

Neutral Citation No: [2023] NICC 28

Ref: SMY12286

*Judgment: approved by the court for handing down
(subject to editorial corrections)**

Delivered: 13/10/2023

IN THE CROWN COURT OF NORTHERN IRELAND
SITTING AT BELFAST

THE KING

v

CONNOR McNEILL

HER HONOUR JUDGE PATRICIA SMYTH
Recorder of Belfast

[1] Connor McNeill you have pleaded guilty to the murder of Stephen Barriskill. The only sentence permissible under law for the crime of murder is life imprisonment, and I imposed that sentence on 31 May 2023. It remains for me to determine the minimum term of imprisonment that you must serve before you can be considered for release by the Parole Commissioners. Article 5(2) of the Life Sentences (Northern Ireland) Order 2001 prescribes that the minimum term must be the period the court considers appropriate:

“To satisfy the requirements of retribution and deterrence having regard to the seriousness of the offence, or the combination of the offence and one or more offences associated with it.”

I am also required by paragraph 25 of Schedule 1 to the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 to inform you that the Independent Barring Board will include you on the barred list relating to adults by virtue of your conviction.

[2] There is an agreed factual basis of plea which is attached to these sentencing remarks at Appendix A. In summary, the facts are that on 26 October 2021, you armed yourself with your legally held shotgun in which you had placed two cartridges, walked to Mr Barriskill’s home, approximately half a mile away and shot him twice in the chest in the bedroom where he had been sleeping.

[3] You had been neighbours for many years and although your relationship had been good, there had been a falling out between you which you told police had to do with the way his father had been treated before his death. Your wife had cleaned for Mr Barriskill's father and you had also carried out work for him.

[4] The shots that killed Mr Barriskill were reported by a neighbour to have occurred sometime after 10:10pm. Your wife returned home from work at approximately 10:20pm and remembers that you were in great form. She went to bed around 10:50pm. Around 1:07am you went to a friend, Jeffrey Clarke's house and appeared drunk. You were given a beer, told to leave your car keys and rang your brother for a lift home.

[5] At some stage, you came into your bedroom, turned on the light and told your wife that you had shot Mr Barriskill. She did not think you were serious and went back to sleep. The following morning you confirmed what you had done and told your wife that you had not intended doing it but had taken the gun and gone up to the house. She took you to the police station where you handed yourself in.

[6] You told police that you had shot a neighbour and consequently, Mr Barriskill's body was found. You said that he had been making threats to you and in relation to your family, both verbally and by text. Your wife said that you had told her in August 2021 that you had been receiving threats, but she did not know the details, other than that he was threatening to stop people going down the lane to the family home. Your son said that you told him Mr Barriskill had taken umbrage against you because you refused to do something for him. Your friend Mr Clarke, who was a mutual friend told police that he had seen messages with a general threatening tone although he could not provide any details and some of them "did not make much sense as though they were sent from someone who wasn't compos mentis." He said you appeared to be a bit "scared" of him.

[7] It is unfortunate that you destroyed your phone by burning it immediately after killing Mr Barriskill. You claim that the reason you destroyed it was because you wanted nothing more to do with him or the phone and that you were not thinking straight. The consequence of your behaviour is that the court is unable to carry out any assessment of the threats that you rely on so heavily in mitigation.

[8] However, the police recovered a mobile phone from the crime scene which belonged to Mr Barriskill. It was triaged for communications between you and although the retrieved messages appear to confirm a falling out, there is nothing that could be construed as threatening towards you or your family. In response to the disclosure of this information, you have instructed your counsel that he owned a number of phones, the implication being that the relevant messages were contained on another device.

[9] The prosecution view is that the threats are of marginal significance in terms of the appropriate tariff and that your account has the clear potential to be

self-serving. The defence submit that something very serious must have occurred to cause you to commit this crime and that the threats are highly relevant, although your reaction was excessive and unjustifiable.

[10] You told police that something “flipped” in your head after Mr Barriskill threatened your daughter, and that you devised a plan to “scare” him. You said that you expected to meet him at the door, where you intended to fire a warning shot, but instead walked into the house. You heard him snoring and went to the bedroom. He woke up and turned on the bedside light and sat up with his feet hanging over the side of the bed. You told police that you stated to him that the “threats and intimidation has to stop” and that he replied, “if you’re going to use that, you better use it now, or else I’m going to send some boys down to kill your whole family.” We only have your account of what occurred in the bedroom.

