

Neutral Citation No. [2008] NILST 10

Ref: **KER7593**

*Judgment: approved by the Court for handing down
(subject to editorial corrections)*

Delivered: **04/03/2008**

Tariff certified by the Secretary of State under Life Sentences (NI) Order
2001 on 16-04-08

THE QUEEN v WILLIAM SLOAN

DECISION ON TARIFF

Ruling by Kerr LCJ

KERR LCJ

Introduction

1. On 6 July 1990, Nicholson J, sitting without a jury at Belfast Crown Court, sentenced the prisoner to life imprisonment for the murder of James Hamilton. Mr Hamilton was 39 years old at the time of his death on 19 June 1989; he died as a result of injuries sustained in an attack on him on 28 May 1989. The prisoner was also found guilty of burglary. His appeal against conviction was dismissed on 16 October 1991. The prisoner was 33 years and 3 months old at the time of the murder.

2. On 19 November 2007 I heard oral submissions on behalf of the prisoner in relation to the tariff to be set under Article 11 of the Life Sentences (Northern Ireland) 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 then assess his suitability for release on the basis of risk.

3. The prisoner was released on licence under the Northern Ireland (Sentences) Act 1998 on 20 January 1999 (by which time he had served 9.5 years); for the purpose of determining this release date, the sentence review commissioners considered that 14 years would satisfy deterrence and retribution. His licence was suspended by the Secretary of State on 7 May 2006 and later revoked by the sentence review commissioners on 21 December 2006. His licence was revoked because of offences (attempted arson, attempted criminal damage and breach of a non-molestation order) committed in the context of his marriage break-up.

Factual background

4. Between 7.00 and 10.00pm on the evening of Sunday, 28 May 1989, James Hamilton was beaten to death in his own home at 6 Harrow Street. The house was ransacked and various items were stolen from it. The Crown case was that the prisoner and two other accused, Armstrong and Smith, had entered the house together and that, while acting together, one or more of them assaulted Hamilton and stole articles from the house.

5. According to the accounts of the two co-accused, (and these were accepted by the trial judge and the Court of Appeal), Sloan was the main assailant. The Court of Appeal, unlike the trial judge, could not conclude with certainty that Sloan had used a hammer to assault the victim.

6. At the trial the Crown proved a written statement made to police on 10 July 1989 by the co-accused Armstrong, in which details of the attack were set out:

“I want to tell you about my bit in Jimmy Hamilton's death. Jimmy and I fell out over money that he said I owed him. On that Sunday I was drinking all day. I left a club in the Shankill around about tea-time. I was worried that Jimmy was going to get me a hiding so I decided to sort him out. I went to another part of town and met two mates I know. I told them my problem and asked them to come with me to Jimmy's house and give me some backing in case he wasn't on his own. I

was going to give him a few digs in the mouth and get him to wise up. After I met these two mates we went over to Jimmy's house, I think it was after tea about 8 or 9 o'clock. When we arrived we parked the car in a side street. We went up to the front door and I smashed the glass in it. I went into the hall way and I saw Jimmy, the next thing that happened this fella with (sic) pushed me aside and pushed Jimmy into the front parlour. This fella knocked Jimmy to the ground and started kicking him I heard Jimmy shouting but I don't know what. This fella just went crazy and the other fella helped this madman carry out some of Jimmy's gear I think a TV and stacking hi-fi. Before we left I remember Jimmy lying in the corner groaning in pain. After we left the house my mates left me off and I went home. I was only going to give Jimmy a digging I didn't think it would have gone as far as it did. This is all I can say I don't want to name the fellas with me.'

Smith's evidence

7. Smith gave evidence that he and Armstrong and a man he referred to as X (on cross-examination by Crown counsel he agreed that X was, in fact, Sloan) went to the house; that Armstrong stopped at the front door of the house; he (Smith) was behind Armstrong and Sloan was behind him (Smith). Armstrong put his elbow through a window in the door. Smith described Armstrong as "just raging". There was a figure behind the door as it opened. This was the deceased, James Hamilton, and, as soon as the door was opened Armstrong threw a punch at him. Mr Hamilton shouted and moved back. After that Sloan pulled a hammer out of the waistband of his trousers and dashed past him and struck Mr Hamilton twice on the body with the hammer. Mr Hamilton went on to the ground and Sloan trailed him into the front room.

