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

**ICOS No: 19/119784**

**Delivered: 09/01/2023**

**IN THE CROWN COURT OF NORTHERN IRELAND  
SITTING AT BELFAST**

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**THE KING**

**v**

**ADRIAN KOZAK AND CAOLAN JOHNSTON**

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**Mr S Magee KC and Ms Catherine Chasemore BL (instructed by the Public Prosecution  
Service) for the Crown**

**Mr K Mallon KC and Mr J McCann BL (instructed by McCourt and Maguire Solicitors)  
for Adrian Kozak**

**Mr B McCartney KC and Mr Liam McStay BL (instructed by Patrick JJ McGuckian  
Solicitors) for Caolan Johnston**

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**HER HONOUR JUDGE SMYTH**

***Introduction***

[1] The defendants faced one count on the indictment namely murder, contrary to common law. The particulars were that on a date between 30 March 2018 and 4 April 2018 they murdered Piotr Krowka.

[2] They were arraigned on 3 July 2020 and pleaded not guilty.

[3] The trial was listed for 9 June 2022. On that date, the defendants notified the prosecution that they were willing to enter pleas to the offence of manslaughter by an unlawful act on the basis of a detailed statement of agreed facts. Discussions between counsel had been ongoing for a number of days but were not fruitful. This plea was acceptable to the prosecution and the defendants were re-arraigned and formally pleaded guilty to manslaughter. Before turning to the agreed facts, I set out the circumstances in which Piotr Krowka met his death.

[4] Mr Krowka was a 37 year old Polish man who came to Northern Ireland in 2014 and lived with his sister and her son Mateusz in Maghera. He was a vulnerable man, who lost his employment due to alcohol and became homeless as a result of a

serious assault on his sister, which was the motive for this attack by the defendants. The defendants and Mateusz were part of a friendship group and in this way, they became aware of the incident. Adrian Kozak was born on 10 June 2000 and was 17 years old, almost three months short of his 18<sup>th</sup> birthday. Caolan Johnston was born on 3 October 2001 and was 16½ years old.

[5] In or about January 2018, Mr Krowka was assaulted and reported to a friend that he had been knocked to the ground and kicked by a group which included his nephew Mateusz. He was noted to have a black eye and swollen cheek at this time.

[6] He was last seen on CCTV on 31 March 2018 as he spends a number of hours walking around the town centre. His movements can be traced, along with the movements of the two defendants and Mateusz.

[7] Around 8:45pm, Mr Krowka left St Mary's Church, where he frequently sought refuge. As was often the case, parishioners give him money to buy food. Sometime before 9:00pm, a local man observed him making his way to the derelict parochial house in which he was staying. A second male was seen walking behind Mr Krowka on the opposite footpath, acting suspiciously. This was Adrian Kozak, who can be seen on CCTV following Mr Krowka around the town.

[8] The local man then heard a thud and saw Mr Krowka face down, with Adrian Kozak standing over him. He challenged Kozak who then ran off, ultimately joining Caolan Johnston and other members of the group at the Maghera Steps. Mr Krowka was helped up and continued to the parochial house. This was the last time he was seen alive.

[9] CCTV footage in this area is not as clear as that in the town centre. However, it is accepted that within moments of Adrian Kozak returning to the group, he and Caolan Johnston left together and made their way immediately to the parochial house at approximately 9:10pm.

[10] Over the course of the next 45 minutes, both defendants carried out a fatal attack upon Mr Krowka within the derelict house. Analysis of the scene suggests that the attack took place in the kitchen, at the back door area of the property as there was no evidence of blood elsewhere. It is clear that this was a brutal and sustained attack and resulted in catastrophic injuries. The lack of any blood trail, in spite of the many injuries, suggests that Mr Krowka was left prone in or about the position in which he was ultimately found, days later.

