Neutral Citation No: [2022] NICC 15 *Judgment: approved by the Court for handing down (subject to editorial corrections)**	*Ref:* **OHA11814** *ICOS No:* **20/063132** *Delivered:* **06/04/2022**

IN THE CROWN COURT OF NORTHERN IRELAND
SITTING IN LAGANSIDE COURTHOUSE

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THE QUEEN

v

ANDREW IAN VANCE

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SENTENCING REMARKS

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Mr C Murphy QC with Mr J Connolly (instructed by the Public Prosecution Service) for the Crown
Mr E Grant QC with Mr D McKeown (instructed by Joe Mulholland Solicitors) for the Defendant

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O'HARA J

Introduction

[1] In the early hours of 31 October 2019 Timothy Graham was violently killed by Andrew Ian Vance ("the defendant"),. The defendant was initially charged with murder (and with possession of cannabis). In light of medical reports obtained from three different psychiatrists who largely agree with each other, the defendant has pleaded guilty to a reduced charge of manslaughter on the ground of diminished responsibility. I have now to sentence him on that basis. Before I do so I have to set out why the murder charge is not being pursued. I also have to set out what happened on 31 October 2019 and the effect which this has had on Mr Graham's family.

[2] I am indebted to counsel for their very helpful submissions, written and oral, in this difficult and complex area.

Background

[3] Both Mr Graham and the defendant lived in Enterprise Court in Bangor in accommodation provided by Inspire. Inspire is an organisation established more than 60 years ago to provide support for people with mental health problems and, importantly, for their families. This support comes in many forms, just one of which is accommodation. I am sure that Inspire has changed very many lives for the better in the decades during which its services have been available.

[4] Both Mr Graham and the defendant suffered from long term mental health problems. Mr Graham was schizophrenic. The defendant is also a schizophrenic. Mr Graham's family was delighted and relieved that through Inspire he had found a place to live where he was well-treated and safe. The fact that his killing occurred in that very setting has only added to their grief and sense of loss.

[5] Mr Graham was described in a witness statement by Ms McNair of Inspire as being in great form on the afternoon of 30 November. She remembered him as very sociable and friendly generally but in particularly good form and full of chat that day after buying new clothes for himself.

[6] Shortly after 1am on 31 November Mr Graham was sitting outside having a cigarette with another resident, Ms Moorhead. They were laughing and talking. Then the defendant came walking towards them. He started to call Mr Graham "Satan." As he did so he walked right up to Mr Graham and started stabbing him. As Ms Moorhead ran off screaming for help the defendant continued to stab Mr Graham. He caused so many devastating injuries that Mr Graham died at the scene. And to make matters worse his family was unable to see him again because his body had to be placed in a closed coffin. He suffered approximately 90 stab wounds.

[7] This fatal attack appears to have come as a shock to everyone in Inspire. There was no history of animosity between Mr Graham and the defendant, never mind a history of violence. Ms McNair was unaware of any violent incident involving the defendant and anybody else during her many years on site.

[8] So far as a criminal record is concerned the defendant, who is now 47 years old, has a minor record. In the 15 years leading up to October 2019 he had been in court just once, for disorderly behaviour in 2007.

[9] When the police arrived at around 1:45am the defendant was still standing over Mr Graham's body, with a knife in his hand. The defendant told the police that he was doing God's work and that he had killed the devil (Mr Graham) who was going to hurt Ms Moorhead. In truth Mr Graham was never going to hurt her in any way nor would any rational person have thought that he might. On the contrary, they were two people enjoying a cigarette and a chat.

Timothy Graham

[10] Mr Graham was 47 when the defendant killed him. He was the eldest of three sons of parents who are both still alive. In Mr and Mrs Graham's statements they have described how close the family was and how Timothy was the central part of it despite the mental health issues which afflicted him. They were all delighted when Timothy was in Enterprise Court, an ideal and safe place with staff and friends who liked him. The effect of the killing on the whole family has been devastating – a constant feeling of fear, loss and exhaustion. While they drew some comfort from the crowds who attended his funeral they are now without their precious son who they describe as "a sensitive gentle giant – funny and clever, easily hurt and bullied with childlike gullibility."

[11] His father, David, has written in similar terms and clearly finds the term "manslaughter" quite insufficient to describe the brutality of what happened. As David Graham points out, Timothy's illness was the same as, or similar to, the defendant's but Timothy could not have performed the same violent act.

