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IN HIS MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE KING

v

PETER McCARTNEY

Mr O'Rourke KC with Mr Colm Fegan (instructed by Emmet J Kelly & Co Solicitors) for the Applicant
Ms McCullough KC (instructed by the Public Prosecution Service) for the Crown

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Before: Keegan LCJ, Treacy LJ and Humphreys J

KEEGAN LCJ (*delivering the ex tempore judgment of the court*)

Introduction

[1] This is a renewed application for leave to appeal a sentence imposed by His Honour Judge Kerr ("the judge") for attempted murder. The sentence imposed was one of 16 years and eight months and an extended licence period of four years. The applicant was found to be dangerous, and a restraining order was also imposed for the remainder of the applicant's life to protect the victim from harassment. The single judge Mr Justice Huddleston refused leave in a comprehensive decision dated 18 July 2024 and there is now a renewed application before us in relation to the length of the custodial term.

Case history

[2] The case history before the lower court was set out in the prosecution written submissions for plea and sentence as follows. The Bill of Indictment included three counts in relation to crimes of attempted murder and two threats to kill committed on 7 November 2020.

[3] On 11 February 2022, the applicant/defendant was arraigned and pleaded not guilty to all offences offering a plea of guilty to an offence of grievous bodily harm

with intent in lieu of the attempted murder. This plea was not accepted by the prosecution and the case was listed for trial on 25 April 2022. There was a management issue that the principal witness was a child in this case. However, the defendant dismissed his legal team. When a new set of lawyers was subsequently appointed, they applied for an adjournment of the trial to obtain an expert report. The court had indicated that the trial should get on before the summer and a new date was fixed for 23 May 2022.

[4] At that stage the defence applied to have the trial adjourned again, as the expert report referred to, was not received and the case was put back to 19 September for trial. A third set of lawyers became involved at that stage and represented the defendant, who is now the applicant, at trial.

Factual background

[5] The case arises in a domestic context as the applicant and victim were married but separated at the date of the index offence. The background facts are stark and are summarised by the single judge comprehensively. However, we will recite some of them for the purposes of this ruling.

[6] First, it is clear in the period leading up to the commission of the offence there were confrontational messages exchanged between the applicant and the victim on mobile phones via WhatsApp. The theme of the messages largely related to the victim's decision that she was going to proceed with their divorce and that the applicant was not going to see the children anymore. There had been a history of domestic violence over a period of two years prior to the offence, some of which resulted in convictions for the applicant. Also, over the two-year period prior to the offence, the applicant developed a drug and alcohol problem which caused him to be aggressive.

[7] On 7 November 2020, while on bail for a previous assault on his wife which had occurred on 14 July 2020, the applicant entered his wife's home at approximately 5.00 pm in the evening and attempted to kill her by repeatedly stabbing her a total of 19 times. At the time the victim was on a phone call with her sister. Emergency services were called at 5:30pm. The couple's four children then aged 14, 12, 9 and 5 years old, were present at the home at the time of the stabbing. One of the children aged 12, saw the incident and bravely attempted to help her mother by kicking the applicant at least three times in the face. This child then witnessed what happened next. After the incident the child immediately telephoned the grandfather for help. At least two of the children heard the incident, witnessed the aftermath and were involved in getting help for their mother.

[8] The victim said to her sister who remained on the phone line, "I'm dying, he stabbed me, phone me an ambulance, he is after stabbing me." The victim had no memory of the incident, but she phoned for an ambulance and told her children to run to the neighbour's house for help. A neighbour did help until police arrived.

[9] As will be apparent from what we have said the victim was seriously injured in this attack. She had to be taken to hospital for emergency surgery and remained in hospital for over one month.

[10] Of note is that on 31 October 2020, that is about one week before the stabbing, the applicant had entered a neighbouring garden to the victim's house, looked around and squeezed himself between the edge of the wall and the back garden where he remained for about one minute before he squeezed back out. This has been described as his hiding place, because this was where the applicant was ultimately located following the attack on the victim a week later. When he was arrested on 7 November 2020, on the way to custody he said to police, "I know I done what I done." However, in police interview he either made no comment or answered no to all questions.

[11] Medical evidence indicated that this victim suffered serious physical injuries because of the stab wounds. These were life threatening. Without urgent surgical intervention she would have died. Understandably she has also experienced some sequalae in terms of her mental health. Inevitably the children of the family also, suffered considerable distress from this incident, one of whom has now been diagnosed with Post Traumatic Stress Disorder ("PTSD").

