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<i>Judgment: approved by the court for handing down (subject to editorial corrections)*</i>	ICOS No: 21/079250
	Delivered: 02/05/2023

**IN THE CROWN COURT OF NORTHERN IRELAND
SITTING AT LAGANSIDE COURTHOUSE**

—————
THE KING

v

**SAMUEL ATCHESON
and
STEPHEN HUNTER**

—————

**Mr C Murphy KC with Mr R Steer (instructed by the Public Prosecution Service) for the
Crown**

**Mr C MacCreanor KC with Mr M Farrell (instructed by Reid Black Solicitors) for the
First Named Defendant**

**Mr J Kearney KC with Ms McAuley (instructed by McCrudden & Trainor Solicitors) for
the Second Named Defendant**

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SENTENCING REMARKS

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McBRIDE J

Introduction

[1] On 24 June 2022, Stephen Hunter (“the second defendant”) pleaded guilty to the murder of Donald Harold Fraser-Rennie, contrary to common law and on 9 January 2023, Samuel Atcheson (“the first defendant”) pleaded guilty to his murder, contrary to common law on a basis of plea.

[2] You have each been sentenced to life imprisonment which is the only sentence permitted by law for murder. It is now my role to fix a minimum term or tariff which you each must serve before you will be eligible to be considered for release by the Parole Commissioners.

[3] I held a sentencing hearing on 17 April 2023, and I have carefully listened to the pleas in mitigation made on your behalf. I wish to acknowledge the

comprehensive and carefully measured and considered oral and written submissions made by Mr MacCreanor KC on behalf of Mr Atcheson and by Mr Kearney KC on behalf of Mr Hunter and by Mr C Murphy KC on behalf of the Crown. Those submissions were of much assistance to the court in its deliberations.

The Deceased

[4] The deceased, Donald Harold Fraser-Rennie, was born on 27 November 1986. He was aged 33 at the time of his death. He originally lived in England but then moved to Northern Ireland where he lived with his partner, Mary Cotton. Together they had two children and although separated at the time of the deceased's death they were residing together with their two children at 146A Dunclurg Gardens, Ballymena. The deceased also had an adult daughter.

[5] I have read the moving statement made by Mary Cotton, dated 23 January 2023 in which she eloquently sets out the devastating impact the deceased's death has had upon her and her children. She has lost a partner and has now had to struggle as a single parent. The children have lost a much loved father and have to face the future without his presence, support, and guidance.

[6] The matters set out in this statement are matters I will consider when determining the appropriate sentence for each defendant but, as has been said before, no term of imprisonment can equate to or restore human life, nor can it alleviate the profound grief, pain and loss the deceased's family now have to live with on a daily basis.

Background

[7] On the afternoon of Tuesday 29 September 2020 both defendants and the deceased purchased/stole alcohol at a Tesco Supermarket in Ballymena. They then returned to Mr Atcheson's flat at 5D Crebilly Road, Ballymena, where they all consumed alcohol. The deceased was not previously known to Mr Hunter, but he was known to Mr Atcheson as they had become friends when they had both resided in the Simon Community Hostel in Ballymena.

[8] The flat at 5D Crebilly Road, Ballymena, is a first-floor apartment consisting of a living room in which there was a double bed, a main bedroom, a bathroom, and a kitchen.

[9] After the men returned to the flat, for reasons which are unclear, both defendants subjected the deceased to an unmerciful beating which caused his death. Phone records between Mr Atcheson and his former girlfriend show that there was some hostility between Mr Atcheson and the deceased perhaps relating to an allegation that the deceased had stolen money and/or medication from him.

[10] During their investigation police obtained CCTV footage, mobile phone records and a statement from Sarah Atcheson, Mr Atcheson's former partner. The phone records show that shortly after 1pm Atcheson phoned Sarah Atcheson for approximately 23 minutes. Later that afternoon between 3:07 and 3:46pm there were five phone calls made by Mr Atcheson to Sarah Atcheson.

