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Tariff certified by the Secretary of State under Life Sentences (NI) Order 2001 on 31-01-05 **Date: 20/10/04**

THE QUEEN v CLIVE THOMAS MOORE

DECISION ON TARIFF

KERR LCJ

Introduction

[1] On 7 October 1994 McCollum J, sitting at Craigavon Crown Court, sentenced the prisoner, Clive Thomas Moore to life imprisonment for the murder of James Alexander Craig on 5 August 1993. The prisoner has been in custody since 5 August 1993. There was an unsuccessful appeal in 1995. The prisoner abandoned an application made subsequently to the Criminal Cases Review Commission. He has been in custody just over 11 years. The prisoner has asked for his tariff to be decided on the papers.

Factual background

[2] The Court of Appeal summarised the salient facts, apparently derived from the prisoner's examination in chief, as follows:

> "The applicant met James Craig in October 1991, following which he became involved with Craig's business of selling models of buildings. The applicant advised Craig on the organisation of the business, worked at its promotion and was instrumental in obtaining in September 1992 a LEDU grant for each of them of £1360, plus a fortnightly payment of £60 each for a period of 6 months. The business did not prosper….
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> The applicant said in evidence that in later 1991 or early 1992 he secured an order from a Mr Duffy in

> Upper Malone Road, Belfast, but the finished product was very poor and he did not seek payment for it. He pretended to Craig, however, that he had received a sum of money for it, but not as much as they had hoped, and paid him the sum of £40. In fact the money came out of the applicant's own pocket, for he felt sorry for Craig, who was badly in need of money. This was the precursor of a series of many similar transactions, in which the applicant paid sums of money to Craig which purported to be a share of the receipts for models but were really paid personally by the applicant."

[3] In his charge to the jury the trial judge said that in his evidence the prisoner claimed that he had taken responsibility for the organisational aspects of the business and that the deceased did not do much. The judge put a personal view to the jury to the effect that the prisoner may have been a 'Walter Mitty' type character, who had gone out to impress the deceased. He referred to "imaginary activity" to persuade the deceased that the business was a success.]

[4] The Court of Appeal continued its account of the prisoner's evidence as follows:

> "By September 1992 the relationship between the applicant and Craig had changed. Craig had become bad tempered and difficult with the applicant, who was constantly giving him sums of money. Craig received the lion's share of the LEDU monies, plus payments from the applicant in respect of bogus orders, which the applicant pretended to have obtained from customers. Between September 1992 and January 1993 Craig received about £200 from the applicant in this way, and several hundred pounds more in 1993, when no models at all were made or sold. Although the applicant had started by feeling sorry for Craig, he was now more afraid of him. Craig became very angry when he did not receive what he wanted, and went into rages, when he would put his fist through doors or punch and kick at trees. On a number of occasions he threatened the applicant indirectly with physical violence from paramilitary organisations.

In January 1993 the applicant tried to end the relationship, but Craig became angry and threatening, and the applicant was unable to bring it to an end. By now Craig was, according to the applicant, regularly receiving money for which he did nothing and resorting to aggression and threats if he did not get what he wanted. The applicant started to make plans to go to work in France, to get away from him. He instituted a complicated deception over an invented order from the Catholic Church in Holywood, involving a fictitious priest and forged letters. The plan was that he would create documents purporting to show that a substantial order was contemplated by the Church, which would then decide against it. He said in evidence that his idea was to demonstrate to Craig that large orders could not be obtained, it already having become apparent that the business could not support two people on small orders. All the while he was playing for time, so that he could make good his escape to France and get away from Craig.

At the beginning of August 1993 the applicant decided to give Craig a substantial sum, which he would obtain from commission due to him, tell him that the business was not viable and that they must finish their association. He was by now heavily in debt, but hoped that by using up his available cash in this way he could pay Craig off and get rid of him. Craig believed that the applicant had a good order from Balmoral Golf Club and was about to be paid for it, and demanded that he be paid £500 at the beginning of August.