[11] You said that he reached for the gun, and that in pulling it back, a shot was discharged and that a second shot was then discharged due to the recoil from the first shot. You said you immediately left the house and ran home, where you destroyed your mobile phone and drank some wine.

[12] The prosecution does not accept this account of an accidental shooting and points out that not only is this account inconsistent with your guilty plea, but it is also inconsistent with your first account to your wife and the first account that you gave to the police. The prosecution also submits that your assertion that you intended only to “scare” him is utterly implausible, in view of what actually occurred.

The Post-mortem

[13] The post-mortem examination was carried out on 29 October 2021 by Dr Peter Ingram, Assistant State Pathologist. He concluded that death was due to shotgun wounds to the chest. Examination of the wounds indicate that one bullet passed right and downwards. The other passed upwards and to the right. Either shot would have caused instantaneous death. The heart was lacerated. The edges of the wounds were irregular, and parts of the pistons/wadding from the cartridges were retrieved from them indicating a shooting at a range of less than one metre.

[14] The shotgun and associated items were examined by Ms Anne Polland from Forensic Science Northern Ireland (FSNI). She concluded that the shotgun was in good condition, that it functioned correctly and was in good mechanical condition. Trigger pressures were noted to be in the correct range for a shotgun of its type, and that the gun was not susceptible to accidental discharge. Ms Polland also concluded that the shooting was carried out from a short distance of between 0.3 and 1.0 metres, and that (given the proximity of both wounds) the shots were likely to have been fired in quick succession.

The Victim Impact

[15] I have received victim impact statements from Mr Barriskill's brothers, David and Brian and also from his former wife Sandra. Mr Barriskill was committed to his close family and supported his brothers emotionally and financially growing up. Both brothers speak of the care he provided for both of his parents over a long period of time, during their final illnesses and express their appreciation for the sacrifices that he made.

[16] The brutal death of their brother in the beloved, historic family home has left raw grief and bewilderment. Generations of the family had lived in that house, and it had been hoped that many generations would do so in the future. That now seems impossible, and the family cannot come to terms with this senseless act of violence by someone their brother had known for a lifetime.

[17] Sandra Barriskill speaks of the man she married more than 40 years ago and with whom she had remained on good terms despite their separation. She describes her shock and that of her son Cain, on hearing of the murder and the devastation and disbelief that a neighbour and close family friend was capable of such a brutal crime. She worries about the impact on Cain, who had not recovered from the loss of his grandfather when he lost his father. Cain has felt unable to provide an impact statement.

[18] Sandra also speaks of the impact of the court proceedings and in particular the effect that repeated breaches of your bail conditions had upon the family. The process that victims have to endure in obtaining justice should never be underestimated. In the midst of her grief and concern for Cain, Sandra speaks with compassion for your family also and what you have caused them.

The Relevant Legal principles

[19] In *R v McCandless* [2004] NI 269 the Court of Appeal directed courts in this jurisdiction to adopt the approach prescribed by Lord Woolf CJ in the Practice Statement [2002] 3 All ER 412 when fixing the minimum term to be served by an offender convicted of murder. Those principles were considered and approved more recently in Northern Ireland in *R v Mark Ward* (No 2: Tariff) NICA 18. The Practice Statement provides for two starting points. It states:

"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.*"
[emphasis added]

[20] The reference in the Practice Direction of 8 to 9 years being the equivalent to 16 to 18 years reflects the notional reduction that judges make to take into account the 50% remission or reduction in actual time to be served in prison, such remission or reduction being built into the statutory scheme for determinate sentences.

The approach to the Practice Statement

[21] In *Ward*, McCloskey J, as he then was, explained at paragraph 7 that the choice of starting point should not be approached in a mechanistic way:

"Rather, it involves an evaluative judgement on the part of the judge who has become progressively immersed in the dense details and nuances of the trial from its inception to its conclusion."

He further stated at paragraph 14 that:

"One of the main features of the Practice Statement is that it is not overly prescriptive. It eschews rigid boundaries and margins. It does not embody a series of inflexible instructions to sentencing judges. In many places its language, as we have observed above, is open textured.

Its general orientation is to resist the application of a straitjacket approach to sentencing judges ...”

