involved at a much later stage that is 11am on the Sunday. He did not respond to 8 telephone calls between 10:45 and 11:00am on that morning which would suggest that either he was not expecting to receive calls or was not responding to them. It is accepted nonetheless that he did come into contact with the other defendants and that he assisted in the plan knowing murder was a potential outcome of that plan and that a firearm was to be used by the perpetrators. He was not travelling in any of the cars involved. Ms McDermott submits that given the prosecution's assessment of his role in the matter this should result in a distinction between him and the others.

[62] He is 47 years of age, significantly older than the other defendants. He was unemployed at the time of the murder and has four children. Two of them are adults, with the others being aged 8 and 5½ years. The younger children were born to a different partner from the older children.

[63] He has 30 criminal convictions. Most of these involve Magistrates' Court offences for assaults, thefts and motor vehicle offences. He has a number of convictions for possession of Class A, Class B and Class C drugs. He has not actually been sentenced to any period of imprisonment, having been dealt with by way of probation orders and suspended sentences.

[64] Post this murder on 26 April 2018 he was convicted of wearing clothing or having articles as a member or supporter of a proscribed organisation on 12 June 2017 which involved putting up flags of a paramilitary nature. He was fined a total of £500 on that occasion.

### **The minimum sentences**

[65] Whilst it is right to say that there are differences in the respective involvement of each of the defendants I am not persuaded that there should be a significant difference in the appropriate tariff. All of the four defendants voluntarily participated in a joint enterprise involving the use of a firearm and the premeditated murder of Mr Horner. The lesser involvement of Blair and Ralph is somewhat counterbalanced by their criminal records in comparison with the other defendants.

[66] Nonetheless, I do intend to make some distinctions between the defendants based on their involvement in the offences before I consider mitigation.

[67] Whilst each defendant has a story to tell I do not consider that there is any significant exceptional or personal mitigation which would justify a reduction in the minimum sentence. It is well recognised in sentencing practice that personal mitigation carries little weight in serious cases such as murder, particularly of the type involved in this case.

[68] Taking all of these matters into account, had the defendants been convicted after a contested trial, I would have imposed a minimum term of 20 years in respect of the defendants Wilson and Smyth; 19 years in respect of Blair and 18 years and 6 months in respect of Ralph.

### **Discount for Pleas**

[69] All of these defendants are entitled to a discount in the tariff by reason of their pleas of guilty.

[70] 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.

[71] In determining what that lesser sentence should be the court should look at all the circumstances in which the plea was entered. Before I consider the individual

circumstances in which the pleas were entered there are a number of aspects of the pleas which apply to all of the defendants.

[72] Firstly, as has been acknowledged by the prosecution, the pleas have been of considerable “benefit and assistance” to all involved in this case.

[73] A potential trial lasting 5 to 6 weeks has been avoided which leads to a significant saving of time and public expense which is in the public interest.

[74] There were a very large number of witnesses due to give evidence in the trial. Because of the circumstances of this case at least five had sought “special measures” to facilitate them giving evidence in accordance with the Criminal Evidence (Northern Ireland) Order 1999, such was there concern about testifying in any trial. The pleas have avoided the necessity of these persons and others giving evidence. They have been spared that ordeal. A large number of witnesses have been inconvenienced as a result.

[75] The pleas of guilty and an acknowledgement of guilt by the defendants can provide a sense of justice and relief for the relatives and friends of the victim.

[70] The individual circumstances of each of the pleas are also significant. Given the background to this case and the likely control of others not before the court it is, as Mr Kelly suggests, “reasonable conjecture that that control may have continued up until the trial process”.

[76] Counsel for the prosecution confirmed that Mr Duffy, on behalf of Wilson, on his client’s instructions, had approached the prosecution a week before the commencement of the trial in an attempt to resolve issues with the prosecution and avoid a trial. It appears to be accepted that this indication was a catalyst for further discussion which enabled all issues to be resolved between the prosecution and the defendants. It is right to say that the defendants Wilson and Smyth were the first to indicate their intention to apply to be re-arraigned. Apart from an acknowledgement of their own guilt this appears to have played a role in quickly confirming the further pleas.

