

*Tariff certified by the Secretary of State under Life Sentences (NI)
Order 2001 on 16-08-07*

THE QUEEN v GEORGE ROBERT ARMSTRONG

DECISION ON TARIFF

KERR LCJ

Introduction

1. On 6 July 1990, Nicholson J, sitting without a jury, at Belfast Crown Court, convicted the prisoner of the murder of James Hamilton. The deceased man was thirty nine years old at the time that he was killed and he lived in Harrow Street, Belfast. The prisoner was also convicted of burglary of those premises. He was sentenced to life imprisonment on the murder charge. He had been remanded in custody from 11 July 1989. He was released on licence under the Northern Ireland (Sentences) Act 1998 on 9 October 1998. His licence was suspended by the Secretary of State on 30 May 2002 and revoked by the sentence review commissioners on 13 May 2005. He has been in custody once more since 30 May 2002.

2. Although the prisoner was offered the opportunity to make oral representations through legal advisers on the tariff to be set under article 11 of the Life Sentences (NI) Order 2001, he elected to have this determined on the papers. The tariff represents the appropriate sentence for retribution and deterrence and is the length of time the 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. The period during which he was at liberty on licence under the 1998 Act is not deductible from the period that has elapsed since he was first committed to custody for the purposes of calculating his release date once the minimum term is fixed.

Factual background

3. Between 7.00 and 10.00pm on the evening of Sunday, 28 May 1989, James Hamilton was beaten to death in the house at 6 Harrow Street. The house was ransacked and various items were stolen from it. The Crown case was that the prisoner and two other accused, Sloan and Smith had entered the house together and that, when acting together, one or more of them had assaulted Hamilton and had stolen articles from the house.

4. The Crown proved a written statement which the prisoner had made to the police on 10 July 1989, which contained the following passage: -

'I want to tell you about my bit in Jimmy Hamilton's death. Jimmy and I fell out over money that he said I owed him. On that Sunday I was drinking all day. I left a club in the Shankill around about tea-time. I was worried that Jimmy was going to get me a hiding so I decided to sort him out. I went to another part of town and met two mates I know. I told them my problem and asked them to come with me to Jimmy's house and give me some backing in case he wasn't on his own. I was going to give him a few digs in the mouth and get him to wise up. After I met these two mates we went over to Jimmy's house, I think it was after tea about 8 or 9 o'clock. When we arrived we parked the car in a side street. We went up to the front door and I smashed the glass in it. I went into the hall way and I saw Jimmy, the next thing that happened this fella with (sic) pushed me aside and pushed Jimmy into the front parlour. This fella knocked Jimmy to the ground and started kicking him I heard Jimmy shouting but I don't know what. This fella just went crazy and the other fella helped this madman carry out some of Jimmy's gear I think a TV and stacking hi-fi. Before we left I remember Jimmy lying in the corner groaning in pain. After we left the house my mates left me off and I went home. I was only going to give Jimmy a digging I didn't think it would have gone as far as it did. This is all I can say I don't want to name the fellas with me.'

5. Armstrong gave evidence that he and the accused Smith and a third man, whom he did not wish to name and whom he referred to as X, went to the deceased's house at about 9.00 pm on the evening of 28 May 1989. He (Armstrong) broke the window in the front door and opened the door by the latch. James Hamilton came towards him down the hall and X pushed past him and pushed Hamilton into the front room. X went crazy and seemed to go out of control and started kicking Hamilton on the ground.

6. He (Armstrong) and Smith then went into the back room and Smith took the video player from the back room and left the house with the video. He (Armstrong) then went into the front room and decided that he would take two swords and a machete which were on the wall in the front room and he did this. When he went into the front room Hamilton and X were rolling about on the floor and Hamilton seemed to be getting the worst of it, and he then took the swords and the machete and left the house.

