

Judicial Communications Office

16 FEBRUARY 2018

FINBAR McCOY SENTENCING

Summary of Judgment

Mrs Justice Keegan, sitting today in the Crown Court in Londonderry, imposed a determinate custodial sentence of 12 months on Finbar McCoy for the manslaughter of James McDonagh on 10 January 2016. He will serve six months in custody and six months on licence.

The Court referred to the agreed statement of facts in the case. Finbar McCoy (“the defendant”) was attending a family event in the Elk Bar, Toomebridge on the evening of Saturday 9 January 2016. James McDonagh (“the deceased”) was drinking in the public bar of the Elk Bar and was observed paying unwanted attention to a number of females in the McCoy party. Sometime after 2.00 am on 10 January, the defendant’s father was observed to be involved in an altercation with the deceased in the car park. The defendant punched Mr McCoy Snr who was observed to have blood on his forehead. The defendant, who had gone home briefly, returned to the car park. He believed that the deceased had hit his mother. The deceased was observed by witnesses attempting to “rile” the defendant who threw one punch which struck the deceased in the face. The deceased fell backwards and became unconscious. The deceased was taken to his mother’s house, still unconscious, and placed on the floor with his head on a pillow and his body covered by a rug. In the morning he was still unconscious and an ambulance was called. A CT scan and then brain stem checks were carried out but no activity was detected. Life was pronounced extinct at 2.38 pm on Monday 11 January 2016.

A post-mortem examination concluded that the cause of death was bruising and swelling of the brain associated with a fracture of the skull and secondary brain stem haemorrhage. The pathologist concluded that this could have resulted from the deceased being punched on the chin and then falling and striking his head on the ground.

Pre-Sentence Report

The probation officer’s report assessed the defendant as a low likelihood of reoffending and not presenting a significant risk of serious harm at this time. The reasons given were: the absence of a relevant criminal record; the manner in which the defendant has met the charges; the defendant’s excellent employment record; the support provided within the defendant’s immediate family circle; the salutary lesson already experienced by the defendant; and the significant level of remorse demonstrated by the defendant.

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Victim Impact Reports

The Court received victim impact reports from the deceased's mother, sister and ex-wife. Particular reference was made to the statement by the deceased's mother who expressed sympathy for the defendant's family and said she didn't care if the defendant saw the inside of a prison – "as a family we just wanted the recognition for what he had done".

Discussion

Mrs Justice Keegan said the consequences in this case are stark:

"This defendant did not go out on 10 January 2016 to kill James McDonagh. However, his assault led to Mr McDonagh falling over and hitting his head off a hard pavement and that caused his death. This chain of events establishes unlawful act manslaughter. The defendant accepts this and ... a salutary lesson has been learnt. This case provides a warning as to how the lives of two young men and their families have been blighted by something that happened in a matter of seconds."

The judge commented that "one punch" manslaughter cases pose a difficult sentencing exercise. The court must strive to reach a sentence reflecting the justice of the case by assessing the aggravating and mitigating factors to reach a starting point. Mrs Justice Keegan considered there were no aggravating factors in this case. She accepted, in terms of mitigation, that this was a spontaneous single act, of low force, without substantial intoxication on the part of the defendant, in a situation which involved provocation, where the defendant was attempting to protect his family, and for which he displays genuine remorse. She said the mitigating factors are particularly strong and, in her view, establish that the defendant's culpability is low.

The judge noted the excellent character references presented on behalf of the defendant and the victim impact reports. Mrs Justice Keegan then referred to the guideline cases on sentencing for this type of unlawful act manslaughter which established a range of sentences to reflect societal disapproval and the need for deterrence. The guidelines are subject to the flexibility allowed to a court in deciding upon the correct sentence on the particular facts of the case.

The judge said this case can be distinguished from other "one punch" cases as there were no aggravating factors and strong mitigating factors. She considered the appropriate sentence in this case falls outside the range contemplated in the guidance cases and stressed that she was taking this "exceptional" step based on the highly specific factual circumstances of the case. Taking this into account the judge decided the appropriate sentence was one of 18 months imprisonment. Mrs Justice Keegan noted that the defendant had pleaded guilty in advance of a retrial and that

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it was clear the defendant wanted to save both families the additional pain of a retrial. She gave him considerable credit for this approach and reduced the sentence to 12 months imprisonment. The judge declined to suspend the sentence:

“I consider that an immediate custodial sentence is required to reflect the gravity of the offence and in my view the circumstances do not warrant a departure from that principle. There also remains the need for deterrence in all of these cases to ensure that this type of event does not occur again.”

Conclusion

The defendant was sentenced to 12 months imprisonment, six months of which will be spent in custody and six months on 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 (www.judiciary-ni.gov.uk).

ENDS

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