

Tariff certified by the Secretary of State under Life Sentences (NI) Order 2001 on 14-03-07

THE QUEEN v ADRIAN MICHAEL GERARD WILSON

DECISION ON TARIFF

Before Kerr LCJ and Campbell LJ

KERR LCJ

Introduction

[1] On 13 February 1998 Campbell J, sitting at Belfast Crown Court, sentenced the prisoner and his co-accused, Colin Paul King, to be detained at Her Majesty's pleasure for the murder of an 83 year old widow, Bessie Robson, on 29 December 1994. The sentence was passed after the conviction of the offender and his co-accused following a retrial, the original conviction of 6 March 1996 having been quashed by the Court of Appeal on 23 December 1996. The prisoner launched an appeal against his second conviction but later abandoned it. His co-defendant pursued an appeal against the second conviction but this was unsuccessful. The prisoner was sentenced to determinate terms of 4 years and 12 months for arson and burglary respectively. He has been in custody since 9 January 1995.

[2] On 19 May 2004 Campbell LJ and I sat to hear oral submissions on the tariff to be set under Article 11 of the Life Sentences (NI) Order 2001. The tariff represents the appropriate sentence for retribution and deterrence and is the length of time the prisoner will serve before his case is sent to the Life Sentence Review Commissioners who will assess suitability for release on the basis of risk.

Factual background

[3] At approximately 10.30pm on Thursday 29 December 1994 neighbours noticed smoke coming from 5 Bellevue Park, Belfast, the home of the deceased, Mrs Bessie Robson. The Fire Brigade was called and officers discovered Mrs Robson's body in the corner of a bedroom between the bed and front window. The room was said to have been in a very advanced stage of burning and the body was so badly burnt that it was not possible to recognise whether it was male or female. Forensic testing concluded that the fire was started by direct ignition, probably on the bed and possibly on the body. It was not clear whether an accelerant had been used.

[4] A post mortem examination was performed by Dr Derek Carson on 30 December 1994. He concluded that death was due to stab wounds, including a stab wound of the heart, and multiple head injuries. Dr Carson's report stated that Mrs Robson was approximately 5 feet in height. Her body had been grossly burned. The post mortem report contained the following passage:

"There were quite extensive and severe head injuries. A large area of bruising affected the back of the right side of the scalp and was seen best when the scalp was reflected, when a scalp laceration was also revealed in the deeper layers. Anteriorly on the forehead there were a number of splits in the skin, numbering at least seven in all. On each side of the forehead one of these was straight and the tissues relatively cleanly divided, suggesting knife wounds, whilst the others were irregular and suggestive of blows from a blunt object as was the bruising posteriorly. The skull was not fractured but there was a collection of blood clot on its inner surface on the left side and there was some surface bleeding on the brain but no bruising. There was extensive bruising of the eyes, the nose was broken and there was blood in the nose and mouth. A jagged wound on the left cheek was associated with considerable bleeding into the tissues on the left side of the face extending from the eye above to the margin of the lower jaw below. This injury could have been

caused by a heavy blow on the cheek, splitting the tissues as they overlay the prominence of the cheek bone, or alternatively the wound may have been a ragged penetrating injury.

There were three smallish stab wounds on the right side of the neck and at least two on the front of the chest. These wounds varied in width and appeared to have been made by a knife with a fairly narrow tapering blade. In the case of the lower of the two chest wounds the knife had penetrated the right ventricle of the heart, causing a fairly small wound and allowing blood to escape into the heart sac and left chest cavity. The depth of this wound, the deepest of the stab wounds, was about 5cm (2 inches), the others varying from 1 to 3 cm."

[5] The devastation to the body of the deceased was such that it was not possible to say whether the burning of her body started before death and contributed to it. The two main sets of injuries were the extensive head injuries and the stab wounds of the neck and chest - death was due to their combined effects.

[6] The day after the fire a number of Mrs Robson's personal items were discovered in outside locations in the vicinity of her home. A number of witnesses placed the prisoner and his co-defendant, Colin King, in the area both before and after the murder. They were both noticed to have drink taken. The prisoner was seen to be carrying a knife. There was, however, no direct evidence of the pair having been at Mrs Robson's home.

