

# Judicial Communications Office

18 APRIL 2018

## SENTENCING OF RICHARD DALZELL

### Summary of Judgment

Mr Justice Colton, sitting today in Belfast Crown Court, imposed a tariff of 12 years on Richard Dalzell for the murder of Mark Lamont on 11 October 2016. This is the minimum term he must serve before he can become eligible to have his case referred to the Parole Commissioners for consideration as to whether he is to be released on licence.

Richard Dalzell (“the defendant”) pleaded guilty to the murder of Mark Lamont (“the deceased”) shortly before the commencement of the trial. The murder charge arose from an incident which took place in the early hours of 26 September 2016 at Ballycastle Road, Coleraine. The defendant had been in the company of Deborah Ramsey on Saturday 25 September 2016 at the Forge Bar, Coleraine from about 12 noon until they left at about 11.30 pm. Whilst in the bar both the defendant and Ms Ramsey were involved in verbal exchanges with three men, one of whom was the deceased. Ms Ramsey had previously been in a relationship with one of the other men.

Both the defendant and Ms Ramsey were very drunk when they left the bar. CCTV evidence shows them arguing with one another at times and at one point the defendant kicks out at a shop shutter in the town. Shortly after the defendant and Ms Ramsey returned to her house the three men came in through an unlocked door wearing hooded tops and obscuring their faces. There was a relatively minor physical and verbal altercation between the defendant and the males who were ushered out of the house. The men parted company outside but the deceased returned alone and got into a fight with the defendant.

In her statement Ms Ramsey said she saw the defendant punching the deceased and causing him to fall to the ground. She tried to intervene but said the defendant kicked the deceased with his right foot. He then left in his car, shouting to her that it was her fault. Two neighbours also gave statements. One described a well-built male, the defendant, repeatedly stamping on the head of a male on the ground while holding on to a concrete pillar. The other said she saw the defendant “*jumping*” on the deceased’s head. She said he was “*putting a lot of effort into what he was doing*” while the deceased lay on the ground. When she went outside to phone for an ambulance, the defendant came to her and said that “*she had not seen anything*” and to “*put her phone away*”. He told her that he was in the UDA. The witness also said that at one point the defendant walked back from his car to the deceased and stamped on his head before returning to his vehicle and driving off.

The defendant was detected speeding by a camera on the Upper Newtownards Road, Belfast at 1.48 am on 26 September. Police attempts to pursue him had to be stopped due to fears for public safety given the speed at which he was driving. The defendant attended Coleraine Police Station on 26 September where he was charged with attempted murder. He admitted hitting Mr Lamont about the head but said he was acting in self-defence. He claimed to have no recollection of kicking Mr Lamont or stamping on his head. The defendant claimed he panicked and drove home to Newtownards.

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The deceased died on 11 October 2016 at the Royal Victoria Hospital Belfast as a result of the injuries sustained during the assault. The cause of death was found to be a brain injury associated with a skull fracture. The pathologist said the severity of the injury would indicate that considerable force had been applied to the head probably by kicking or stamping or a combination of both whilst the deceased was lying on the ground. The defendant was re-arrested and charged with the murder of Mr Lamont. He was interviewed again and mostly made no comment throughout the interviews.

The defendant pleaded guilty on the following basis:

*"The defendant's actions in relation to the deceased were initially in self-defence following the deceased's return to the scene to fight the defendant. The defendant accepts he got the better of the deceased and that his actions went beyond what was reasonable or which constituted self-defence. The defendant's actions were substantially provoked by the actions of the deceased at the time of the fight and by those of the deceased and his associates by their earlier intervention into the home where the defendant was present."*

The legal principles that the court should apply in fixing the minimum term are set out in **R v McCandless & Ors** [2004] NICA 1 where 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 Life Sentences (NI) Order 2001. The Practice Statement sets out two starting points – a lower one of 12 years imprisonment and a higher one of 15/16 years imprisonment.

Mr Justice Colton referred to victim impact statements relating to the deceased's family. He recognised that the loss of Mr Lamont's life cannot be measured by the length of a prison sentence: "There is no term of imprisonment that I can impose that will reconcile his family and friends to his loss, nor will it cure their anguish". He said, however, that case law states that the opinions of the victim or the surviving members of the family about the appropriate level of sentence do not provide any sound basis for reassessing a sentence.

