

Tariff certified by the Secretary of State under Life Sentences (NI) Order 2001 on 19-01-07

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

THE QUEEN

- v -

DEAN MICHAEL WOODS

DECISION ON TARIFF

Ruling by Kerr LCJ

KERR LCJ

Introduction

1. On 22 January 1997 after a trial before Lord Justice MacDermott, sitting at Antrim Crown Court with a jury, the prisoner was convicted of the murder of Brian Peden on 10 December 1995, and sentenced to life imprisonment. The prisoner was 18 ½ years old at the time of the murder. Mr Peden was twenty six years old. The prisoner has been in custody since 11 December 1995.

2. 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 (NI) 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

3. The main prosecution witness was a Mr William Wilton. He gave evidence about a number of incidents including that in which Mr Peden received the fatal injuries. These incidents included a description of the following events: -

(a) On Saturday 2 December 1995 an argument took place between Mr Wilton and the prisoner over the latter's alleged ill treatment of Mr Wilton's puppy during which the prisoner threatened the witness with violence;

(b) On Thursday 7 December 1995 neighbours reported that the prisoner and Marc Lawrence Woods, his brother, had been seen in the vicinity of Mr Wilton's car. A neighbour told the witness that she saw the prisoner throw a breeze block through the car's rear window some hours later;

(c) Around midday on 8 December 1995, all three Woods brothers came to Mr Wilton's house, where the prisoner stood at the front door and claimed that the block had been thrown by one Barbara Leslie; and

(d) On the evening of 8 December 1995, Mr Wilton, Graham Watton and Brian Peden played pool and drank beer in the Top House pub. They then bought a Chinese take away and walked back to Mr Wilton's house (at approximately 12.30 - 12.45 am). Half an hour later, all three set out to walk to Brian Peden's home. As they reached the end of Oakland Walk, Mr Wilton saw the prisoner appear from around the corner and his evidence continued as follows: -

"He had what looked like a golf club, an iron, in his hands. The iron was raised above his head and I saw him swing down and strike Brian (Peden) on the head with the golf club. I saw Brian stagger and Dean raise the club and strike Brian another blow to the head with the club. I then noticed that Mark and Stuart Woods who also had golf clubs in their hands, they started to hit Brian as

he staggered and fell around the corner on to the footpath. This all happened in a matter of seconds. I reached back and pushed Stephen (Holmes) backwards and told him to run as I set off at a run I saw all three, Dean, Mark and Stuart Woods hitting Brian as he lay on the ground. I ran home as fast as I could and got a long baton which has black tape around it from my house and I ran back again. I fully intended to use the baton to fight off the Woods brothers and stop them from attacking Brian. When I got back, it was only a minute, the Woods brothers Dean, Mark and Stuart, had gone I saw Brian lying in the footpath on his back ... the right side of his head was smashed in and he appeared to be dead ... I can think of no reason why Brian should have been attacked in this way. I do believe that I was the intended victim but Brian got the worst of it. I believe that Dean Woods, Mark Woods and Stuart Woods were attempting to carry out their earlier threat against me and that Brian was the first one that they saw out of the three of us in the alley way. I have known Dean, Mark and Stuart Woods for about 8 years. I have no doubt that they were the men who had attacked us and beaten Brian with the golf clubs. Although this attack took place on us at night in the dark, there is a lamp post at the end of the footpath at the corner where we were attacked. This lamp was lit and gave a good light, illuminating the footpath and corner. I only saw Dean, Mark and Stuart Woods for a few seconds but I will never forget what I saw. During this vicious attack I was only a matter of feet and only about 4 or 5 feet at the most from them. My view was not obstructed during this time."