[11] In her statement dated 3 October 2020 Sarah Atcheson states that on Tuesday 29 September 2020 Atcheson contacted her by video call. The camera was turned towards the deceased who at that time was lying on the floor lifeless with blood coming from his mouth. She states that both Hunter and Atcheson were laughing, and she saw Hunter score a screwdriver down the right side of the deceased's face. Both Hunter and Atcheson then licked blood (presumably the deceased's blood) off each other's face. She then observed Atcheson kick the deceased in the head and face at least 10 times. She describes that there was blood everywhere in the flat.

[12] Stephen Hunter also video-recorded part of the attack on the deceased at 3:14pm. The clip which is 58 seconds long shows the deceased covered in blood sitting on the floor in the apartment beside the bed in the living room. At this stage it is obvious that he has already been subjected to a very savage beating, but he is still alive, able to speak and move his arms. Hunter verbally abuses the deceased and hits him several times on the face during the video clip. Hunter tells him that he cannot raise his arms to defend himself and at one point he threatens to stab him. Throughout the clip Hunter appears to be forcing the deceased to answer his questions with the words "yes." Atcheson is standing to the side. He is holding a phone and there appears to be blood on his top, jeans, and shoes. Atcheson is not involved in assaulting the deceased during the duration of the video clip but at one point he advises the deceased to answer Hunter by saying "yes sir." At no point during the clip does Atcheson try to help the deceased or to stop the ongoing assault.

[13] At 4:11pm CCTV shows Atcheson and Hunter at the local Tesco petrol station. At this stage Atcheson has changed his clothes and is wearing a jacket which belonged to the deceased. His shoes appear to be covered in blood. Some minutes later both defendants walk in the direction of Lanntara where Hunter's girlfriend, Nicola Campbell, lived. They are both observed to be unsteady on their feet. Later that evening between 8:50 pm and 11pm approximately Atcheson Facebook messages his half-sister seeking help saying there was a dead man in his flat. It is not until almost 1am that he calls 999. In the 999 call he says that a male has been beaten up at his flat and he is believed to be dead. When asked about the deceased's name he said, "at the moment all we have is 'Donald' and stated "we have literally just arrived at the scene."

[14] When police arrived, they found the deceased lying in the flat in a pool of blood. He had no pulse and when paramedics arrived, they confirmed he was dead at approximately 1:09am. Atcheson denied he had any involvement in the death of the deceased and told police Hunter was responsible.

[15] At police interview both defendants denied murder and shifted the blame onto the other. Hunter, however, did accept that he punched the deceased twice in the face and kicked him once whilst he was lying on the ground. Whilst on the ground he straddled him and grabbed his cheeks with both hands and squeezed his fingers into them. Hunter then told police that he had left the flat whilst the deceased was still alive, and Acheson was fighting with the deceased. This was clearly a lie as the CCTV footage shows that Acheson and Hunter were observed together at the local petrol station at 4:11pm that afternoon.

[16] Similarly, at police interviews Acheson lied about his involvement in the incident by blaming Hunter for causing all the injuries to the deceased.

[17] During the investigation police retrieved items which were found on waste ground close to Acheson's flat. These included items from his flat and it is clear from this that an attempt was made to clean up the scene and dispose of evidence. Police also discovered fire embers close to Nicola Campbell's home where attempts had been made by the defendants to destroy evidence.

[18] A forensic scientist attended the scene and found the deceased lying in the living room with a large pool of blood around his head indicating he had been stationary in that position for some time. His clothing was blood stained. There was significant blood projected onto the walls, furniture, and ceiling in the living room which she opined was caused by blood releasing due to an impact, violent movement, or pressure. She also noted heavy bloodstaining on the mattress in the main bedroom, again, with projected blood staining on the walls and furniture. She observed a pool of blood on the floor indicating a stationary bleeding source of some duration. In addition, she found smears of blood in the bathroom floor and projection onto the furniture and possible footmarks in the blood on the floor in both the bathroom and the living room.

[19] She opined that the presence of blood throughout the entire apartment including the kitchen indicated the deceased had been moved around the flat during the course of the assault.

[20] The body of the deceased was moved to the Northern Ireland Regional Forensic Mortuary where an autopsy was carried out on 2 October 2020 by Dr Lynas, State Pathologist for Northern Ireland.

