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IN THE CROWN COURT IN NORTHERN IRELAND
SITTING AT LAGANSIDE

THE KING

v

SHARON HARLAND
and
RHONA GRACEY

Mr N Connor KC with Ms S Gallagher (instructed by Public Prosecution Service) for the Crown
Mr F O'Donoghue KC with Mr S Doherty (instructed by Quigley Grant & Kyle, Solicitors) for the Defendant Harland
Mr E Grant KC with Mr T McCreanor (instructed by Keown Nugent, Solicitors) for the Defendant Gracey

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O'HARA J

Introduction

[1] Mr Daniel Guyler was a 75-year-old man living in Londonderry when he was attacked and robbed on 23 July 2018. He was critically ill and deeply unconscious when attended to by an ambulance crew responding to an emergency call. Mr Guyler never regained consciousness but only died on 1 May 2019, more than nine months later.

[2] The defendants were charged with his murder and with robbery. After discussions with the prosecution, they pleaded guilty to unlawful act manslaughter rather than murder. The robbery charge was "left on the books" i.e. not proceeded with. However, robbery remains an aggravating factor in the case because in all likelihood the assault on Mr Guyler which led to his death was committed in the course of a robbery. His wallet was found soon after the attack, but with approximately £400 missing from it, and the defendants were noticed to have unexpected amounts of money.

[3] Mr Guyler's eventual death was due to aspiration pneumonia as a result of traumatic axonal injury. This occurs when the brain shifts rapidly inside the skull as an injury is being inflicted, causing subdural haematomas. When Mr Guyler was found on the street, he had obvious facial and head injuries including bruising and swelling around his face, a laceration to his right ear and contusions around both eyes.

[4] No witness saw the attack on Mr Guyler. It is not clear how much violence was inflicted on him or how he was attacked. It may be that some of his injuries were caused when he fell to the ground. The defendant Harland says she does not recall what happened. The defendant Gracey gave an account in her pre-sentence report which does not reveal very much and has to be treated with caution. According to that version, the defendants and Mr Guyler were part of a larger group of people drinking and, in her case, taking Xanax. He gave her money a few times to buy more alcohol. Eventually, there were just three of them left. At that point, for some reason which is not clear or has just not been disclosed, there was the attack.

[5] It is not possible to explain events any more clearly than that. The conduct of the defendants after the attack led immediately to them being suspected of involvement. They ran away and were seen disposing of the wallet. They were directly linked to the attack by Mr Guyler's blood being found on their clothing. No distinction is to be drawn between them in terms of their involvement.

Mr Guyler

[6] Mr Guyler was a vulnerable man. He was 75 years old, and a frail 75 at that. He was a heavy smoker, probably with some history of heart problems and was known to suffer from chronic obstructive pulmonary disease. Until February 2018 he had been in prison for some time. After his release he moved around before he ended up living in Londonderry.

[7] I have read a victim impact statement from a nephew who has many happy memories of time spent with Mr Guyler in years gone by. Even up to July 2018 they spent time together, talking regularly by phone and meeting weekly. For this nephew the period from July 2018 to his uncle's death nine months later was exceptionally difficult. On his regular visits to the hospital, he found it distressing to see his uncle with tubes coming out of his body, lying uncommunicative month after month.

[8] This statement is a reminder of just how upsetting the death of a relative or friend can be, even if that person ended up in later years leading what would be regarded as a troubled life. There is nearly always someone left behind who suffers a real loss. And, to emphasise the obvious, even a troubled or difficult life is protected by the law. It is still a life which has been taken unlawfully and the defendants must be punished for that.

Aggravating and Mitigating Factors

[9] In their extremely helpful written and oral submissions, for which I am grateful, counsel have set out what they suggest are aggravating and mitigating factors. For the prosecution it is suggested that the aggravating factors are as follows:

(i) The attack on Mr Guyler was unprovoked.