[7] One witness, Teresa McLarnon (the former girlfriend of King), made a statement to police on 5 January. She stated that at around 10.30pm the prisoner called at 253 Whitewell Road (where he knew her to be visiting a friend) looking "serious" and told her that the co-defendant wanted to speak to her. The prisoner told her that the "Proxies" were after the pair and she went outside to the co-defendant who was sitting at the bottom of the garden. She asked what the matter was and the co-defendant shrugged his shoulders. He was said to be shaking and holding his face in his hands. He would not answer either Ms McLarnon or the prisoner. Ms McLarnon grabbed the co-defendant by the wrist and he staggered up and

suggested that they go to his uncle's house. They walked to the house and the prisoner gained entry through a window and opened the front door. Ms McLarnon recalled that the prisoner said to his co-defendant: "...come on Colin we have to go and get cleaned up". The co-defendant is said to have remained seated and when Ms McLarnon asked him what he had done he replied, "I did everything, everything, I've got to go to the Isle of Man". He then said that he had killed a 'Provie'. The prisoner came back into the room and told the co-defendant to get cleaned up. When the co-defendant took off his coat Ms McLarnon saw blood on the front left chest area and the cuff of the left sleeve. The prisoner gave the co-defendant a face cloth and he attempted to clean the blood from his clothes. A discussion took place about what they should do next described by Ms McLarnon as follows: -

"Colin kept saying we have to get out of Ireland, we have to get to the Isle of Man ... Scottie (the prisoner) said 'no, just go home act normal'. If you got to the Isle of Man they're going to know it was us. They have no proof but if we go they will know it was us. He said they should go home and just act normal. They kept talking like this trying to convince each other what was the best thing to do."

The co-defendant went to lie down and Ms McLarnon watched the prisoner clean his shoes: -

"Scottie sat on the bath he had one foot on the toilet and was cleaning it with the face cloth. I could see blood on his shoe between the sole and the top of the shoe ... I could see thick blood on the edge of the shoe. As he rubbed the blood I could see it on the face cloth. He was wearing a pair of blue Levi jeans. There was blood on the inside of the left leg ... He got up threw the face cloth down the toilet and flushed it.

The prisoner is said to have told Ms McLarnon that they had killed a man over stolen jewellery. He is said to have told Ms McLarnon: "Don't be worrying about it, it's over and done with now". Ms McLarnon said that the prisoner did not appear regretful but rather that he 'seemed happy

because he was singing and smiling...'. They left the house and Ms McLarnon telephoned for a taxi for the pair from her own home.

[8] A 14 year old witness stated that he had previously been with Wilson and King to Mrs Robson's house and that they had expressed an interest in robbing it. On that occasion they were prevented from proceeding with the burglary because when the prisoner had knocked the front door a man had appeared. (During police interview Wilson accepted that he had previously called at Mrs Robson's house for the purpose of committing burglary).

[9] A knife was discovered in the bathroom of the house that the pair had used to wash themselves after the murder. Another knife (believed to be the murder weapon) was discovered in a drain close to the murder scene. In the Court of Appeal's account of the first trial Hutton LCJ referred to forensic evidence of Mrs Robson's blood on the shoes of both defendants, but this evidence is not currently available.

[10] Throughout several interviews by police both accused denied involvement in the murder. Later, when they began to make admissions, each admitted to the burglary but blamed the other for the attack on Mrs Robson.

[11] The prisoner's first interview began shortly after 8am on 2 January 1995. Interviews proved inconclusive and he was released. He was rearrested on 7 January 1995 (after Ms McLarnon's damaging statement) and made his first admissions that afternoon. The prisoner told police that he and King had been drinking at King's home when they decided to go to the Fairyknowe area. They bought some more drink and caught a bus. When they arrived they stood drinking with others. The prisoner says that King suggested that they look for money at Mrs Robson's house. The prisoner climbed into the house through a window and let King in through the front door. He says that he went into the living room and kitchen to see what there was to steal, and then went to get King. He found King in a bedroom and saw that "your woman was lying on the floor with blood pissing out of her...the blood was over the walls and Colin was standing there with no top on...The woman must have been in her nightdress, it was half above her waist..." He later said that King had called him into the room. He stated that King said that she had seen his face.

