

Judicial Communications Office

13 SEPTEMBER 2018

COURT SENTENCES FOR MANSLAUGHTER OF JAMES HUGHES IN 2016

Summary of Judgment

Mr Justice Colton, sitting today in the Crown Court in Belfast, imposed an indeterminate custodial sentence on James Devine for the manslaughter of James Hughes. He specified a tariff of eight years as the period which must be served before Devine can be considered by the Parole Commissioners for release on licence.

James Devine ("the defendant") was charged with two counts: murder contrary to common law and theft contrary to s.1 of the Theft Act (NI) 1969. The court heard that the defendant called his mother at around 8.00 am on Sunday 6 November 2016 to say he had "stabbed a boy to death". When asked why, he made an allegation against James Hughes ("the deceased") which has never been substantiated. She told him he would have to give himself up but he asked if he could come to her home in Ballymoney. He arrived at about 6.30 pm and was carrying cash totalling £6,080 which he claimed was his savings. He again said that he had stabbed the deceased, that the deceased was begging for his life but he just could not stop and that he wanted to hand himself in. The defendant's mother then rang the police.

Police attended the deceased's flat in Divis Tower, Belfast, at approximately 7.30 pm. The deceased was in the kitchen and there were two knives on the floor. The deceased had last been seen on the Friday night, 4 November and it appeared that he may have been killed on Saturday night, 5 November. The defendant had been seen on the Sunday morning after 10.00 am, getting out of the lift in Divis Tower. He was very unsteady on his feet and he gave the appearance that he was on drugs. The post mortem revealed that the deceased suffered a total of 33 stab wounds to his neck, chest and abdomen. Examination of his left hand showed wounds consistent with defensive action, indicating that he had grasped the blade of a knife. An injury to his forearm suggested he had raised it to protect himself.

The police went to Ballymoney and arrested the defendant. In response to the caution, he indicated that he understood. He was compliant as he was handcuffed and an evidence protection kit was placed on him. During that procedure he made a number of comments to the police saying, "I murdered him", "I killed a man", and "I killed him because I had to". He said he had murdered the deceased in his flat and had stabbed him over and over again. He again made an allegation against the deceased. When he was placed in the back of the police car he began to rip off his evidence protection kit and tried to get out of the car, lashing out at the officers. He was verbally abusive towards police and required to be restrained. When having his hands swabbed for evidence in the custody suite he told the police officer that he should "do a good job on this one. It's the one I stabbed him with." He also said that he "went back to him twice but he was not showing any signs of life."

The defendant was interviewed on 7 and 8 November 2016. He gave a prepared statement saying that he suffered from paranoid schizophrenia and his memory from Friday 4 November until his arrest was "not great". He said that on Friday he went from Ballymoney

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to Belfast and was drinking but had no memory where he slept on Friday and Saturday night, save for vague memories of being in a house with fellow drinkers from Divis. He said that on Sunday he walked into the deceased's flat to find him dead in his kitchen. He claimed to remember nothing of the killing. Nor did he remember admitting the crime to his mother and sister when he went to Ballymoney. His interviews continued with him occasionally answering questions against his solicitor's advice. He said he did not know if he had murdered the deceased, but thought he did it. After interview the defendant was charged with murder, replying "I have nothing to say to that". Subsequent DNA analysis revealed DNA from blood on the defendant's watchstrap and clothing matched that of the deceased.

After being charged with the offences of murder and theft the defendant was detained at HMP Maghaberry from where he was transferred on a hospital order to the Shannon Clinic, Knockbracken Healthcare Park, Belfast where he remains to this day. There was initial concern about his fitness to plead but as a result of intensive medical and nursing care he was subsequently reassessed as being fit to plead and pleaded not guilty at arraignment on 9 March 2018. Counsel for the defendant indicated that he fully accepted that he had committed the act of killing the deceased and the only issue that remained outstanding was whether he met the test for the defence of diminished responsibility. Further medical evidence was obtained and the defendant applied to be re-arraigned. On 8 June 2018 he pleaded guilty on Count 1 of the indictment to the offence of manslaughter by reason of diminished responsibility. That plea was accepted by the prosecution and the remaining Count 2 was "left on the books".

The medical evidence in relation to the defendant

The court received medical reports from two consultant psychiatrists. The requirements which must be established in order to establish a defence of diminished responsibility are that the defendant must be suffering from an abnormality of mental functioning which arose from a recognised medical condition; substantially impaired his ability to do one or more of the things mentioned in the statute¹; and provides an explanation for the defendant's acts and admissions in doing or being a party to the killing. There was no dispute between the doctors that the defendant met the statutory test. He was assessed as having a longstanding diagnosis of schizophrenia dating from 2006 as well as a recorded diagnosis of personality disorder and of opiate and alcohol dependencies. Mr Justice Colton considered that the plea to manslaughter by reason of diminished responsibility was properly accepted by the prosecution as the defendant's condition at the time of the killing would have substantially impaired his ability to form a rational judgement and to exercise self-control.

