

Tariff certified by the Secretary of State under Life Sentences (NI) Order 2001 on 22-09-08

THE QUEEN v JAMES JUNIOR McKINSTRY CRAIG

DECISION ON TARIFF

Ruling by Kerr LCJ

KERR LCJ

Introduction

1. On 5 May 1998 after being convicted, by unanimous verdict of the jury, of the murder of Sonia Forsythe the prisoner was sentenced to life imprisonment by Lord Justice MacDermott. He did not apply for leave to appeal against his conviction.

2. The deceased was a 13 year old school girl when she went missing in June 1991. Her decomposed body was found nearly five years later, in April 1996. It had been hidden in the coal bunker of what had been the prisoner's home. He was 19 years old when the deceased went missing, and 26 years old at the time of his conviction. He was committed to custody on 2 April 1996 and has now served more than 11 years in prison.

3. Although the prisoner was offered the opportunity to make oral representations through legal advisers on the tariff to be set under 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. The deceased, Sonia Forsythe, lived with her mother, step-father and younger sister at Sydney Street West in the Shankill area of Belfast, and attended Girl's Model School. On 30 June 1991, she had been out playing with friends. She had returned home for tea, but had then gone out again at around 7pm. The prisoner claims that he was passing at this time and the young girl asked him for a cigarette. He said that he knew the deceased to see. The prisoner then claimed that the deceased accompanied him to the Diamond Bar where he bought cigarettes for his mother and cans of beer for himself. He said that the deceased then accompanied him back to his flat at 2 Sydney Street West, Belfast, for him to drop off the beer, but she did not enter the flat. He claimed that he last saw her later that evening, sitting on the windowsill of a derelict house in Tennant Street with two other girls.

5. The deceased did not return home on the night of 30 June 1991 and she was reported as a missing person. Following her disappearance, the police searched 2 Sydney Street West, the home of the prisoner, on a number of occasions. On one such occasion, on 19 March 1996, forensic scientists accompanied the police and discovered blood stains in two cupboards but no trace of the deceased girl was found.

6. The prisoner claimed that he had not been living in the flat since September 1995. On the night of 19 March 1996 there was a fire in the flat, centred in the living room, the cause of which was unknown. On 1 April 1996 representatives from the Housing Executive went to 2 Sydney Street to clear it out so that it could be prepared for re-letting. When clearing out the coal bunker in the yard, they discovered the remnants of a body wrapped in carpet and bin liners and buried in the coal.

7. Dental records were used to identify the body as that of Sonia Forsythe. Dr. Crane, State Pathologist, gave evidence that the body was badly decomposed and that he could not say for certain when she had died, but that it could have been at any time from 1991 onwards. The cause of death was multiple fractures to the skull, one of which was a deeply depressed fracture on the left side. Having examined a metal poker found in 2 Sydney Street West and having compared the configuration of the

elliptical-shaped end of this with the pattern, size and shape of the depressed skull fracture, Dr. Crane was of the opinion that the poker or one of identical shape and size was responsible for the injury.

8. Because of the decomposition of the body, DNA samples could not be taken to match it with the blood found in the cupboards in the flat. However, a forensic scientist gave evidence at trial that it was possible to link the blood stains found in the cupboards to Sonia, by comparing them to DNA samples taken from her parents, and that it was also possible to link the carpet in which the body was wrapped to that which had been in the flat.

9. At his trial the prisoner claimed he that he had been 'framed' for the murder by a sophisticated plan on the part of an unknown person or persons.

Post mortem examination

10. The following is the relevant extract from Dr Crane's autopsy report: -

"The absence of most of the skin and all the internal organs, particularly the brain, precluded an unequivocal and precise determination of the cause of death, but this in itself is not surprising after a period of some years. Nevertheless of significance was the presence of a number of fractures of the skull none of which in my opinion had been caused during the recovery of the body from the coal bunker. Although absolute proof was lacking, the indications were that they were sustained relatively soon prior to death and if that were so were almost certainly responsible for death itself. There was a small superficial crack in the front of the skull above the root of the nose but this in itself was quite trivial. A more extensive area of damage involved the left cheek bone and upper jaw, the latter having been smashed into a number of fragments. These fractures must have been caused by a blow of considerable force to the face. There were three further fractures to the back of the skull indicating three blows to this area with

a hard object, probably linear in shape and having a sharpish edge or narrow striking surface. The most significant injury, both in terms of severity and appearance, was a large deeply depressed fracture on the left side of the top of the skull, the appearance of which suggested that it could be possible to determine the type of object responsible for its infliction. The blow which caused it must have been delivered with considerable force resulting in comminution of the bone, fragments of which would have driven into the underlying brain. An injury of this type would be expected to have proved fatal due to the associated brain injury and bleeding within the skull. Having examined the metal poker found in the flat in Sydney Street West and having compared the configuration of the elliptical-shaped end of this with the pattern, size and shape of the depressed skull fracture, I have no doubt that this implement or one of identical shape and size was responsible for the injury. Also I am satisfied that the other skull fractures could also have been inflicted with this poker, with those on the back of the skull in particular having been caused by the right-angled edge of the poker shaft."

The prisoner's personal background

11. The prisoner was born on 9 July 1971. He was therefore 19 years old when the deceased went missing, and 24 years when her body was found. In April 1991 he became the tenant of the upper flat at 2 Sydney Street West, Belfast. The prisoner lived in the flat on his own and worked in the shop run by his mother in Tennant Street. He claimed that he had left the flat in September 1995 when he went to live with his girlfriend.