[21] The post-mortem disclosed that the deceased had multiple injuries consistent with a sustained physical assault. Dr Lynas noted the following injuries:

- Extensive heavy bruising of the face consistent with multiple forceful blunt blows such as punches, kicks, stamps, strikes with a weapon or a combination.
- Severe fracturing of the nasal bones, again, in keeping with multiple forceful blows.

- Fractures of the bony sockets of the teeth.
- Subdural haemorrhage and subarachnoid haemorrhage on both sides of the brain and to the rear of the brain. The swelling and degeneration of the brain structure suggested it had survived in a state of reduced consciousness for approximately 30 minutes following brain injury.
- Severe fracturing of the nasal bones which compromised air flow.
- Bleeding into the windpipe.
- Dense bruising on both sides of the neck, fracture of two of the major cartilages of the neck and multiple pin sized retinal haemorrhages, again, suggestive of the deceased's neck having been forcibly grasped/compressed. Such compression may have caused loss of consciousness and if sustained could have precipitated death.
- Nine rib fractures on the left side and associated bruising together with two rib fractures on the right side and associated bruising to the chest and back. Dr Lynas considered these chest injuries were caused by heavy blunt trauma such as blunt blows, heavy punches, stamps, kicks or strikes with a weapon or alternatively falls against a hard surface. These injuries would not have proved rapidly fatal but decreased the deceased's ability to breathe and in turn increase the strain on his body.
- Multiple fractures to the liver indicating heavy blunt impacts, most likely punching, kicking, or stamping.
- Multiple bruises to the forearms, back of both hands and abrasions. The bruising to forearms could have been caused if the deceased had raised his arms to protect his head and the bruising on the back of the hands was in keeping with blunt impacts caused by using his hands to protect himself or by stamps or kicks to his hands.
- Probable incision on the left middle finger suggesting it was caused by a sharp object such as a knife or a glass.
- Multiple fine linear abrasions on the face in keeping with an object such as a screwdriver having been scraped across the skin.

[22] At the time of death the deceased had 244mls per 100mls of alcohol in his blood and he was, therefore, moderately severely intoxicated when he died. Alcohol intoxication makes a person more susceptible to the effects of a head injury and it was

therefore a possible contributing factor in the overall sequence of fatal events. In addition, there was evidence of cannabis in the deceased's blood.

[23] From these findings Dr Lynas concluded that the cause of death was blunt force trauma of the head and chest and compression of the neck together with acute alcohol intoxication as a possible contributing factor.

[24] From all the evidence presented by the Crown, I am satisfied beyond reasonable doubt, that the deceased and both defendants were all drinking alcohol in Atcheson's flat on 29 September 2020. There appears to be an allegation that the deceased had stolen money and/or medication previously from Atcheson. Whatever the reason for the assault, as is clear from the multiplicity and extensive nature of the injuries observed in the autopsy report, the deceased was subjected to what was a savage, merciless, prolonged beating involving multiple punches, kicks and blows. The callous and vicious nature of the attack is graphically portrayed in the disgusting video made by Hunter. It is also clear from the forensic scientist's report that the deceased was moved around the flat during the course of what was a prolonged attack.

[25] Both defendants have pleaded guilty to murder on the basis that they were joint principals in a joint enterprise physical assault which caused the death of the deceased.

[26] The agreed basis of plea for Mr Atcheson is:

- “(i) The defendant pleads guilty to count 1, based on joint enterprise with Stephen Hunter.
- (ii) The prosecution will assert that the defendants are joint principals, but that Hunter had a leading role.
- (iii) Further, the defendant, by his presence encouraged the commission of the offence.
- (iv) The prosecution cannot specify the precise role of Atcheson, in respect of the infliction of injury, however, it is evident that he was involved in a number of kicks of the deceased as described.
- (v) The assault was prolonged as per the medical evidence.”

[27] There is no agreed basis of plea for Mr Hunter

[28] Mr Hunter's counsel, Mr Kearney, accepts that Hunter was a joint principal in a joint enterprise of physical assault which caused the death of the deceased. He does

not, however, accept the essence of the agreed facts between the prosecution and co-accused and, in particular, disputes the assertion that his client played a leading role in the assault.