For the previous few weeks the applicant had been carrying round with him articles which he could use as weapons if Craig became violent with him. He would lift a big stone or a stick when they were out for a walk, or would bring a spanner, screwdriver, or on occasion a hammer, with him in his pocket. He usually kept his own hammer by his bed in case Craig or one of his associates broke in. On Monday 2 August the applicant called at the house of an old

friend Sam Abraham, seeking a screw to fix the bumper of his car. Mr Abraham was not at home, but the applicant rummaged round the garage. He said that when he was doing so he noticed a hammer and decided to take it with him as protection when he met Craig that night. He put it in his trouser pocket, wrapped in a plastic bag and concealed by his jacket.

He did not broach the subject of the difficulties of their business that night, but arranged to meet Craig again on Wednesday 4 August and give him the money. Craig had become increasingly angry and was insisting that he be paid the £500 on Wednesday. On Wednesday the applicant obtained cash totalling some £700 and took £500 in notes to Craig's house. Craig and his two young sons accompanied the applicant in his car and bought carry-out meals. After this they stopped in a car park and the applicant gave Craig the £500, then asked for £100 back for living expenses, to which Craig reluctantly agreed. They intended to go to Bangor to see a modeller, but decided to go for a walk first. They parked in a car park at Edenderry about 8 pm, and the children elected to stay in the car. The applicant and Craig set off along the towpath towards Gilchrist Bridge. The applicant again had Mr Abraham's hammer with him in his pocket.

The conversation was casual as far as Gilchrist Bridge, but at that point the applicant told him that he did not think that he could go on with the business any longer. He revealed that there had been no money coming in and that he had been paying Craig out of his own pocket. Craig began to become steadily more irate as they walked back towards Edenderry and abused and threatened the applicant. The applicant said that he was very frightened and distressed by this time and near to tears. Craig started to push and jab at the applicant with increasing force and hit him fairly hard five or six times before the applicant took the hammer from his pocket. He held it up to warn Craig off, but that only made him angrier. Craig again hit the applicant a number of times, knocking

> the hammer into his face. The applicant was in pain, screaming and weeping. In his own words, he "lost it" and struck Craig. He shouted repeatedly "Leave me alone" and hit him on the back of the head. He continued to strike him, with no idea how hard the blows were or where he was hitting him. He had by now lost all control of himself, and only wanted Craig to stop hitting him. He recollected striking him a number of times as he lay on the ground. He stopped and walked away a few feet, then threw the hammer into the river in disgust or relief. The applicant said that he heard a noise from Craig and then realised that he was lying injured on the ground and tried to lift him on to his feet or into a sitting position. Craig was too heavy, and the applicant lost his grip on him, whereupon Craig half fell and half rolled down the bank into the river. The applicant stared at him for a bit, then jumped into the river and tried to support him and keep him above the water. Other people arrived and eventually sufficient help came to get both men out of the water.

[5] The Deputy State Pathologist Dr Carson described the head injuries sustained by the deceased as multiple and severe. There were many lacerations of the scalp, with gross fractures of the underlying skull, gross laceration of the brain and bleeding over its surface. There were large irregular defects of the skull, the major defect on the left side measuring 17 cm by 8 cm. The bone was broken into small fragments, and he recovered 64 separate fragments of bone from this fractured area, many very small. In his report Dr Carson said of the injuries:

> "Whilst the injuries were concentrated mainly on the left side of the head, there were others on the back of the head, right frontal region and right forehead. The general distribution of injury suggested that the deceased might first have been struck and felled by a blow on the back of the head, with many more blows being struck as he lay on the ground. The crescentic and circular nature of many of the injuries suggested blows from the head of a hammer, whilst other small indented wounds suggested blows from the claws of the hammer. Even allowing for the weight of the hammer, considerable force would have been required to cause skull fractures of the severity found."

He also said that after one such blow Craig would have been unconscious and not in a position to defend himself. In Dr Carson's opinion the brain damage was sufficient to cause unconsciousness and death, although it seemed probable from the presence of diatoms in his lungs that the deceased inhaled some river water and that this could have accelerated his death.[1]

[6] The offender accepted that when assistance arrived he made up a story that he and Craig had been attacked by a group of youths who smashed Craig's head in with a hammer. He maintained this story during two days of questioning by the police, who appear to have been sceptical about its truth, since they arrested him on the evening of 6 August and charged him with Craig's murder. He did not produce the version which he gave in evidence until he was visited in prison by Mr Abraham, who subsequently told the police, with the applicant's agreement.

