Neutral Citation No. [2008] NILST 8 | *Ref:* **2008NILST8**

Tariff certified by the Secretary of State under Life Sentences (NI) Order 2001 on 17-07-08

THE QUEEN

-v-

CHRISTOPHER McMILLAN

DECISION ON TARIFF

Ruling by Kerr LCJ and Campbell LJ

KERR LCJ

Introduction

1. On 21 July 1997, following a trial by Campbell J sitting at Belfast Crown Court without a jury, the prisoner, Christopher McMillan, was sentenced to life imprisonment for the murder of Norman Gabriel Anthony Harley, a 46 year old man, on 27 November 1995. His appeal against conviction was dismissed by the Court of Appeal on 21 July 1997.

2. The prisoner was aged 20 years and 5 months old at the time of the murder. He was arrested on 29 November 1995 and, apart from a period between 12 April 2002, when the prisoner was released on licence under the Northern Ireland (Sentences) Act 1998, and 14 May 2003, when his licence was suspended by the Secretary of State, he has been in custody. For the purposes of calculating the expiry date of the minimum term that will be certified by the Secretary of State under the Life Sentences (Northern Ireland) Order 2001, he is to be taken as having served 12 years and 6 months in custody to date.

3. On 10 March 2008 we heard oral submissions on behalf of the prisoner in relation to the tariff to be set under article 11 of the 2001 Order. The tariff represents the appropriate sentence for retribution and deterrence and is the length of time that the prisoner will serve before his case is sent to the Life

Sentence Review Commissioners who will then assess his suitability for release on the basis of risk.

Background to the offence

4. The factual background was set out by the Court of Appeal in the following passages of its judgment dismissing the prisoner's appeal: -

> "The body of the deceased was discovered shortly after 11 pm on 27 November 1995 lying on a grassy slope above the upper lake in the grounds of the Waterworks. These grounds are a public park, and although the entrance gates are closed at night people can obtain easy access at various points, and the park is populated at all hours of the day and night. There are two lakes or reservoirs in the park. The Westlands estate, whose inhabitants are mostly Protestant, lies to the north side of the upper lake and people from this estate tend to use the area bounding the top end of the upper lake for recreation. The lower lake lies close to an area in which the inhabitants are mostly Roman Catholic and they tend to frequent the part of the park which surrounds the lower lake. Fights of a sectarian nature regularly take place in the park.
>
> The deceased, a Catholic aged 46 years, had been drinking with friends in a house in Henderson Avenue, off Cavehill Road. He left to catch a bus at approximately 7.30 pm. He was seen waiting at the bus stop shortly thereafter, but he appears to have missed his bus, which was scheduled to stop there at 7.35 pm. He was last seen by Valerie Mulgrew walking down Cavehill Road at the junction of Westland Road. This witness put the time at around 8 pm.
>
> When the body was first examined by a police officer at 11.09 pm there were no vital signs. At post mortem examination it was established that the deceased had died as a result of the wounds inflicted that evening. He had been heavily intoxicated and would not have had much ability to resist an attack.
>
> There were severe head injuries, with extensive facial and skull fractures. Dr Carson the Deputy State Pathologist concluded that the cause of death was bruising and oedema of the brain and aspiration of

blood associated with fractures of the skull and facial bones. The facial fractures could possibly have been caused by stamping on the face, but linear bruising on the temple and injuries to the lower chest strongly suggested blows from a rod-shaped object and were consistent with fairly heavy blows from a metal bar or tube. A tubular metal bar was found on the evening of 29 November 1995 behind a wall enclosing an area beside Antrim Road close to Kansas Avenue. It could have been dropped over the wall from the footpath bordering Antrim Road. It was of the same type as a bar which was missing from a bench in the gymnasium in Thompson House, a hostel in which Bellringer was living at the time. Dr Carson agreed that this bar, which was 76 cm in length and weighed 700 gm, could have caused the linear injuries to the head and trunk of the deceased.