This appeal

[12] This appeal began with the applicant lodging a notice of appeal himself two months out of time. No issue is taken with that by the prosecution and so, in principle, we have proceeded on the basis that an extension of time would be granted should there be merit in the appeal. That is because the delay was due to the applicant trying to obtain new legal representatives. He has now done so, and they have advanced this appeal by way of amended grounds of appeal.

[13] In essence, there are three points raised. Firstly, that the starting point chosen by the judge before reduction for the plea was too high. Secondly, related to the first point, there was insufficient credit applied for the applicant's own mental health condition, namely PTSD which was vouched by a medical expert, Dr Harding, consultant child and adolescent forensic psychiatrist, in circumstances where this issue was related to culpability. Thirdly, there was insufficient reduction for the plea.

[14] In support of these arguments we have read the very comprehensive skeleton argument for leave prepared by Mr Fegan, which has been amplified by Mr O'Rourke KC in oral submissions. We have heard and listened carefully to Mr O'Rourke's submissions to us. Suffice to say, there is nothing that the applicant's legal representatives have overlooked in preparing the appeal for this court.

[15] In dealing with the two substantial grounds of appeal, the first port of call is inevitably, in a case such as this, the sentencing remarks of the trial judge who had carriage of the case. We have read those sentencing remarks in light of the arguments made. There can be no argument with the analysis of the judge and, indeed, Mr

O'Rourke does not demure from this, that this offending was at the top of the scale. Having made that assessment the judge stated, in his view, that the proper starting point before considering personal mitigation and reduction for a plea is 22 years.

[16] It is clear to us from the sentencing remarks that the judge proceeded to consider the pre-sentence reports, which reference the applicant's own background and his suffering from PTSD. We pause to observe that the pre-sentence reports reference scepticism with the account that the applicant gave of his history to Dr Harding. We also note that the pre-sentence report refers to some minimisation on the part of the applicant in terms of the victim's injuries. The judge does refer to all of this in his remarks. He also refers to the applicant's difficulties in relation to his past and the high risk of reoffending that the Probation Service opined was established, and the opinion that the applicant presented a significant risk of serious harm.

[17] The judge clearly considered the defence submission that based on Dr Harding's reports the applicant's mental state should be taken into account. He refers to this variously in relation to mitigation, but also in relation to culpability. The judge agreed with the analysis in relation to PTSD, but did not accept that there was evidence of psychosis, which we will return to. However, it is clear then in the sentencing remarks that the judge analysed the question of whether a reduction of sentence due to mental health concerns could affect his ultimate sentence in the case. The judge also refers to a well-known authority of *R v Doran* [1995] NIJB 75 in that regard. He also considered the evidence of Dr Harding, who referred to the effects of PTSD but did not consider that the evidence justified the suggestion that the applicant did not appreciate what he was doing and the effect on his wife and family.

[18] Taking all the above matters into account, the judge proceeded to give a reduction of two years from the 22 years before applying credit for the plea. He said specifically that was to reflect that PTSD may have affected the applicant's judgment. In the light of the case trajectory, the judge gave a reduced reduction for the plea of one-sixth and that brought his sentence to 16 years and eight months.

Consideration

[19] As to the law, it was common case that the appropriate sentencing guideline case of *R v Michael Loughlin* [2019] NICA 10, should be applied. This is set out at paras [18]-[21] as follows:

> "18. In *R v McCann* [1996] NIJB 225 Hutton LCJ stated:
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> > 'That the normal level of sentence for the attempted murder of a member of the security forces is in the region of 25 years imprisonment and in some cases a sentence in excess of 25 years may well be proper.'

That guideline remains in force today and nothing said in this case is intended to call into question its applicability.

19. This court has not, however, given any further guidance on the appropriate range of sentencing for the offence of attempted murder. The circumstances in which this offence is committed can vary considerably. That point is reinforced by the extensive catalogue of aggravating and mitigating factors to which the Sentencing Guideline Council makes reference and which we consider should be taken into account in determining the correct sentence. The paper produced by Sir Anthony Hart reviewing relatively recent decisions in this jurisdiction, shows a variation between 12 and 22 years as the starting point in those non-terrorist attempted murder cases.

