

Judicial Communications Office

20 December 2019

COURT SENTENCES FOR MURDER OF ROBERT FLOWERDAY

Summary of Judgment

Mr Justice Colton, sitting today in Belfast Crown Court, imposed a tariff of 16 years and six months imprisonment on Michael Gerard Owens for the murder of Robert Flowerday in January 2018. This is the minimum term that he must serve in prison before he will become eligible to have his case referred to the Parole Commissioners for consideration as to whether, and if so when, he is to be released on licence.

Factual Background

On 28 January 2018 the police received a report expressing concern for the safety of Mr Flowerday, a retired teacher who worked on a casual basis as a part-time tutor. He had failed to turn up for a pre-arranged tutoring session which was considered to be out of character for him. The police attended his house and found his body sitting in an armchair. They also found an axe, poker and claw hammer with extensive bloodstaining. The post-mortem report concluded that Mr Flowerday had been subjected to “a sustained assault that was concentrated to his head and neck and that the brain injuries were sufficient to have caused his death”. Injuries to his hands and arms were suggestive of those sustained while he was trying to defend himself against an attack.

The police were approached the following day by a man who told them he had met the defendant in the afternoon of 28 January 2018. He said the defendant, who appeared to be drunk, said he intended to go and burgle Mr Flowerday’s house. The defendant then consumed a bottle of wine and placed a plastic bag over his head as a makeshift balaclava. The man phoned the defendant at 6.00 pm that evening but was told “I am doing a job, leave me alone”. When he spoke to the defendant later that evening he was told “I think I killed him I used a hatchet”.

The defendant was also seen in Crumlin village at 10.45 pm. He was given a lift by a man who was collecting a meal from a Chinese restaurant. The defendant had also purchased a meal. He was noted as being dirty and having a cut to his hand. He told the driver “I am just going to the river to dump these clothes”. The clothes that the defendant was wearing on the night of the murder have never been found.

The defendant was arrested on the evening of 29 January 2018 and answered “no comment” to all questions put to him. The police recovered a belt from his home that had Mr Flowerday’s blood on it. Fingernail scrapings taken from the defendant yielded DNA from the deceased. The police also recovered the bag that the defendant had used as a makeshift balaclava from Mr Flowerday’s home. It contained the defendant’s DNA in the mouth area.

The appropriate tariff

The defendant pleaded not guilty at arraignment but asked to be re-arraigned on 3 October 2019, well in advance of his trial which was listed for 13 January 2020, and pleaded guilty to two counts, namely murder and burglary with intent to steal. Having pleaded guilty, the court imposed upon the defendant the only sentence permitted by law for that offence, one of life imprisonment. The

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court then proceeded to determine the length of the minimum term¹ the defendant is required to serve in prison before he will first become eligible to have his case referred to the Parole Commissioners for consideration by them as to whether, and if so, when he is to be released on licence. Before coming to that determination, Mr Justice Colton said it was essential to comment on the victim impact statements he had received from Mr Flowerday's family, friends and the wider community:

"The picture that emerges is of a man who lived a blameless and worthy life. He was someone who made a valuable contribution to the community which is understandably shocked and appalled at his brutal death."

Mr Justice Colton referred to the pre-sentence and medical reports provided to the court. The pre-sentence report recorded that the defendant's lifestyle had, since 2009, become characterised by the excessive consumption of alcohol and misuse of illegal drugs. He admitted that he had been drinking heavily and had taken "significant quantities of cocaine" at the time of the murder. He said he entered the deceased's house in an attempt to steal money but this escalated into a vicious assault as the deceased sought to protect his property and defend himself. After killing Mr Flowerday, the defendant moved his body to the living room so that it could not be seen in the front porch and took steps to conceal his involvement in the crime. The report records that the defendant accepts full responsibility for his actions and has been "overwhelmed by a sense of shame" since the offence. The Probation Service concluded that the defendant presents a high likelihood of re-offending but did not assess him as presenting a significant risk of serious harm to the public at this time based on his limited history of offending. The consultant psychiatrist's report stated that he was of the opinion that the defendant suffers from a mixed personality disorder with features of emotionally unstable personality disorder and sociopathic personality disorder. He did not consider the defendant to have true paranoid thinking.

Mr Justice Colton said that selecting a starting point for a tariff is not a mechanistic or formulaic exercise. The guidelines are there to assist the Court to proceed to, what, in the circumstances of the case, it considers is a just and proportionate sentence. In the words of the statute, the tariff should "be appropriate to satisfy the requirements of retribution and deterrence". He said the seriousness of the offence in this case clearly placed it in the higher starting point range of 15-16 years:

"The offender's culpability was exceptionally high. The murder was done in the course of a burglary. I consider that the victim was vulnerable. There was evidence that gratuitous violence was used during the course of the murder which was committed using multiple weapons including a hammer and a hatchet. As a result extensive and multiple injuries were inflicted on the deceased before death."

Mr Justice Colton referred to additional matters which were capable of constituting aggravating features: the attempts made by the defendant to dispose of his clothing after the murder and the steps he took to conceal the deceased's body. The judge said that mitigating factors were difficult to find. He said that while the defendant did not go to Mr Flowerday's house armed, he chose to arm himself when Mr Flowerday sought to defend himself and he had ample opportunity to desist from the assault and spare his life. Counsel for the defendant pointed to what he said were genuine expressions of remorse and shame on behalf of his client. The judge also noted that the defendant had given a very full and harrowing account of his actions in the pre-sentence report and that such a

¹ See Notes to Editors

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frank and fulsome account is rare. He said he would make some small allowance in mitigation for this but added: “In truth the only true mitigation is the fact that the defendant has pleaded guilty.”

Mr Justice Colton then considered what the appropriate reduction should be for the defendant’s guilty plea. He cited the decision of the Court of Appeal in *R v Turner and Turner* [2017] NICA 52 which gives guidance on the appropriate discount in tariffs in murder cases. This stated: “An offender who enters a not guilty plea at the first arraignment is unlikely to receive a discount for a plea on re-arraignment greater than one-sixth and that a discount for a plea in excess of five years would be wholly exceptional even in the case of a substantial tariff.” The judge said that in determining what the lesser sentence should be the court should look at all the circumstances in which the plea was entered:

“In this case the prosecution accept that the plea was “a timely plea”. Whilst it was not at the first opportunity [the defendant] applied to be re-arraigned well in advance of his trial. That plea reinforces the remorse he has expressed and the very full account he has given of his conduct in the reports I have considered. As against that it must be borne in mind that the defendant gave a “no comment” interview, exercised his right to compel the main prosecution witness to give evidence and to be cross-examined at committal and pleaded not guilty on arraignment, notwithstanding that the initial date for arraignment was adjourned.”

Mr Justice Colton said that taking into account the appropriate starting point, the aggravating and mitigating features prior to consideration of the discount for a plea, the appropriate tariff would be one of 20 years imprisonment. This was the tariff he would have imposed in the event of a conviction after a contested trial. He considered that, in light of the defendant’s timely plea, he was entitled to a discount of one sixth and reduced the tariff to one of 16 years and six months. This is the minimum term that the defendant must serve in prison before he will first be eligible to have his case referred to the Parole Commissioners for consideration by them as to whether he should be released on licence. The judge imposed a sentence of two years imprisonment in respect of the offence of burglary with intent which is to be served concurrently with the tariff.

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 (<https://judiciaryni.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

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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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