[22] As Colton J recently said in his sentencing remarks in *R v Holmes & Others* [2022] NICC 14, at para [48]:

“Thus, the selection of a starting point is not a mechanistic or formulaic exercise. The guidelines are there to assist the court to proceed to, in the circumstances of the case, what it considers as a just and proportionate sentence having regard to the guidelines. In the words of the statute the tariff should ‘be appropriate to satisfy the requirements of retribution and deterrence.’”

Dr East’s reports and the Pre-Sentence Report

[23] Dr East, Consultant Forensic Psychiatrist, prepared two reports dated 21 February 2023 and 26 June 2023 in respect of your mental state at the time of the killing.

[24] You have no history of mental ill-health and do not meet diagnostic criteria for any mental illness although you have experienced some anxiety since your arrest which is a reaction to your circumstances.

[25] Dr East comments on the presence of cocaine in a blood sample taken following arrest, despite your assertion to police that you had not used an illicit substance in six months and had only ever taken it on about half a dozen occasions. He considers that cocaine use may have been relevant to your description of your mental state at the time of the murder.

[26] You described a state of derealisation, a sense of detachment which is a manifestation of a state of extreme emotional arousal, and which is commonly associated with serious offences, particularly in a person with little in the way of a history of serious violence. Dr East considers that the most likely explanation for your mental state at the time of the murder is a combination of cocaine use and extreme emotional arousal.

[27] In his addendum report, Dr East comments on the history you gave of the threats made by Mr Barriskill and the effect upon you. You recounted disturbed sleep prior to and since the murder, reliving the events leading up to it, but not the actual murder itself. You described being bullied and intimidated by Mr Barriskill and your fear for your own safety and that of your family which caused you to “thrash and lash out” in your sleep and unable to share a bed.

[28] In his initial report, Dr East set out your account in the following terms:

“Mr McNeil described the deceased as “controlling” and that he found himself “being cornered.” Mr McNeil told me that he understood the deceased to be involved in “dog-fights” and “drugs.” Mr McNeil told me that he “didn’t want to know”, but he would receive multiple demands from him. Mr McNeil recalled being told to “stay away” by mutual acquaintances. This all meant that Mr McNeil was “in fear” the deceased. Mr McNeil told me that when visiting the deceased, he was “shown a drug-making machine.” He stated to me that the deceased “told him to take it home and make Es for him.” He did not comply, and this put him in further fear. Mr McNeil went on to state that he received multiple messages from the deceased over the next weeks, demanding that he comply. Two weeks later, he was called by the deceased, who apparently stated that he was a “marked man.” Mr McNeil alleged that the deceased went on to threaten Mr McNeil’s sons.”

[29] Dr East concluded on the basis of your account, supported by the agreed facts relating to the threats, that the state of derealisation you described at the time of the murder reflected the level of emotional arousal caused by the bullying and intimidation. In considering Dr East’s conclusion, it has to be borne in mind that there is no objective evidence as to the nature and seriousness of the threats, given the dearth of evidence about this and a self- serving account cannot be ruled out.

The Pre-Sentence Report (PSR)

[30] The pre-sentence report (PSR), records that you alluded to Mr Barriskill’s character as being a valid reason for the level of fear you felt from the threats. You said that you knew what he was capable of, that some of the threats involved paramilitaries, that you were aware of things he had done in the past which did not result in him going to prison. You said that you thought involving the police would make matters worse and cause more tension, “adding fuel to the fire.”

[31] In the absence of any evidence verifying the content of the threats, counsel were invited to provide any further relevant information to justify your comments. No information was provided on your behalf, but the prosecution submitted a statement in the following terms :

“Mr Barriskill had no relevant convictions, and the police had no intelligence indicating membership, association or affiliation with any paramilitary or criminal grouping.”

The appropriate tariff

[32] The central dispute between the parties relates to the correct starting point before consideration is given to variation upwards or downwards to reflect the aggravating and mitigating circumstances.

[33] The prosecution submits that the higher starting point of 16 years is applicable whilst the defence submit that it is the normal starting point of 12 years. Before turning to those submissions, it is important to reiterate the guidance that the starting point is not to be approached in a mechanistic manner and that the practice statement is there to assist the court in arriving at a just and proportionate sentence which satisfies the requirements of retribution and deterrence.