[12] The police questioned the prisoner about his use of a knife. The prisoner suggested that he placed the knife on the bed because he was filling his pockets with items from the house. He denied that he offered or deliberately left the knife for the co-accused to use on Mrs Robson. He denied having joined in the assault at any time. The prisoner said that he thought Mrs Robson was dead when he set fire to the room, but he accepted that he had not checked this to be so and he accepted that she could still have been alive. He admitted that he had lit the fire to destroy evidence. The police put it to the prisoner that he was culpable for the murder and had stabbed Mrs Robson. He denied this.

[13] On 30 March 1995, at the prisoner's request, police visited him at Hydebank Young Offenders' Centre. He then gave a different version of events. He stated that after opening the front door for King he had waited outside the house. King had emerged after about 20 minutes and handed him the knife, which he put in his pocket. He later realised that the knife was covered in blood and suggested that the knife had bloodied his shoes. He told the officers that he had not given this version of events during formal questioning because he owed King a favour and had agreed to take responsibility for the arson before he realised it would get him into so much trouble.

[14] At the first trial it appears that both Wilson and King gave evidence and in effect blamed each other for Mrs Robson's murder. Neither gave evidence on the second trial. The prisoner claims that he contacted police some five years ago and gave them a full and truthful account of his role in the killing and in a letter to the court he admitted having killed Mrs Robson with a bottle opener.

The offender's progress in prison

[15] A progress report from life governor Fred Caulfield dated 24 September 2001 was included in the NIO papers. It stated that the prisoner had matured considerably since arriving at Maghaberry. He has completed both anger management and enhanced thinking skills programmes. He is said to be focussed on improving his education and has participated in a number of courses. The prisoner gets on well with staff and inmates and is on the enhanced status regime. Mr Caulfield's report deals with the admission that Wilson has made to his role in the murder in the following passage: -

“...it was never his intention to kill anyone but...the whole event was a robbery that went totally wrong and his attitude demonstrated notable remorse for his actions. Mr Wilson stated that prior to the time of the offence that he had been taking drugs and on the day of the offence had consumed a bottle of cider and a few tins of beer. He also stated that he carried a knife in his pocket for personal protection as various individuals were targeting him. When discussing the offence he stated that he and his co-accused were in the victim’s house for the purpose of a robbery and when he went into the bedroom he saw his co-accused there and the victim lying on the floor. Mr Wilson stated that the victim had been beaten by his co-accused. Mr Wilson saw the victim getting up from the floor; he panicked and pulled a knife from his pocket, stabbing her in the chest.”

[16] Another prison official, Maurice Reid, commented: “This willingness to accept responsibility for the murder evidences a developing maturity and an openness to explore risk factors and begin the process of developing risk management strategies.” Mr Reid discussed the prisoner’s improved behaviour and his involvement in a number of courses and projects, including an interest in religion and music.

[17] A report from Dr Philip Pollock (consultant forensic clinical psychologist), dated 31 August 2001 contains an account of the killing given by Wilson in the following terms: -

“We done a burglary and someone died because of our actions, we were just walking up the street, he [King] chose the house that night, the idea was to sneak in and sneak out, she wasn’t even meant to wake up, he [King] woke her up, I don’t know why, I was in the other room emptying her handbag, she was lying on the floor, I shouted at him [King] about ten times ‘what did you do?’, she came at me, I took the knife out and used it, I kicked her and set the house on fire ... I think I did

it for him [King], because she could identify him, that's the worst bit about it..."