An earlier incident took place in the Waterworks area, in respect of which Bellringer pleaded guilty to causing grievous bodily harm to Paul Joseph Flood. Flood and three other young men were taking a short cut through the Waterworks and were walking along the south side of the lower lake between 7.15 and 7.30 pm when they encountered Bellringer, who was accompanied by a small black dog. Bellringer accosted David McKee, one of Flood's companions, grabbed him by the arm and shoulder and accused him of drug dealing. When Flood attempted to pull his arm away Bellringer struck him a violent blow on the mouth, causing the loss of two teeth and fractures to three more, which required hospital treatment.

Flood ran off in one direction and his friends escaped by another path. Bellringer pursued them and they heard him shout "Chris, get the three bastards". They saw another man running to try to cut off them off, but they were able to make good their escape and report the incident to the police. Flood stated in evidence that he had not been asked his religion at the time of the attack, but he was in the area of the Waterworks normally frequented by Catholics.

Several witnesses deposed to seeing the appellant and Bellringer during the course of the early part of the evening of 27 November. They called at the door of the house of Evan James Moore in Old Westland

Road after 7 pm and asked him to come out with them. The appellant was carrying a black iron bar about a foot or two long and the men had a small black and white dog with them.

The appellant and Bellringer were seen at the same time by two boys, William Mahood and Scott Gillespie, then both aged twelve years. The boys shouted at them remarks about being drunk, whereupon the men chased them for a short distance. Mahood and Gillespie said that the appellant had an iron bar with holes in it over his shoulder and there was a black and white dog with them. They both said that they heard one of the men say as they left in the direction of the Waterworks that they were "going to beat a taig".

The appellant and Bellringer encountered Alan Dempsey as they walked down Westland Drive towards the Waterworks. He was uncertain about the time, but said that it must have been after 7 pm, when he left the house, and could have been between 7 and 7.30. He bumped into Bellringer as he passed and Bellringer threatened him with violence, but desisted when Dempsey claimed friendship with Evan Moore.

The appellant and Bellringer were seen by William Murphy walking up Cavehill Road, across the road from the Cavehill Bar. Murphy put the time in his evidence in chief at roughly about 7.45 and in cross-examination agreed to a time between 7.30 and 7.45. He said that the appellant had an iron bar in his hand and that the men had a small black dog, with them. He spoke to the two men, who appeared to be rather drunk, and the appellant said that they were going for a "dander". When Murphy asked him what he was doing with the bar, he said that he had "beat a taig round the head in the Waterworks". Mr Harvey QC submitted on behalf of the appellant that if Murphy and Miss Mulgrew are correct in their estimates of the time, this encounter must have taken place before the attack on Mr Harley and the appellant's remark must have been an inaccurate reference to the attack on Mr Flood.

The Crown adduced the evidence of several witnesses who were at a party later that evening in the

appellant's flat at 36 Kansas Avenue. Mr Harvey submitted, not without some justification, that the evidence of the witnesses about what was said at that party has to be regarded with great caution, since the participants had all taken a good deal to drink, there was loud music being played and noisy conversations were taking place. The judge completely rejected the evidence of one of the witnesses, Richard McAllister, as so unreliable as to be worthless, and Mr Harvey submitted that the evidence of the other witnesses was of very suspect quality.

MMcC was standing at the corner of Vancouver Drive and Kansas Avenue some time after 8 pm when the appellant and Bellringer "came dandering down". They showed him an iron bar and said that they "were only after beating somebody with it". He could not remember who was in possession of the bar. MMcC accompanied them to the flat at 36 Kansas Avenue and listened to music there for a time. He noticed that one of Bellringer's knuckles was burst open. He heard one of them say in the living room, where they were both present together, that they had beaten somebody in the Waterworks and there was a reference to knocking somebody's teeth out.

