

Tariff certified by the Secretary of State under Life Sentences (NI) Order 2001 on 03-07-06

THE QUEEN v COLIN PAUL KING

DECISION ON TARIFF

Before Kerr LCJ and Campbell LJ

KERR LCJ

Introduction

[1] On 13 February 1998 Campbell J, sitting at Belfast Crown Court, sentenced the prisoner and his co-accused, Adrian Michael Gerard Wilson, to be detained at Her Majesty's pleasure for the murder of an 83 year old widow, Bessie Robson, on 29 December 1994. The sentence was passed after the conviction of the offender and his co-accused following a retrial, the original conviction of 6 March 1996 having been quashed by the Court of Appeal on 23 December 1996. The prisoner pursued an appeal against the second conviction but this was unsuccessful. His co-defendant launched an appeal against his second conviction but later abandoned it. The prisoner was also sentenced to a determinate term of 12 months for burglary. He has been in custody since 7 January 1995.

[2] On 19 May 2004 Campbell LJ and I sat to hear oral submissions on the tariff to be set for the prisoner's co-accused under Article 11 of the Life Sentences (NI) Order 2001. The tariff represents the appropriate sentence for retribution and deterrence and is the length of time a 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. We concluded that a minimum term of fifteen years was appropriate. This prisoner has elected

not to seek an oral hearing. Campbell LJ and I have considered the written submissions made on his behalf and the other materials that we shall refer to in this ruling before deciding on the minimum period to be fixed in his case.

Factual background

[3] At approximately 10.30pm on Thursday 29 December 1994 neighbours noticed smoke coming from 5 Bellevue Park, Belfast, the home of the deceased, Mrs Bessie Robson. The Fire Brigade was called and officers discovered Mrs Robson's body in the corner of a bedroom between the bed and front window. The room was said to have been in a very advanced stage of burning and the body was so badly burnt that it was not possible to recognise whether it was male or female. Forensic testing concluded that the fire was started by direct ignition, probably on the bed and possibly on the body. It was not clear whether an accelerant had been used.

[4] A post mortem examination was performed by Dr Derek Carson on 30 December 1994. He concluded that death was due to stab wounds, including a stab wound of the heart, and multiple head injuries. Dr Carson's report stated that Mrs Robson was approximately 5 feet in height. Her body had been grossly burned. The post mortem report contained the following passage:

"There were quite extensive and severe head injuries. A large area of bruising affected the back of the right side of the scalp and was seen best when the scalp was reflected, when a scalp laceration was also revealed in the deeper layers. Anteriorly on the forehead there were a number of splits in the skin, numbering at least seven in all. On each side of the forehead one of these was straight and the tissues relatively cleanly divided, suggesting knife wounds, whilst the others were irregular and suggestive of blows from a blunt object as was the bruising posteriorly. The skull was not fractured but there was a collection of blood clot on its inner surface on the left side and there was some surface bleeding on the brain but no bruising. There was extensive bruising of the eyes, the nose was broken and there was blood in

the nose and mouth. A jagged wound on the left cheek was associated with considerable bleeding into the tissues on the left side of the face extending from the eye above to the margin of the lower jaw below. This injury could have been caused by a heavy blow on the cheek, splitting the tissues as they overlay the prominence of the cheek bone, or alternatively the wound may have been a ragged penetrating injury.

There were three smallish stab wounds on the right side of the neck and at least two on the front of the chest. These wounds varied in width and appeared to have been made by a knife with a fairly narrow tapering blade. In the case of the lower of the two chest wounds the knife had penetrated the right ventricle of the heart, causing a fairly small wound and allowing blood to escape into the heart sac and left chest cavity. The depth of this wound, the deepest of the stab wounds, was about 5cm (2 inches), the others varying from 1 to 3 cm."

[5] The devastation to the body of the deceased was such that it was not possible to say whether the burning of her body started before death and contributed to it. The two main sets of injuries were the extensive head injuries and the stab wounds of the neck and chest - death was due to their combined effects.

[6] The day after the fire a number of Mrs Robson's personal items were discovered in outside locations in the vicinity of her home. A number of witnesses placed the prisoner and his co-defendant in the area both before and after the murder. They were both noticed to have drink taken. Wilson was seen to be carrying a knife. There was, however, no direct evidence of the pair having been at Mrs Robson's home.

