

# Judicial Communications Office

17 October 2019

## COURT SENTENCES DAVID BOYD FOR MURDER

### Summary of Judgment

Mr Justice Colton, sitting today in Belfast Crown Court, imposed a tariff of 12 years on David Robert Boyd for the murder of Richard Gerard Scullion on 6 July 2018. This is the minimum term that he must serve in prison before he will become eligible to have his case referred to the Parole Commissioners for consideration as to whether, and if so, when he is to be released on licence.

#### **Factual Background**

Richard Gerard Scullion (“the deceased”) had known the defendant for approximately two years. They passed the afternoon and early evening of Friday 6 July 2018 consuming alcohol whilst watching television and listening to music. David Boyd (“the defendant”) told the police that the mood changed after a male called at the house and the deceased accused him (the defendant) of “bringing trouble to his door”. The deceased left the living-room and entered the kitchen followed by the defendant. The defendant asserts that the deceased turned around with clenched fists and that he reacted to the perceived threat by lifting a frying pan which he used to strike the deceased on the head. The blow caused the deceased to fall, face down on the kitchen floor and whilst on the ground the defendant kicked and punched him. The deceased moved and said “I’ve had enough” at which point the defendant knelt on his back and grabbed a knife from the draining board and stabbed the deceased in the back.

The body of the deceased was discovered by a friend on the afternoon of Monday 9 July 2018. The post mortem report found that the deceased had sustained extensive bruising of the face and a laceration on the face due to multiple blows to the head. There were a number of stab wounds, one of which had penetrated the wall of the aorta, which would have caused considerable bleeding into the chest cavity which was the main cause of death. The pathologist also noted a number of rib fractures consistent with stamping. It was recorded that the deceased was quite heavily intoxicated at the time of death.

When interviewed by police, the defendant admitted killing the deceased and disposing of the murder weapon (a 19.5 cm long black handled kitchen knife) and his shirt and shoes in an area adjacent to the River Bann (his wallet was also found at this location) before returning home, shirtless and shoeless, to his partner at around 10.30 pm.

Before determining the appropriate tariff, Mr Justice Colton referred to a moving testimonial from the deceased’s mother. Whilst she acknowledged the difficulties her son encountered and his efforts to overcome them, the Court said that what emerged was a generous, friendly and popular man. He was clearly loved by his mother, his sisters and all of their

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families. The judge said it was clear that the deceased was a man of great compassion and kindness towards others, particularly the homeless: "Indeed tragically it was this feature of his personality which endeared him to the defendant and was the basis for their friendship. All needless and senseless losses of life are tragic. Gerard's death was particularly tragic as it was caused by someone he befriended and helped, something the defendant himself acknowledges".

The Court received a pre-sentence report, medical reports from a consultant psychiatrist and a copy of the defendant's criminal record. The pre-sentence report and the medical reports indicated that the defendant had a difficult background. He has abused alcohol and drugs since aged 14/15 and has lived a very transient lifestyle, residing in different care homes and hostels across Northern Ireland, without any family support. He became involved in criminal offending and has spent periods of his life in custody. The Probation Board assessed the defendant as representing a high likelihood of re-offending and presenting a significant risk of serious harm.

The deceased has 49 previous convictions which evidenced an established pattern of violent and aggressive behaviour while under the influence of alcohol or drugs. The offences include aggravated assault, possession of an offensive weapon and making threats to kill. The victims included a homeless man, his previous partner and current partner. Other convictions of a violent and aggressive nature include ten for assaults on police over a number of years.

The consultant psychiatrist reported that the defendant suffers from an enduring unstable personality disorder. Over the years he has had various contacts with mental health services who confirmed a personality disorder, longstanding issues with drugs and alcohol and a history of self-harm. The clinical notes and records also identified a serious problem with anger which was reflected in episodes of self-harm and in his criminal record. There were regular referrals to the Addictions Team. The Court noted that the defendant will be offered opportunities in custody to engage in services within the prison to address the risk factors associated with his offending behaviour and will not be released from prison by the Parole Commissioners if he is deemed to be a danger to the public.

There was some disagreement between counsel as to the appropriate starting point. The prosecution submitted that the presence of extensive/multiple injuries placed this case in the higher starting point category<sup>1</sup>. They pointed to the fact that a weapon was used as something which would justify varying the starting point upwards. The prosecution further submitted that the defendant's previous convictions for offences of violence are an aggravating factor. The defendant was awaiting sentence for an assault at the time the murder occurred and was subject to a suspended sentence imposed on 29 March 2018 for an assault on police.

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<sup>1</sup> See Notes to Editors.

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In mitigation, counsel for the defendant pointed to genuine remorse, the defendant's plea of guilty, the fact that he admitted killing the deceased during interview and the fact that at the time of the murder he suffered from a mental disorder which lowered the degree of his criminal responsibility for the murder, although not affording a defence of diminished responsibility. The prosecution took no issue that these were relevant mitigating factors.

## **The appropriate tariff**

Mr Justice Colton commented that selecting a starting point for a tariff 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. The judge said the particular circumstances of this case may not easily fall into the specific categories identified in the guidelines.