Paul McLaughlin arrived at the flat at about 8.30, then accompanied the appellant to a wine lodge, where the appellant bought a quantity of drink to take out. They returned to the flat about 9 pm and the witness remained there overnight. He noticed the cut on a knuckle on Bellringer's right hand. He related a description of a conversation at which both the appellant and Bellringer were present when one of them said that he hit a boy on the face with a bar. McLaughlin understood that to be in the context of an incident involving four youths, however, and then referred to Bellringer saying that the appellant had pushed "him" in the water. They also said that they had taken £20 or £25 from him. There was a stain on the appellant's tracksuit bottoms, which he said was blood. There was a degree of confusion and uncertainty in the witness's description of the conversation, both as to who said what and to what the speakers were referring.

Evan Moore stated that he went to the flat at 36 Kansas Avenue, arriving about 8.30 to 8.40. He noticed the mark on Bellringer's hand, which he said he got in a fight. He went on to give a description, in the appellant's presence, of having asked a man in the Waterworks for money and when the latter refused he grabbed him and hit him. The appellant came from behind him with the bar and hit him around the back of the head and on the legs. The man fell to the ground and they continued to beat him with kicks and punches and then with the bar. Bellringer and the appellant were both very drunk and were talking freely during the evening about the incidents in the Waterworks. Moore said that he saw the bar lying on the floor in the flat. His evidence then went on as follows:

> 'Q34 Can you say if anything was said about the bar in the flat? A. The swinging.
>
> Q35 Tell us about the swinging of it? A. I think it was McLaughlin [this is fairly clearly a mistake for McMillan] who said the way he swung the bar at the man?
>
> Q36 What way did he say he swung the bar at the man? A. That he hit him with it.
>
> Q37 Where was the bar when he said he had been swinging at it? Where was the bar at that stage? A. I think it was on the floor.
>
> Q38 How did he say he was swinging it? A. How did he swing it at the man?
>
> Q39 Yes? A. Swinging it just.
>
> Q40 And did he say anything about where the contact, if any, occurred between the bar and the man? A. Yes, the head and upper body.'

> He saw blood on the white stripes of the appellant's tracksuit bottoms. Moore accepted in cross-examination that the appellant and Bellringer were very drunk to start with and became worse as the evening, went on, Bellringer reaching a condition which he described as "blitzed". He admitted that his own recollection was vague of who said what in describing the incidents, that it was difficult after the lapse of time to separate them in his mind and that he suffered from a degree of confusion."

Police interviews with the prisoner

5. During his first interview by police the prisoner denied involvement in the murder. He claimed that he had been in his flat on that date with Bellringer, leaving it for the first time after 8pm in a friend's car in order to collect another friend. He said that they had stayed at his friend's house until quarter to nine and then left to go to an off- licence. The prisoner told police that he and his friends had then returned to his flat arriving there at about 9.00pm. When asked if he would confess to involvement in the killing, he replied "I'll see my solicitor first, he's coming tonight at 6.00 o'clock". When asked why he would not tell the police about the incident then and there, he replied, "I'm going to get more than Bellringer". The prisoner went on to state, "Bellringer grabbed him and kicked him about. I am saying nothing more until I see my solicitor".

6. In the prisoner's second interview on 29 November 1995, he admitted that he and Bellringer were at the Waterworks for a walk. He stated that they walked past another man to whom he said 'hi' and the man had replied 'hi'. The prisoner then told the police that he had turned round to see that Bellringer was hitting and kicking this man and putting his heel into the man's face. He stated that he then ran over and gave the man "a couple of boots" around the legs, that they took money out of the man's pocket and then walked back to his flat. The prisoner stated that they spent the stolen money at an off-licence.

7. When questioned about the use of an iron bar, McMillan said that both he and Bellringer had used the bar but claimed that it was Bellringer who had the bar when the man was first attacked. When asked if Bellringer had used the bar to attack the man the prisoner replied, "I didn't see him but obviously he had if your man's skull is caved in". He explained to the police that they had the bar with them because they were going to rob somebody in the Water Works area. He informed the police that this had not been planned but they had decided to carry out the robbery when they were already in the area. When the police asked him if he had told people after the attack that they had "done a taig", the prisoner stated he couldn't remember saying this. Later, he

said that he did remember making this remark to people in his flat - "You should have seen the booting a taig got in the park". On further questioning the prisoner admitted that he was not certain of the religious background of the victim but then said, "We just knew he was a taig", as he believed that the majority of people in the Water Works area were Catholics.