8. Smith claimed that Armstrong and he then went into the back room and Hamilton was screaming and shouting in the front room "stop it, stop it." Armstrong unplugged the television and the video in the back room and he and Armstrong carried the television set out of the house and took it to a waiting taxi. He (Smith) and Armstrong then went back to the house and

went into the back room where Armstrong handed him the video recorder. As he passed the front room he heard a mumbling sound. He took the video back to the taxi and he waited there and about 5 or 10 minutes later Armstrong came out of the house with swords. Armstrong got into the taxi and he and Armstrong were driven by the taxi driver back to the Castle Inn in East Belfast.

Armstrong's evidence

9. Armstrong gave evidence that he, Smith and X, went to the house 6, Harrow Street, at about 9.00 pm on the evening of 28 May 1989. He broke the window in the front door and opened the door by the latch. James Hamilton came towards him down the hall and X pushed past him (Armstrong) and pushed Mr Hamilton into the front room. X went crazy and seemed to go out of control and started kicking Mr Hamilton while he lay on the ground.

10. Armstrong said that he and Smith went into the back room and Smith took the video from the back room and left the house with it. He then went into the front room and decided that he would take two swords and a machete which were on the wall in the front room and he did this. When he went into the front room Mr Hamilton and X were rolling about on the floor and Mr Hamilton seemed to be getting the worst of it. Armstrong then took the swords and the machete and left the house.

The case for Sloan

11. After his arrest, Sloan made no verbal or written admissions. At the conclusion of the Crown case, counsel for Sloan applied to the trial judge for a direction that Sloan had no case to answer, but the trial judge did not accede to this application and ruled that Sloan had a case to answer. The judge then called on Sloan pursuant to Article 4 of the Criminal Evidence (Northern Ireland) Order 1988 to give evidence in his own defence, but Sloan declined to do so and no other witnesses were called on his behalf.

The fingerprint evidence

12. At the trial the Crown proved that two fingerprints made by Sloan were found inside the house. A fingerprint from Sloan's right middle finger was found behind the right ear of the front part of a broken china

ornamental cat that police discovered lying on a chair in the back downstairs room. The left thumb print of Sloan was found on the door frame inside the front downstairs room of the house.

Trial judge's findings in relation to Sloan

13. The trial judge made the following findings about Sloan's involvement:

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"The powerful case against Sloan at the close of the Crown case is supported by his refusal to give evidence and by the evidence of Armstrong and Smith.

Mr Finnegan QC in his closing submissions contended that the Court had to use a blend of the evidence of Armstrong and Smith to convict Sloan and that no one could act with confidence on their evidence. Smith had agreed with Mr Finnegan in cross-examination that the police had mentioned Sloan's name to him at interview as being involved in the murder. Mr Finnegan argued that Smith had merely fallen in with the suggestion by the police that Sloan was involved. Smith denied this and I have indicated my rejection of this theory. I have already outlined the strength of the case against Sloan at the close of the case for the prosecution. I am also sure that the basic details of the attack on Hamilton were truthfully told to the Court by Smith.

I have considered carefully all the submissions made by Mr Finnegan QC on behalf of Sloan. On all the evidence admissible against Sloan I am satisfied beyond all reasonable doubt that he was a willing party to a ferocious attack on Hamilton which caused Hamilton to suffer grievous bodily harm as a result of which he died and that Sloan intended Hamilton to suffer grievous bodily harm at the time of the attack on Hamilton. Accordingly he is guilty of murder.

