

Tariff certified by the Secretary of State under Life Sentences (NI) Order 2001 on 25-05-07

**THE QUEEN v DAVID JOHN THOMPSON**

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**DECISION ON TARIFF**

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**Ruling by Kerr LCJ**

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**Ruling 2.4.07  
Certified -**

**KERR LCJ**

*Introduction*

[1] David Thompson (the prisoner) was jointly charged with Simon Doole with the murder of Ryan Robert James Neill on 17 March 2000. He was found guilty by unanimous verdict at Ballymena Crown Court sitting at Coleraine on 7 April 2001. Doole had pleaded not guilty to murder but guilty to wounding with intent to cause grievous bodily harm contrary to Section 18 of the Offences against the Person Act 1861. That plea was accepted by the Crown and Doole was sentenced to custody probation comprising four years' imprisonment and twelve months' probation.

[2] The prisoner did not give evidence on his trial, although he had been warned that an adverse inference might be drawn against him under Article 4 of the Criminal Evidence (Northern Ireland) Order 1988. On his being convicted of murder he was sentenced to life imprisonment. He has been in custody since 21 March 2000. He was some nineteen and a half years' old at the time of the murder. His victim was twenty seven.

[3] Although the prisoner was offered the opportunity to make oral representations through legal advisers on the tariff to be set under article

10 of the Life Sentences (Northern Ireland) Order 2001, he elected to have this determined on the papers. 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*

[4] At 12.23am on 17 March 2000 a police patrol at High Street, Antrim found Ryan Neill lying on the cobbled stone surface of a pedestrian precinct close to a public house called Maddens. He was unconscious and bleeding from the head. The doorman from Maddens identified him to the police. Witnesses indicated that he had been assaulted by two men who had made off towards the Bailiwick bar. One of the men (the taller of the two - Thompson) had been seen to punch Ryan Neill and then throw him to the ground where he was kicked by both of them before Thompson stamped repeatedly on his head. Both men walked away from their victim but then returned with Thompson leading and Doole following. Thompson stamped on Ryan Neill's head again and they both then ran off with the victim's wallet. Ryan Neill was taken by ambulance to Antrim Area Hospital where at 1.00 am he was found to be deeply unconscious with gross swelling and bruising to the left side of his face and left ear and an abrasion to the left side of his scalp. Full supportive treatment including ventilatory support was required and he was transferred to the neurosurgical department of the Royal Victoria Hospital, Belfast. He was transferred back to Antrim Area Hospital on 7 May 2000 when his condition was considered to be fair, but he collapsed on 9 May and again on the following day. After the second collapse he could not be resuscitated. The cause of the collapse was a pulmonary embolus but he had also contracted pneumonia and this contributed to his death.

[5] At police interview the prisoner admitted meeting Doole on the evening of 16 March 2000. He attempted to go into Maddens public house but was refused entry. He told police that he was allowed to enter the pub for the purpose of using the lavatory and that thereafter he waited outside for Doole. He denied seeing or participating in any assault on Ryan Neill, whom he said was drunk and talking gibberish. He maintained that he was himself sober and that he and Doole were with the victim only 20 or 30 seconds before he left their company.

[6] Dr Michael Curtis, Assistant State Pathologist, performed a post mortem on 10 May 2000. His conclusions as to cause of death were expressed as follows:-

“Neuro pathological examination of the brain both gross and microscopic revealed the presence of diffuse axonal injury (DAI) of traumatic aetiology. This type of brain injury is the result of acceleration/deceleration forces acting on the brain. In the context of this case, this injury would have been caused by the accelerated fall, i.e. the victim being propelled to the ground, resulting in the head striking the ground and the accelerated brain then undergoing rapid deceleration. The isolated acts of kicking and stamping on the head, though obviously injurious, are believed not to generate sufficient acceleration force to the brain to cause this pattern of injury.”

[7] It is clear, therefore, that the death of Mr Neill was brought about by the prisoner’s action in throwing him to the ground rather than by the stamping on his head which might, at first blush, have seemed the more likely cause of injury. One of the principal issues on trial was whether the prisoner, at the time that he threw the deceased to the ground, had the requisite intention *i.e.* to intend to kill or cause really serious harm to the deceased. There is every reason to suppose that, at most, the prisoner intended, *at the time of inflicting the injury that actually caused death*, no more than to cause grievous or really serious harm.