8. At the third police interview on 29 November 1995, the police informed the prisoner that they believed that he had gone into the Water Works with the sole intention to attack a Catholic. They continued to interview him regarding his part in the murder. The prisoner insisted that he did not have the iron bar when the attack took place and denied that he had targeted the victim because he was Catholic.

9. During the fourth police interview McMillan told the police that he had gone to his mother's house after the attack and taken clothes for her to wash. The police asked him if he and Bellringer had pushed the victim's body down the bank so that no-one would find him. He replied, "Yeah". The police questioned him as to whether he thought the man was dead and the prisoner said, "I thought he was knocked out". The police then asked him whether he thought of returning to check if the man was alive or dead. The prisoner responded, "Aye", and then said that they were going to go back after spending the £25 they had stolen from the victim. Obviously, they did not do that.

10. Later in the same interview, the prisoner was asked if he had used the bar on the victim and he indicated that he had done so. The police asked him why he had not told them this before and he replied, "I was ashamed and frightened".

11. During the final interview the prisoner was informed that it appeared from the pathologist's report that the victim had not been able to put up any resistance to the attack on him. The prisoner agreed that there was no struggle and stated, "He never had a chance".

Post mortem findings

12. Campbell J described the post mortem findings in the following passage from his judgment: -

> "At the post mortem examination it was established that his death had occurred as a result of injuries which he had suffered. At this examination there was evidence of alcohol induced liver disease and of degenerative emphysema of the lungs but neither of these conditions contributed in any material way of his death. An analysis of samples of his blood and

urine showed the concentration of alcohol in his blood was 293 milligrams per 100 millilitres and his urine 373 milligrams per 100 millilitres. This was described by the Deputy State Pathologist, Dr Carson, who carried out the examination, as a severe degree of intoxication and as creating a state in which the victim could not have had much ability to resist an attack on him.

Dr Carson said that his examination revealed that the most severe injuries were to Mr Harley's head. There was bruising and abrasion to his nose, bruising to his eyelids and extensive fractures of the bones of his nose and cheeks. There was more severe bruising and a laceration on the left side of his forehead and left temple and, over the temple, there were two intersecting linear bands of bruising. Dr Carson found bruising in front of and behind the left ear lobe and areas of bruising and abrasion to the back of the head.

Beneath the injuries to the forehead and temple there were extensive comminuted depressed fractures of the skull and fissured fractures extending to the right across the base of the skull. The brain was bruised and bleeding and blood from the nose had run downwards into the air passages. A combination of the brain damage, gross skull fractures and blood in the air passages were, in Dr Carson's opinion, the main factors causing death.

Dr Carson considered that the linear bruising which he had noted on the temple suggested two blows from a rod shaped object such as a mental rod or bar. The facial fractures did not have the same pattern and Dr Carson said that it is possible that they were caused in some other way such as by stamping on the face. The bruising and abrasion on the back of the scalp could, in his opinion, have been caused by counter pressure on a hard surface when the injuries were being inflicted to the face and left temple.

There were injuries to the left side of Mr Harley's lower chest, involving a fracture of the seventh left rib and a laceration of the spleen, which could have been caused by the same or a similar object to that used to

> inflict the injury to the face and temple. Such an object could have caused the abrasion seen to the right upper thigh.
>
> Dr Carson was shown a metal tube, which had been recovered by the police, and he said that this tube or any similar object could have caused the injuries to Mr Harley's head and trunk. He agreed that the major injuries had been caused by such an object and he added that the blow that had fractured the rib cage would have required to have been fairly heavy. In his opinion the gaping wounds were, on balance, more likely to have been caused by kicking rather than stamping and this would have been with the edge of a shoe. He agreed that the type of footwear worn by Bellringer would have left an impression had it been used in a stamping action. If the injuries were caused by kicking they would have bled immediately on impact and blood would have been expected to come in contact with the shoes and lower part of the trousers of an assailant. Dr Carson said that the injury to the left eye was caused by something other than a rod and that it was too severe to have been caused by a fist. He said that normally such an injury is caused by stamping or kicking but he added that it is possible that it was inflicted by someone wearing an object such as knuckle duster".