Victim Impact

Mr Justice Colton referred to victim impact statements provided by the deceased's sisters and his niece. He said it was clear that the deceased was a "man with very special characteristics", being described as having been "a well read, thoughtful human being committed to the Buddhist philosophy of peace" which he said made his violent death all the more poignant. The judge commented that the statements in their own individual and eloquent way demonstrate the profound personal grief of each of the authors and brought

¹ To understand the nature of the defendant's conduct; to form a rational judgement; and to exercise self-control.

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home to him the impact the tragic and traumatic death has had on the deceased's immediate family and others in the community whom he helped and befriended.

The appropriate sentence

The first issue for the court to determine, given the defendant's medical condition, was whether or not a hospital order, with or without restrictions, under Articles 44 and 47 of the Mental Health (Northern Ireland) Order 1986 would be the most suitable means of dealing with the defendant and protecting the public from serious harm.

The consultant psychiatrists both considered that the imposition of a hospital order, with or without restrictions, would not be an appropriate disposal. In her report, Dr Kennedy said she would have concerns that the defendant might be considered at subsequent Mental Health Review Tribunals (to which he is regularly entitled) to no longer meet the criteria for detention in hospital as it was likely that, after a concerted period of medical treatment with limited access to destabilisers, he would present as mentally stable. This could result in an individual of the highest risk being in the community relatively early with an unrealistic expectation that his risk could be managed by forensic and community mental health services alone. In her view what is required is a "robust risk managed process and a multi-agency approach re safeguarding the public in the future from any recurrence of life threatening harm." Dr Kennedy said an offender can be sentenced to custody in Northern Ireland with the needs for specialist mental health care thereafter dictating the location of interventions. Following custodial sentencing, the defendant could be transferred very quickly from HMP Maghaberry back to Shannon Clinic or another secure psychiatric hospital as determined by his needs for treatment. At a point where hospital treatment was no longer indicated, he could be returned to custody (if appropriate) to serve whatever tariff might be outstanding, complete any additional offence related work and in due course satisfy the requirements of the Parole Commissioners. This approach was supported by the consultant psychiatrist instructed on behalf of the defendant.

Mr Justice Colton considered that while the defendant meets the first test in Article 41 of the Mental Health (Northern Ireland) Order 1986 in that he is suffering from mental illness or severe mental impairment of a nature or degree which warrants his detention in hospital for medical treatment, he did not meet the second condition required for a hospital order namely that "the court must be of the opinion, having regard to all the circumstances, including the nature of the offence and the character antecedents of the defendant and to the other available methods for dealing with him, the most suitable means of dealing with the case is by means of a hospital order".

The judge concluded that the medical evidence, together with the requirements of appropriate punishment and protection of the public pointed towards a custodial sentence rather than a hospital order.

"Whilst the court has some concern about the potential risks of a custodial sentence I am satisfied on the basis of the medical evidence that in fact the defendant will receive the appropriate and necessary treatment if a custodial sentence is imposed on the basis that he will be transferred back to the Shannon Clinic and receive the treatment as envisaged in Dr Kennedy's report. In particular this avoids the risk of the defendant being prematurely released into the community without the necessary protection and support."

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Discretionary Life Sentence, Indeterminate Sentence or Extended Custodial Sentence?

The next issue for the court was to consider whether it should impose a discretionary life sentence, indeterminate sentence or extended custodial sentence as prescribed in Articles 13 to 15 of the Criminal Justice (NI) Order 2008. The first question was whether 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. Factors to be taken into account in assessing the risk include the nature and circumstances of the current offence, the offender's history of offending including not just the kind of offence but its circumstances and the sentence passed, whether the offending demonstrated any pattern and the offender's thinking and attitude towards offending.

Mr Justice Colton referred to a pre-sentence report compiled by a probation officer. It referred to the defendant's traumatic upbringing, his poor emotional and mental health since childhood and his abuse of substances over a long period of time including all manner of illegal drugs and excessive consumption of alcohol. The defendant has 56 previous convictions, the majority of which relate to assaults on police and public disorder type offences. His offending began in 1992 at the age of 17 and appears to be linked to substance abuse, aggression and his unstructured and chaotic lifestyle. As well as custodial and suspended custodial sentences the defendant has been subject to periods of supervision in 1996, 1997, 2002, 2005 and 2010. He breached a number of the supervision orders with offences in 2010 and 2013 representing an escalation in the severity of his previous offending. This current offence occurred during a probation order imposed in 2015.

The pre-sentence report assessed the defendant as posing a significant risk of serious harm to others. This assessment was supported by Dr Kennedy who said that the defendant has a very substantial number of historical risk factors, each of which independently link to a risk of future violence:

"The risk factors of high relevance to future violence and risk management and needing intervention are his violent offences, his alcohol (substance abuse) use, his Paranoid Schizophrenia, his dysfunctional and dramatic background with resultant problem personality traits including particularly his paranoid dissocial and avoiding traits, his conflictual inter-personal relationships, poor insight into mental health, risk profile and need for treatment, and his poor engagement with services."