20. We agree with the Sentencing Guidelines Council that the culpability of the offender is the initial factor in determining the seriousness of the offence. The fact that the offender had an intention to kill demonstrates of itself a high level of culpability but there is a distinction to be made between planned, premeditated, professional attempts to kill and those that arise spontaneously. We also consider that the extent of harm caused is relevant to the overall sentence but that the court also has to take into account the harm that the offence was intended to cause or might foreseeably have caused.

21. We consider that the intention to kill is a significant factor suggesting a materially higher range of sentencing than that adopted in McCauley and Seaward. There are cases involving substantial provocation, mental health issues or youth of the offender and little actual harm where starting points below those noted in the paper prepared by Sir Anthony Hart and set out at paragraph [18] above would be appropriate. Although the spontaneous commission of this offence with no aggravating circumstances might also lead to a starting point below the range set out above, generally we consider that the starting point for sentences for this offence are likely to lie within that range. We do not consider that it is possible to give any more specific guidance."

[20] We apply this guideline which refers to the variety of circumstances in which attempted murder can arise leading to a wide range of sentencing. Sentences in

Northern Ireland can attract, and as the guidance says, a sentence up to 22 to 25 years may apply in some cases of exceptional gravity.

[21] The aggravating factors are not disputed, and rightly so. There are 10 factors set out by Ms McCullough in her well-drafted skeleton argument. They are that the applicant armed himself with a knife; that he walked over two miles to the victim's house; that he was found hiding in the neighbouring property a week before so he had created a hiding place; there were threats as a preamble to this offending by way of WhatsApp; that he was on bail; that this offence occurred in a private home; that it also occurred in a domestic violence context; that there was a relevant criminal record; that the presence of children is clearly an aggravating factor; and that there was the high impact on the victim herself and the children, that is evidenced by the victim personal statements.

[22] Turning to the grounds of appeal, the first and primary issue in this appeal is whether the judge incorrectly considered and applied the opinion provided by the medical evidence of Dr Harding (comprised in three reports). We have read the transcript of the hearing on this issue and having done so we can see that the matter was canvassed at length by Mr Mateer and Mr Kelly, Mr Kelly representing the applicant. The judge was aware of the issue, the judge also considered the medical evidence and the pre-sentence reports. It is clear to us that the judge accepted that PTSD was an issue for him to reflect in sentencing. He did not actually reject Dr Harding's analysis of that. However, he was quite right not to rely on the opinion in relation to psychosis because, frankly, the expert report is unsustainable in relation to that diagnosis.

[23] Overall, in our view, the judge was generous, not to critique this medical evidence any further and that, we think, was due to his experience in this area. He accepted that PTSD may have an effect on the judgment of the applicant. He then had to make an evaluation of what this meant in sentencing terms. We think that the judge was alive to the fact that this could reduce culpability. He specifically said this in his sentencing remarks whereby he reached the ultimate conclusion that the applicant's judgment may have been affected, but the applicant was aware of his actions against his wife which also affected his children. The judge also referred to personal mitigation but, as all experienced practitioners in this area will know, personal mitigation in a case such as this of such seriousness will be limited.

[24] We acknowledge that perhaps the language used by the judge could have been clearer, but we are satisfied that on an overall read of this sentence, it is tolerably clear how the judge assessed the import of the medical evidence. He looked at it in terms of how it affected the applicant's judgment, which is essentially a culpability assessment. He also had mitigation in terms of personal circumstances in the background. Either way two years as a reduction from the 22 years was appropriate and fair. On the facts of this case, we do not think, conceivably that the judge could have gone further.

[25] Therefore, we uphold the reasoning of the judge in terms of the starting point that he chose and the reduction that he made to it given the medical evidence and we, therefore, dismiss the first two grounds of appeal which are combined.

[26] The third ground of appeal Mr O'Rourke has raised in written argument only, is that there is insufficient reduction for the plea of guilty. Mr O'Rourke wisely did not make oral submissions on this because the point has no traction whatsoever. This was a very late plea when this victim and her daughter who was a witness were prepared for trial. In our view the one sixth reduction was entirely appropriate, within the discretionary range that was open to the judge. There is no basis upon which we would interfere with that assessment. We also dismiss this ground of appeal.

Conclusion

[27] This was a horrific crime perpetrated in a domestic setting. The victim was lucky not to be killed, she will be scarred for life as will the children of this family. Therefore, the judge was correct to impose the sentence that he did to reflect the crime that was committed.

[28] We will refuse leave and dismiss the appeal.