[11] Both defendants returned to the parochial house the following afternoon. Approaching the rear entrance, close to where the body was found, the consequences of their actions would have been clear- he had not moved. They did not raise the alarm.

[12] On Tuesday 3 April at approximately 3:45pm, Mr Krowka's body was found by a man who had been sent by the local priest to check the property, following reports that the boarding had been pulled away from the back door. He and another man discovered that plywood attached to the back door had been disturbed and when they lifted it to get into the property, they saw Mr Krowka's body lying on the floor, on its left hand side, with one foot protruding out of the door, albeit covered by the plywood. The body was cold and covered in muck and the arm was bent back unnaturally.

[13] A post-mortem was conducted by Dr Christopher Johnson and he concluded that the cause of death was blunt force injuries to the head, chest, abdomen and left arm. There was no natural disease or effects from alcoholism that had contributed to Mr Krowka's death. There were numerous injuries to the body:

- There was a substantial laceration to the upper lip and mouth which was suggestive of a forceful kick to that area.
- There were cuts to the lower lip, right side of the forehead and bruising to the face.
- Mr Krowka had suffered a traumatic brain injury resulting in the immediate reduction in consciousness resulting in the risk of developing hypothermia if conditions were damp. The body, when found, was in clothing that was wet and there was some injury to suggest hypothermia had developed to some extent due to degradation of tissues in some of the limbs.
- There was extensive bruising to the chest, abdomen and pelvic region consistent with blunt trauma such as punches and kicks.
- Four ribs were fractured which would have had an impact on the ability to breathe.
- His kidney was lacerated.
- There was bruising and swelling over his left lower arm and hand which would have bled considerably.
- His right arm was bruised and swollen.
- There was a fracture of the hyoid bone in his neck which would indicate the deceased had been forcefully grabbed by the throat during the assault.
- He had a stab wound to his cheek possibly caused by broken glass as well as having wounds to the palms and back of his hands.

[14] A friend of Caolan Johnston told police that Johnston showed him a video on his phone in the aftermath of this incident. He recalls it was a blurry and dark clip, but it showed what he thought was a number of males standing around the body of “the homeless man” and they were kicking the body.

[15] Another friend of Caolan Johnston told police that she had been speaking with Caolan Johnston on Facetime on the night of the assault. He told her about the incident between Mateusz’s mother and Mr Krowka. He said he had done something bad before going on to tell her that he had injured his hand when he was involved in giving the man a beating for what he had done. She got the impression there was more than one person involved.

[16] Adrian Kozak was arrested on 10 April 2018 at his home address. His home was searched and various items of clothing were seized. On one of the trainers seized, which matched visually the shoes being worn by him as he was tracked on CCTV, forensic analysis revealed DNA belonging to Mr Krowka in bloodstaining on the toe area of the shoe.

[17] Caolan Johnston was arrested at his home address on 17 April 2018 and items were also seized from his address, including his mobile phone. The location record on his phone linked him to the attack on Mr Krowka.

[18] When the defendants were interviewed, they denied being involved in the attack and gave a different account of their movements on 31 March 2018 to that which was shown on the CCTV footage when it was examined. They maintained a denial of involvement in the attack up until the day of trial.

[19] It is not possible to time Mr Krowka’s death, but it is accepted that the assault took place on the night of 31 March 2018. The injuries did not result in instantaneous death.

### *The agreed facts*

[20] Both prosecution and defence have agreed a number of facts relating to the circumstances in which Mr Krowka died:

1. The defendants accept that Mr Krowka died as a result of the assault they carried out upon him on the evening of 31 March 2018 the details of which are outlined in the various forensic pathology reports.
2. At no stage did the defendants intend to cause Mr Krowka really serious harm.
3. The defendants accept that in the course of their assault upon the deceased, they inflicted the injuries found on him as contained within the post-mortem report of Dr Johnston and the Crown opening. However, when the

defendants left the scene on the evening of 31 March 2018, due to their age, relative immaturity, lighting conditions and a degree of panic, whilst they realised Mr Krowka was prone and incapable, they failed to appreciate the extent of his injuries or the fact he was in a life- threatening condition.