[34] The prosecution submits that the facts of this case are far removed from the type of case which would typically attract the normal starting point of 12 years. Such cases frequently involve spontaneous quarrels between friends, usually after drink or drugs have been taken. In comparison, it is submitted that your culpability is exceptionally high and the fact that Mr Barriskill had been asleep in his bed, means that he was in a particularly vulnerable position, which in itself, is a factor that justifies the higher starting point.

[35] The prosecution submits that it would have been obvious that lethal injuries would be inflicted. The trajectory of the two bullet wounds suggests that the first shot was discharged while you were standing, and Mr Barriskill was on the bed and the second was fired after he had fallen back upon it. The prosecution submits that there was a clear intention to kill and that the killing bore all the hallmarks of an execution.

[36] Furthermore, the prosecution submits that there are significant aggravating circumstances justifying a variation upwards from 16 years to 18 or 19 years. Those circumstances are:

- (a) the killing was planned (even if only a short time before the murder as evidenced by the steps you took before walking to the house, approximately half a mile away)
- (b) arming yourself with a weapon in advance
- (c) discharging the weapon at close range
- (d) the murder took place within Mr Barriskill's home, where he was entitled to feel safe and secure.

[37] The defence submit that the normal starting point is applicable because the background to the offences relates to a falling out between two neighbours who had been friends for many years. The defence does not accept that you went to the house planning to kill the victim but rather that you merely intended to scare him. The defence rely on paragraph 10 of the Practice Statement, which states that "cases

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 paragraph 12."

[38] The defence submit that the only applicable factor within paragraph 12, is that Mr Barraskill was vulnerable since he was asleep in his bed.

[39] The defence accept the aggravating factors identified by the prosecution, save for the element of planning and that a variation upwards is appropriate, whichever starting point the court considers appropriate.

[40] In my judgment, this is clearly a case in which a higher starting point of 16 years is appropriate, in view of Mr Barraskill's vulnerability, asleep in his bed when you entered the house and in no position to defend himself.

[42] I also accept the aggravating factors identified by the Prosecution and outlined above, including the element of planning. I do not accept the Defence submission that you only intended to scare Mr Barriskill. If that had been your intention there was nothing to stop you firing a warning shot outside the house. Nothing in the facts of this case is consistent with an intention only to scare him. In view of the aggravating factors in this case, I consider that the starting point should be varied upwards to 19 years.

The Mitigating Circumstances

[43] I now have to consider the mitigating circumstances. You are 55 years old, married with three adult children and you have no relevant criminal record. You have an excellent work history. You told the probation officer that you had taken a couple of glasses of wine on the evening prior to the murder occurring and on reflection you feel that alcohol had become a crutch to help you to deal with the threats from Mr Barraskill. In relation to the cocaine, you told the probation officer that you used very little of it in the past. It is noted that you passed a drug test in custody.

[44] The probation officer confirmed the information in Dr East's report that your mental health has deteriorated since your remand into custody and that you have been noted to be a prisoner at risk on a number of occasions. You have however, used your time constructively whilst in custody, completing qualifications and assisting other prisoners as a peer mentor.

[45] The positive aspects of your character are apparent from the four character references submitted on your behalf. The people who have written these references have known you for decades and speak of you as an honest, trustworthy and hard-working man, devoted to your family and always ready to help anyone in need. In particular, each of them confirms that you have no history of violence or aggression.

[46] Whilst your counsel attaches significant weight to your previous character, the authorities are clear that this factor does not weigh heavily in a case such as this. In *AG's Reference (Number 6 of 2006) (Niall David McGonigle)*, Kerr LCJ referred to *AG's Reference (No 7 of 2004) (Gary Edward Holmes)* [2004] NICA 42 where the court said:

“[15] The personal circumstances of the offender, while of some importance in this particular instance, could not have removed the case from the category of normal disposal...Such factors will always be of limited effect in the choice of appropriate sentence.”

And in *AG's Reference (No 6 of 2004) (Conor Gerard Doyle)* [2004] NICA 33, the court said:

“[37]... as this court has frequently observed, the personal circumstances of an offender will not normally rank high in terms of mitigation, particularly where the offence is as serious as that in the present case. “

Conor Doyle was convicted of murder.

[47] You gave an account of the murder to the probation officer which mirrored an earlier account to police, and which is not accepted by the prosecution - that the trigger of the gun was only pulled after Mr Barriskill tried to lean forward to grab the gun. You said that you did not remember how you pulled the trigger a second time because everything happened so quickly.