Psychologist's report

13. Campbell J also referred to a report of a Mr Davison, a consultant psychologist, who examined the prisoner on 5 March 1997: -

> "His evidence was that McMillan's overall IQ was 79 which places him in the eight percentile. Mr Davison said that 92% of the population would be intellectually more competent. A finding of 79 allowed the witness to say, with 95% accuracy, that McMillan's IQ is within the 10 point span of 74-84.
>
> It was his impression that McMillan was trying during the tests and he noted that the results of his verbal, performance and IQ tests matched fairly well. An overall educational ability of below 70 he described as educationally sub normal and within the range of 70-80 as borderline and between 80 - 90 as

> low average. Mr Davison said that those with a low IQ would experience difficulty with moral reasoning but for those in the range of 79-80 there would be no such problem".

Antecedents

14. The prisoner has previous convictions in the juvenile court for common assault on child or young person, burglary and theft of a non dwelling, burglary and theft from a dwelling, breach of conditional discharge and disorderly behaviour. He had eight convictions by a magistrates' court for taking a motor vehicle without owner's consent, no insurance, driving under age, theft, unaccompanied L driver, careless driving, handling stolen goods, disorderly behaviour and behaviour likely to cause a breach of the peace and assault on the police. Of these, the following convictions are relevant for present purposes as indicating a previous propensity to violence: -

- common assault on child or young person on 19 November 1987 before Belfast Juvenile Court on 6 June 1988. The prisoner was fined £50 and ordered to pay costs;
- assault on police before Belfast Magistrates' Court on 17 February 1996. The prisoner was fined £75.

Judge's sentencing remarks

15. Passing sentence on Bellringer, Campbell J described the attack on Mr Harley in the following terms: -

> ". . . It was, by any stretch, an appalling and vicious attack that took place on Mr Harley; it was without provocation, it was on an innocent man who was incapable of putting up any sort of resistance".

16. In sentencing McMillan, Campbell J accepted that this was not a sectarian attack, saying: -

> ". . . I accept . . . that this was not a sectarian attack. . . The objective facts suggest that this was to get money to feed your addiction to alcohol in which this man lost his life as a result.".

The decision on appeal

17. On the hearing of the appeal, it was not in dispute that both the prisoner and Bellringer had taken part in a savage assault on the victim. Each defendant blamed the other for using the metal bar to strike the fatal blows.

The issue in the appeal was the sufficiency of the proof against the prisoner that he had been the one who wielded the implement and caused the injuries from which the victim died. In particular, the prisoner challenged the admissibility of certain statements which he had made in the course of police interviews after his arrest. Carswell LCJ, delivering the judgment of the court, dismissed the appeal and held that the pieces of evidence taken together were capable of amounting to a sufficiently clear case that it had been the prisoner who used the bar to strike the deceased about the head, inflicting the fatal wounds upon him. Nevertheless, it was accepted that the murder had not been proved to be sectarian and that the prisoner had not intended to cause the victim's death but had intended to inflict grievous bodily harm.