[29] I asked Mr Kearney if he wished to have a *Newton* hearing to determine this matter. He submitted that that was not appropriate.

[30] In circumstances where Hunter has pleaded guilty and there is no basis of plea, and a *Newton* hearing is not requested and would not assist given Hunter's inability to recall the events of that evening due to the effects of intoxication. I will determine the facts which are established beyond reasonable doubt on the basis of the evidence before the court.

[31] Having regard to the evidence before the court and without having regard to the evidence of the defendants, I am satisfied beyond reasonable doubt, that both defendants engaged in a joint enterprise physical assault which caused the death of the deceased. The video shows Hunter playing a leading role in the assault at that time. Further, at interview Hunter also accepts that he punched the deceased twice in the face causing him to fall to the ground and whilst he was on the ground, he kicked him and then grabbed him by the face with both hands squeezing it. In relation to Atcheson it is important to note that he is present throughout in the video clip and although he is not actively involved, at no point does he intervene to stop the assault or to assist the deceased. In addition to his presence as observed in the video, Sarah Atcheson's evidence was that Atcheson kicked the deceased at least 10 times in the head and face. During this period of the assault, Hunter was present and did nothing to stop the assault and Hunter then scored a screwdriver down the deceased's face and an abrasion is noted by Dr Lynas in keeping with such a mechanism of injury.

[32] On the basis of this evidence, I am satisfied beyond reasonable doubt, that there is no material difference in terms of culpability in respect of each defendant in relation to their involvement in the assault.

Legal Principles

[33] Article 5(2) of the Life Sentences (Northern Ireland) Order 2001 ("the 2001 Order") provides that the minimum term:

"(2) ... shall be such part as the court considers appropriate to satisfy the requirements of retribution and deterrence having regard to the seriousness of the offence, or of the combination of the offence and one or more offences associated with it."

[34] The relevant legal principles the court should apply in fixing a minimum term were set out in *R v McCandless* [2004] NICA 1 in which the Court of Appeal held that the Practice Statement issued by Lord Woolf CJ and reported at [2003] 3 All ER 412

should be applied by sentencers in this jurisdiction who are required to fix tariffs under the 2001 Order. The relevant parts of the Practice Statement for the purposes 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.”

The starting point

[35] The Crown submitted that this was a higher starting point case for both defendants on the basis the deceased sustained extensive and multiple injuries before his death; there was evidence of gratuitous violence; there was evidence of humiliating and degrading treatment, and the deceased was vulnerable.

[36] Mr MacCreanor on behalf of Mr Atcheson, did not dispute that it was a higher starting point case on the basis of the injuries sustained by the deceased before his death.

[37] Mr Kearney submitted that the starting point ought to be the lower/normal starting point on the basis the role Hunter played in joint enterprise reduced his culpability. For reasons already set out, I am satisfied that there is no material difference in the level of culpability of each defendant in respect of the role each played in the assault.

[38] Although the Crown seeks to rely on the presence of vulnerability of the deceased, sadism and humiliating and degrading treatment, I am not satisfied that these factors are present in this case.

[39] Like O’Hara J in *R v Nauburaitis* [2021] NICC 6 at para [29](iii) I find it difficult to use the description of vulnerable in a context where both the deceased and the defendants had all been consensually drinking excessively in the hours before the murder.

[40] I have carefully viewed the video of the attack and the evidence of Sarah Atcheson about the defendants licking the deceased’s blood off each other’s face. Whilst I am satisfied the video shows gratuitous violence, I do not consider that the behaviour of the defendants could be characterised as sadism or meeting the threshold for humiliation or degradation of the victim.

[41] I am satisfied that the higher starting point is appropriate in this case considering the extensive and multiple injuries inflicted upon the victim before his death by both defendants and in light of the use of gratuitous violence. These factors clearly elevate this case from that of a loss of temper between two people known to each other.

Aggravating Features

[42] As I have determined this case attracts a higher starting point on the basis of the extensive and multiple injuries inflicted upon the deceased and the gratuitous use of violence, I, therefore, will not use these as aggravating features as this would amount to double counting in coming to the appropriate tariff.