4. The defendants accept that they returned to the scene the following day in the naïve hope that Mr Krowka may have recovered from his injuries however found that he was dead or at an advanced state of dying which caused them to panic. They did not interfere with the body. They accept that they revisited the scene that night in panic and worry having come to the realisation of the enormity of what they had done.
5. Prior to this event and subsequently, the defendants have had limited involvement with the authorities. Taken together with the gravity of the proceedings this has coloured their approach in this case. They accept that they did not provide truthful accounts, make admissions during their interviews or prior to entering pleas, however, the court is invited to look at the issue of credit against that canvas.
6. There were triable issues in this case including on (i) the identity of the individuals who carried out the assault and (ii) the timing of the assault. Therefore, the guilty pleas are of value to the Crown.
7. In respect of Mr Johnston:
  - (a) The report of Dr Greene which identifies issues of compliance in addition to his age suggests that his culpability was less than that of his co-accused.
  - (b) He cannot be deemed responsible for any injury, whatever that may have been caused in the first assault on Mr Krowka on the 31 March 2018.

### *Victim Impact*

[21] I have received a victim impact statement from Mr Krowka's sister which I have considered carefully. It is clear that she has suffered a very great deal and has struggled to come to terms with what has happened to her brother. As a Polish person, living without family in a community which is not home, she has borne a heavy burden of grief. The misplaced sense of grievance which appears to be at the root of this offending has weighed heavily upon her, particularly when one of the defendants had been treated as her own son. She remembers her brother as a child, when times were good and the warm, caring and loving person that he was before his life became derailed.

### *Personal circumstances/background*

[22] I turn to Adrian Kozak first. He also comes from a Polish family and his parents, who have little English, have had to navigate a criminal justice system in circumstances they could never have envisaged. I am grateful for the very helpful presentence report compiled by Mr Stuart Plant from PBNI, which sets out the conflicting inferences which may be derived from the defendant's presentation and account of offending.

[23] Adrian Kozak showed promise as a young person, achieving nine GCSEs and representing both his school and his local GAA club in Gaelic sports. He attended college to study A-levels but for unexplained reasons, he found this challenging and left early to attend a local technical college to study joinery. After this offence was committed, he left college, citing the emotional impact upon him, obtaining employment locally which ceased as a consequence of the police investigation. He has since moved location and is currently employed on a full-time basis. The probation officer, Mr Plant, comments favourably on his ability to maintain employment despite his young age and the pressure of these very lengthy proceedings.

[24] However, when discussing the background to this offence, the account given by Mr Kozak of his motivation and his behaviour is neither plausible nor consistent with the known facts. Whether that is a result of denial in the face of such a terrible crime or an emotional inability to process the situation due to immaturity, is unclear.

[25] He does accept assaulting Mr Krowka previously, and that is likely to relate to the incident reported by Mr Krowka to a friend. He also accepts being the person responsible for assaulting him earlier in the evening, before he and Mr Johnston made their way to the parochial house. He claims a motivation for the incident on the earlier date which is mentioned for the first time in the presentence report, and in particular was not mentioned in the course of police interviews when the incident was discussed. This alleged motivation is also relied on by way of explanation for the earlier confrontation on the night in question when a local man intervened. Mr Kozak's explanation that he later came upon Mr Krowka by chance, not realising that he was staying in the derelict house is not plausible given the evidence of CCTV.

[26] He makes the case that on reaching the rear door of the property, Mr Krowka appeared to have a tool-like object in his hand and he immediately punched him in fear of the weapon being used against him. No such weapon was found at the scene, and the description of the assault bears no relation to the kind of assault which resulted in the terrible injuries inflicted.