Representations of the victim's family

18. The victim's brother, Mr William Harley, made a representation in relation to the tariff setting process on behalf of the Harley family. He described the death of his brother as continuing to have a devastating impact on the entire family. He stated that the sudden and horrific manner of his brother's death brought immense emotional stress to his family both in Belfast and England. He made reference to how the police informed the family that his brother had severe head injuries and explained that the coffin would have to be closed because of the extent of the head injuries. Mr William Harley described how the media and police attention added to their stress as they made arrangements for his brother's funeral. He explained that after the funeral they then had to endure the court case against the accused when his two sisters came back from England to attend the trial at considerable financial cost. He explained how another sister was considered too ill to attend the trial and that her illness was due to the emotional toll the death had had on her. He stated that during the trial the court was shown horrific photos of his brother's injuries and that this had proved too much for some members of the family who had had to leave the courtroom. In relation to the prisoner's reactions at court he stated as follows:

> "To make matters worse the accused appeared to show no remorse and at times taunted the family with rude and vulgar gestures".

19. Mr Harley described how the stress of the murder and court proceedings affected his entire family. His mother's health deteriorated quickly to the extent she lost a lot of weight and became unable to walk. She became bedridden and had to receive 24 hour care assistance. His immediate family in Belfast then had to attend to her needs. Her two daughters once again travelled regularly from England to attend to her. He explained that this involved considerable financial expenditure and put a strain on the members of the family who remained in England. He stated that his mother died in

early 2003 and that they had no doubt that his brother's death was the most significant factor in this. He also described how his brother's niece was affected by his death to the extent that she had to attend a psychiatrist to treat her trauma.

20. Mr Harley concluded his representations with the following statement: -

> "To this day we feel a huge void in our lives with the death of Norman. All deaths are a tragedy but the brutal and needless manner of Norman's death makes it all the more difficult to take. Norman was a totally innocent man who simply happened to be walking through a public park when he was set upon and cruelly murdered. He was in good health and was so full of life that his death continues to make no sense to any of us. As we visit his grave and the grave of my mother, we are left reeling that two people died as a result of this heinous crime and that the rest of the family continue to suffer immeasurable pain".

Representations on behalf of the prisoner

21. In oral and written submissions made on behalf of the prisoner Mr Harvey QC made the following points: -

> "The following mitigating features were present:
>
> *In relation to the offence*
>
> (a) The trial judge found that the evidence did not justify a finding of guilt on the basis that the defendant intended to kill;
>
> (b) The culpability of the defendant although high could not in the circumstances be considered as exceptional;
>
> (c) While the co-defendant was acquitted of murder and, on the evidence it was not possible to ascertain his precise role, it is not unreasonable to conclude, for the purposes of determining the tariff for this accused, that his involvement was a significant factor;
>
> (d) The attack was not premeditated or planned.
>
> *Personal factors*

(a) His youth, at the time of the offence was 20 years old;

(b) His limited educational attainment and intellectual ability;

(c) His limited criminal record;

(d) His expression of remorse;

(e) That while the case was contested there were significant issues of fact and law which were in dispute."

22. We have taken these and all other representations made on the prisoner's behalf closely into account.

Practice Statement

23. In *R v McCandless & others* [2004] NICA 1 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 were required to fix tariffs under the 2001 Order. The relevant parts of the *Practice Statement* for the purpose of this case are as follows: -

"The normal starting point of 12 years

10. Cases falling within this starting point will normally involve the killing of an adult victim, arising from a quarrel or loss of temper between two people known to each other. It will not have the characteristics referred to in para 12. Exceptionally, the starting point may be reduced because of the sort of circumstances described in the next paragraph.

11. The normal starting point can be reduced because the murder is one where the offender's culpability is significantly reduced, for example, because: (a) the case came close to the borderline between murder and manslaughter; or (b) the offender suffered from mental disorder, or from a mental disability which lowered the degree of his criminal responsibility for the killing, although not affording a defence of diminished responsibility; or (c) the offender was provoked (in a non-technical sense), such as by

prolonged and eventually unsupportable stress; or (d) the case involved an overreaction in self-defence; or (e) the offence was a mercy killing. These factors could justify a reduction to eight/nine years (equivalent to 16/18 years).