[43] Mr Murphy suggested that each defendant's offending was aggravated by the following features:

(a) **The killing was sadistic in nature**

He referred to the evidence of the defendants' behaviour during the video and Ms Sarah Atcheson's evidence that each defendant licked the deceased's blood off each other's face and laughed.

Whilst the video shows brutality and whilst the action of licking the deceased's blood off each other's faces was grotesque, I do not consider, it reached the threshold of sadistic behaviour as there is no evidence that they were doing this to obtain pleasure.

(b) **The killing was wholly unprovoked**

I am not satisfied beyond reasonable doubt that it was wholly unprovoked in light of the evidence suggesting that there may have been some hostility shown by the deceased to Atcheson prior to the attack.

(c) **The body was left at the flat and no assistance was sought even if the defendant thought he was dead**

I am satisfied both defendants left the flat and each failed to seek any assistance for the deceased. Mr Hunter left with Mr Atcheson as shown in the CCTV, and therefore he clearly lied to the police when he said that he left at a time when Mr Atcheson and the deceased were still fighting each other. Mr Hunter failed to seek any assistance for the deceased and Atcheson only did so many hours after the incident. I consider the conduct of each defendant in this regard is an aggravating feature although it appears that the deceased may well have been dead at the time they left the flat.

(d) **The defendants recorded on video the deceased as he was dying and thereby engaged in brutally humiliating and degrading treatment**

I have taken the conduct shown in the video into account in setting the starting point in that it shows gratuitous violence. I, therefore, do not treat the behaviour shown in the video as an aggravating feature. I do, however, consider the fact that a recording was taken of the deceased when he had already been seriously assaulted and the video which shows him being assaulted and abused when in a weak and bloodied state constitutes an

aggravating feature. No contrary view was expressed by counsel on behalf of each defendant.

(e) **The commission of the offence whilst intoxicated**

Whilst this is normally an aggravating feature, in the circumstances of this case, where all the parties had been drinking together prior to the murder, I do not intend to treat it as an aggravating factor.

(f) **Making efforts to clean up the crime scene and destroy evidence**

There is evidence of efforts made by each defendant to wash clothing and to dispose of forensic evidence. Counsel on behalf of the defendants accept that this is an aggravating feature albeit, I accept, that the attempts to destroy evidence were unsophisticated and did not seriously interfere with the police investigation.

(g) **The effect on the deceased's family as shown by the victim impact statement**

I have already outlined the impact the deceased's death has had on his family. It is something I will consider when setting the tariff, although I do not intend to treat it as an aggravating factor as it is self-evident in almost every murder case the deceased's family will be greatly affected by the death and the manner of the death.

Previous convictions

[44] Each defendant has relevant previous convictions. Samuel Atcheson has 101 previous convictions. Although this is lengthy record it largely does not involve offences of significant violence. A significant number of the offences relate to third party prosecutions for road traffic offences and possession of illicit drugs associated with his chaotic lifestyle. There is, however, one serious matter regarding a section 47 assault against a previous partner during a domestic dispute. The matter was dealt with at the magistrates' court in 2018 when he was imprisoned for four months, and a restraining order was also granted.

[45] Mr Hunter has 25 previous convictions with relevant entries for serious offending including two serious assaults and four assaults on the police. Of relevance is a conviction on 31 October 2015 when he was sentenced to 19 months in Scotland for grievous bodily harm which involved use of a knife in a domestic context. In the pre-sentence report he is assessed as posing a significant risk of serious harm. I consider this relates to future risk and not culpability and therefore I do not treat this assessment as an aggravating feature.

Mitigating Features

[46] Mr Murphy, on behalf of the Crown, submitted that the only mitigating features were the pleas of guilty.

Mr Atcheson

[47] Mr MacCreanor, on behalf of Mr Atcheson, advanced a number of submissions in respect of factors the court should take into account in mitigation.

[48] First he asked the court to take into account the personal circumstances of the defendant including his poor mental health and learning difficulties.