[7] One witness, Teresa McLarnon (the former girlfriend of King), made a statement to police on 5 January. She stated that at around 10.30pm Wilson called at 253 Whitewell Road (where he knew her to be visiting a friend) looking "serious" and told her that King wanted to speak to her. He told her that the "Proxies" were after the pair and she went outside to King

who was sitting at the bottom of the garden. She asked what the matter was and King shrugged his shoulders. He was said to be shaking and holding his face in his hands. He would not answer either Ms McLarnon or Wilson. Ms McLarnon grabbed King by the wrist and he staggered up and suggested that they go to his uncle's house. They walked to the house and Wilson gained entry through a window and opened the front door. Ms McLarnon recalled that he said to King, "...come on Colin we have to go and get cleaned up". King remained seated and when Ms McLarnon asked him what he had done he replied, "I did everything, everything, I've got to go to the Isle of Man". He then said that he had killed a 'Provie'. Wilson came back into the room and told King to get cleaned up. When King took off his coat Ms McLarnon saw blood on the front left chest area and the cuff of the left sleeve. Wilson gave King a face cloth and he attempted to clean the blood from his clothes. A discussion took place about what they should do next described by Ms McLarnon as follows: -

"Colin kept saying we have to get out of Ireland, we have to get to the Isle of Man ... Scottie (Wilson) said 'no, just go home act normal'. If you got to the Isle of Man they're going to know it was us. They have no proof but if we go they will know it was us. He said they should go home and just act normal. They kept talking like this trying to convince each other what was the best thing to do."

King went to lie down and Ms McLarnon watched Wilson clean his shoes: -

"Scottie sat on the bath he had one foot on the toilet and was cleaning it with the face cloth. I could see blood on his shoe between the sole and the top of the shoe ... I could see thick blood on the edge of the shoe. As he rubbed the blood I could see it on the face cloth. He was wearing a pair of blue Levi jeans. There was blood on the inside of the left leg ... He got up threw the face cloth down the toilet and flushed it.

Wilson is said to have told Ms McLarnon that they had killed a man over stolen jewellery. He is said to have told Ms McLarnon: "Don't be worrying about it, it's over and done with now". Ms McLarnon said that Wilson did

not appear regretful but rather that he 'seemed happy because he was singing and smiling...'. They left the house and Ms McLarnon telephoned for a taxi for the pair from her own home.

[8] A 14 year old witness stated that he had previously been with Wilson and King to Mrs Robson's house and that they had expressed an interest in robbing it. On that occasion they were prevented from proceeding with the burglary because when the prisoner had knocked the front door a man had appeared. (During police interview Wilson accepted that he had previously called at Mrs Robson's house for the purpose of committing burglary).

[9] A knife was discovered in the bathroom of the house that the pair had used to wash themselves after the murder. Another knife (believed to be the murder weapon) was discovered in a drain close to the murder scene. In the Court of Appeal's account of the first trial Hutton LCJ referred to forensic evidence of Mrs Robson's blood on the shoes of both defendants, but this evidence is not currently available.

[10] Throughout several interviews by police both accused denied involvement in the murder. Later, when they began to make admissions, each admitted to the burglary but blamed the other for the attack on Mrs Robson.

[11] King was arrested on Sunday 2 January and interviewed on four occasions that day and twice the following day. He was then released but was re-arrested and made his first admissions on the afternoon of 7 January 1995 when statements placing him at the scene and evidence of the deceased's blood on his shoes were put to him. He stated that as they burgled the house they were confronted by Mrs Robson in her bedroom. Wilson ran towards her shouting "Where the fuck's your money?" and King went to another room and searched through a handbag and when he walked back he found Wilson kicking Mrs Robson on the head: "...then when I walked round I seen the woman's face was all bruised and battered and all that there. Then I just stood there and stared at her for a while. I says c'mon get out of here, get out of here, then he says hold on, hold on and he started emptying stuff over the woman and then he stood on the bed and started throwing it over the bed..." King denied knowing anything about a stabbing. He maintained that he did not touch Mrs Robson at all. He stated that Wilson set fire to the room.

[12] In the appeal from the first conviction Hutton LCJ outlined King's testimony in the following passage: -

“At the trial each appellant sought to place the sole responsibility for the killing on the other. In his evidence King said that on the evening of 29 December he did not see Wilson with a knife at any time or even think that he had one. He and Wilson went into the garden of 5 Bellevue Drive. Wilson got in by a window which was open and then let him in by the front door. He (King) had seen no light in the house as they approached it. On entering the house he went to the living room where a light was on and searched a handbag which was on a chair, but there was nothing in the handbag. Wilson was in the hall at this time. He and Wilson then went down the hall and they both entered the bedroom at the end of the hall where a light was on. He saw a woman standing beyond the bed. Wilson then shouted twice "where the fuck's your money?" and jumped onto the bed towards her. He (King) left the bedroom leaving the door open. He did not hear the woman speak or shout. He went to the living room and the kitchen looking for money but found none and two or three minutes later he returned to the bedroom where he saw Wilson "throwing a kick", he walked round to the window where Wilson was standing and he saw the woman lying on the floor near the window. There was blood on the walls and on her face which was all bruised. He said to Wilson to come on and tugged him and as he (King) went to leave Wilson said to hang on. He stood while Wilson started throwing "stuff" over the bed and the body. Wilson then lit the bed and they ran off, he did not realise what Wilson was doing until he set fire to the bed. He (King) had not at any time touched the woman. They then ran away from the house.”

[13] Neither defendant gave evidence at the second trial but in the course of Wilson's tariff hearing a letter from him was submitted to the Court in which he admitted having killed Mrs Robson with a bottle opener.