[77] The pleas entered by Blair and Ralph were somewhat different in that they were initiated by the defendants themselves notwithstanding legal advice that they had a reasonable prospect of being acquitted of the murder offence. This is particularly so in the case of Ralph. He was advised by counsel that he had a reasonable prospect of an acquittal and he was urged to think very carefully about entering a plea. Having raised the matter initially he reflected on the matter overnight and confirmed to his lawyers on further consultation that he was anxious to plead guilty having been fully advised of the risks and consequences.

[78] Notwithstanding all of these very compelling points the fact remains however that the pleas in this case were late in the day, albeit before any trial commenced. In

such circumstances the defendants are not entitled to the conventional credit for guilty pleas ranging between one third to 25%. As a general principle maximum credit is reserved for those defendants who plead guilty at the earliest opportunity.

[79] Of course in considering any reduction for a plea in a murder case the court must have regard to the decision of the Court of Appeal in **R v Turner and Turner** [2017] NICA 52 in which the court reviewed how sentencers should approach a reduction in the tariff for a guilty plea to the offence of murder.

[80] In the judgment, delivered by the Lord Chief Justice, the court reviewed the sentencing practices in England and Wales and in Scotland in this area. In particular the court noted the limitations on the reductions allowed for guilty pleas in murder cases in England and Wales. The court did not accept all of the rationale for the limitations and recognised some of the differences in practice in the jurisdictions. Nonetheless, the court expressly recognised that the sentence proscribed for murder is different from every other offence and is intended to reflect the seriousness with which society regards the crime.

[81] In paragraph 40 of the judgment Morgan LCJ went on to say:

*"[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."*

He went on to say:

*"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."*

Importantly however, the Lord Chief Justice goes on to say:

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

[82] Bearing this guidance fully in mind I have come to the conclusion that the discounts to which the defendants are entitled for their pleas should result in the following minimum tariffs.

[83] The minimum tariff which Alan Wilson must serve before he can apply for release on licence during his life sentence is one of 16 years.

[84] The minimum tariff in the case of Ryan Smyth is one of 16 years.

[85] The minimum tariff for Joseph Blair is one of 15 years and 6 months.

[86] The minimum tariff for Robert Ralph is one of 15 years.

[87] The discounts I have applied are slightly more than one sixth but in my view are justified because of the factors I have set out above at paragraphs [70]-[77] that are relevant to the particular circumstances of the pleas in these cases.

[88] On the basis of information provided to me by the Prison Service each of the defendants is entitled to the following credit in respect of time already served before the imposition of the life sentence:

Alan Wilson - 11 days

Ryan Smyth - 20 days

Joseph Blair - 161 days

Robert Ralph - Nil

## **Second Count**

[89] Each of these four defendants falls to be sentenced on the second count of possession of a firearm and ammunition with intent, contrary to Article 58(1) of the Firearms (Northern Ireland) 2004. This offence is in fact subsumed in the murder count and was an essential element of the murder charge.

[90] Since each of the defendants has been convicted of a specified offence it falls to the court to assess whether there is a significant risk to members of the public of serious harm occasioned by the offender of further such offences - see Article 15(1) of the Criminal Justice (Northern Ireland) Order 2008.

[91] In making this assessment the court may take into account any information about the offender which is before it.

[92] Since each of these defendants is now serving a life sentence and cannot be released unless it is deemed safe to do so by the Parole Commissioners I do not consider in those circumstances that there is a significant risk to members of the public arising from the convictions on count 2 and that the court can deal with these offences on the basis of determinate sentences.

[93] Accordingly, I impose the following sentences in respect of count 2:

Alan Wilson - 12 years' imprisonment



Ryan Graham Smyth – 12 years’ imprisonment  
Joseph Blair – 10 years’ imprisonment  
Robert Ralph – 9 years’ imprisonment

These sentences are to run concurrently with the life terms imposed.

### **Adrian Gordon Price**

[94] Mr Price has pleaded guilty to the offence of withholding information, contrary to Section 5(1) of the Criminal Law Act (Northern Ireland) 1967. The prosecution case against him is that he was in phone contact with Blair, Ralph and Wilson in the hour after the shooting. He was made aware of their, and Ryan Smyth’s involvement in the murder. Notwithstanding this knowledge, he failed in his duty under section 5 of the Criminal Law Act (Northern Ireland) 1967 to give that information to the police.