[49] As appears from the pre-sentence report the defendant is now aged 36 years of age and has been in custody since the index offence. The defendant was a victim of childhood trauma and entered the care system at 15 years of age. He was introduced to cannabis at a very early age and then in his teenage years became addicted to heroin. Matters deteriorated when his mother died in 2010 and the defendant began abusing alcohol and his mental health then deteriorated.

[50] As appears from the reports of Dr Noble, Consultant Psychiatrist, dated 22 May 2022 and Dr Bownes, Consultant Psychiatrist, dated 6 April 2023, this defendant's mental health has been extremely poor over an extended number of years, and he has spent periods in psychiatric units. Dr Noble opines a diagnosis of emotionally unstable personality disorder with subsequent alcohol dependence and learning difficulties. There is an additional diagnosis of post-traumatic stress disorder. Dr Bownes reports that Atcheson is now engaging with drug substitution treatment and counselling services within the prison setting.

[51] I do not consider that the mental health difficulties and the learning difficulties from which Atcheson suffers serve to reduce his culpability in the index offending. Although it is accepted that at the time of the offending the defendant was leading a chaotic and unstable lifestyle characterised by homelessness, drug and alcohol misuse, addiction, poor mental health, and self-harm, he had just secured Housing Executive accommodation when the index offence took place, and the medical evidence establishes that he was clearly aware of what he was doing and its consequences.

[52] Further, in the context of a murder charge little weight can be given to his personal circumstances and his mental health and learning difficulties in terms of mitigation.

[53] Mr MacCreanor also submitted that the court should take into account the fact that the murder was not premeditated, and Atcheson alerted the emergency services as to what had happened and as a result, they were able to preserve and secure forensic evidence. In addition, Atcheson named his co-accused immediately to the police, thus, prompting his swift arrest and, again, the retrieval of forensic evidence including the mobile phone footage which has proved of invaluable assistance to the investigators. I consider some weight can be given to these factors.

[54] It was further submitted that the court should consider the assessment by probation that Atcheson did not poses a significant risk of serious harm to the public as a mitigation factor. I reject this submission as this assessment relates to future risk and not culpability.

[55] Mr MacCreanor also highlighted the high level of remorse expressed without prompting by Atcheson in the pre-sentence report and to Dr Bownes.

[56] In *R v Turner* it was recognised that compelling evidence of remorse can be a separate mitigating factor to a guilty plea. In light of his comments to the author of the pre-sentence report and Dr Bownes and as appears from the letter from the prison Chaplin Atcheson has expressed what I consider to be genuine and heartfelt remorse in respect of his actions. Although it is to be noted that he continued in the pre-sentence report to minimise the role he played and to give a version of events which is at odds with the other sources of evidence.

Hunter

[57] Mr Kearney, on behalf of Mr Hunter, submitted that there were a number of mitigating factors the court should take into account in reducing the starting point.

(a) **Mens rea**

Mr Kearney submitted that in this case there was no evidence to the criminal standard showing that Hunter intended to kill as opposed to cause grievous bodily harm. I have already outlined the nature of the multiple and extensive injuries caused to the deceased by reason of punches, blows and kicks as appears from the medical evidence. The severe prolonged and vicious nature of the attack as established by the post-mortem report, the forensic scientist's report, the video, and the evidence of Sarah Atcheson and, also, the admissions made by this defendant clearly indicate, I find, an intention to kill. The failure to stop the assault and leaving the deceased without any means of assistance, I find, is evidence that each defendant was content that the deceased should be left to die. In a case of this nature where there is gratuitous and extensive violence used during the course of the attack including the use of a shod foot and a screwdriver any mitigation, even if an alternative mens rea is appropriate, is unlikely to be material in any event. I, therefore, do not consider there should be a reduction on the basis that this defendant intended GBH as opposed to an intention to kill.

(b) **The murder was not premeditated**

I accept this submission.

(c) **Mr Hunter's personal circumstances**

As appears from the pre-sentence report the defendant is now aged 32 years old. He was brought up in a stable family. He had behavioural problems which impacted on his education, and he experienced mental health problems in his teens and began drinking and using illegal drugs. He has a partner and three children. After his separation he lived an unsettled life associated with emotional and mental health problems and prolonged misuse of substances. As stated above, in the context of a murder case, little weight can be given to personal mitigating circumstances.