[12] Everything that is said by the Graham family is borne out in the very helpful detailed report from their general practitioner, Dr Crawford.

Psychiatric Evidence

[13] Three psychiatrists have examined the defendant and scrutinised his medical records. They are Dr Devine and Dr Bownes who provided reports for the defence and Dr Kennedy who provided reports for the prosecution. There is no difference of any significance in their conclusions which can be summarised as follows:

- The defendant was suffering from an abnormality of mental functioning.
- That abnormality arose from a recognised medical condition, namely schizophrenia.
- That abnormality impaired the defendant's ability to form a rational judgment or to exercise self-control.
- That abnormality provides an explanation for the defendant killing Mr Graham.

[14] The conclusions and opinions of the psychiatrists are not controversial in this case. This is not one of those cases in which it is suspected that a killer is trying to invent or concoct an excuse for what he did. The defendant's medical history, indeed his very presence as a resident in Enterprise Court, confirm these conclusions and leave no alternative approach open.

[15] The effect of this analysis, with which I fully agree, is that the defendant is not guilty of murder but is instead guilty of manslaughter by reason of diminished responsibility as provided for by section 53 of the Coroners and Justice Act 2009. That does not mean that he bears no responsibility for what happened – it means less responsibility than people who are fortunate enough not to have an abnormality of mental functioning.

[16] In these circumstances the prosecution was entirely correct to accept the plea of guilty to manslaughter by reason of diminished responsibility once the medical evidence was available rather than pursuing the charge of murder.

Sentencing

[17] What then is the correct sentence to impose on a defendant who is not in law guilty of murder but who has killed someone in such a brutal and unprovoked way? Neither the legislature nor the courts have found this question easy to answer. No matter how judges approach such cases there will always be a grieving family such as the Grahams, a defendant like the defendant with an abnormality of mental functioning and the public who need to be protected.

[18] The defendant falls to be sentenced within the framework of the Criminal Justice (NI) Order 2008 ("the 2008 Order").

[19] The paper written by the late Sir Anthony Hart in 2013 summarised the legal authorities which were available at that time as establishing the following:

(i) Diminished responsibility does not mean no responsibility or blame. Accordingly, a sentence in prison may still be appropriate.

(ii) If the defendant's responsibility for his act was so grossly impaired that his degree of responsibility for what he did is minimal and if there is no danger of a repetition of that violence the probable sentence will be non-custodial, possibly with supervision.

(iii) If the psychiatric reports recommend and justify it, a hospital order may be appropriate.

(iv) If a hospital order is not appropriate and if the defendant constitutes a danger to the public for an unpredictable period of time the sentence will usually be life imprisonment (with a minimum tariff).

(v) If there is no basis for a hospital order and if the defendant's residual responsibility is not minimal a determinate sentence is appropriate. How long that sentence will be depends on the degree of the defendant's responsibility for his actions and the length of time he will continue to be a danger to the public.

[20] Sir Anthony's summary is invaluable but like the decided cases in this area it provides guidance rather than directions about what is to be done in every case. All cases depend on their own facts and context.

Hospital Order

[21] The starting point is whether the psychiatrists recommend and justify the defendant being made the subject of a hospital order under the Mental Health (NI) Order 1986 ("the 1986 Order").

[22] Dr Kennedy and Dr Devine agree that the defendant meets the medical criteria for a hospital order. However, they also agree that if he serves a custodial sentence he can be transferred from prison to the secure psychiatric hospital (The Shannon Clinic) for any required treatment. In other words, his condition is not such that he needs to be in hospital all the time.

[23] On its own this fact steers me away from making a hospital order. However, I note, in addition, that in practice there is a risk that the review tribunal which would periodically consider whether a person such as the defendant might be released from hospital might focus on whether his mental illness still warrants hospital treatment. If it is not so satisfied, the tribunal will direct discharge from hospital without further considering if he is still a danger to the public. Dr Devine has specifically referred to this as a significant point of concern in his reports. This possibility was also recognised as something to be wary of by the Court of Appeal in the case of *R v Hackett* [2017] NIJB 274.

[24] I do not believe that discharge from hospital on that basis is appropriate in light of the killing for which I am sentencing the defendant. For that reason and because he does not need to be in hospital all the time I rule out a hospital order in this case.

