

THE QUEEN v MICHAEL BERNARD McFADDEN

DECISION ON TARIFF

Ruling by Kerr LCJ

1. On 16 September 1982 the prisoner was sentenced to life imprisonment by the then Mr Justice Kelly at Londonderry Crown Court for the murder on 11 February 1982 of Gerard Farran, a 74-year-old man. The prisoner also received a 12-year sentence for robbery. He has been in custody since 14 February 1982. There was no appeal. A co-defendant, Christopher John Doherty (29/11/60) was sentenced to identical terms for the same offences.

2. The purpose of today's hearing has been to consider the "tariff" to be served by the prisoner 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. As the trial judge (Lord Justice Kelly) has now retired, and is not therefore "available" under the 2001 Order, the matter is one for the Lord Chief Justice alone.

Factual background

3. At about 1 pm on 12 February 1982 Catherine Wallace entered the home of her neighbour, Gerard Farran, at 34 Hawkin Street, Londonderry, to check on his welfare as he had failed to keep an earlier appointment at his sister's house. Mrs Wallace found Mr Farran dead in an upstairs room, lying across a bed. She fetched another neighbour and the police and an ambulance were called. Witnesses noted that the deceased had sustained head injuries and that the house appeared to have been ransacked. The deceased was a 74-year-old widower who had recently retired from his job as a money collector.

4. Mrs Wallace and another neighbour, Winifred Wynne, told police that they had seen Mr Farran return home the previous evening, and they described how a young man approached them to ask about another house on the street after Mr Farran had closed his door. Two other witnesses described seeing a similar man inside the house just after midnight. They later contributed to a police photo-fit picture.

5. The prisoner was arrested on the morning of 13 February 1982, and at first gave police a false name. When interviewed that day, however, he very quickly broke down and made admissions. In a statement to the police on the afternoon of 13 February 1982 he said that he had the idea of robbing the deceased when he saw him in the Victoria Bar, Orchard Street, on the night of the murder. The prisoner thought that the deceased had a lot of money because he saw him drinking every day. (He also knew him to have worked as a money collector.) When the deceased left the bar the prisoner followed him and found out where he lived. He then returned to the bar and put the idea of the robbery to his co-defendant. They went to the deceased's house, forced the door and searched downstairs but failing to find anything they went upstairs and into the deceased's bedroom. The deceased got up, asked the men what they were doing and told them to get out whereupon the prisoner asked "Where's the money?" The deceased answered that he had no money, walked towards the men and again told them to leave. The men grabbed the deceased and started to hit him. The deceased said that he had money downstairs, and was led by the arms to a cupboard where he got £20. The men divided the money but demanded more. Although the deceased said that he had no more money the men led him upstairs and into a back room where he was pushed down on the bed and beaten. The prisoner said: "We thumped him for about five minutes or so." The deceased told the men that he knew them from the bar. The statement continues:

"I then said...what are we going to do, he will know us and we will probably get four years. We were afraid that he would identify us to the Police. Some one of us said about silencing him for good and take no chances. I then tried to strangle him. I put my hands around his neck and squeezed his neck. I wasn't fit to do it. When I tried to strangle Mr Farran he started to struggle again and I hadn't the strength to do it. Joker then leaned over and put his hands around Mr Farran's throat and tried to strangle him. He wasn't able to do it either and got up off him. Mr Farran was lying with his back on the bed and his feet on the floor. I say a piece of cloth lying on a chair...I lifted that cloth and put it round his neck. I said to

Joker will we do it and he said, "Aye", and I told him to take one end of it and I took the other. We pulled as hard as we could on the cloth to choke him. We held it for about five seconds and I took the cloth off him.... I said to Joker is he dead and Joker said naw, I don't think so. Joker started to thump at his chest. I then said, "We'd better get out of here." I didn't think he was dead. I thought he had fainted and that he would die later."

6. The men said they found out the next day that Mr Farran had died. In his statement the prisoner said: "We didn't talk much about it we didn't think that anyone had seen us and we thought we wouldn't get caught ... I spent the £10 the next day on drink." The prisoner's statement finished with an expression of remorse: "I want to say that I am sorry for killing Mr Farran. We were only going to rob him not kill him, when we went to the house first. If he hadn't recognised us we wouldn't have killed him. We just didn't want to get caught."

7. The co-defendant made two statements, and only in the second did he admit to playing a significant part in the venture. Even then, the co-defendant maintained that the prisoner alone was involved in the act of strangulation although he accepted that he had hit the deceased as much as the prisoner had done. Later forensic examination linked the prisoner's clothing with the scene of the crime.

