

Tariff certified by the Secretary of State under Life Sentences (NI) Order 2001 on 23-01-08

THE QUEEN v ROBERT WILLIAM MOLYNEAUX

DECISION ON TARIFF

Ruling by Kerr LCJ

KERR LCJ

Introduction

[1] The prisoner, Robert William Molyneaux, was arraigned on 19 September 1988 when he pleaded not guilty to two charges of murder and a number of other related charges. He was re-arraigned on 3 October 1988 and then pleaded guilty to the two murder charges. On 20 October 1988 Nicholson J sentenced him to life imprisonment for the murder of Edward Campbell and James Pius Meighan. The sentences were ordered to run concurrently. The prisoner was 21 years old at the date of sentencing and was 19 years and 9 months at the time of the first murder and 19 years and 11 months when the second murder was committed.

[2] The prisoner was released under the Northern Ireland (Sentences) Act 1998 having served 10 years and 11 months' imprisonment. The Secretary of State revoked the prisoner's licence on 14 June 2005 after he had been committed for trial on new charges on 21 May 2005. 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 (see *R v George Armstrong*).

[3] Although the prisoner was offered the opportunity to make oral representations through legal advisers on the tariff to be set under article 10 of the Life Sentences (NI) Order 2001, he elected to have this determined on the papers. He has indicated that he does not wish to make written representations. No representations have been received from the families of the deceased.

[4] The tariff represents the appropriate sentence for retribution and deterrence and is the length of time that 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.

Factual background

The murder of Edward Campbell

[5] I summarised the factual background to this murder when I set the minimum term for the prisoner's co-accused, Darren Larmour. This summary has been adapted to take account of the particular role of the prisoner.

“On the evening of 2 July 1987 the prisoner and a number of other men in a loyalist gang associated with the Ulster Freedom Fighters spent the night drinking at a club in the Silverstream area of Belfast. While there they hatched a plan to murder a man that they thought to be associated with the Irish National Liberation Army. At 12.22am on 3 July 1987 the prisoner and a co-defendant called at the office of D-Cabs (a so called “Catholic” firm) in King Street, Belfast, and ordered a taxi to Ligoneil. The deceased, Mr Campbell, took the fare. As the taxi neared the top of the Crumlin Road the [*prisoner's co-defendant*] produced a gun and ordered Mr Campbell to drive to Legmail Street where two more co-defendants were picked up. Mr Campbell was placed in the boot of the taxi and the [*prisoner*] drove to the home of their proposed target. When they got there they heard dogs barking and they abandoned their plan. After driving off talk turned to the taxi driver and whether he had heard the men using their names. They drove to a disused quarry on the Hightown Road and stopped the car. Mr Campbell was released from the boot and put to one side while the men discussed who was going to shoot him. The prisoner said that they did not ask Mr Campbell whether he was a Catholic, but assumed that he was because he worked for a firm that was perceived to be Catholic. He was then led off and shot dead by one of the group [*the prisoner's co-accused, Alfred John Howcroft, admitted in his statement after caution, dated 12 October 1987, that he had pulled the trigger*]. Some accounts, including his own, suggest that the prisoner stayed at the car during the shooting. The details of the death are gruesome: a co-defendant is said to have pulled the trigger but the gun did not fire. Mr Campbell is then said to have asked, “You're not going to shoot me” to which the gunman replied, “I am if this will work”. Local

residents heard shots at around 1am. The car was later burnt out and was located by police at 1.35am. Police found Mr Campbell's body at 8.35 the same morning."

The murder of James Pius Meighan

[6] James Pius Meighan was a 22 year old Catholic from the New Lodge area of North Belfast. He was engaged to Anita Skillen, a Protestant from Prestwick Park in the Ballysillan area. At around 7.00pm on Sunday 20 September 1987 the prisoner had been at the Benview Community Centre where he met two of his friends. He was asked by them to collect a shotgun from a shed behind the old Ballysillan Taxi offices, which was then an advice centre. He was told that it was to carry out a shooting and he admitted that he knew that the intended target was to be the victim, James Pius Meighan, because it was a Sunday night and he knew that the victim would be outside the house of his fiancée, Anita Skillen. As the prisoner knew, Mr Meighan called there every Sunday. According to a statement made by him after caution he was instructed to collect the shotgun between 8.00 and 9.00pm and to meet his friends 'at the turn of the road'. In his statement he said: -

"I headed up the road and hung about the shops waiting to collect it. At about 8 o'clock I saw the two of them standing near the ole (*sic*) O'Hara's Bakery. I dandered over to them and I was told that the shotgun had already been collected."

[7] The prisoner's co-accused in the murder, Alfred John Howcroft, alleged in his statement, however, that: -

"Me and another mate were given a 9mm Beretta pistol afterwards^[1] and later Robert Molyneaux got us a shotgun and we made our way to where we'd been told."