Dangerousness

[25] I turn now to Article 13 of the 2008 Order. It sets out how a judge should proceed in a case such as this where the defendant has committed the very serious offence of manslaughter which carries a maximum sentence of life imprisonment (though in this instance that life sentence is discretionary rather than mandatory).

[26] There are four possible steps:

(i) First, consider whether the defendant is dangerous (in the legal sense).

(ii) If he is dangerous, consider whether a life sentence is appropriate.

(iii) If a life sentence is not appropriate, consider whether an extended custodial sentence is adequate to protect the public.

(iv) If an extended custodial sentence is not adequate, impose an indeterminate custodial sentence.

[27] While it might seem to the public and, specifically to the Graham family, that the defendant is obviously dangerous, the concept of dangerousness has a specific meaning in the 2008 Order. The defendant is only to be considered to be dangerous if there is a significant risk to the public of serious harm occasioned by him committing further specified offences. In this context "serious harm" means death or serious personal injury, whether physical or psychological and "specified offences", in the context of this case, means violent offences which may cause death or serious injury rather than, for example, a series of minor offences.

[28] In considering "significant risk" I have to be satisfied that the risk is greater than just a possibility. And in assessing that risk I have to take into account the nature and circumstances of the killing of Timothy Graham, the defendant's history of past offending, whether there is any pattern of offending, various social and economic factors including accommodation, relationships, drugs or alcohol abuse and the defendant's thinking. These and other considerations are referred to in *R v EB* [2010] NICA 40, *R v Cambridge* [2015] NICA 4 and *R v Brownlee* [2015] NICA 58.

[28] It is also clear from *R v Nelson* [2020] NICA 7 that the assessment of dangerousness is not an arithmetical or scientific exercise but involves an evaluation by the sentencing judge of all of the relevant information.

[29] In this case that information includes the medical reports and the pre-sentence report from the Probation Board for Northern Ireland dated 21 February 2022 together with an addendum report dated 10 March 2022 which I specifically asked for.

[30] I have already noted at para 8 that the defendant's criminal record is very minor and rather old. In addition, I have noted that there was no significant history of any sort between him and Mr Graham or any other resident. In essence, the killing appears to have come largely out of the blue.

[31] On closer scrutiny Dr Kennedy found rather more to be concerned about than this might suggest. She assessed the risk of violence by means of the Historical Clinical Risks, known as HCR20. This is a form of structured professional judgment in which she considered ten historical factors, five clinical factors and five risk management factors. Of the ten historical factors she found that eight were met including by way of example poor relationships with others, substance use problems and poor compliance with treatment and supervision.

[32] Dr Kennedy continued at para 2.7 of her supplementary report:

> "The importance of historical factors is that they are relatively static and represent the baseline risk of the risk assessment. The presence of problems with clinical items … and risk management items … serve to increase the risk from the baseline or if there is improvement in these items to reduce risk back to that baseline level of risk."

[33] Dr Kennedy then referred to the defendant's mental illness into which his insight is poor, his use of drink and drugs and his limited ability to cope with stressful circumstances and life events. She continued at para 2.12:

> "His mental illness can be managed with the input of forensic mental health services. The duration of this need cannot be determined but is likely to be long term. Given the nature of the offence – in terms of the unpredictability and rapidity of mental state deterioration and gravity of outcome – he will require very careful management by properly skilled staff."

She then continues at para 2.13:

> "It is for the court to consider the above and determine if he meets the criteria for dangerousness which is a legal concept."

[34] Dr Bownes commented on Dr Kennedy's analysis in an addendum report dated 24 February 2022. He agreed with her assessment, especially the point that while the defendant accepts that he suffers from a serious mental illness it has become apparent from his poor engagement with treatment that he has limited insight into the outworkings of his schizophrenia and his treatment needs. Information supporting this analysis came from Dr Devine who had himself personally treated the defendant during 2020, after the killing.

[35] This led Dr Bownes to conclude that:

> "Identifying and treating any further clinically significant disturbances to Mr Vance's mental well-being as they arise will require monitoring by mental health professionals of the nature normally required by local forensic mental health services for the foreseeable future."

[36] The first pre-sentence report is dated 21 February 2022. The author concluded after a team meeting that the defendant did not present a significant risk of serious harm at that time. Specific references were made to the absence of convictions for

serious persistent or planned violence together with the absence of evidence that there is an established pattern of behaviour.