[27] He has no criminal record and his peer group at the time appears to be known to police for low level antisocial behaviour. He is assessed as a medium likelihood of reoffending due to his limited victim empathy, poor emotional regulation, three

assaults against Mr Krowka within a period of two weeks, a willingness to seek out the victim and an ability to use violence, inconsistencies in accounting for his own actions and victim blaming and limited accountability when attempting to claim self-defence.

[28] The probation officer comments on the defendant's young age which may be a factor in understanding his lack of insight into his actions or the potential consequences. Although he has expressed remorse, the probation officer considers that there is a limited expression of genuine victim empathy. However, the defendant has explained his anxiety of these proceedings and the probation officer notes that he may not have processed the gravity of his behaviour due to his age.

### *Aggravating circumstances*

[29] Mr Krowka died after an assault involving substantial violence, which was prolonged, and resulted in multiple injuries being inflicted. He was no physical match for the defendants, who suffered no injuries, save for Mr Johnston's knuckles, from punching the deceased. While the defence suggest that the injuries are merely consistent with kicks and stamps as well as punches, the evidence from the available pathology, his injuries generally, the blood on the tip of Adrian Kozak's shoe, the position of the body on the floor and the evidence from a friend that he was shown a video clip of the "homeless man "being kicked, satisfies me beyond a reasonable doubt that the attack went beyond punches. Insofar as Mr Kozak is concerned, there was a degree of pre-meditation.

### *Mitigating circumstances*

[30] In addition to Mr Kozak's clear criminal record, guilty plea and matters already set out in the presentence report, I have been provided with a reference from his employer. He is regarded as a valued employee who conscientiously carries out his duties and strives to continue to improve his performance.

[31] I have also considered a report from Joe Dwyer, Psychology Services. It sheds some light on his background, including alcoholism within the family and accompanying episodes of violence and instability. Mr Kozak's parents' lack of English added to the burden upon him to deal with difficult situations such as calling ambulances and speaking to medical staff. It is also clear that there were high expectations of him which were probably unrealistic and ultimately, by the age of 17, he had a strong sense of failure.

[32] Mr Dwyer's report describes signs of distress as a child when his father was drinking heavily. It also notes that there is an expectation that Polish children will behave and succeed because most of them do. Vulnerabilities identified by Mr Dwyer were not recognised, and in all likelihood, they contributed to Mr Kozak's inability to develop more resilience. The school evidence suggests that while he appeared motivated to achieve and conform to expectations, that quickly tailed off,

resulting in a descent into mindless anti-social behaviour. I agree with the probation officer that there are positive signs of rehabilitation in his behaviour since this offence, as evidenced by his stable employment and confirmed by a reference from his employer.

[33] I also note Mr Dwyer's assessment that Mr Kozak is of limited cognitive ability, and presents as brighter than he is in reality. He has a full-scale IQ of 77, which is described as borderline, notwithstanding his apparent success at GCSE level.

[34] The impact of his youth on this sentencing exercise requires separate consideration in the context of the authorities and I deal with it at paragraphs [46]-[49].

[35] I now turn to the mitigating factors in respect of Caolan Johnston who was 16½ and is now 21 years old. Mr Johnston lives with his parents and two brothers. He recalls a supportive and caring upbringing. He reports no issues around alcohol or drugs and has been in employment within the construction sector since successfully completing his GCSE exams. He had no convictions at the relevant time, and subsequently has two minor non-relevant convictions related to driving a scrambler-type vehicle, which resulted in penalty points and a fine. He is to be treated as having a clear record.

[36] It is accepted that Mr Johnston accompanied Mr Kozak to the derelict house at his request. He also claims to have been confronted by Mr Krowka, and admits to punching him on two occasions, and kicking out at him on one occasion, before running off with his co-accused. He denies returning to the property. He accepts that he was scared to face up to the consequences of his behaviour and is considered to present with a degree of victim awareness, although he claims that his actions were in self-defence. He cannot explain the extensive injuries that led to Mr Krowka's death and acknowledges that he struggles to explain how he acted in such a way that he caused his death.