(ii) Mr Guyler was vulnerable by reason of his age and physical characteristics.

(iii) The attack occurred in the course of a robbery and was, therefore, for financial gain.

(iv) Both defendants have relevant criminal records for offences of violence.

(v) The defendant, Gracey, was in breach of licenced conditions at the time of the commission of the offence.

[10] I accept that list but subject to the point that there is some overlap between the factors and that they are in the context of a plea of guilty to manslaughter. The very fact that manslaughter is admitted in this case means that the defendants accept unlawful killing by an assault on the deceased.

[11] In terms of mitigation the prosecution accepts that the plea of guilty to manslaughter, as soon as it was offered instead of the original murder charge, is relevant. I agree but I also accept the suggestion for the defendants that mitigation goes a little further than that in this case. We do not know how much violence was inflicted on Mr Guyler, whether it was one blow or more. Nor do we know whether injuries were caused by his fall as well as by the attack. What we do know, however, is that there was no intention to kill him or cause him serious harm because if there had been, the defendants would have continued to face a murder charge.

[12] I accept that in view of the extent of Mr Guyler's physical frailties it may have been possible for the defendants to try to fight the case on the basis that it could not be proved exactly what caused his death. This might have been a matter of some debate though, in my judgment, such a defence would probably not have succeeded. Nevertheless, some credit can be allowed to the defendants for accepting that fact.

[13] At this point it is necessary to consider the personal circumstances of the two defendants because there are differences between them which affect the sentences which I will impose.

Ms Gracey

[14] In July 2018, Ms Gracey was almost 32 years old. She is now 36. Her criminal record is dreadful. She has 55 previous convictions. Most significantly, she has a record for serious assaults and causing serious injury. In 2015 she was convicted of inflicting grievous bodily harm on a disabled man who used a Zimmer frame. The assault on him resulted in severe traumatic brain injuries which were caused by her fists. She locked the victim in a cupboard after the assault and told a witness that she did not know if he was dead or alive. In 2014, she and a co-defendant were convicted of grievous bodily harm and attempted robbery after attacking a man with a hammer. They caused serious injuries requiring 33 stitches to lacerations to his head and face. In the course of that attack, they brought the victim to a cashpoint and demanded money until members of the public intervened. Some years earlier in 2012 she was convicted of causing actual bodily harm when she pushed a man through a window because, she alleged, he had been "sleazy" towards her. Earlier again, in 2007, she was convicted of wounding when she and a co-defendant attacked a woman in her home, stabbing her in the thigh. Another resident at the same address received a suspected fractured skull, having been hit on the head with a hammer. Ms Gracey had forced entry to the house and assaulted residents with a hammer, a wooden walking stick and a kitchen knife.

[15] At the time of her attack on Mr Guyler, Ms Gracey was in breach of the licence conditions upon which she was released from prison in June 2018. These conditions had been imposed for the protection of the public but also for her own good. She was unable to recognise that and had stopped taking prescription medication. Instead, she was self-harming. Upon her arrest on the current charge, she had her licence revoked.

[16] In part all of this reflects a childhood and adolescence full of difficulties and trauma which have continued throughout her adult life. Her father served time in jail and her mother had mental health issues which led to the family home being disrupted and deeply unhappy. All of this has had an adverse long term impact on her development and behaviour. She has suffered from homelessness and from addictions. It is unhelpful to recite all of the details of this life, but a strong indicator of the extent of her problems is that she has two daughters who she has not been able to raise herself. She is currently on significant medication for anxiety and depression among other problems. There are also reports of her trying to take her own life within the prison.

[17] Despite all of that she has at last begun to show some positive signs since she was in prison. According to the pre-sentence report from the Probation Board, which I have found very helpful, she has been on an enhanced regime since April 2022 and she is trying to deal with her problems so that, for example, she is on a drugs substitution programme and has not been subject to any adjudications (i.e. breaches of prison regulations).