Mr Justice Colton concluded that there is a significant risk to members of the public of serious harm occasioned by the commission by the defendant of further specified offences under Article 23(1)(b) of the 2008 Order.

Life Sentence?

The offence of manslaughter is one in respect of which the court can impose a discretionary life sentence if it considers that the seriousness of the offence justifies this approach. If it does not, then the court must consider whether an extended custodial sentence would be adequate for the purpose of protecting the public from serious harm occasioned by the commission by the offender or further specified offences. If not, the court must impose an indeterminate custodial sentence.

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Mr Justice Colton referred to the guidance sent out by the Court of Appeal in the case of **R v Sean Hackett** [2015] NICA 57. He did not consider that an extended custodial sentence would be adequate in this case for the purpose of protecting the public. The issue is therefore whether or not the court should impose a life sentence or an indeterminate custodial sentence.

The Court of Appeal said in **Hackett** that there is no longer any need to protect the public by passing a sentence of life imprisonment for the public as they are now properly protected by the imposition of the sentence of imprisonment for public protection. The court should only impose a life sentence in cases where the culpability of the offender is particularly high or the offence itself particularly grave: "A life sentence should be reserved for offences of the utmost gravity".

Mr Justice Colton said he must have regard to the fact that the defendant was drinking before the offence and was well aware of the impact of alcohol upon him, having past convictions for alcohol fuelled violence. It appears that he entered the deceased's home and killed him by multiple stab wounds. He indicated to his family that the deceased pleaded for his life but that he did not stop. He also took a sum of money from the victim. The judge said that any assessment of the appropriate sentence has to be seen in the overall statutory context:

"This was a truly shocking offence. The medical evidence clearly indicates that at the very least at the time he committed this offence the defendant suffered from a serious mental illness and that his ability to form a rational judgment and exercise control in relation to the events on the day of the killing was substantially impaired as a result of that mental illness. It is clear that as a result of the 2008 Order, as interpreted by the Court of Appeal, the imposition of life imprisonment will be rare in cases such as this. Because of the factors I have identified I do not agree that the defendant's culpability was low and clearly in those circumstances punishment is appropriate. On balance however I have come to the conclusion that this case does not meet the high threshold for the imposition of a life sentence."

Mr Justice Colton said that the imposition of an indeterminate custodial sentence under the 2008 Order would be sufficient to provide appropriate retribution and deterrence in respect of this manslaughter conviction and to provide protection to the public in the future:

"In this regard I emphasise the importance of ensuring the protection of the public. Irrespective of any tariff I impose the defendant can only be released on licence if this is approved by the Parole Commissioners who will be best placed to assess the need to ensure the safety of the public. Even if released on licence after serving an appropriate tariff he will be subject to recall should any concern arise about the conduct of the defendant or any risk he poses to the public."

The Appropriate Tariff

Having decided that an indeterminate custodial sentence was the appropriate sentence, the judge went on to determine the length of the minimum term the defendant will be required

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to serve in prison before he will first become eligible to have his case referred to the Parole Commissioners for a consideration by them as to whether, and if so, when he is to be released on licence:

“The court repeats its view that the defendant’s culpability was more than minimal. This was a truly shocking offence. The defendant entered the deceased’s home and stabbed him repeatedly in the face of his pleas to desist. The defendant had consumed alcohol, knowing the effect this has had on his conduct in the past. He stole from the deceased after the killing. It involved the infliction of multiple injuries as a result of a gratuitous frenzied and sustained attack with the use of knives. The defendant also has a relevant and significant criminal record for crimes of violence.”

Mr Justice Colton commented that any reduction in sentence for remorse in this case would be very minimal. He considered the defendant’s very difficult and dysfunctional upbringing, in the context of such a serious offence, to be a very minor and mitigating factor. He said the mitigating factor was the fact that as a result of his diminished responsibility, the defendant was unable to form a rational judgment or exercise control when he committed this horrific offence. This means as a matter of law, the case must be distinguished from one of murder. The defendant was also entitled to a reduction in his tariff by reason of his plea of guilty. Mr Justice Colton determined that had the case been contested and the defendant convicted of manslaughter by reason of diminished responsibility he would have imposed a minimum tariff in the range of 10-12 years, to reflect the aggravating and mitigating factors which he identified. He reduced that tariff to one of 8 years because of the circumstances in which the plea was entered in this case and the defendant’s approach to the offence and said that, overall, he considered that this tariff is one which is appropriate in all the circumstances of the case:

“In imposing this tariff I make it clear that before the defendant can be considered for release into the community it will be necessary for the Parole Commissioners to assess whether or not he can be safely released and in this regard they should have, as a minimum, access to the medical evidence which was available to this court. Furthermore, if that assessment shows that at any time it is safe to release him, sufficient safeguards must be imposed to ensure, so far as this can be achieved, that he does not present a risk to the public after he is released. Even if he is released on licence he will 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 (www.judiciary-ni.gov.uk).

ENDS

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