[37] It is noted that he was emotional throughout the interviews with the probation officer, who concluded that his actions will impact upon him for the rest of his life. He broke down when elements of the offence were revisited.

[38] He is assessed as a medium likelihood of reoffending in light of his use of violence to resolve perceived conflict, engagement in risk taking behaviours, lack of consequential thinking, negative peer associates, pre-meditated decision making, and taking limited responsibility for his role in the index offence. His remorse and regret are noted, however, along with the willingness to accept any punishment handed down by the court.

[39] I have also considered a report from Dr Timothy Green, Chartered Consultant Clinical Psychologist. Caolan Johnston is assessed as having a full-scale IQ within



the “low average” range, with anxious personality features and no tendency to violence. Dr Green’s conclusion is that Mr Johnston has a tendency to compliance in order to please others when in a social context. In short, the assessment is that it is likely that he will be more vulnerable than the average person to agreeing or “going along with” what is put to him, rather than making his own assessment of the situation. The prosecution accepts that on the basis of this conclusion, the younger age, and the fact that Caolan Johnston was not involved in any earlier assault on Mr Krowka, there is a distinction in the culpability of the two defendants.

[40] I have considered a reference from Father Patrick Doherty, Parish Priest, who has known Caolan Johnston throughout primary and secondary school. He describes him as being of good character in every respect, cooperative and law-abiding. He comes from a decent, trustworthy, and upright family.

[41] Neither of the defendants is assessed by PBNI as posing a significant risk of serious harm in the future, after risk management meetings were convened. In respect of Adrian Kozak, that assessment has been reached because there is no pattern of criminal behaviour and there are limited negative lifestyle factors which would contribute to an increased risk of offending. Future work has been identified including professional counselling services to enable Mr Kozak to manage the impact of his offending and to understand the internal thought processes which contributed to his actions.

[42] In respect of Caolan Johnston, the meeting concluded that it was unlikely that he would place himself in similar circumstances where he would commit serious offences in the future.

[43] Despite the brutal assault which caused the death of Mr Krowka, I accept these assessments for the reasons given.

### *Sentencing principles in manslaughter cases*

[44] While manslaughter can occur in a wide variety of circumstances, the leading authority in cases involving serious violence by young men is *R v Magee* [2007] NICA 21. At paragraph [26] of the judgment Kerr LCJ said:

“[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. Indeed, in some cases an indeterminate sentence will be appropriate. Notwithstanding the difficulty in arriving at a precise range for sentencing in this area, we have concluded that some guidance is now required for sentencers and, particularly because of the prevalence of this type of offence, a more substantial range of penalty than was perhaps hitherto applied is now required.”

[27] Aggravating and mitigating features will be instrumental in fixing the chosen sentence within or – in exceptional cases – beyond this range. Aggravating factors may include:

- (i) the use of a weapon;
- (ii) that the attack was unprovoked;
- (iii) that the offender evinced an indifference to the seriousness of the likely injury;
- (iv) that there is a substantial criminal record for offences of violence; and
- (v) more than one blow or stabbing has occurred.”

[45] In his authoritative paper on sentencing in manslaughter, attempted murder and wounding with intent, delivered to the Judicial Studies Board in September 2013, Sir Anthony Hart distilled the sentencing ranges in cases to which *Magee* applied:

“Cases involving substantial violence to the victim. While sentences range from 6 years on a plea to 14 on a contest, pleas in cases at the upper end of the spectrum attract sentences of 10 to 12 years with sentences of 12 years being common. Sentences of 6 to 8 years tend to be reserved for cases where there are strong mitigating personal factors, or the defendant was not a principal offender.”