7. Nicholson J found that the offender, Sloan, had used a hammer in the attack on the victim. He summarised his findings on the facts as follows: -

'Mr Cinnamond QC, who appeared with Mr O'Hanlon for Armstrong, submitted that there was a reasonable possibility that Armstrong's intention was to hit Hamilton a few digs and that he should be found guilty of manslaughter or acquitted altogether if the hammer was used and Mr X went berserk.

I am sure that Armstrong lied throughout his evidence in the witness box and concealed from the detectives at interview much of the truth, in order to underplay his part in the killing of Hamilton.

I am sure that he set out from the Castle Inn with the intention that Hamilton would sustain grievous bodily harm. I am sure that he had a number of motives. I believe that his predominant motive was revenge for the fact that one of the eurocheques obtained by him from Hamilton and

his friends and presented by him to the shopkeeper had led to his arrest. If this belief is incorrect, then his predominant motive was to persuade Hamilton by physical violence to abandon any idea of getting anyone to beat up Armstrong or of seeking payment for the eurocheques.

Hamilton was bound to recognise Armstrong and it was, therefore, necessary to terrify Hamilton. I am sure that the beating up, the taking of the TV, video and hi-fi and the smashing up of the contents of the house were part of his plan to terrify Hamilton.

I am prepared to accept as a reasonable possibility that he was unaware that Sloan was bringing a hammer with him. But I am sure that when the hammer was produced by Sloan, Armstrong tacitly agreed to and authorised its use, remained present to assist Sloan if, by any chance, Hamilton got the upper hand of him or in case anyone else came to the aid of Hamilton and made use of Sloan's onslaught on Hamilton to remove the TV, video, hi-fi, swords and machete from the house. There is no evidence to justify a finding that he personally attacked Hamilton in the front room. But I am sure that, as Smith said in evidence, Armstrong punched Hamilton in the hall way. I have borne in mind the frailties of Smith's evidence and character in making this finding and all the submissions made in relation to him. Armstrong is guilty of murder and burglary.'

8. An appeal to the Court of Appeal against conviction was dismissed on 16 October 1991. In its judgment the court said: -

"We consider that in the light of Armstrong's written statement and of his evidence in chief and in cross-examination, the trial judge was fully entitled to find that when Armstrong enlisted aid

of the two other men to go to Harrow Street with him, it was his intention that Hamilton would not merely be given one or two moderate punches or blows but would be given a real beating, and that therefore Armstrong's intention was to cause Hamilton grievous bodily harm. Accordingly Armstrong was rightly convicted of murder on that ground.

...

However, even if the evidence had not justified the trial judge in finding that Armstrong intended grievous bodily harm to Hamilton when he left the Castle Inn to go to Harrow Street, we consider that Armstrong was guilty of murder under the other principle referred to by the judge at page 42 of his judgment: -

“But I am sure that when the hammer was produced by Sloan, Armstrong tacitly agreed to and authorised its use, remained present to assist Sloan if, by any chance, Hamilton got the upper hand of him or in case anyone else came to the aid of Hamilton, and made use of Sloan's onslaught on Hamilton to remove the TV, video, hi-fi, swords and machete from the house.”

Post mortem

9. Dr Crane, the Assistant State Pathologist for Northern Ireland, conducted a post mortem examination on the body of the deceased and expressed the following conclusions: -

"The injuries to the chest were consistent with his having been assaulted. They would have required considerable force for their infliction and could have been due to his having been kicked or struck with a blunt object. Also the inflammation of the pancreas gland could have been initiated by blows to the abdomen such as by punching or kicking. In

view of this it would seem reasonable to regard the injuries as being the underlying cause of his death. There was also some resolving bruising on the under surface of the scalp, possibly due to blows to the head. There was no damage to the underlying skull or brain however and the scalp injury would not have contributed to the fatal outcome."

Personal background of the prisoner

10. The prisoner is now 57 years old. His solicitors have provided information about his partner, who lives in Belfast and is 54 years of age. They were childhood sweethearts; she came to visit him when he was in prison in England and they have renewed their relationship and plan to live together on his release. The solicitors have also stated that while in jail the prisoner suffered a heart attack, suffers from diabetes at present and is in generally poor health.