Mr Justice Colton said that the facts of this case involved the killing of an adult victim, arising from a quarrel or loss of temper between two people known to each other. He noted, however, that the Court only had the defendant's account of what happened. He said that even on that account the offence was significantly aggravated by the conduct of the defendant in the killing of the deceased including striking him with the frying pan, punching and kicking him when on the floor, and when the deceased said "*I've had enough*" the defendant knelt on his back, grabbed a knife and stabbed him. The pathologist's report suggested six separate wounds caused by a knife:

"The punching, kicking and stabbing of the deceased whilst he lay prone and defenceless on the ground clearly brings into play the characteristics referred to in paragraph 12 of the guidelines, namely the infliction of extensive and/or multiple injuries, in this case by the use inter alia of knife by the defendant. Nor is it to the defendant's credit that he left the deceased after the infliction of the fatal injuries. Rather than ring an ambulance, as he conceded he ought to have done in his police interviews, he in fact sought to destroy potential incriminating evidence."

Mr Justice Colton considered that the appropriate starting point is one of 15 years, which can be achieved either by a starting point of 12 years together with aggravating features or a starting point of 15 years. He considered the defendant's criminal record was clearly an aggravating factor: "The record clearly demonstrates a history and propensity to violence and a failure to respond to previous sentences."

Taking this factor into account the judge considered the appropriate tariff to be one of 17 years before consideration of mitigation. In terms of mitigation, the judge said this was a spontaneous offence committed with a lack of premeditation. It was not a case of being armed with a weapon in advance, but that was all that could be said in mitigation of the offence itself. In terms of personal mitigation the Court noted that the defendant had expressed genuine remorse for his actions. Mr Justice Colton said this was evident in the police station where in the course of the interviews the defendant made repeated references

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to the deceased being kind to him and kind to everyone. He acknowledged that he would help anyone out and give you his last penny if he had it. The judge said the interviews supported the contention that the defendant was remorseful for what he had done. This was echoed in the pre-sentence report where the defendant presented as being "*overwhelmed*" in recalling the attack. The report expressly recorded his regret at his actions and that he presented with a deep sense of regret and guilt, but the Court said that given the serious nature of this offence any reduction in the tariff for remorse must be relatively minor.

The Court also noted the psychiatric evidence and medical notes which recorded that the defendant suffered from a mental disorder at the time of the killing which lowered the degree of his criminal responsibility for that killing. Mr Justice Colton said that whilst this did not afford a defence of diminished responsibility it was recognised in the guidelines as a factor which can be used to reduce the normal starting point. The judge, however, said this disorder must be seen in context. The consultant psychiatrist said there was no evidence that the defendant suffers from psychosis and in his opinion there was no compelling evidence of dependence on alcohol or drugs. He accepted the proposition that the defendant's behaviour at the time of the alleged offence was linked to the interaction of alcohol intoxication and his psychological difficulties, but that at the time of the offence he did not lack the capacity for criminal intent.

Mr Justice Colton said that taking these mitigating factors into account he considered that the appropriate tariff before any discount for the plea would be one of 15 years.

## **Discount for guilty plea**

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. In considering the appropriate discount for a plea of guilty in a murder case the Court said it was necessary to take into account the guidance issued by the Court of Appeal where it came to the conclusion 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 five years would be wholly exceptional even in the case of a substantial tariff. The Court however went on to say 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. In determining what the lesser sentence should be the Court should look at all the circumstances in which the plea was entered.

Mr Justice Colton said that, notwithstanding the fact that the defendant pleaded not guilty at first arraignment, this was a case in which a discount of greater than one sixth should be given. He said the factors which justified it in this case were:

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- Although in his initial interview the defendant did not accept his role in the deceased's death in subsequent interviews he admitted killing the deceased and disposing of the murder weapon;
- At first arraignment counsel for the defendant assured prosecution counsel that the plea was entered pending the receipt of psychiatric evidence and it was accepted the defendant had killed the deceased. Whilst that psychiatric evidence did not afford a defence of diminished responsibility it did provide basis for mitigation;
- After receipt of the medical evidence arrangements were made for the re-arraignment of the defendant which ensured that the trial date was vacated and no witnesses were required to attend at Court;
- The defendant's plea was also a factor supporting his remorse for his actions.

Mr Justice Colton said that, having regard to these factors, he considered that the defendant was entitled to substantial discount, in excess of the one sixth. He therefore reduced the tariff from 15 years to 12 years. This is the minimum term that the defendant must 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 he is released on licence will be one of 12 years. 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.

## NOTES TO EDITORS

1. This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available on the Judiciary NI website (<https://judiciaryni.uk>).
2. The minimum term is the term that an offender must serve before becoming eligible to have his or her case referred to the Parole Commissioners for them to consider whether, and if so when, he or she can be released on licence. Unlike determinate sentences, the minimum term does not attract remission. If the offender is released on licence they will, for the remainder of their life, be liable to be recalled to prison if at any time they do not comply with the terms of that licence. The guidance is set out in the case of R v McCandless & Others [2004] NI 269.
3. A Practice Statement, [2002] 3 All ER 417, sets out the approach to be adopted by the Court when fixing the minimum term to be served before a person convicted of murder can be considered for release by the Parole Commissioners. It also sets out two starting points. The lower point is 12 years, and the higher starting point is 15/16 years imprisonment. The minimum term is the period that the Court considers appropriate to satisfy the requirements of retribution and deterrence having regard to the seriousness of the offence. This sentencing exercise involves the judge determining the appropriate starting point in accordance with sentencing guidance and then varying 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.

ENDS

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