[7] Some witnesses gave evidence of hearing raised voices or shouts and others of hearing splashes and cries for help. The only witness who saw the prisoner close to the time of the incident was James Mallon, who said that he saw the body of a man in the river, and that after a short interval the applicant stepped forward from the shade of the trees and shouted for help. Mr Mallon said that he told him to get the man out of the river while he went for help. The applicant in his police interviews disputed the correctness of this version and averred that he was in the river holding Craig before he talked to anybody. He appears, however, to have resiled somewhat from this in his evidence at the trial and only said that he was not aware of Mr Mallon's presence until he was in the water.

[8] Mr Cinnamond QC who appeared for the prisoner before the Court of Appeal laid some stress on the applicant's own injuries, which were described as follows:

> (a) an oval bruise, 5 by 2 cm, on the right brow;
> (b) shallow incisions in the right cheek, 2 and 3 cm long respectively;
> (c) a laceration 3 cm long on the left brow;
> (d) an oval bruise on the left cheek, 9 by 7 cm;
> (e) an abrasion 1 cm in diameter on the left chest;
> (f) an abrasion on the left knee;
> (g) fine shallow incisions on the palms of the hands.

The palmar injuries could have been caused by a rough area on the handle of the hammer or by a sharp twig or bramble. The other injuries were caused by blunt blows, which could have been from a fist. Mr Cinnamond submitted that these

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[1] In cross examination prosecuting counsel put to the prisoner that he had hit the deceased at least 11 times and possibly several more, including when he was on the ground.

must have been inflicted by Craig before the first hammer blow -- since that blow would have rendered him unconscious -- and demonstrated that Craig had given the applicant a considerable beating before he lost control and retaliated with the hammer.

[9] In dismissing the application for leave to appeal the Court stated:

> "In bringing in a verdict of murder the jury must have decided against the applicant either on the subjective or the objective element. It may have been satisfied that the applicant deliberately killed Craig without being provoked, which could have been his premeditated plan or an intention later formed during the confrontation with Craig; or it may have reached the conclusion that he responded to provocation but that it was not such as to make a reasonable person lose his self-control. It is not possible to tell which view the jury took.
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> The main thrust of the Crown case appears to have been on the subjective element. It was suggested that the murder was premeditated, either in the sense that the applicant set out from the beginning to murder Craig or that he formed that intention when it became apparent during the confrontation that he was not going to be able to rid himself of his demands. In support of this thesis the Crown relied on the fact that the applicant took Abraham's hammer with him to the towpath, that he smashed in his skull with a succession of blows, that Craig ended up in the river -- from which they infer that the applicant pushed him in to finish him off, as he was still audibly alive -- and that when other people arrived on the scene he immediately told a false story and persisted in it for some time.
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> Mr Cinnamond advanced a series of arguments against this thesis, which were put before the jury in the judge's summing up and had no doubt been relied upon by defence counsel. He submitted that the carrying of the hammer, at first sight an apparently damning fact, was just as explicable by the applicant's

fear of Craig and his desire to have a means of self-protection. The number and severity of the blows tended, he argued, to demonstrate frenzy and loss of control rather than a mere determination to finish off his victim. He contended that it was unlikely that the applicant would have attempted to get rid of the body by pushing it into the river and that to do so was unnecessary to accomplish Craig's death; accordingly, the facts were at least as consistent with the applicant's story of his slipping in by accident. Finally, the invention of a false story was quite explicable by panic, in the realisation that he had killed Craig in his frenzied attack (a similar point is made in Archbold, paragraph 19-64).

The jury was also properly directed to the objective element in the defence of provocation. The Crown case on this was that if the applicant lost his self-control and mounted a fatal attack on the deceased, the provocation was insufficient to make a reasonable man act in this way. Defence counsel relied on the whole of the circumstances which formed the background to the attack, but focused particularly on the extent of the injuries to the applicant. He submitted that these were so severe that a reasonable jury could not sensibly reject the defence of provocation, since any reasonable person in the situation of the applicant could be expected to react in the same manner. In consequence, the verdict was unsatisfactory and should be set aside and a verdict of manslaughter substituted.

