

Tuesday 14 October 2014

COURT OF APPEAL INCREASES MINIMUM TERM TO BE SERVED BY JOHN PAUL WOOTTON

Summary of Judgment

The Court of Appeal today increased the minimum term of detention to be served by John Paul Wootton for his part in the murder of Constable Stephen Carroll from 14 years to 18 years. The 25 year tariff imposed on Brendan McConville was not altered.

Brendan McConville and John Paul Wootton were both convicted of the murder of Constable Carroll and of possession of a firearm with intent to endanger life. Wootton was also convicted of attempting to collect information likely to be of use to terrorists. McConville was sentenced to life imprisonment with a minimum term of 25 years. Wootton was sentenced to detention at Her Majesty's pleasure with a minimum term of 14 years (because he was under 18 at the time the offences were committed). The Director of Public Prosecutions sought to refer the sentences to the Court of Appeal on the grounds they were both unduly lenient. He submitted that the killing of a police officer acting in the course of his duty, by those seeking to terrorise the community for their own political or ideological motives, must come within the highest category and that a deterrent element should also be considered. The DPP argued that the starting point for McConville should be 30 years. He contended that in respect of Wootton, the only mitigating factor was his age.

The guidance on the appropriate tariff in murder cases in this jurisdiction is contained in the judgment in R v McCandless [2004] NICA 1. The Court of Appeal also adopted the Practice Statement issued by Lord Woolf [2002] 3 All ER 412 which sets out the appropriate starting points for adult and young offenders, and how and when the court should vary the starting point. The Court said the Practice Statement was designed to be for guidance only and the starting points were intended as aids in finding the right and appropriate sentence for the particular case. The Court accepted that the sentencing regime in England under the Criminal Justice Act 2003 (which governs the choice of the minimum term in life sentence cases) could be taken into account but said that where the Practice Statement has made provision for the type of case in which the sentence is being imposed, the 2003 Act is likely to be of limited value.

McConville

The Court of Appeal stated that the murder of Constable Stephen Carroll was a carefully planned terrorist operation. The prosecution case was that while McConville did not fire the shot which killed the police officer, and there was no evidence as to his being involved in the planning and preparation of the offence, it could be said that he participated in the operation and was close to the firing point in the period leading up to the shooting. The trial judge, by virtue of this participation, identified that this was a case where a tariff of 20 years and

upwards could be appropriate. The Court of Appeal stated that the significant aggravating factor in this case was that this terrorist offence involved the killing of a police officer in the course of his duties. It noted that Paragraph 12 of the Practice Statement recognises that where the victim is a public servant that, of itself, would move the case into the higher starting point:

“The reason for that approach is not because the lives of public servants are more valuable than other lives but because public servants should be protected by way of deterrence having regard to the obligations and risks which they take on for the benefit of the community”.

The Court of Appeal also referred to the specific reference in paragraph 19 of the Practice Statement to the murder of a person performing his duties as a prison officer. It said that provision was designed to ensure that anyone who would consider harming those charged with managing dangerous offenders realises that they will be severely dealt with when made amenable:

“We consider there is no material distinction between the position of prison officers who manage dangerous offenders and police officers who investigate serious crime and bring offenders to justice. Their roles may be different but the need for deterrence in each case is plain”.

The Court of Appeal considered that the trial judge properly took into account that this was a terrorist offence, that it was aggravated by the fact that a police officer was the victim and further by the fact that McConville was serving a suspended sentence for a firearms offence at the time the murder was carried out. It concluded that a tariff of in or about 25 years was appropriate and that the sentence was not unduly lenient.

Wootton

The Court of Appeal said that many of the same aggravating factors applied to Wootton: he was a willing participant in the terrorist murder of a police officer although the precise nature of his role had not been established. Unlike McConville, there was no evidence that he was at the firing point at any time before or after the shooting. Wootton was also convicted of attempting to collect information likely to be of use to terrorists. The evidence was that he had been trying to obtain details of the address of a police officer which the Court said was a strong inference that he was actively seeking information with a view to someone doing that police officer harm. It said there was also evidence of his participating in public in paramilitary dress and that he was connected to the discharge of firearms other than the firearms used in the murder.

Wootton was two months short of his 18th birthday when the murder was committed. Paragraph 24 of the Practice Statement indicates that the judge should always start from the normal starting point appropriate for an adult, 12 years. It then suggests that

as a rough check the starting point should be reduced by one year for each year that the offender's age is below 18. The Court of Appeal warned that any such exercise should take into account the maturity of each person and that a mechanistic approach is never appropriate.

Paragraph 25 of the Practice Statement requires the judge to then take account of the aggravating and mitigating factors in the particular case. The Court of Appeal stated that there were three significant mitigating factors in this case: this was a terrorist murder; the victim was a police officer carrying out his duties; and the offender was convicted of attempting to obtain information useful to terrorists in respect of another police officer. The Practice Statement indicates that the suggested tariff in these circumstances would be of 20 years or more. The Court of Appeal said that **the fact that the starting point is 12 years or less as adjusted for age does not in any way diminish the extent to which aggravating factors such as involvement in terrorism or the murder of police officers should substantially uplift the determination of the tariff.**

The Court of Appeal went on to test this analysis against established sentencing principles which have been set out in case law. It said it was satisfied that the mitigation for youth in the case of a person who was approximately two months short of his 18th birthday at the time of the commission of a serious violent offence of this nature was limited:

“In our view the appropriate tariff in the case of Wootton was 20 years. We have to take into account the effect of double jeopardy arising from his exposure to this reference and in the circumstances we substitute a tariff of 18 years.”

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 Court Service website (www.courtsni.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 Commission 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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