(d) **Mental health disorder**

Relying on the guidance in *McCandless* at para [11] Mr Kearney submitted the court should reduce the starting point on the basis Mr Hunter's culpability was significantly reduced because he was suffering from a mental disorder falling short of the defence of diminished responsibility which nonetheless lowered his degree of criminal responsibility. In this regard he relied on the report from Dr Loughrey, Consultant Psychiatrist. As appears from Dr Loughrey's report Hunter has a longstanding psychiatric history and longstanding chronic and entrenched alcoholism with moderate learning difficulties. He is addicted to drugs and has a recent diagnosis of paranoia and alcohol dependence syndrome with self-harming. Whilst I accept Hunter has a recognised mental health condition, Dr Loughrey concluded that his ability to know what he was doing and that what he was doing was wrong was not materially affected by his psychotic illness. Accordingly, I am satisfied, in these circumstances, that his culpability was not reduced by reason of his mental health condition. In addition, I note that he has not consistently addressed these issues and failed to engage with community mental health services and was non-compliant with prescription medication at the time of offending. These are other reasons why his culpability should not be reduced having regard to his mental health difficulties.

(e) **Remorse**

Mr Kearney offered to the court on Hunter's behalf an apology to the family and court and expressed his remorse at his actions. In the pre-sentence report whilst Mr Hunter expresses regret it appears that he is more concerned about the difficulty the consequences of his actions has had upon him and his family. I, therefore, give little weight to this factor.

The defendants' guilty pleas

[58] Hunter pleaded guilty on 24 June 2022. He did not plead guilty at first arraignment, but I accept that the delay was caused by the reasonable actions of the

defence in seeking a medical report to investigate whether a defence of diminished responsibility could have been relied on.

[59] Atcheson pleaded guilty on 9 January 2023, the day the jury was due to be sworn in, on the basis of the plea already outlined.

[60] The principles in respect of reduction for a plea of guilty are referred to in *R v Turner* [2017] NICA 52. At para [40] Morgan LCJ outlines that each case must be considered on its own facts, but in circumstances where a defendant enters a not guilty plea at the first arraignment, he is unlikely to receive a discount for a plea on re-arraignment greater than one sixth and a discount for a plea in excess of five years would be wholly exceptional.

Conclusion

[61] In my judgment this is clearly a case in which a higher starting point of 16 years is entirely appropriate by reason of the multiplicity and extent of the injuries inflicted and the gratuitous violence used against the deceased.

[62] There are a number of factors which aggravate the offending including the fact that neither defendant sought any assistance for the deceased; that the assault was recorded on video; that efforts were made to clean up the scene and destroy evidence and each defendant has relevant records. Having regard to these aggravating features and also the mitigating features set out above which includes both defendants' personal circumstances and mental health difficulties I consider that the appropriate starting point for each defendant is 18 years.

[63] Turning then to reduction for a guilty plea, I accept that each defendant is entitled to have his guilty plea recognised as such pleas normally reduce the impact of the crime upon victims, save victims and witnesses from having to testify and are in the public interest in that it saves public time and money on investigations and trials. Although Mr Hunter did not plead at first arraignment, I consider that it was reasonable for his lawyers to seek to carry out medical investigations. In all the circumstances, I consider it is appropriate to reduce the starting point of 18 years to one of 15 years.

[64] Mr Atcheson did not plead guilty until the day the jury was due to be sworn in. Whilst this was on the basis of plea which set out that Hunter played a leading role, for the reasons already set out, it is my view, that there is no material difference in his culpability to that of Mr Hunter. I, therefore, consider that there should be a reduction of two years in respect of his guilty plea.

[65] Therefore, the minimum period which Hunter must serve in prison before he can be considered for release is 15 years. The minimum period which Mr Atcheson must serve in prison before he can be considered for release is 16 years. After that

time, it will fall to the Parole Commissioners to decide whether each should be released on licence subject to specific conditions.