Antecedents

11. The prisoner has two previous convictions for violent offences. On 18 October 1979 he was convicted in Belfast magistrates' court of common assault and fined £25.00. On 3 January 1984 he was convicted in Belfast petty sessions of assault on police and was sentenced to imprisonment for 1 month. He has a significant record in respect of theft and deception cases, having been dealt with on 22 occasions for such offences between 1969 (when he was 20 years old) and 1989 (when he was 40 years old). Most of these were appearances in the Crown Court.

Representations

12. No representations were received from the deceased's family or on their behalf.

13. Citing the decision in *R v Shaw* [2001] unreported (in which lower, middle and higher tariff starting points are identified) the prisoner's solicitors submitted that this case should be considered as a "middle to higher" tariff category. The following factors were advanced as justifying this choice: -

- (a) the attack was an act of revenge on the deceased because one of the euro cheques that the deceased had supplied to the prisoner had led to his arrest;
- (b) the deceased had decided to use physical violence to induce Mr Hamilton to abandon any idea of getting anyone to beat up the prisoner or to seek payment for the euro cheques;
- (c) the prisoner's age and the absence of any violence on his criminal record at the time of the commission of the offence.

14. The solicitors acknowledged that the following aggravating factors were present: -

- (a) a weapon was used;
- (b) it was a sustained attack;
- (c) extensive injuries were inflicted due to repeated blows being struck possibly caused by a blunt object but more likely by bricks;
- (d) the attack was motivated from fear that the deceased would come looking for the prisoner.

15. The solicitors advanced the following points as mitigating factors: -

- (a) the offender was aged 40 years and 7 months at the time of the offence and although he had previous convictions going back to 1969, there was no record of convictions for significant violence. The principal convictions occurred during a period of dishonesty at an earlier stage;
- (b) the offender had limited social skills;
- (c) the case was contested on the basis of the prisoner's involvement in the crime committed, his greatest error being his failure to distance himself when Sloane produced the weapon and his willingness to remain at the scene.

Practice Statement

16. 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.

Very serious cases

18. A substantial upward adjustment may be appropriate in the most serious cases, for example, those involving a substantial number of murders, or if there are several factors identified as attracting the higher starting point present. In suitable cases, the result might even be a minimum term of 30 years (equivalent to 60 years) which would offer little or no hope of the offender's eventual release. In cases of exceptional gravity, the judge, rather than setting a whole life minimum term, can state that there is no minimum period which could properly be set in that particular case."

17. The case of *Shaw* to which the offender's solicitors referred in their written submissions has been overtaken by the decision in *McCandless* and the question of a middle tariff starting point no longer arises.

Conclusions

18. None of the matters canvassed by the prisoner's solicitors as mitigating factors can be properly so regarded. The fact that an offender may have a lesser record does not operate as a mitigating factor - it merely denotes the absence of an aggravating factor. Likewise, the lack of social skills cannot begin to explain - much less excuse or mitigate - his involvement in this outrageous attack. His relatively smaller role in the attack (if this is accepted as reflecting the true circumstances) stands to be considered in the selection of the sentence *but not as a mitigating factor*. It does not diminish the callousness of the attack nor reduce the offender's culpability for his role but if it is found that he played a lesser role than others, that circumstance must play its part in the selection of the minimum term.

19. This is unquestionably a higher starting point case. The murder was committed during the course of a burglary – or, at least, burglary was associated with the killing. The victim was vulnerable in the sense that he was not able to repel an attack by three men.

20. A number of undoubted features of aggravation were present. I am satisfied that the attack was planned. A weapon was used, although not, on the available evidence, by this offender. A mitigating factor as to the offence is that both the trial judge and the Court of Appeal appeared to have accepted that the offender intended only to inflict grievous bodily harm rather than to kill.

21. Taking all these factors into account, I consider that the appropriate minimum term is seventeen years' imprisonment. This will include the period spent in custody on remand is.