#### *Personal background of prisoner*

[8] There is no personal information about the prisoner save that which is included in written representations submitted by the prisoner himself and by his maternal grandmother. These are dealt with below.

[9] The prisoner had two previous appearances in court. At Belfast Crown Court on 9 September 1996 he was sentenced to two years in the Young Offenders Centre suspended for three years on counts of criminal damage and robbery. He then appeared before Ballymena Crown Court on 4 June 1998 when he was convicted of and sentenced for the following offences:-

Common assault	...	..	..	6 months concurrent
Grievous bodily harm	...	..	..	5 years concurrent
Criminal damage (offence of 5.9.96)				2 years concurrent
Criminal damage	...	..	..	6 months concurrent
Robbery (offence of 5.9.96)	...	..	..	2 years consecutive
Robbery	...	..	..	3 years concurrent
Robbery	...	..	..	3 years concurrent
Escaping from lawful custody	...			6 months concurrent

### *Victim Representation*

[10] Written representations were received from ten members of the deceased's family. These paint a picture of a close family absolutely devastated by the death of Ryan Neill.

- The deceased's mother said that she has lost "a loving son and a dear friend". She has had to get medication to cope and finds many things distressing. She stated that "nothing will ever be the same. I will never get over this as long as I live. There is not a day goes by I am not thinking of him and how things would have been if he had got a chance of life."
- The deceased's father said that Ryan's death had changed all their lives drastically and that "there will never be a day go past that we won't feel his loss in some way".
- The deceased's brother, Gary Neill said that the prisoner "is an evil young man who showed no remorse whatsoever [and during] the whole trial [was] laughing and smirking" and that when the prisoner was sentenced he heard him muttering to the judge "is that the best sentence you have". He said he gets depressed and that but for his parents he would "end it all".
- The deceased's brother Richard Neill stated that he is not the same person since his brother died and that he feels that a part of his life has been torn from him that is gone forever.
- The deceased's brother Stephen Neill said that he has "no trust in any one any more".
- His paternal grandmother is on medication for depression since the murder and stated that she "cannot get Ryan out of my mind".
- His maternal grandmother lost weight and could not eat or sleep after the murder and now cannot go out by herself, is depressed all the time and is on medication. She stated that she "will never be the same again".

- The deceased's uncle expressed his feelings of uselessness and stress and made the point that if the prisoner had not got out of prison early for the last offence he committed then perhaps his nephew might be here today.
- The deceased's cousin, who works with families whose loved ones have died and are dying, said that Ryan's death had affected her personally and professionally; professionally she was not able to deal with complex cases and was unable to go on further counselling or bereavement training.
- Finally the deceased's brother's fiancée stated that Ryan was like a brother and that she felt depressed and at times angry. She said that the prisoner did not "even show the slightest bit of remorse for what he has done..."

*Legal representations on behalf of the prisoner*

[11] Written representations were submitted through the prisoners' solicitors, Harte, Coyle and Collins, from Barry McDonald QC and Tom McCreanor of counsel dated 28 October 2005. The following points were made: -

(i) *Lower starting point case:* It was suggested that this case had many of the features of a lower starting point case of 12 years. It was a case of "the killing of an adult victim arising from a quarrel or loss of temper between two people known to each other".

(ii) *Reduction of lower starting point:* The starting point of 12 years could be reduced as the offender's culpability was significantly reduced; the death of Mr Neill might well be considered as close to the borderline between murder and manslaughter, as the act of the accused which was accepted by the jury as causing the death was a single punch or push to the ground of the deceased.

(iii) *Aggravating factors:* None of the aggravating features listed at paragraph 14 of the practice statement applied to the instant case. In relation to paragraph 15 (offender's previous record and failures to respond to previous sentences) counsel acknowledged that the prisoner had a criminal record at the time of the offence and that he was previously released under the normal rules on remission of sentence.

(iv) *Mitigating factors:*

- *Intention to cause grievous bodily harm rather than to kill:* the Crown sought to establish and the judge charged the jury that the intent was to inflict grievous bodily harm rather than intention to kill (page 17 of the charge).
- *Offence was spontaneous and lacked premeditation:* there was no evidence that this case was anything but a spontaneous attack without planning and wholly lacking in premeditation.
- *Age of the accused at the time of the offence:* the accused was aged 19 at the time of the killing.