The judge also referred to a psychiatric report and pre-sentence report in respect of the defendant. The psychiatrist's opinion was that the defendant was suffering from post-traumatic stress disorder and feels he is under threat. The probation report described the defendant's unstable upbringing and his 22 previous convictions dating back to 1998. This report expressed the opinion that alcohol misuse and the use of anabolic steroids were relevant factors in the commission of the offence. The probation officer assessed the defendant as being at medium likelihood of reoffending and someone who is at significant risk of causing serious harm.

Counsel agreed that the appropriate starting point was the "normal" one of 12 years. Mr Justice Colton, in applying the Practice Statement, reflected that it is only intended to be guidance and the starting points are points at which the sentencer may start on his journey towards the goal of deciding upon a right and appropriate sentence for an individual case. He said the court has to assess the culpability of the defendant and sentence him on the basis of the actions which led to the death of the deceased when he went beyond what could be

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viewed as self-defence. The judge said he was particularly influenced by the descriptions of the independent witnesses who describe the defendant repeatedly stamping on the head of the deceased whilst he was on the ground: "One witness describes him holding on to the concrete pillar of the gate whilst he did so. The other independent witness describes the defendant "jumping" on his head and that he was "putting a lot of effort" into what he was doing".

Mr Justice Colton commented that an over-reaction in self-defence can cover a multitude of actions from unnecessary additional punches, or a gratuitous single kick to repeated assaults long after any issue of self-defence arises. He considered that the assault in this case was "particularly serious" and went well beyond that which could be considered self-defence or a fight or for which there was legitimate justification. The assault was aggravated by the fact that the victim was clearly vulnerable as he was lying on the ground when his head was stamped upon repeatedly.

The judge felt it was extremely difficult to assess the precise intentions of the defendant at the relevant time:

"Clearly his actions were sufficient to establish that he had the necessary intent in law for murder. At the very least he intended to cause serious injury to the deceased. Overall in the context of this case I do not consider that there is any significant mitigation in terms of the defendant's intent."

He concluded that in terms of the offence the following matters are relevant in terms of mitigation:

- (a) The defendant's actions were initially in self-defence in circumstances where he had a reasonable belief that the deceased intended to and could have inflicted violence on him;
- (b) The defendant's initial actions were substantially provoked by the actions of the deceased and others; and
- (c) The initial fight was spontaneous and not pre-planned or premeditated.

Mr Justice Colton said these mitigating features have to be judged in the context of what he considered to be a "serious, sustained and senseless assault upon a victim who was in a vulnerable position". He said the actions of the defendant went well beyond anything that could be considered self-defence for which there was a legitimate justification:

"It was at the most serious end of the spectrum for an over-reaction. Any reflection at all by the defendant on his conduct must inevitably lead to the conclusion that he would have caused at the very least very serious injury and potentially the death of the victim."

The judge felt that the offence was further aggravated by the conduct of the defendant after the assault. He left the scene immediately and evaded the police. He threatened a civilian witness who came to the aid of the deceased, invoking the name of a paramilitary organisation. Mr Justice Colton said there was nothing in the defendant's conduct in the aftermath of the assault or in the course of his interviews which indicated any degree of remorse. He was not persuaded that the defendant is entitled to any significant discount for

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remorse although he did accept that he has suffered a degree of psychological injury as a result of the incident on the night in question.

Mr Justice Colton concluded that a tariff of 14½ years would be appropriate. He said the defendant is entitled to discount for his plea of guilty. 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 determining what that lesser sentence should be the court should look at all the circumstances in which the plea was entered and the stage in the proceedings at which the defendant has pleaded guilty. Maximum credit is reserved for those defendants who plead guilty at the earliest opportunity. Those who enter guilty pleas at later stages in the proceedings will not be entitled to maximum credit - as a general principle the later the plea in the course of the proceedings, then the less the discount will be. Mr Justice Colton set out the rationale behind allowing discounts for guilty pleas. He said that a plea is an indication of remorse. A plea of guilty and an acknowledgement of guilt by a defendant can provide a sense of justice and relief for the relatives and friends of the victim. In addition, the defendant's guilty plea will be of enormous benefit to the witnesses who would have been compelled to give evidence in this case. A plea also leads to a significant saving of time and public expense which is in the public interest.

Mr Justice Colton considered that a reduction of one sixth is appropriate in this case and therefore reduced the tariff from 14½ years to 12 years. The defendant will therefore serve 12 years in custody before he can be considered for release.

## 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](http://www.judiciary-ni.gov.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.

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ENDS

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