4. Brian Peden was pronounced dead in the Royal Victoria Hospital at 8.30pm on 10 December 1995. Dr Carson conducted a post mortem on 11 December 1995 and reported that the victim was of slim build, weighing 10 stone and measuring 5 feet 10 inches in height. He was healthy and there was no evidence of any pre-existing disease which could have caused or accelerated his death. Cause of death was recorded as laceration, bruising and oedema of the brain associated with comminuted, depressed fractures of the skull due to a blow (or blows) on left side of head. Dr Carson's opinion was:

"Death was the result of a major head injury, for which he had been treated in hospital prior to death. The surgical treatment had altered the appearances of the wound or

wounds on the left side of the head. However there was a large defect in the skull on this side where fractured bone had been removed covering an area 9.5 cm. x 4.5cm ..., and from the margins of the defect further fractures radiated into the base and to the back of the skull. There was extensive damage to the underlying brain extending right across to the midline. The surrounding brain was bruised and swollen and there can be no doubt that the brain injury was of a severity to cause coma and death, despite hospital treatment.

The head injury must have been caused by a heavy blow (or blows) on the left side of the head. The depth of the brain injury suggested that the instrument used had actually penetrated the skull and brain. A blow from a golf club could have caused the injury.

There were abrasions elsewhere, on the right cheek, the right ear, the chin and on the back of the right hand. These could have been sustained by contact with the ground.

...

The report of the Forensic Science Agency shows that at the time of his death there was no alcohol in the body."

The trial and the appeal

5. The prisoner and his brothers, Marc Lawrence Woods and Stuart Norman Woods were charged with the murder of Brian Peden on 10 December 1995. In the course of the trial, the prosecution agreed not to proceed with the charge of murder against Marc Lawrence Woods he having pleaded guilty to manslaughter. At the end of the Crown case, the trial judge directed the jury to enter a verdict of not guilty against Stuart Norman Woods.

6. During the trial the prisoner made the case that it was Mr Wilton who had killed the victim, claiming that he was an unreliable witness who had convictions for dishonesty and who had lied to the court. He also made the case that his brother Marc decided to plead to manslaughter as a result of paramilitary pressure to do so.

7. An application for leave to appeal against conviction was refused on 16 April 1997.

The prisoner's antecedents

8. The prisoner had four previous appearances before the courts, three of which involved violence. He was convicted of common assault on a child or young person on 26 June 1992 when he was 14 years old and given a conditional discharge for 2 years. On 7 March 1994 he was convicted of causing grievous bodily harm with intent arising out of an incident on 17 September 1993 when he was 15 years old, and was sentenced by Ballymena Crown Court to detention in a young offenders centre for 18 months. On 26 January 1996 he was convicted by Antrim Crown Court of assault occasioning actual bodily harm and possession of an offensive weapon in a public place on 5 May 1995 when he was 17 years old. For these offences he was sentenced to detention in a young offenders centre for 6 months suspended for 12 months. The other appearance before the courts related to the theft of a cycle and a vehicle and consuming alcohol while a minor when he was 15 years old. For these offences he was placed on probation for two years.

The judge's sentencing remarks

9. In imposing the mandatory life sentence on the prisoner the learned trial judge made the following observations: -

“Dean Woods, I need not go over the facts relating to the tragic death of Brian Peden. Not only has his life been cut short by this unjustifiable killing but his family must have suffered a lot and will continue to suffer in the future enormously.

So far as you, Dean Woods, are concerned you have been very properly convicted of this awful murder. Our present society is presently plagued by far too much gratuitous violence. It must be made clear to all and sundry that such behaviour is totally unacceptable and will not be tolerated.

You are only nineteen years of age and you have previous convictions for violence. No doubt you were the principal instigator and participant in this attack.

...

... one of the great tragedies of this case is that neither of you saw fit to turn back from the life of crime for which you had been dealt with previously by the courts in a lenient way. You did not learn the lessons of your earlier sentences....

You have each brought misery and distress not only to the Peden family but to your own families."

The relatives' representations

10. Both the deceased's parents have made written representations. This is what his mother said: -

"Brian was murdered just a short distance from our home at Ballysally. I attended Brian as he lay dying on the ground and tried to comfort him until medical help arrived.