[48] The prosecution queries your level of remorse in light of this account which suggests an accidental shooting and is at odds with your guilty plea. However, the probation officer describes your distress when discussing the murder and considers that you do have a good level of insight into the harm that that you have caused to Mr Barriskill's family, as well as your own family. The fact that you handed yourself into police within hours of the killing, ensuring that Mr Barriskill's body was quickly discovered and that there was no question as to the perpetrator, is also evidence of remorse. Mr Barriskill lived alone, and his body may have lain undiscovered otherwise.

[49] I have also had regard to the judgment of Kerr LCJ in the case of *R v Conway* [2004] NILST 23 where the court did not leave remorse “entirely out of account” by way of mitigation because of Conway's continued assertion that the murder of which he was convicted was an accident. In this case, the defendant is clearly in a stronger position than Conway in relation to remorse and I do give weight to it notwithstanding that there is evidence that you continue to minimise your culpability.

[50] You are assessed as presenting a low likelihood of further reoffending and despite the gravity of your actions, you are not assessed as posing a significant risk of serious harm to others. That assessment is based on a current balancing of risk and protective factors and in particular, your limited offending history and supportive family relationships. It is the assessment of risk which the parole commissioners will carry out in the future which will determine when you are safe to be released.

[51] In relation to the threats from Mr Barriskill, whilst it is accepted that these were made, it is difficult to properly assess their significance given that the court only has your account, and you destroyed your phone which you say would have provided some objective evidence of their nature and seriousness.

[52] It is not suggested on your behalf that the threats in any way justified the murder, but it is submitted that they must have been operating on your mind. I note that the last threat, on your account, was approximately 10 days earlier and the police have confirmed that Mr Barraskill had no criminal or paramilitary connections.

[53] The prosecution referred the court to the correct approach when there are disputed facts, set out in Blackstone's 2018 ed at D 20.8 (see also D 20.80). The judge is entitled to hold a Newton hearing to ascertain the truth about disputed facts and where the issue arises from facts that are within the exclusive knowledge of the accused, the defence should be willing to call him. If he does not give evidence, the judge may draw such inferences as she thinks fit, subject to any explanation put forward.

[54] Matters of mitigation are not normally dealt with in a Newton hearing but where there is no evidence to support an accused's account other than his contention, the judge is entitled to invite defence counsel to call his client. In this case, whilst there is evidence that threats were made, the only person who can assist the court in assessing their significance is you.

[55] The prosecution submit that a Newton hearing is not necessary in this case because the issue of threats is of marginal significance given the serious aggravating circumstances. In any event, you have not given any evidence although you have instructed your counsel as to the details and you described them in the course of police interviews. In those circumstances, whilst I attach some weight to this factor, I am unable to afford it substantial weight.

[56] Your guilty plea is a significant mitigating factor, although it was not entered at the first opportunity, and was entered a relatively short time before trial. Discussions between counsel had been ongoing for a couple of weeks. In *R v William Turner & James Henry Turner* [2017] NICA 52 the then Lord Chief Justice

conducted an analysis of the approach to sentence reduction for guilty pleas in murder cases throughout the UK. Ultimately, the court concluded (at paragraph 40):

“Each case clearly needs to be considered on its own facts but it seems to us that an offender who enters a not guilty plea at the first arraignment is unlikely to receive a discount for a plea on re-arraignment greater than one-sixth and that a discount for a plea in excess of 5 years would be wholly exceptional even in the case of a substantial tariff. We have concluded, however, that it would be inappropriate to give any more prescriptive guidance in this area of highly fact specific sensitive discretionary judgement. Where, however, a discount of greater than one-sixth is being given for a plea in a murder case the judge should carefully set out the factors which justify it in such a case.”

[57] I consider that 1/6th reduction for your guilty plea is appropriate in this case. I have taken a starting point of 19 years. Taking into account your guilty plea and the additional mitigating factors the tariff shall be 15 and ½ years.

[58] It needs to be understood that this is the minimum period that you will serve, less any period spent on remand in custody. After you have served that period, it will be for the parole Commissioners to determine when it is safe to release you back into the community to serve out the remainder of your life sentence on licence.

[59] In relation to the second count, I impose a sentence of 9 years concurrent.