I am sure, as against Sloan, that the TV, video and hi-fi equipment were removed during the course of the incident involving the attack on Hamilton and that he was a willing party to the removal. I am sure that, having regard to the condition of the front door and the rest of the premises and the attack on Hamilton, Sloan entered the premises as a trespasser and that all the relevant ingredients of the crime of burglary were established beyond reasonable doubt against Sloan. Accordingly he is guilty of burglary."

The appeal

14. The Court of Appeal dealt with the issue of whether Sloan used a hammer in the following passage from the judgment: -

"Mr Cinnamond submitted . . . that the only evidence that Sloan used a hammer was the evidence of Smith, who was a man with a criminal record and who had an obvious reason to suggest that the attack on Hamilton was of an extreme nature which he had not anticipated and to give false evidence that Sloan used a hammer. Mr Cinnamond also relied on the evidence of the Assistant State Pathologist that the chest injuries which caused Hamilton's death were more likely caused by kicks than by a blunt instrument.

The judge had the great advantage of seeing Armstrong and Smith give evidence, but notwithstanding this we would have some doubts as to whether Sloan did produce a hammer and strike Hamilton with it as Smith, in evidence, said he did. We also think it more likely that Hamilton sustained his fatal chest injuries from kicks than from blows by a hammer.

However, we consider that this does not affect the basic validity of the judge's finding, because on

Armstrong's own evidence, when he and Sloan and Smith entered the house, Sloan went crazy, pushed Hamilton into the front room and started kicking him on the ground. Therefore Armstrong clearly realised that Sloan might intentionally inflict serious injury on Hamilton by the kicking..."

Post mortem report

15. Dr Crane, who was then assistant state pathologist for Northern Ireland, conducted a post mortem on the body of the deceased and reached the following conclusions: -

"The injuries to the chest were consistent with his having been assaulted. They would have required considerable force for their infliction and could have been due to his having been kicked or struck with a blunt object. Also the inflammation of the pancreas gland could have been initiated by blows to the abdomen such as by punching or kicking. In view of this it would seem reasonable to regard the injuries as being the underlying cause of his death. There was also some resolving bruising on the under surface of the scalp, possibly due to blows to the head. There was no damage to the underlying skull or brain however and the scalp injury would not have contributed to the fatal outcome."

16. Dr Crane also gave evidence at the trial that the chest injuries to Mr Hamilton were possibly caused by a blunt object but were more likely to have been inflicted by kicking.

Personal background of the prisoner

17. Details of the personal background of the prisoner are contained in a pre-sentence probation report dated 20 November 2006 which was prepared by Mr Thompson in respect of the attempted arson and breach of non-molestation order. The following is the salient portion of the report: -

“Mr Sloan was raised in Dundonald in a family of six children. His mother died in 2000 but his father is alive, albeit he suffers from respiratory difficulties and has had a stroke. Mr Sloan advises me that his father has offered him accommodation *when* he is eventually released. Mr Sloan states that this will be of mutual benefit in helping him remain abstemious and allow him to help care for his father.

Mr Sloan attended school locally and describes himself as “not being overly qualified”. He is however literate and presents as being of average intelligence and socially adept.

From the age of 13 years Mr Sloan has been involved in a range of criminal behaviour including assault and disorderly behaviour, motoring and burglary for which he was previously fined, disqualified and eventually imprisoned. He served a 3 year prison sentence for attempted robbery in 28/08/1987. Eventually he would be arrested in 1989 for murder and spend the next 10 years in custody.

Since his release Mr Sloan has appeared on five occasions for motoring matters including two for driving under the influence. On 16/11/2005 he received a 12 month Probation Order with a requirement of attending a drink driver’s programme. He completed this course and reports being significantly influenced by this in terms of a change in attitude towards driving. His remand in April 2006 has meant that further work could not be undertaken.

Prior to the imposition of his life sentence Mr Sloan had been in a long term relationship. It lasted for 5 years of his life term when by mutual consent it was terminated, He states that he remains on friendly terms with his ex-partner.