The higher starting point of 15/16 years

12. The higher starting point will apply to cases where the offender's culpability was exceptionally high or the victim was in a particularly vulnerable position. Such cases will be characterised by a feature which makes the crime especially serious, such as: (a) the killing was 'professional' or a contract killing; (b) the killing was politically motivated; (c) the killing was done for gain (in the course of a burglary, robbery etc.); (d) the killing was intended to defeat the ends of justice (as in the killing of a witness or potential witness); (e) the victim was providing a public service; (f) the victim was a child or was otherwise vulnerable; (g) the killing was racially aggravated; (h) the victim was deliberately targeted because of his or her religion or sexual orientation; (i) there was evidence of sadism, gratuitous violence or sexual maltreatment, humiliation or degradation of the victim before the killing; (j) extensive and/or multiple injuries were inflicted on the victim before death; (k) the offender committed multiple murders.

Variation of the starting point

13. Whichever starting point is selected in a particular case, it may be appropriate for the trial judge to vary 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.

14. Aggravating factors relating to the offence can include: (a) the fact that the killing was planned; (b) the use of a firearm; (c) arming with a weapon in advance; (d) concealment of the body, destruction of the crime scene and/or dismemberment of the body; (e) particularly in domestic violence cases, the fact that the murder was the culmination of cruel and

violent behaviour by the offender over a period of time.

15. Aggravating factors relating to the offender will include the offender's previous record and failures to respond to previous sentences, to the extent that this is relevant to culpability rather than to risk.

16. Mitigating factors relating to the offence will include: (a) an intention to cause grievous bodily harm, rather than to kill; (b) spontaneity and lack of pre-meditation.

17. Mitigating factors relating to the offender may include: (a) the offender's age; (b) clear evidence of remorse or contrition; (c) a timely plea of guilty.

Very serious cases

18. A substantial upward adjustment may be appropriate in the most serious cases, for example, those involving a substantial number of murders, or if there are several factors identified as attracting the higher starting point present. In suitable cases, the result might even be a minimum term of 30 years (equivalent to 60 years) which would offer little or no hope of the offender's eventual release. In cases of exceptional gravity, the judge, rather than setting a whole life minimum term, can state that there is no minimum period which could properly be set in that particular case."

Conclusions

24. This was a case of wanton and brutal violence inflicted on a man who could offer little in the way of resistance to the senseless but barbaric attack on him. He was vulnerable to the assault because of his intoxicated condition and his injuries speak clearly of the quite ruthless and pitiless assault to which he was subjected. Mr Harley's family have been devastated as a result of his death and the awful manner of his killing.

25. More than one of the factors outlined in paragraph 12 of the *Practice Statement* are present in this case. The killing was done for gain. The assailants robbed the unfortunate Mr Harley of the money that he had on his person. Extensive injuries were inflicted and the evidence suggested that

quite gratuitous violence had been meted out to him. Furthermore Mr Harley was an obviously vulnerable victim by reason of his inebriation.

26. Aggravating factors relating to the offence include the use of a weapon in the attack and the fact that attempts made to hide the victim's body by pushing it down the bank in the Water Works so that it was out of sight. A further aggravating factor personal to the offender is his failure to respond positively to earlier benevolent disposals for violent offences.

27. The only mitigating factors of which one could be confident are that the offender was young at the time of the offence and that it was accepted by the trial judge and the Court of Appeal that his intention was to cause grievous bodily harm rather than to kill. Although he claims to have suffered remorse there is scant evidence of this in the material that we have seen. The prisoner can claim little credit for how he met the charge - denial of involvement during police interviews and blaming Bellringer for use of the metal bar. There is evidence also that after the attack he bragged to his friends about what he had done.

28. The presence of a number of factors outlined in paragraph 12 of the *Practice Statement* prompts the conclusion that this qualifies for the description of a 'very serious case' within the terms of paragraph 18. A substantial upward adjustment of the tariff is therefore warranted. It is to be noted that the *Practice Statement* contemplates that this may be to a period of thirty years.

29. Taking all these factors into account, we have concluded that the appropriate minimum term in this case is seventeen years. This will include the time spent on remand.