[18] Almost inevitably the pre-sentence report concludes that Ms Gracey has been assessed as posing a significant risk of serious harm. That means that there is a high likelihood of her committing a further offence and causing serious harm. For this reason, the Probation Board have indicated their support for any application made to the court by the police for a Violent Offences Prevention Order ("VOPO").

Ms Harland

[19] In July 2018, Ms Harland was 42 years old. She is now 47. Her criminal record is extensive with 50 previous convictions, but they have all been dealt with in the magistrates' court, indicating a lower level of criminal conduct than Ms Gracey's. There have been prison sentences but comparatively short ones. From 2017 onwards there has been a series of drug convictions, dealt with by fines and conditional discharges.

[20] The pre-sentence report paints a picture of a childhood and life which, like Ms Gracey's, has been full of difficulties and trauma. From about the age of 11, Ms Harland started running away from home and ended up in a children's home. She is reported to have been raped and abused repeatedly. She has a history of drug and alcohol abuse over almost 30 years, from her teens. While she has six children, none of them are in her care, nor have they been for approximately 20 years.

[21] It is not surprising that a psychiatric report and addendum from Dr G Loughrey confirms a long history of engagement with psychiatric services. His view is that, in addition, to a personality disorder and drugs dependency diagnosed some years ago, she is now a paranoid schizophrenic. That diagnosis is supported by observations and treatment decisions made in the community and in prison.

[22] In his report dated July 2022, Dr Loughrey says the following:

> "… the more stable this client's mental state is, the less likely she is, on balance, to carry out violent behaviour and that is for a number of reasons including that she would no longer be as paranoid about other people and have delusional beliefs about them, sometimes involving the perception of threat or injury but also that, simply by having a more stable mental state, her emotions will be more stable and she will be able to address her addiction behaviour more readily and to therefore behave in a more stable fashion.
>
> The current mental state indicates that she is still actively unwell and still in need of treatment. There is unfortunately a striking level of consistency between the bizarre psychotic ideation and unstable behaviours

> observed in the history and those that are described in the recent medical files …
>
> This lady will need continued treatment, and this will take a number of forms.
>
> First, she will need continued drug treatment for her schizophrenia and that is anti-psychotic medication. It would be important that consideration is given to ensuring that she remained on this medication, in as compliant a fashion as possible, for essentially as long as possible.
>
> Second, she would benefit from specific treatment directed towards her addiction and with supervision of her behaviours, especially when she is again at liberty.
>
> Further, she would benefit from social elements of treatment including the provision of a more stable lifestyle and that would include an appropriately supervised housing placement. She is likely to be more structured and better supervised in specialist housing than she would be in, for example, homeless accommodation.
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> Finally, she will need long term supervision and I am essentially certain that the relevant community forensic mental health team will be involved in providing this, as and when, this client is again at liberty."

[23] Following her arrest in July 2020 on the charges of murder and robbery, Ms Harland was charged and remanded in custody, but shortly afterwards detained in the Shannon Clinic. She has remained there ever since, for more than two years. On 17 January 2023 a Mental Health Review Tribunal decided that she should be subject to detention for a further period. The Tribunal accepted that detention for treatment in hospital was necessary in all the circumstances, particularly because given her previous non-compliance with medication and non-engagement with mental health services combined with her substance misuse she would likely be non-cooperative if she was not detained in hospital for a further period. In reaching that decision the Tribunal took account of what it regarded as her lack of insight into her mental illness and her need for medication. The Tribunal was also satisfied that her discharge would create a substantial likelihood of serious physical harm to herself and/or to other people.

[24] Against that background the Probation Board has correctly decided that under its risk assessment procedures Ms Harland presents a high likelihood of

reoffending and a significant risk of causing serious harm. If and when she is deemed suitable for release, they would expect her to comply with a series of conditions similar to those referred to by Dr Loughrey and the Mental Health Review Tribunal. These would include engaging in treatment as directed by a mental health team, complying with the medication regime and remaining free from drugs and alcohol.