Following his release in 1999 he met his wife Sofia and they married in Florida six months later. The couple had two sons, now aged 6 years and 4 years. The couple separated in January 2004. Mr Sloan describes a deterioration due in large part to his increasing dependency upon alcohol. He would state that he had not been conscious of his steady decline but now acknowledges it as well as the impact of his behaviour upon his wife. He states that when he was remanded in custody in April he experienced significant withdrawal symptoms. Since then he has participated in alcohol education programmes with the Dunlewey Centres Outreach Workers and expresses an intention to sustain this when he is eventually released.

Mr Sloan had owned the family home where his wife and children remain. He had moved to private rented accommodation since 2004. Mr Sloan had been in receipt of Income Support of £110 per fortnight as he does not enjoy good health. He lost an eye in an industrial accident, and had to have his spleen removed in 1985 following an accident at a swimming pool. He is also asthmatic and several years ago sustained a badly fractured leg when he was attacked by three muggers in his home district. Prior to this he had worked in a security firm and 'in sales'.

18. Before his conviction for murder the prisoner had two convictions for violence against the person and four convictions for burglary. In 1977 Holywood juvenile court imposed a two year conditional discharge for common assault and a two year conditional discharge for burglary and theft. In 1986 Belfast Magistrates' Court sentenced him to twelve months' imprisonment suspended for three years for aiding and abetting burglary and theft- non-dwelling. In 1987 he was sentenced at Belfast Crown Court to twelve months' imprisonment for aiding and abetting burglary and theft which was to run concurrently with a twelve months' custodial sentence for attempted robbery. In 1989 he was sentenced by Belfast Magistrates' Court to one month in prison for common assault on an adult.

19. After his conviction for murder, for offences committed while he was on release on licence, he was sentenced to one month imprisonment on each of three charges of breach of a non-molestation order, nine months' imprisonment for threats to damage property, and nine months' imprisonment for attempted arson (all to run concurrently).

20. The prisoner also has numerous other convictions for theft, handling stolen goods, criminal damage, road traffic offences, breach of driving licence regulations, riotous/disorderly behaviour, breach of construction and use regulations, breach of PSV/HGV regulations and deception.

Representations from the prisoner's solicitors

21. Extensive written submissions were made on behalf of the prisoner by his solicitors. In broad summary, they argued account should be taken of the following factors in making a decision on tariff: -

(i) the appropriate weight to be given to the mitigating factors and in particular the fact that the conviction was on the basis of intent to commit grievous bodily harm rather than to kill;

(ii) the prisoner's legitimate expectation of a review of his case after 10 years with the likelihood of a recommended release date being set at that review, created in the course of the life sentence review board's conduct of his case;

(iii) the sentence served by his co-defendant William Smith - apparently, it was recommended that he be released in December 1998

Representations from the prisoner

21. The prisoner made a written submission to the Life Sentence Review Board dated 16 July 1998. In this document he made the following claims:-

(1) He did not use a hammer on the victim and he was not the main assailant;

(2) The trial judge accepted that he did not intend to kill the victim, but that he intended to inflict grievous bodily harm;

(3) He referred to what he said was a comparable case of Eamonn O'Neill who served 8 years for killing, with a hammer, the man his girlfriend was dating;

(4) He stated that the reason he did not give evidence at trial was because he was advised to take this course by his legal team and that since his trial he has given the full facts of his case to both the prison authorities and the Probation Board for Northern Ireland;

(5) He said that he has attended counselling sessions with the Probation Board and that it has organised an opening for him on release from prison as a Trainee Project Worker on a three year contract. As part of the requirements of this position he will be required to attend the University of Ulster on a day release basis to study towards a Diploma in Youth and Community Work; and

(6) He expressed remorse for the offence in the following passage:-

“In conclusion, I am unable to turn back the clock and repair the damage that I have inflicted on so many innocent people which included the taking away of a person's life, the hurt to his family and the hurt to my own family. I wish that I could express my true sorrow to my victim's family for what I have done, but I am hesitant to write to them in case I only cause more hurt. I have discussed this with the governor who agrees with my opinion in this matter.”