The jury were in our view entitled to take the view on the facts established before them that the applicant decided in advance of the meeting to manoeuvre the deceased to a place on the towpath where he could attack him, notwithstanding the obvious difficulties in covering his tracks, or that he formed a firm intention to kill him when it became apparent that Craig was going to continue to demand money. Equally, they were entitled to reach the conclusion that the applicant did lash out with the hammer in a frenzy, as he maintained, but that a reasonable man

> would not have lost his self-control in such circumstances."

Personal background

[10] No relevant material about the prisoner's personal background is available, although the trial judge adverted to his good work record and lack of criminal record. The appeal papers mention a psychiatric report, but none is on file or referred to in the judgment.

Antecedents

[11] No details are on file, but the judge's summation indicates that the prisoner had a clear record.

Sentencing remarks

[12] The trial judge did not recommend a minimum sentence, but simply imposed the mandatory term.

The NIO papers

[13] No submissions have been made by the deceased's family.

[14] The prisoner's solicitors, John J Rice & Co, have submitted that the tariff should be between 10-12 years. The submission maintains the prisoner's previous assertions: that he was provoked; that he concocted a story in panic; that the hammer was brought to the scene in anticipation of its use in self-defence. It is argued that the circumstances lean against premeditation. The prisoner is said to have enjoyed good standing in his community and to have been a man of good character.

[15] The prisoner has submitted a letter in which he states that it has taken him "several years to process the sense of guilt, profound regret and self disgust caused by knowing I had taken a man's life, but I now believe that I have come to terms with and accepted all aspects of my offence." In referring to the offence the prisoner states that he "overreacted in a totally wrong and irrational manner, the consequences of which have caused so much pain and distress to so many people and for which I alone must take full responsibility." He refers to his state of mind, the need for him to bring protection to the meeting, the spontaneity of

the attack, how he had nothing to gain from it, and how the frenzied nature of the assault suggests that he momentarily lost control. He says that he now sees that he made a mistake in not seeking appropriate help at an earlier stage, but was under such stress that he did not think. While in prison he has taken advantage of the educational facilities with a view to obtaining a degree. He accepts full responsibility, expresses remorse and says that he will live with the offence for the rest of his life.

Practice Statement

[16] 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*
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> 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.
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> 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).
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> *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.
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> 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."

Conclusions

[17] This case is not obviously in the normal starting point category. It was not a case of a sudden quarrel and loss of control. Some uncertainty surrounds the circumstances of the killing but there is a strong suspicion that there was a significant element of pre-planning. Moreover, it could be said that there are factors which are more in keeping with the higher starting point of 15/16 years: evidence of gratuitous violence or the infliction of extensive and multiple injuries and, arguably, the fact that the deceased would have been unconscious, and therefore vulnerable, after the first of many hammer blows to the head.

[18] On one view, the prisoner was provoked. The Court of Appeal stated that the jury: "may have been satisfied that the applicant deliberately killed Craig without being provoked, which could have been his premeditated plan or an intention later formed during the confrontation with Craig; or it may have reached the conclusion that he responded to provocation but that it was not such as to make a reasonable person lose his self-control." At both the trial and appeal the defence made reference to the injuries sustained by the prisoner allegedly at the hands of the deceased in support of the provocation defence. Some allowance must therefore be made for this factor in fixing the tariff period.

[19] The fact that the prisoner came to the meeting armed with the murder weapon is an aggravating factor, as is the fact that the deceased ended up in the water. This appears to me to have been an attempt to conceal the body or to damage evidence. .

[20] While there are strong indications of premeditation, it is impossible to be certain of this. As the prisoner's solicitors point out, he remained at the scene and called for help, although these must be viewed against the background of the false allegation of an attack by youths and the allegation that a witness had spotted the body, prompting the prisoner to emerge from trees.

[21] The prisoner cannot claim much personal mitigation in how he met the charge. He made up a story of an assault by a group of youths, then changed his

story to admit the actus reus but only by reason of provocation. He contested the charge and the defence was rejected by the jury.

[22] Having carefully considered all these matters, I have concluded that the appropriate tariff in this case is fourteen years. This will include the period spent by the prisoner on remand.