[25] Subsequent to this report being prepared the prosecution have sought a Violent Offences Protection Order similar to the one referred to above in relation to Ms Gracey.

Approach to sentencing

[26] In *R v Magee* [2007] NICA 21 the Court of Appeal gave broad guidelines to be followed when sentencing defendants for manslaughter. Those guidelines are still relevant today. At para [22] of the court's judgment, Kerr LCJ said:

> "Offences of manslaughter typically cover a very wide factual spectrum. It is not easy in these circumstances to prescribe a sentencing range that will be meaningful. Certain common characteristics of many offences of violence committed by young men on other young men are readily detectable, however, and, for reasons that we will discuss, these call for a consistent sentencing approach."

[27] The court continued at para [26]:

> "We consider that the time has now arrived where, in the case of manslaughter, where the charge has been preferred or a plea has been accepted on the basis that it cannot be proved that the offender intended to kill or cause really serious harm to the victim and where deliberate substantial injury has been inflicted, the range of sentence after a not guilty plea should be between eight and fifteen years' imprisonment. This is, perforce, the most general of guidelines. Because of the potentially limitless variety of factual situations where manslaughter is committed, it is necessary to recognise that some deviation from this range may be required."

[28] From this judgment and others which follow from it, it is clear that a sentencing judge has a broad discretion when deciding what sentence should be imposed in a manslaughter case.

[29] I have also been helpfully referred to a decision of the Court of Appeal in England and Wales, *R v PS and others* [2020] 4 WLR 13. In those cases, the issue was the effect which mental health conditions might have on sentencing judges when assessing culpability and harm and any aggravating or mitigating factors. Of course, that judgment was given in the context of guidelines issued by the sentencing Council. Those guidelines are much more prescriptive than any equivalent in Northern Ireland. Nevertheless, it is difficult to find anything to dispute in what is said at paragraphs [17] and [18]:

> "17. It will be apparent from all of the above that sentencing an offender who suffers from a mental disorder or learning disability necessarily requires a close focus on the mental health of the individual offender (both at the time of the offence and at the time of sentence) as well as on the facts and circumstances of the specific offence. In some cases, his mental health may not materially have reduced his culpability; in others, his culpability may have been significantly reduced. In some cases, he may be as capable as most other offenders of coping with the type of sentence which the court finds appropriate; in others, his mental health may mean that the impact of the sentence on him is far greater than it would be on most other offenders.
>
> 18. It follows that in some cases, the fact that the offender suffers from a mental health condition or disorder may have little or no effect on the sentencing outcome. In other cases, it may have a substantial impact. Where a custodial sentence is unavoidable, it may cause the sentencer to move substantially down within the appropriate guideline category range, or even into a lower category range, in order to reach a just and proportionate sentence. A sentence or two in explanation of those choices should be included in the remarks."

[30] In truth, this approach chimes with one which was already apparent in this jurisdiction – see for example *R v Doran* [1995] NIJB 75 in which Hutton LCJ said at page 5:

> "Mental illness, which, of course, can vary greatly in severity and degree and in effect, is not an automatic reason for reducing the sentence imposed for a criminal offence, but we consider that there can be cases in which it is just for a court to make a reduction in the sentence which it would otherwise impose to take account of the

mental illness by the accused and of its effects on his criminal conduct.

There are a number of authorities in which this approach has been taken. In the Australian case of *Joyce v Svikart* [2 June 1994, unreported] the accused was sentenced to 3 months' imprisonment for assault. He appealed against this sentence to the Supreme Court of the Northern Territory of Australia sitting in Darwin on the ground (inter alia) that:

> 'The learned Chief Stipendiary Magistrate erred by failing to give sufficient weight to the appellant's mental illness (schizophrenia) when determining questions of general deterrence.'