### *The question of youth*

[46] At the time of the offence, Adrian Kozak was 17, a few months short of his 18<sup>th</sup> birthday and Caolan Johnston was 16½. By virtue of section 53 (6) of the Justice Act 2002 (“the 2002 Act”), they are to be treated as children for the purposes of

sentencing. The principal aim of the youth justice system is the protection of the public by the prevention of offending. There is a specific requirement, however, in relation to the welfare of children in section 53(3) of the 2002 Act:

“(3) But all such persons and bodies must also have regard to the welfare of children affected by the exercise of their functions (and to the general principle that any delay in dealing with children is likely to prejudice their welfare), with a view (in particular) to furthering their personal, social and educational development.”

[47] This provision reflects article 3.1 of the United Nations Convention on the Rights of the Child which states that in all actions concerning children the best interests of the child shall be a primary consideration and paragraph 5 of the Beijing Rules which states that the imprisonment of a child shall be used only as a measure of last resort and for the shortest appropriate period of time.

[48] While particular regard must be paid to the importance of the rehabilitation of children, recognising that youth and immaturity may substantially reduce culpability, Morgan LCJ explained in *Lee Smyth and Caolan Laverty* [2020] NICA 47 that:

“[45] These factors have to be balanced, of course, against the requirements of retribution and deterrence. Consequently, the nature of the offending will be an important factor in determining where the balance lies. The sentencing guidance gives a clear steer as to how that balance is to be struck. At [23] of *Magee* the court refers to “wanton violence among young males.” That is a clear indicator that the sentencing range takes into account those of teenage years. The guidance in [26] suggests that deviation from the range may arise because of the potentially limitless variety of factual situations where manslaughter is committed but we accept that very careful consideration would have to be given to cases where wanton violence was committed by very young teenagers. The decision of this court in *R v Coyle* [2010] NICA 48 is an example of such an approach.”

[49] In *Coyle*, a sentence of 5 to 6 years on a plea to manslaughter was considered appropriate for a 17 year old who killed his grandfather in the course of a robbery without intending him any harm. Pathology evidence indicated that death probably occurred by reason of the deceased being grabbed by the crook of an arm around his neck from behind. One fairly quick movement could have caused death quite rapidly because of the deceased’s age. Although a knife was used, it caused no

significant damage. The prosecution accepted that the injuries may well have been unintended and accidental.

### *The question of delay*

[50] The defence submit that the delay in bringing this case to trial is such that the article 6 right to a trial within a reasonable time period has been infringed and that delay should be reflected in sentence. This offence was committed on 31 March 2018, and the trial was listed in June 2022. The prosecution point out that the primary cause of the delay was the complex police investigation necessitated by the failure of either defendant to make admissions during interview or arraignment. Defence statements confirmed that the issue of the identity of the deceased's attackers was not admitted and that position was maintained up to the date of trial.

[51] In *R v Dunlop* [2019] NICA 72 and in *DPP Reference No 5 of 2019 Harrington Legen Jack* [2020] NICA 1 the principles the court should apply when determining this question are set out and summarised at [46] of *Jack*:

- (i) The threshold of proving a breach of the reasonable time requirement is an elevated one, not easily traversed.
- (ii) In determining whether a breach of the reasonable time requirement has been established the court will consider in particular but inexhaustively, the complexity of the case, the conduct of the defendant and the manner in which the case has been dealt with by the administrative and judicial authorities concerned. The first and third of these factors may overlap.
- (iii) Particular caution is required before concluding that an accused person's maintenance of a not guilty stance has made a material contribution to the delay under consideration."

[52] At [45] the court explained that if there is a breach of the reasonable time requirement, the remedy should be effective, just and appropriate depending on the nature of the breach and all the circumstances including the rationale which is, that a person charged should not remain too long in a state of uncertainty about his fate. The appropriate remedy should take into account not only the impact of the delay on the offender but also the requirement that offenders are realistically punished for their offences. In relation to the impact of the delay this must be established in evidence by the offender and must take into account that usually the offender has been at liberty throughout the period of the breach. Frequently a public acknowledgement of the breach will be sufficient.