I cannot erase the memories of that night and suffer from cruel flashbacks of that bloody scene. Brian was my youngest child and we were very close I will **never** be able to forget that night and the subsequent hospital bedside vigil we kept.

I have fallen into poor health and suffered heart problems which I am told are the **direct result** of the death of Brian and in particular the manner in which he died.

My present quality of life is very poor and I fear will remain so for the rest of my life."

11. Mr Peden made the following representations: -

"Brian was murdered just seven weeks after the birth of his daughter [. . .]. He and his fiancée Allison had their wedding date set for March the following year.

They had just set up home together and were looking forward to spending many happy years together.

Allison has remained unmarried and their daughter [...] is growing up without the presence of her father. Allison is suffering emotionally and financially from his murder and will continue so for the foreseeable future. Their daughter looks for the father she will never see.

My once close knit family unit has disintegrated since the murder, two sons have moved away from their home town of Coleraine in the belief that they can better handle the murder of Brian away from those people the court found to be involved.

My life has changed drastically since the murder I have become nonsocial and withdrawn; it has interfered with my religious beliefs and has made me very wary and untrusting of people.

For some time after I sought solace in the use of alcohol and medically prescribed drugs, only stopping after I myself had fallen on the wrong side of the law, I have been told that these actions were the direct result of severe grief and frustration.

I relive that night every night and continue to crucify myself thinking that perhaps I could have done more to have prevented this murder or indeed permitted Brian to remain on life support just that little bit longer.

We have moved out of our home town of Coleraine in the hope that a new home may aid our coming to terms with the murder alas there is no escape. My wife has, since the murder, suffered severe ongoing health problems (heart attack) and we have no doubt that these problems are directly linked to the murder and loss of Brian."

12. The prisoner's solicitors, McCann and McCann submitted written representations. They contended that the case should be treated as one which attracted the normal starting point of 12 years provided for in the *Practice Statement* which has guided the fixing of tariffs in life sentence cases in this jurisdiction. It was suggested that this was a case involving killing of an adult victim arising from a quarrel or loss of temper between two people known to each other and that it has none of the characteristics of a higher starting point case.

13. The solicitors have submitted that the only aggravating factor in relation to the offence was that the prisoner was armed in advance with a weapon, a golf club and the only aggravating factor in relation to the offender was that the prisoner had previous convictions for violence.

14. In terms of mitigating factors the solicitors have claimed that the prisoner's intention was to cause grievous bodily harm rather than to kill. Death was caused, they claimed, by a single blow from a golf club. They also suggested that the case had a certain spontaneity about it and that perusal of the judge's charge would reveal that it was not a totally premeditated attack. The other mitigating factor identified by them was the offender's age at the time of the offence.

Practice Statement

15. 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

16. I have no hesitation in rejecting the suggestion that this is a normal starting point case. This was not a case of a sudden quarrel. On the contrary the prisoner had clearly intended to carry out a violent attack. He not only armed himself with a potentially lethal weapon, he aimed blows at the victim's head in a manner calculated to maximise the injury inflicted. The victim was unarmed and after he had been disabled by the first blow was in a completely defenceless condition. The prisoner continued to strike the deceased after he had fallen to the ground and I do not therefore accept that his actions are more consistent with an intention to cause grievous bodily harm rather than to kill.

17. I also reject the suggestion that the judge's charge supports the notion that this was in any way a spontaneous attack. At page 36 of the judge's charge he said, "this was a deliberate ambush on the Wilton party but ... what went wrong was that it was not Wilton who ended up dead but the unfortunate Mr Peden."

18. The only mitigating factor appears to be the prisoner's age at the time of the offence. He was 18 ½ years old. It is at least questionable as to whether this should prompt a significant reduction in the tariff to be imposed given his previous convictions for violent offences. These previous convictions indicate that he did not possess the degree of innocence and naivety that is normally to be found in someone of his age at the time of the murder. They also constitute aggravating factors in themselves.

19. Taking all these factors into account I fix the minimum term to be served by the prisoner at fifteen years. This will include the time that he has spent on remand.