12. The prisoner's criminal record is mainly confined to road traffic offences. On 24 May 1993 he was convicted at Belfast Magistrates' Court of the offence of 'common assault on adult' on 22 November 1992 for which he was sentenced to 120 hours community service. This offence was committed almost 1½ years after the disappearance of the deceased.

Representations from the victim's family

13. Representations were submitted by the deceased's mother. These are dated 29 April 2002. In a very moving letter she has described the devastation that her daughter's disappearance and death have wrought on her and her family. She stated that the murder of her daughter has seriously affected both her physical and mental health. Since Sonia's disappearance, she has been unable to eat or sleep properly and has been on medication including antidepressants and sedatives which she feels she is now unable to cope without. She attempted suicide in September 1991, 3 months after the disappearance, and again in September 1992.

14. Mrs Forsythe blames the stress and anxiety caused by the disappearance and murder of her daughter for the ill health and premature deaths of both her father and her husband. Her father died on 21 October 1991, and her husband died on 2 December 2000 after suffering a heart attack and stroke in August 1994. Her other daughter, Nicola, is now the only immediate family left, but Mrs Forsythe believes that Nicola has been deprived of a normal childhood due to her hyper vigilance in relation to her remaining daughter. She is acutely conscious that Nicola has also been deprived of the love and friendship of a sister.

15. Because the prisoner pleaded not guilty and has never given details of how Sonia was killed, Mrs Forsythe feels that the trial did not answer the questions that she required to have answered, such as, "Why had he brought her to his flat? What did he do to her before he killed her? Why did he kill her?" These unanswered questions deepen and prolong the intensity of the grief that she has experienced.

Representations from the prisoner

16. Written submissions were made on behalf of the prisoner. It was accepted that his case attracts a higher starting point of 15/16 years (*per R v McCandless and others* - see below) because the victim was a child and because extensive injuries were inflicted on her before death. It was not disputed that the concealment of the body and the fact that it was not discovered until 1996 was distressing for the family of the victim in that it denied them the opportunity to bring closure to the victim's death.

17. Emphasis was laid on the lack of other aggravating factors in the present case, such as:-

- (i) the fact that there was no evidence that the killing was planned;
- (ii) there was no evidence that a firearm was used;
- (iii) there was no evidence that the prisoner armed himself with a weapon in advance.

18. It may be observed that the absence of aggravating factors does not particularly assist in deciding on the appropriate tariff. That process involves the selection of the proper starting point, the recognition of aggravating and mitigating features present in the case and the reflection of those factors in varying the starting point chosen. The fact that a particular aggravating factor is not present is essentially neutral. It will not increase the tariff that would otherwise be applied but neither will it diminish the minimum period to be served.

19. At the time of the murder the prisoner was only 19 years old with a limited criminal record. It is submitted on his behalf that the tariff should not deviate from the higher starting point and should be fixed at 15/16 years.

Practice Statement

20. 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

21. This is obviously a higher starting point case. Because of her youth, the victim was highly vulnerable. Moreover, multiple injuries were inflicted on her. The post mortem shows that she suffered many fractures of her skull and several fractures of her facial bones immediately prior to death. The force required to inflict these injuries must have been considerable. It is likely that the weapon was the metal poker found in the prisoner’s home, or an identically shaped object.

22. The concealment of the victim’s body compounded and greatly increased the trauma and grief that her family suffered. To have to endure years of uncertainty as to the fate of this young girl must have caused untold misery. Reported sightings of the child (which of course proved to be wrong) can only have deepened their grief and distress. Even now, because the prisoner has never acknowledged his guilt or given an account of what he did to Sonia, her family is denied knowledge of the exact circumstances of her death. This behaviour I regard as a substantial aggravating factor.

23. Paragraph 4 (2) (b) of Schedule 1 to the Criminal Justice Act 2003 provides that the murder of a child if it involves the child’s abduction or a sexual or sadistic motivation will *prima facie* warrant a whole life sentence. This provision does not apply to Northern Ireland but it is an indication of how seriously Parliament regards this type of offence and I consider that I am entitled to take this factor into account in fixing the tariff in this case. I also keep in mind that in this jurisdiction a whole life tariff may be imposed if the court is of the opinion that, because of the seriousness of the offence no minimum term should be applied.

24. There is no clear evidence that there was a sexual motivation for this killing although there must be a strong suspicion that the young victim was sexually maltreated before she was murdered.

25. The only mitigating factor that I am able to discern in this case is the age of the offender at the time that the murder was committed. In the absence of an account that would provide insight into why he killed Sonia, it is

difficult to decide what weight should be attached to this factor, however. It may be that he panicked and, partly because of his lack of maturity, impulsively killed the child but if the prisoner has chosen to maintain his silence about the circumstances of the death it is not open to me to engage in benevolent speculation in his favour. Nevertheless, I must take into account the fact of his youth when fixing the minimum period of imprisonment.

26. The prisoner has not expressed any remorse for this dreadful crime. His refusal to disclose any details can only be regarded as indicating an absence of remorse.

27. I do not consider that a whole life tariff is appropriate to this case. Nor do I believe that it is a case in which I should refrain from setting a tariff. I have concluded that the proper minimum period to be served by the prisoner is twenty one years. This will include the time spent on remand.