[37] I expressed unease at that conclusion and noted that the PBNI team had not had access to any of the psychiatric reports. This led to a short supplementary report in which all of those medical reports are referenced. Ms Finnegan, Probation Officer, states in this report of 10 March 2022 that the medical reports "reinforce our decision making" i.e. the limited history of offending and the absence of previous convictions for serious violence lead them to maintain their view that the defendant does not pose a significant risk of serious harm at this time.

[38] I acknowledge the great expertise and experience of the Probation Service in dealing with all sorts of offenders. Their views are always to be taken seriously. On this occasion, however, I consider that they are wrong and that the defendant does, indeed, pose a significant risk of serious harm. I have reached that conclusion taking account of all of the contents of the various reports but including specifically the following:

- The historical factors identified in detail by Dr Kennedy.
- The defendant's limited insight into his condition.
- The extreme degree of violence inflicted on Mr Graham.
- The unpredictability and rapidity of the defendant's mental deterioration and the gravity of the outcome of what he did.
- The absence in October 2019 of particularly extreme stressors in the defendant's life which might explain his actions in some way.
- The emphasis placed by the doctors on the need for him to be carefully managed by skilled staff for an indefinite period into the future.

[39] To put it more succinctly, if the defendant can kill someone as harmless and blameless as Mr Graham when they are both living under the protective umbrella of Inspire, how is there not an ongoing significant risk of serious harm to the public? If the defendant offends again there is every chance that the harm he causes will be as brutal and devastating as his attack on Mr Graham. The risk of that happening is not negligible or minor. It is not an outside chance. It is a real and meaningful risk.

[40] Having formed that conclusion, I now turn to consider whether a life sentence is appropriate. The harm done by the defendant is enormous – he took a man's life in the most brutal of manners and caused untold harm to the Graham family. But the level of his culpability or blame is limited – not only was it not a premeditated attack in any significant way that we know of, but what happened is due in very large measure to the abnormality of mind from which the defendant suffered then

and still suffers now. As decisions such as *Hackett* and *Dolan* [2020] NICC 7 illustrate, a life sentence with a minimum tariff is not appropriate in the present circumstances despite the loss of Mr Graham's life.

[41] I now turn to the option of an extended custodial sentence. This is a sentence which combines what Article 14 of the 2008 Order describes as the "appropriate custodial term" (e.g. 7 years, 10 years etc) and a further period, "the extension period", during which the offender is subject to licence and is of such length as to protect the public from serious harm occasioned by the commission of further serious offences.

[42] In my judgment an extended custodial sentence is not appropriate in today's case because I cannot now anticipate how the defendant will respond to continuing psychiatric treatment or when it will be safe, or safe enough, to release him entirely from continuing licence obligations. Given what the psychiatrists have written such confidence in the future is entirely beyond me.

[43] Instead, I have concluded that the appropriate sentence is an indeterminate custodial sentence. That involves me in setting a tariff, meaning the number of years which the defendant must serve before he becomes eligible to be considered for release. When that period has been served, the Parole Commissioners will release the defendant it they consider that it is safe to do so. At that point in time they will be able to assess the risk which he still poses. They will be informed about his treatment, his insight and his conduct in prison. They will also consider the terrible events of 31 October 2019 and how he took Mr Graham's life. It will be their decision as to whether it is safe to test his release into the community and, if it is, impose any necessary conditions with which the defendant must comply. In doing so, they will be in a much better position than I am today.

Setting the Tariff

[44] In setting the number of years which the defendant must serve before the Parole Commissioners decided whether he can be released I take into account all the matters which have already been referred to in this judgment. These include:

(i) The gravity of the crime.

(ii) The killing of a trusting, defenceless and entirely innocent man.

(iii) The defendant's limited criminal record.

(iv) The defendant's expression of regret and remorse.

(v) The defendant's psychiatric condition (mindful of the need to avoid double counting since that psychiatric condition is already the basis for the reduction of the charge).

(vi) The defendant's very unhappy and unsettled life history which includes him having been the victim of a very serious assault.

[45] I must also consider however, that there is some evidence of inappropriate and excessive use of alcohol and drugs. Indeed, there is a charge of possession of cannabis for which I have to sentence him. It does not appear that the defendant was under the influence of drink or drugs at the time of the killing though that is hard to be certain about because he was not tested for some time afterwards.

[46] Overall, my view is that the defendant has limited residual responsibility for the killing. Accordingly, I impose an indeterminate custodial sentence with a tariff of six years. And for completeness, on the charge of possession of cannabis is impose an absolute discharge.