(v) *Sentence of the co-accused:* The co accused Simon Doole was sentenced for the offence of grievous bodily harm. Although David Thompson was found to have inflicted the blow which caused the death, the culpability of David Thompson in the attack was not significantly greater than Simon Doole. In addition it was clear from the video tape evidence of the scene outside Maddens' bar that Simon Doole was the instigator of an initial confrontation with the victim prior to the attack. This is clearly demonstrated by the video evidence in the case at 00: 36: 26 to 00: 37: 12 which shows Simon Doole, dressed in a jacket with a stripe on it, squaring up to the victim with David Thompson, dressed in light clothing, present but not participating in the confrontation. Simon Doole pleaded guilty to a charge of grievous bodily harm for which he received a sentence of 4 years imprisonment.

(vi) *Conduct of the accused since sentencing:* this conduct, as set out in the letter from the prisoner and from Agnes Elliott, his grandmother, is relevant to the setting of the tariff in this case, counsel submitted. The representations that they made demonstrate acknowledgment of responsibility and remorse. They also indicate good behaviour and educational and charitable endeavour by the accused whilst in custody.

#### *Representations from the prisoner*

[12] The prisoner submitted personal representations in the following terms:-

“I accept that I assaulted Ryan Neill and these actions inadvertently led to his death. I never intended to cause him serious harm. I fully accept responsibility and I am not trying to excuse myself. I would also like to say that I personally threw the two punches which knocked Ryan over and this was proved to be the cause of his injury. I

am very penitent for my actions and have many regrets about that night and also my approach to the police and courts. I understand that I have caused great pain to the Neill family and I can't change or lessen this but obviously if I could I would. Between the ages of 16 to 19 I was subjected to pressure from older men which led me into a criminal way of thinking which I now deeply regret. During the 6 years I have been in custody I feel that I have matured immensely and can now see that I had a very immature and naive perspective of life when I was a teenager. In my period of custody here I had only one disciplinary charge of refusing an order back in 2002. I think the fact that I have stayed away from trouble confirms I have matured and I don't have a propensity for violence. I have always worked since I left school and while I have been in prison. I started an NVQ in mechanical engineering. I am also doing other educational projects, computers, English and a diploma in fitness and nutrition. Next year I am starting an open university degree in science. While working in the engineers I was part of a group who won an award for designing and building a specialised wheelchair for a young disabled girl from Brazil. I was recently involved in some charity work where a group of us raised £2,000 in a million pound weight lift".

[13] The prisoner's maternal grandmother, Agnes Elliott, also submitted representations. Mrs Elliott, who visits her grandson in prison every two weeks, said that she had seen her grandson mature over the time that he has spent in prison and that his impetuous behaviour and lack of a loving father caused much of the prisoner's unfortunate past.

#### *Practice Statement*

[14] 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*

[15] This is clearly not a lower starting point case. The attack on the deceased was not remotely akin to an assault on someone known to the prisoner in the course of a sudden quarrel. The deceased was vulnerable because of his intoxicated condition and Doole and the prisoner carried out a ruthless, unprovoked and pitiless attack on him. I consider that the prisoner's culpability is particularly high on that account. I believe that it is likely that he intended at the moment of the attack that caused the death of Mr Neill to inflict more than grievous bodily harm on the deceased and this must stand to his credit but it cannot remove the case from the higher starting point category and I confess to some surprise that experienced counsel should have submitted otherwise.

[16] The prisoner's record is an aggravating factor in the case. Despite his youth he had already displayed an aggressive and violent propensity. His relatively young age at the time of committing this murder must be taken into account but this factor is offset to some extent at least by the fact that he had already been deeply immersed in criminality.

[17] The remorse that he now claims to suffer was certainly not evident during the trial. As the relatives of the deceased have asserted, he

displayed an arrogant indifference to the suffering of the deceased's family and there must be some doubt at least about the authenticity of his avowed repentance. As has frequently been observed, it is often difficult to distinguish between genuine remorse and regret for the plight of the prisoner himself that is the consequence of his criminal activity. There is reason to suppose that the prisoner's vaunted sorrow for what occurred partakes more of the latter.

**[18]** I consider that it is proper to take into account the prisoner's behaviour and progress in prison since the time of his incarceration and this certainly stands to his credit. Taking all these factors into account I consider that the minimum period that he should be required to serve is fifteen years. This will include the time that he has spent on remand.