Submissions from PPS

22. The PPS provided written submissions on 8 November 2007. They contended that the case falls within the higher starting point of 15/16 years as the killing was done for gain (in the course of a burglary) and the prisoner's culpability was exceptionally high in that he had armed himself with and used a hammer in the course of the attack on Hamilton. They pointed out that the attack was planned and drew attention to the number of persons involved. It was suggested that the prisoner's criminal record is an aggravating feature. The Crown acknowledged that the prisoner's intention was to cause grievous bodily harm rather than to kill.

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.

19. Among the categories of case referred to in paragraph 12, some offences may be especially grave. These include cases in which the victim was performing his duties as a prison officer at the time of the crime or the offence was a terrorist or sexual or sadistic murder or involved a young child. In such a case, a term of 20 years and upwards could be appropriate."

Conclusions

24. This is clearly a higher starting point case. The murder was committed during the course of a burglary – or, at least, burglary was associated with the killing. The victim was vulnerable in the sense that it would have been impossible for him to have repelled this unexpected attack by three men. The prisoner’s solicitors argue that although these factors would appear *prima facie* to place the case in the higher starting point category, the facts of the case bring it close to the borderline between murder and manslaughter, one of the mitigating factors that can reduce the lower starting point of 12 years. While it is possible – or, even, probable – that at the moment of the attack the prisoner intended to do no more than inflict grievous bodily harm on the victim this cannot remove the case from the higher starting point category.

25. The attack on the deceased man was sustained and vicious. He was in no position to defend himself effectively. Repeated blows of considerable force were rained on him. He was to all intents and purposes at the mercy of the prisoner and I have no doubt that it was Sloan who was the principal perpetrator of the attack on the deceased.

26. A number of aggravating features were present. It is clear that the attack was planned. The prisoner has a relevant criminal record. It is a mitigating factor that the prisoner intended to cause grievous bodily harm rather than to kill and the fact that he has expressed remorse must be taken into account. One is bound to have reservations about the genuineness of this, however. No remorse was expressed at the trial and the question must always arise in such circumstances whether the professed remorse is a belated and contrived attempt to garner sympathy where none is due. Moreover, the fact that in his submission to the Life Sentence Review Board he claimed that he was not the main assailant does not inspire confidence in his assertion that he regrets the incident.

27. The prisoner’s solicitors have argued that, as a result of the Life Sentence Review Board’s conduct of his case, the prisoner had a legitimate expectation of a review of his case after 10 years with the likelihood of a recommended release date being set at that review. I do not accept that this has been established. Even if it were established, however, it would not bind me to fix the minimum period at that level but I must give due weight to the fact that the prisoner considered that it was likely that he would have had a tariff fixed that was less than that which is indicated by the *Practice Statement* that he would be required to serve to satisfy the requirements of retribution and deterrence. The tariff was fixed at a time

before the *Practice Statement* was promulgated and while the prisoner's legitimate expectation must be taken into account, regard must also be had to the requirements of that statement.

28. It was also submitted on the prisoner's behalf that, in making a decision on the minimum term, account should be taken of the sentence served by the co-defendant William Smith. Smith was in an entirely different position from that of Sloan, however. This fact was recognised by the trial judge. When sentencing Smith on 20 July 1990 he said:

“In this case, Smith, I propose to take a slightly, not a slightly unusual course, an extremely unusual course which I have never taken before and which I don't wish anyone to use as a precedent. Had I been in a position to find you guilty of unlawful killing as distinct from murder I would have imposed a sentence of not more than 10 years imprisonment in your case. That is not subject to what I hear about the other accused. I take the view that your role in this affair was a very much less grave one than the role played by Armstrong and Sloan. I am sure that you did not intend other than serious bodily harm, that is to say you certainly did not intend anyone to be killed as a result of this crime.”

29. Taking all these factors into account, I consider that the appropriate tariff in the present case is one of nineteen years. This will include the time spent on remand.