8. A post mortem examination was carried out by Dr Derek Carson, Deputy State Pathologist, on 13 February 1982. He concluded that the cause of death was asphyxia due to strangulation and constriction of the neck by a ligature, together with blows on the face and head. The report stated that death was clearly the result of an assault. It referred to multiple injuries consisting of abrasions, lacerations and bruising, consistent with a beating by fists, repeated blows having been necessary to cause them. The injuries would not have caused death or unconsciousness but may have facilitated the force necessary to cause asphyxia. Death was due to asphyxia caused by compression of the neck as evidenced by bruising, petechial haemorrhages and fractures. Bruising suggested an attempt at manual strangulation followed by the application of a ligature. Bruises on the body indicated a struggle. Five ribs on the left side of the chest were broken, probably as a result of pressure of the chest of by someone sitting or kneeling on the deceased, or a heavy fall.

Sentencing remarks

9. In passing sentence Mr Justice Kelly referred to the number of cases he had dealt with involving the deaths of elderly people, saying:

“...this is the second case of murder and the third case of unlawful killing in which the victim was an elderly man that I have had the misfortune to deal with in this court. In each of the three cases a harmless, elderly and defenceless man has met a gruesome and terrible death at the hands of thugs like you ... you two went out determined to go to any extremes of wickedness to steal what few pounds your 74 year old victim possessed and to ensure that your identity would not be revealed. It was a despicable and shameful crime.”

The judge did not recommend a minimum term of imprisonment.

Antecedents

10. The prisoner had a lengthy criminal record spanning the years 1968-2002. The record was dominated by offences of dishonesty (burglary x 17; deception x 7; theft x 6), but there were 2 offences of robbery predating the index offences and another for which he was sentenced in the Republic of Ireland in 2002 at which time he was also imprisoned for 12 months for possession of a firearm in suspicious circumstances.

Representations

11. No representation has been submitted by the victim's family. The prisoner's solicitor has submitted that the tariff should be in the 12-15 year range and has advanced the following points of mitigation:

1. This was essentially a robbery that went wrong;
2. The offences were committed while the offender was under the influence of alcohol;
3. His admissions to police demonstrate remorse;
4. He made an early plea of guilty;
5. He was young - 22 at the time of the commission of the offences;
6. He had no record of violence.

Consideration

12. In a judgment recently handed down by the Court of Appeal in this jurisdiction, *R v McCandless & others* [2004] NICA 1, it was concluded that judges fixing tariffs under article 5 of the Life Sentences (Northern Ireland) Order 2001 should follow the *Practice Statement* issued by Lord Woolf CJ and reported at [2002] 3 All ER 412). This dealt with the minimum terms for both adult and young offenders. It replaced the previous normal starting point of 14 years (recommended in an earlier *Practice Note* reported in [2000] 4 All ER 831) by substituting a higher and a normal starting point of respectively 16 and 12 years. These starting points then have to be varied upwards or downwards by taking account of aggravating or mitigating factors.

13. In the following passage, the Court of Appeal in *McCandless* emphasised that the *Practice Statement* was not to be applied inflexibly: -

“We think it important to emphasise that the process is not to be regarded as one of fixing each case into one of two rigidly defined categories, in respect of which the length of term is firmly fixed. Rather the sentencing framework is, as Weatherup J described it in paragraph 11 of his sentencing remarks in *R v McKeown* [2003] NICC 5, a multi-tier system. Not only is the *Practice Statement* intended to be only guidance, but the starting points are, as the term indicates, points at which the sentencer may start on his journey towards the goal of deciding upon a right and appropriate sentence for the instant case.”

14. The correct starting point in this case must be 16 years. The offender’s culpability was high and the victim was exceptionally vulnerable. In particular, the incident involved two young men in an attack on a 74 year old who lived alone; it took place in the course of a robbery at the home of the deceased; and it took place to defeat the ends of justice as the men proceeded with the murder on the basis that they had been identified by the deceased and would receive prison sentences. The murder in itself was grotesque, and according to the prisoner’s version of events involved both assailants taking turns to manually strangle the deceased, before they jointly pulled on either end of a ligature. It is also worthy of consideration that the murder only occurred after the deceased had sustained what must have been a savage beating in which he received multiple injuries including 5 broken ribs.

15. While it would appear that the murder was not planned long in advance, the offender’s statement reveals that it was clearly premeditated. The prisoner

considered his options and decided to murder the deceased to escape identification. The intention was to kill.

16. The representations submitted for the prisoner contend that his record did not reveal any previous convictions involving violence. This is not correct: the prisoner had two previous convictions for robbery at the time of the murder.

17. The most significant mitigating factor in the case is that the prisoner made admissions to the police soon after questioning began and pleaded guilty at the earliest opportunity. Taking this and all other relevant factors into account, I consider that the appropriate tariff is one of seventeen years.