On the hearing of the appeal the court reduced the sentence and Thomas J stated:

'19. I accept the principle of law in dealing with persons suffering mental illness is: General deterrence should often be given very little weight in the case of an offender suffering from a mental disorder or abnormality because such an offender is not an appropriate medium for making an example to others.'"

[31] Following this established approach it is clearly possible to make allowance for a mental illness in some circumstances. However, that can only be to a limited degree because otherwise the need to punish offenders and deter not just them but others from serious criminal offending would be undermined. This point is illustrated by the judgment of Coghlin LJ in *R v Foster* [2015] NICA 6 in which at para [16] he said:

> "As Kerr LCJ observed in *R v Quinn* [2006] NICA 27 substantial sentences are required to deter individuals from this type of wanton violence and to remind them that if their actions go beyond what they in their drunken condition intended they must face the consequences. Deterrent sentences are also required to mark society's outright rejection of such behaviour and to reflect the inevitable emotional consequences of the loss of a life."

[32] So, there is perhaps some degree of tension in a case such as this which involves the killing of a frail elderly man in the course of a robbery. On the one hand there is the need to punish and deter offenders. On the other hand, a

mitigating factor for Ms Harland is the mental health problems apparent from the reports.

[33] Before passing sentence I must refer to one further issue. It is accepted on behalf of both defendants that because the dangerousness threshold has been met, this is a case in which an extended sentence can be imposed. The period of the extended sentence shall not exceed five years – see Article 14(8) of the Criminal Justice (NI) Order 2008. The purpose of such an extended sentence is protective rather than punitive.

Conclusion

[34] Having considered all of the submissions, reports, and authorities, I now come to pass sentence. The assault which took Mr Guyler's life was an assault on a frail elderly man who had been drinking for some time with the defendants. At least, in part, it was motivated by robbery. The defendants ran off and left him grievously injured on the road. He lingered in hospital for nine months before he died. His death has had a severe impact on his nephew, an impact which continues to this day.

[35] I accept the aggravating features advanced by the prosecution save to note that the fact that there are five such factors does not necessarily make this case worse than one with, say, three aggravating factors, but aggravating factors of more gravity.

[36] I make a distinction between the two defendants in terms of sentencing for two reasons. The first is that Ms Harland's criminal record, while significant, features much less serious violence than Gracey's. The second is that in Harland's case there was at the time of the offence and there is still now a grave mental health problem which has resulted in her being detained in the Shannon Clinic. I acknowledge that Ms Gracey has her own problems which are not insignificant. They are not however on the scale of Ms Harland's and do not amount to a mitigating factor, especially since she had breached licence conditions and turned her back on supports put in place following her release from prison.

[37] In these circumstances, before allowing for the pleas of guilty, I would impose a sentence of 12 years on Ms Gracey and 10 years on Ms Harland. Then I must allow for the pleas of guilty. While those pleas are to be recognised, there is still a limit on how much allowance should be made for them given the failure or refusal by both defendants to acknowledge any part or responsibility at the time of the attack on Mr Guyler. Taking account of all of these factors, I reduce the sentences to nine years for Ms Gracey and seven years six months for Ms Harland. In Harland's case it may be that most or all of her time will continue to be spent in the Shannon Clinic. At this stage, however, nobody knows if or how she will progress, and I have to pass sentence now without the advantage of reassessing it in the years ahead when her condition (hopefully) changes for the better.

[38] I also impose an extended sentence on each defendant. The maximum permissible extension of sentence is for five years. In light of the sentences which I have already imposed I will limit the extended sentence in each case to three years. That extension is intended to be protective. It will, or should, assist each of these two troubled women in the years ahead while also protecting the public.

[39] The parties agreed during the sentencing hearing to defer any applications for Violent Offences Protection Orders until they learn what sentences I impose. I will now allow time for those sentences to be considered. In light of the fact that I have passed extended sentences on each defendant it may be that the need for VOPOs in either case is no longer present but in the first instance that is a matter for the prosecution to consider.