Antecedents

[14] The prisoner has previous convictions for disorderly behaviour, burglary and obtaining property by deception. He has no previous convictions for offences of violence.

Written representations

[15] No representation has been made on behalf of the victim's family. The prisoner's solicitors made a written submission in which the following passages appear: -

"At all times, and still at today's date, the applicant states that he entered the property solely with the intention of carrying out a burglary of the property and at no stage intended to cause any harm to the occupant. He maintains that, at no stage, did he know that Wilson had a knife or see Wilson with a knife, and this only came to his attention when he was arrested by Police subsequently...Further, he now believes that his co-accused has admitted being the person who stabbed Mrs Robson, to prison staff and fellow inmates."

and

"The applicant has maintained his innocence of the actual murder in this case and therefore any remorse is difficult to gauge, but we would submit that the applicant is clearly sorry that his burglary has caused the death of this woman and understands the effect of his actions."

Observations by the Court of Appeal

[16] Delivering the judgment of the Court of Appeal on the prisoner's second appeal, McCollum LJ said: -

“We have no doubt that there was an overwhelming case against each of the accused that he entered the deceased’s house knowing that she was likely to be present. Neither gave evidence and it is true to say that no evidence existed to raise a reasonable doubt to the effect that one of these accused had gone far beyond the common purpose of both. It was clear that their association continued for the rest of the evening after the crime had been committed and at a time when each admitted that he knew that the deceased had at least been grievously wounded and had had her house set on fire. It is difficult to imagine that a jury could have had any doubt that the fatal events in the house had been fully contributed to, or at least have been aided and abetted by each ... It is clear ... that the prosecution was alleging that the forensic evidence established that King took an active part in the attack on the deceased and whether he did that alone or in concert with Wilson was immaterial. It is also clear that the prosecution was prepared to rely in its opening on the accuracy of that part of Wilson’s statement which admitted that he left the knife on the bed ...”

Practice Statement

[17] 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."

[18] One of the cases dealt with in the *McCandless* judgment was that of Paul James Johnston who was 18 at the time of the killing of his victim, Sean May. The deceased was a vulnerable man of fifty-eight at the time of

the murder. The trial judge fixed a tariff of 19 years after having made a reduction of two years to take account of the accused's age. The Court of Appeal held that the reduction was appropriate but concluded that the tariff should be fixed at 16 years to reflect the remorse that the offender had shown since. At paragraph 33 the court said: -

“Subsequent events have now shown that Paul has, belatedly perhaps but apparently genuinely, evinced real remorse for his actions by giving instructions that his counsel were not to pursue his appeal against either conviction or sentence. In our opinion this is a factor of some weight and we should take account of it now, even if the applicant did not himself seek that. We consider that there should be a further reduction to reflect it and that the minimum term in Paul's case should be fixed at 16 years.”

Conclusions

[19] The prisoner was one month short of his seventeenth birthday when this offence occurred. It was committed on 29 December 1994 and his date of birth is 26 January 1978. The *Practice Statement* dealt with young offenders at paragraph 24, which states: -

“In the case of young offenders, the judge should always start from the starting point appropriate for an adult (12 years). The judge should then reduce the starting point to take into account the maturity and age of the offender.”

[20] In *McCandless* it was argued that the effect of this paragraph was that sentencers were invariably required to take a starting point of 12 years in the case of a young offender, irrespective of the nature or seriousness of the crime. That argument was rejected by the Court of Appeal in the following passage: -

“Mr Orr suggested that by these remarks [in paragraph 24] Lord Woolf intended that the starting point in the case of young offenders should invariably be 12 years, however heinous the

crime and however clear it might be that it should be placed in the higher category. We are unable to accept that Lord Woolf so intended. It seems to us clear that he was dealing with the mechanics of the calculation of the minimum term in the case of young offenders. That is to be determined by commencing at the same place as in the case of an adult, then applying a reducing factor depending on the offender's age and maturity, before fixing on the starting point. In doing so he was focussing on the method of approach, not prescribing a starting point of 12 years for cases of every degree of heinousness."

[21] We are satisfied that one must begin the tariff fixing exercise in the present case at the higher starting point of 15/16 years. The victim was extremely vulnerable. She was an elderly woman living alone, clearly in no position to resist the violence meted out to her by two youths. The killing occurred in the course of a robbery and the attack on her was gratuitously violent. The higher starting point must be reduced to take account of the offender's age at the time of the offence but we do not consider that it should be adjusted on account of his denial of complicity in the murder. The prisoner has been convicted of the offence of murder and that conviction has been affirmed by the Court of Appeal. It is now possible to deduce, however, that Wilson is likely to have played a more leading role in the commission of the episode. It is also relevant that he was convicted of arson whereas this prisoner was not. In fixing Wilson's tariff, we took account of the aggravating feature that he had attempted to destroy the crime scene. Having due regard to these matters we consider that the appropriate tariff in the case of King is fourteen years.