[53] The court recognised the variety of factual circumstances in which delay may arise and declined to give prescriptive guidance except to observe "that in cases involving hardened recidivists who must be impervious to concern, in the case of vile and heinous crimes or in the case of dangerous criminals who pose a significant

risk to members of the public of serious harm the appropriate response would be a public acknowledgment without any reduction in the penalty. The public could not have confidence in a criminal justice system that first caused delay and then as a consequence unleashed a dangerous criminal on the public...”

[54] The court indicated that delay should be taken into account as a mitigating circumstance before reduction for a guilty plea and it is not necessary for a court to indicate by way of weeks months or years what percentage of reduction in sentence has been allowed for delay “provided that it is clear that it has been taken into account and that there is an indication in general terms as to the extent to which it has been. For instance, the degree of aggravating or mitigating features can be described generally as serious or minor. There is no reason why the impact of delay cannot be described in those terms.”

[55] In my view, the delay in concluding these proceedings is a factor of some seriousness that I should take into account. While the defendants did not admit their responsibility for the attack, that is not the same thing as causing proceedings to be protracted for example by making unnecessary applications or dismissing legal teams which were examples of the type of conduct which might be taken into account against the defendant where there is a complaint of delay. No explanation has been provided for the length of the investigation, although no doubt a painstaking CCTV investigation was required which ultimately identified the defendants’ movements throughout the afternoon and evening of the night in question and the following day.

[56] Four and a half years has now elapsed during which these defendants have waited to hear their fate and there was a delay of four years before the trial date. That is an exceptionally long period, particularly for very young people and it is evident from the probation reports that each of them has suffered anxiety at the prospect of the sentence that will be imposed. While this offence may properly be considered as “vile or heinous”, the defendants have not been assessed as dangerous and indeed have no criminal record and positive references as to their character have been received. The probation officer specifically commented on the length of these proceedings and referred in positive terms to Adrian Kozak’s ability to maintain full-time employment in those circumstances. Clearly the same point can be made in respect of Caolan Johnston.

### *Consideration*

[57] There is no dispute that a case involving substantial and serious violence by young males falls within the category which has a range of sentence of 8 to 15 years in prison after trial. However, the defence submit that this range is for adult offenders only, and a reduced range is applicable in this case.

[58] While the youth of an offender is a powerful mitigating factor in any case, that does not mean that the range in *Magee* is not intended to apply to offenders

under the age of 18. In *Lee Smyth and Caolan Laverty* (see [49]), Morgan LCJ expressly stated that the range identified in *Magee* is appropriate for teenagers, with the caveat that very careful consideration is needed when dealing with very young offenders. The court is entitled to deviate from the range if it is appropriate to do so and in the case of young offenders the court has to balance the youth and immaturity of the defendants with the need for punishment and deterrence on the facts of an individual case. The particular focus on rehabilitation does not mean that the seriousness of the case does not require condign punishment. The nature of the offending will be an important factor in determining where the case falls within the range.

[59] In terms of where this case falls, the prosecution submits that the defendants' youth should not reduce their culpability because that was a significant factor which influenced the prosecution decision to accept a plea to manslaughter rather than pursuing a murder charge. It submits that selecting a lower starting point on account of youth or immaturity would amount to double counting of a mitigating factor. It accepts that their immaturity may be taken into account in considering their behaviour after the event.

[60] The defence rely on the agreed facts and point out that there is no reference to the plea to manslaughter being accepted *because* of the defendants' youth and furthermore, the prosecution has conceded as agreed facts that there were triable issues including the identity of the attackers and that the pleas were of assistance to the prosecution.