[8] Another defendant, Joseph Morrison, during interview by police officers, said: -

"The guns for the job were already in Hoover's [Howcroft's] house and Rob Molyneaux had brought them up earlier ... I took the shot gun up to the top of the road at Ligoneil lights and I gave it back to Rab Molyneaux. Rab took the gun and he hid it."

[9] The sentencing judge proceeded on the basis that the prisoner had supplied the weapons. No representations as to the correctness of that conclusion have been made and there is no reason that I should make any other assumption. In so far as it is relevant to the selection of the minimum period that the prisoner will be required to serve, he will be deemed to have supplied the weapons and that he disposed of the shotgun after the shooting.

Police interviews

[10] The prisoner was arrested on 9 October 1987 under section 12 of the Prevention of Terrorism (Temporary Provisions) Act 1984 on suspicion of being involved in acts of terrorism. He was cautioned and made no reply. He was taken to the Police Office at Castlereagh RUC Station where he was interviewed on several occasions over 9 and 10 October 1987. He did not co-operate with the police until late on 10 October when he confessed to his involvement in the murder of Edward Campbell.

[11] On 13 October 1987 the prisoner was interviewed in relation to the murder of James Meighan. He denied that he had supplied the shotgun used in the murder. He was shown a statement by his co-accused, Howcroft, which claimed that the prisoner had supplied the weapon. He again denied this and made a written statement to that effect. As I have said, however, Nicholson J concluded that he had done so and I proceed on that basis. During the course of his interviews the prisoner told them of a number of other incidents in which he had been involved.

Antecedents

[12] At the time he was sentenced to life imprisonment the prisoner had a number of previous convictions in the magistrates' courts. His criminal record began when he was 14 years old where he was given a 2 year conditional discharge for burglary and theft. At the age of 18 he was bound over to keep the peace. Whilst on remand for these murders he was sentenced to 3 months' imprisonment for assault occasioning actual bodily harm, 3 months' imprisonment for possession of an offensive weapon and 3 months imprisonment and ordered to pay restitution amounting to £537.39 for criminal damage.

Practice Statement

[13] 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.

19. Among the categories of case referred to in para 12, some offences may be especially grave. These include cases in which the victim was performing his duties as a prison officer at the time of the crime or the offence was a terrorist or sexual or sadistic murder or involved a young child. In such a case, a term of 20 years and upwards could be appropriate."

Conclusions

[14] This is clearly a higher starting point case. Many of the factors outlined in paragraph 12 of the *Practice Statement* are present. The victims were killed because they were Catholic; Mr Campbell was killed at least partly to prevent his giving

information about them and this may therefore be said to have happened to pervert the course of justice; in Mr Campbell's case he was providing a public service as a taxi driver; and more than one murder was involved.

[15] There are at least two aggravating features about these murders. Both were planned to some extent and both involved the use of firearms. I have no doubt that Mr Meighan was targeted not because it was apprehended that he represented any threat to anyone in the area (which is the pretext that was offered for his murder) but because he was Catholic and had become engaged to a young woman who was Protestant. This I regard as a further aggravating feature.

[16] The tariff fixed in Mr Larmour's case was fifteen years but an important distinction is to be drawn between that case and the present. Mr Larmour had been diagnosed as suffering from Huntington's chorea, a degenerative disease of the brain which is characterised by progressive dementia. He was already in need of full time care at the time that his tariff was fixed and it was expected that he would become increasingly disabled. The Crown accepted that his condition should be taken into account in fixing the tariff in his case.

[17] Mitigating factors in this case are that the prisoner was young at the time of the murders, he pleaded guilty and there is the suggestion that he is remorseful about his involvement in these crimes. The trial judge was unable to come to a confident conclusion as to the genuineness of the claimed remorse and, certainly, the fact that he persisted in his denial of having supplied the weapons used in the murder of Mr Meighan does not speak loudly in favour of the view that he truly repented his involvement in these merciless killings. Nevertheless, I take it into account, albeit to a limited extent.

[18] Because of the presence of several factors each of which would individually justify the selection of the higher starting point, it is necessary to consider the invocation of paragraph 18 of the *Practice Statement*. Paragraph 19 must also be considered since these were plainly terrorist murders. Taking all these factors into account, I fix the minimum term to be served at eighteen years.

^[1] Howcroft's statement described a meeting of a loyalist gang at which information was relayed to the members of the movements of a car, registration number LIJ 6012 (James Meighan's car), the owner of which was alleged to be gathering intelligence on both RUC and UDR personnel and loyalist paramilitaries and intended to set up the murder of a UDR man. In Joseph Morrison's statement he tells of being in the house of an unnamed man (identified as Howcroft) who indicated that an IRA member was visiting the Ballysillan area with a view to murdering a UDR man and that this alleged IRA member had to be "done in". Morrison knew that the unnamed man was referring to the victim and he knew the victim's movements as he and others had been watching him. It was decided to kill the victim that night as he visited his fiancée's house every Sunday.