[95] In mitigation Mr Berry points out that this was an offence committed by his omission rather than any positive act on his part. This was done out of a misguided sense of loyalty. Importantly, it had no bearing on the progress of the investigation by the police which was not hindered in any way by this act of omission. The defendant is aged 48 and does have a lengthy criminal record. The record relates essentially to offences dealt with in the Magistrates’ Courts and the vast majority relate to road traffic offences. He does have a previous conviction for a threat to kill in July 2013 in respect of which he received a probation order.

[96] It is accepted that Mr Price pleaded guilty to this offence at the earliest opportunity, when it first became available to him and he is obviously entitled to significant credit for that.

[98] Counsel have carried out a search of sentencing decisions of the courts in this jurisdiction for this offence. They could not find any in which an immediate custodial sentence was imposed and invariably suspended sentences were deemed to be the appropriate disposal.

[99] Since this case involves a murder I consider that the custody threshold is passed but in light of the factors outlined by Mr Berry I propose to suspend any prison sentence in this case.

[100] Taking all matters into account I consider the appropriate sentence for this defendant is one of 12 months’ custody which is to be wholly suspended for a period of two years.

[101] As no doubt the defendant is aware, given his record, this means that in the event of him being convicted of another offence committed within the next two years he is not only liable to be sentenced for that offence but for this offence also.

## **Terri Aicken**

[102] Terri Aicken has also pleaded guilty to withholding information, contrary to Section 5(1) of the Criminal Law Act (Northern Ireland) 1967. The prosecution case against her is that she provided a statement to police on 16 June, the day her partner Ryan Smyth was arrested. She told police in that statement that on Sunday 28 May, at around 12pm, she and Ryan had left his children over to his former partner in the Westwinds Estate in Newtownards. From there they had gone for lunch to Cafolla's before returning to her home at Green Road, arriving at around 1:15pm. She had said that she had gone to bed sleeping until 4pm.

[103] Later in an interview on 18 June, she said that she had slept until 5:45pm and that she did not know where Ryan was while she slept.

[104] In these circumstances she had failed in her duty to inform the police that she was unable to account for his whereabouts on the afternoon of 28 May 2017. She apologised for misleading the police in her statement and accepted that she would have to deal with the consequences of her actions.

[105] Mr Borelli on behalf of Miss Aicken points to the very difficult personal circumstances applicable to Miss Aicken at the relevant time. On 10 June 2017 she gave birth to her first child. Within days of that birth the father of her child, Ryan Smyth, was arrested in respect of the murder of Mr Horner and she too was interviewed by the police on the same day.

[106] It is accepted that on that occasion she failed to comply with her public duty and indicate that she could not say where Ryan Smyth was at the time of the murder. Nonetheless, she attended voluntarily with the police two days later on 18 June when she acknowledged her error and told the police the truth.

[107] It is significant that her conduct had no impact on the police investigation.

[108] She pleaded guilty to the offence at the earliest opportunity, when it first became available to her, notwithstanding that there was a contestable issue about the admissibility of her initial police statement.

[109] She is a person of good character whose only previous contact with the law was a caution for shoplifting when she was a juvenile. For all intents and purposes she can be treated as a person with a clear record. She now has to rear her young son in the absence of his father, which of course is a further example of how other people have been affected by this callous murder.

[110] She has a diploma in professional cookery and has used this qualification to obtain a part-time job. She has a very limited income. She works 3 days per week and pays for a nursery for two of those days for her young child.

[111] She will keenly feel the loss of the income provided by Ryan Smyth, particularly when it comes to the support of her child.

[112] Mr Borelli correctly suggested that the court in these circumstances might look at a community based sentence but he recognised that given her commitments to work and her child this was not practical.

[113] As is the case with Mr Price one has to bear in mind that the context for the withholding of information charge was a brutal murder. It is for this reason that I considered that the custody threshold was passed in Price's case and, in the absence of any practical community service option, is also alive in the case of Miss Aicken.

[114] Nonetheless, having regard to her personal circumstances she is in a completely different category from that of Price.

[115] I propose to impose a custodial sentence of 3 months which is to be wholly suspended for a 12 month period.

[116] As no doubt will be explained to Miss Aicken this means that, in the unlikely event of her being convicted of an offence in the next 12 months, she will be sentenced not only for that offence but is liable to be sentenced for this offence as well.

[117] I confirm that I make the forfeiture order sought by the police in respect of the three vehicles involved in this offence.