He later accepted that burning the house was an attempt to destroy forensic evidence. Dr Pollock offered the following opinion: -

"There is evidence at interview of genuine remorse, shame, guilt and regret in Mr Wilson's presentation. He appears to have accepted responsibility for his actions in killing the victim and there is some evidence of a tendency to diffuse or distribute blame onto his co-accused. He is experiencing a guilt related preoccupation with the gravity of his actions...which have lessened since his religious conversion. Mr Wilson is exhibiting difficulties psychologically digesting the facts of his actions and how reprehensible they are. He comments that he perceives himself to have been a 'different person' before the murder compared to the present day and that he struggles to integrate the reality of the murder due to its negative self-evaluative impact on him."

[18] A report from the prison education unit confirmed that the prisoner had made "great strides" to improve his abilities, gaining qualifications in English, maths and I.T. He has completed a number of Bible courses. He expressed interest in working in the Braille unit.

[19] The prisoner has obtained a B grade in GCSE English and has embarked on an Open University foundation course in social sciences. He has made progress in academic and practical subjects and won prizes for poetry and prose. He has completed courses in anger management and enhanced thinking. A letter from the St John's Ambulance Association commends the prisoner on his achievement in reaching the highest level of first aid available. A letter from an official from the Prison Fellowship attests to the genuineness of the prisoner's Christianity which has been accompanied by a radical change in lifestyle. Stephen Neilly, the Presbyterian Chaplain, has also written a lengthy letter supporting the authenticity of the prisoner's Christianity.

[20] 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."

[21] One of the cases dealt with in the *McCandless* judgment was that of Paul James Johnston who was 18 at the time of the killing of his victim, Sean May. The deceased was a vulnerable man of fifty-eight at the time of the murder. The trial judge fixed a tariff of 19 years after having made a reduction of two years to take account of the accused's age. The Court of Appeal held that the reduction was appropriate but concluded that the tariff should be fixed at 16 years to reflect the remorse that the offender had shown since. At paragraph 33 the court said: -

"Subsequent events have now shown that Paul has, belatedly perhaps but apparently genuinely, evinced real remorse for his actions by giving instructions that his counsel were not to pursue his appeal against either conviction or sentence. In our opinion this is a factor of some weight and we should take account of it now, even if the applicant did not himself seek that. We consider that there should be a further reduction to reflect it and that the minimum term in Paul's case should be fixed at 16 years."

[22] Mr Farrell for the offender suggested that the court should take a similar approach in the present case. He submitted that the tariff should be less than 16 years, however, because the circumstances of the killing were much less gruesome in the present case than the Johnston case.

Conclusions

[23] The prisoner was 17 years old when this offence occurred. It was committed on 29 December 1994 and he reached 18 on 1 February 1995.

The *Practice Statement* dealt with young offenders at paragraph 24, which states: -

“In the case of young offenders, the judge should always start from the starting point appropriate for an adult (12 years). The judge should then reduce the starting point to take into account the maturity and age of the offender.”

[24] In *McCandless* it was argued that the effect of this paragraph was that sentencers were invariably required to take a starting point of 12 years in the case of a young offender, irrespective of the nature or seriousness of the crime. That argument was rejected by the Court of Appeal in the following passage: -

“Mr Orr suggested that by these remarks [in paragraph 24] Lord Woolf intended that the starting point in the case of young offenders should invariably be 12 years, however heinous the crime and however clear it might be that it should be placed in the higher category. We are unable to accept that Lord Woolf so intended. It seems to us clear that he was dealing with the mechanics of the calculation of the minimum term in the case of young offenders. That is to be determined by commencing at the same place as in the case of an adult, then applying a reducing factor depending on the offender’s age and maturity, before fixing on the starting point. In doing so he was focussing on the method of approach, not prescribing a starting point of 12 years for cases of every degree of heinousness.”

[25] We are satisfied that one must begin the tariff fixing exercise in the present case at the higher starting point of 15/16 years. The victim was extremely vulnerable. She was an elderly woman living alone, clearly in no position to resist the violence meted out to her by two youths. The killing occurred in the course of a robbery and the attack on her was gratuitously violent. The higher starting point must be reduced to take account of the offender’s age at the time of the offence but the exercise does

not end there because the aggravating factors of attempted destruction of the crime scene and the prisoner's criminal record must be considered.

[26] Having carefully considered all these matters we have decided that the tariff in the present case should be 15 years.