[61] The only lawful basis for accepting a plea to manslaughter in this case is an acknowledgement that the defendants' lacked an intention to cause Mr Krowka really serious harm. That is reflected at para 2 of the agreed facts. No doubt, the defendants' youth and immaturity, along with other factors influenced that decision. However, that does not mean that they are to be treated as adult offenders for the purposes of determining where in the range this case falls. While the starting point for consideration is the seriousness of the offending, this has to be looked at through the prism of youth and immaturity.

[62] Both prosecution and defence have referred me to a number of fact-specific cases where young or comparatively young offenders were sentenced on a plea to manslaughter (*McNally* [2010] NICC 15; *Eamon Coyle* [2010] NICA 48; *Ryan Quinn* [2006] NICA 27; *McClements and another (Matthew Gillon)* [2018] NICC 22; *Kaspars Valters* [2008] NICC 29). Whilst they are of assistance, it is the balance of the aggravating and mitigating circumstances in this case which determines where the case falls within the category.

### *The appropriate sentences*

[63] This is an exceptionally difficult case. A vulnerable man was left to die, having been subjected to a brutal and sustained beating by two teenagers who did

not intend to cause him really serious harm and who, due to their age, relative immaturity, lighting conditions within a derelict house and a degree of panic, failed to appreciate the extent of his injuries or the fact that he was in a life-threatening condition.

[64] There was a degree of pre-meditation on the part of Adrian Kozak, who had also assaulted Mr Krowka earlier in the evening and on a previous occasion, involving himself in the affairs of a family which had nothing to do with him. Caolan Johnston was willing to go along with it, no doubt, due to his particular immaturity and tendency to be compliant. He played no part in the earlier assaults.

[65] In the 4½ years that have elapsed, each has gained and maintained full-time employment and they come before this court with references as to their character. Neither has any issues with drugs or alcohol. For the purposes of this sentencing exercise, they are to be treated as having no criminal record, either before or after this offence. They are now adults and apart from their apparent inability to expressly come to terms with the enormity of their crime, there are no indicators of future risk.

[66] Turning to you Adrian Kozak, you were a few months short of your 18<sup>th</sup> birthday and the sentencing range in *Magee* is clearly appropriate. The seriousness of your offending, notwithstanding the substantial mitigation including the serious delay in concluding these proceedings is such that a starting point after trial is 10½ years before reduction for your guilty plea.

[67] I turn now to you Caolan Johnston. The prosecution accepts that there is a clear distinction to be drawn between you and your co-accused. You were 16½, significantly younger, easily led and had no prior involvement with Mr Krowka. I consider that while the sentencing range in *Magee* is appropriate, the starting point is at the bottom of the range, and is eight years.

### ***Reduction for plea***

[68] In determining the appropriate reduction in sentence for a guilty plea, the courts look at all the circumstances in which the plea was entered including the way the defendants met the charge. The key issue in this case was the identity of the attackers and both of you denied responsibility right up until the day of trial. However, the prosecution accepts that I should take into account that you had limited involvement with the authorities before this offence and the gravity of the proceedings is also a factor in understanding your failure to accept the part you played in Mr Krowka's death. In normal circumstances, no more than 10% reduction would be permitted for a guilty plea at this stage of the proceedings. In view of the prosecution concession and the triable issues identified in the agreed facts along with the acknowledged value of those pleas, I am prepared to allow somewhere between 20-25% reduction.

[69] Adrian Kozak, I sentence you to determinate custodial sentence of eight years in prison.

[70] Caolan Johnston, I sentence you to determinate custodial sentence of six years in prison.

[71] Under the provisions of Article 8(2) of the Criminal Justice (Northern Ireland) Order 2008 I am obliged to specify a period referred to as the custodial period at the end of which you are to be released under Article 7 of the Order. Under Article 8(3), the custodial period shall not exceed one half of the term of the sentence.

[72] Adrian Kozak, I therefore specify that the custodial period of the sentence is to be one of four years with the licence period being one of four years.

[73] Caolan Johnston, I therefore specify that the custodial period of the sentence is to be one of three years with the licence period being one of three years.