

# Judicial Communications Office

Thursday 21 April 2011

## COURT SETS MINIMUM TERMS OF IMPRISONMENT FOR THE MURDER OF GEOFF KERR

### Summary of Judgment

Mr Justice Hart, sitting today in Downpatrick Crown Court sitting at Belfast, ordered that Darren Ivan Kernohan should serve 22 years imprisonment before he can be considered for release by the Parole Commissioners. Martin Thomas Fleming was ordered to serve a minimum term of 16 years imprisonment. The judge also sentenced Siobhan Clyde, Margaret Veronica Deery and Laurence Desmond Kincaid for offences connected to the murder.

The court heard that Kernohan and Fleming forced their way into the home of Geoff Kerr, his wife Sally Kerr and their son Adam Kerr on the night of 27 April 2009. Their purpose was to steal firearms. Kernohan held a gun to Mrs Kerr's head. Mr Kerr came to her defence by striking Kernohan on the head with a heavy soup tureen. In the course of a struggle which took place between Geoff Kerr and Kernohan, two shots were fired, one of which killed Mr Kerr. The jury convicted Kernohan of murder rejecting his account that he discharged the shots but did not know the gun was loaded and fired it by accident. Fleming pleaded guilty to the murder of Mr Kerr. Both pleaded guilty to the common assault of Mrs Kerr.

Mr Justice Hart referred to the victim impact statements from Mrs Kerr and from her four sons. He said it would be impossible to do justice to the descriptions each gave of the impact of the events of that night and the grief that afflicts them each day. He said that no one who was in court when Mrs Kerr gave her evidence could fail to have been impressed by the courage the family displayed during the attempted robbery or her dignity, composure, strength of character and self-control when recounting the events of that night despite having to give evidence on a day which coincided with her wedding anniversary.

The minimum term is the period that the court considers appropriate for a defendant to serve before he or she can be considered for release by the Parole Commissioners. The term should satisfy the requirements of retribution and deterrence having regard to the seriousness of the offence.

# Judicial Communications Office

This sentencing exercise involves the judge determining the appropriate starting point in accordance with sentencing guidance and then varying 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. Mr Justice Hart said this was a case which falls within the higher starting point of 15-16 years.

Mr Justice Hart was satisfied that Kernohan was the principal offender. He admitted planning the robbery and that he was motivated by greed. The pre-sentence report assessed him as presenting a risk of serious harm to others. The judge cited a number of aggravating factors: Kernohan's previous convictions for offences of violence, possessing a firearm and dangerous driving causing the deaths of three people; he was on probation when he committed the murder; he armed himself in advance with a loaded gun and pointed this at Mrs Kerr as she pursued him; the getaway car was burnt out to destroy any evidence; the gun had not been recovered; and the murder was committed in front of Mrs Kerr and her son. Mr Justice Hart considered there were no mitigating factors. Kernohan showed no remorse throughout. He refused to answer questions during interview. It was only when presented with DNA evidence linking him to the scene that he constructed his lying account, as the jury found it to be, to explain his actions. **Mr Justice Hart said that Kernohan should serve a minimum term of 22 years imprisonment before he can be considered for release.**

The judge said that by pleading guilty to murder, Fleming accepted that he knew that Kernohan was carrying a loaded firearm and the purpose of their going to the house was to rob Geoff Kerr. The prosecution accepted that he was a secondary party but that he did foresee that the gun might be used. Mr Justice Hart referred to the aggravating factors: it was Fleming who destroyed the car; and his "exceptionally bad" criminal record including crimes of dishonesty and violence. The pre-sentence report suggested that while Fleming expressed some degree of remorse he had sought to minimize his role in the murder, and that there is a high likelihood of re-offending. The judge then referred to the mitigating factors: Fleming did not fire the shots; he may not have been expecting Kernohan's willingness to fire the gun; he expressed remorse; and his plea of guilty albeit at a very late stage. **Mr Justice Hart said that Fleming should serve a minimum term of 16 years imprisonment before he can be considered for release.**

Mr Justice Hart then turned to the other defendants. He said they fell into a different category of culpability as it was not suggested that any of them knew what Kernohan and Fleming were going to do. Their offences involved misleading the police by giving false information or withholding information. Mr Justice Hart said that "those who mislead the police, or withhold

# Judicial Communications Office

information, about serious crimes are at risk of immediate prison sentences unless there are strong mitigating personal or other circumstances”.

Siobhan Clyde was the owner of the car used by Kernohan and Fleming. She admitted during interview that she had made it known some weeks before the murder that she wanted to have her car burnt out so she could make a false insurance claim. She was phoned by someone and brought her car to a hotel car park where she handed over the keys. She then rang her mother who came and collected her. She arranged with her mother that they would say the car was stolen from her mother’s home address. The keys were later dropped through her letterbox. At first she refused to name the person to whom she had given the car but finally admitted it was Kernohan. Mr Justice Hart referred to the mitigating factors: Ms Clyde has to all intents and purposes a clear record; has a child for whom she is responsible; and her plea of guilt, albeit at the start of the trial. He sentenced her to 12 months imprisonment to be suspended for 2 years.

Veronica Deery is Siobhan Clyde’s mother. She immediately admitted to the police that her daughter had told her in advance of her plan to have the car burnt out but claimed that she told her daughter not to be stupid. She did, however, collect her daughter at the hotel car park and made a statement to police confirming that the car had been stolen from her house. Mr Justice Hart said that Mrs Deery was a hard working woman of hitherto good character. She suffers from Cystic Fibrosis. He said she foolishly allowed herself to be a party to what she thought was a dishonest attempt by her daughter to obtain the insurance money for her car. Mrs Deery was sentenced to 12 months imprisonment suspended for 2 years.

Laurence Desmond Kincaid was arrested following analysis of telephone calls which strongly suggested that it was he who drove Fleming to Glengormley so that Fleming was able to put the keys of Siobhan Clyde’s car back through her letterbox after the car had been burnt. Kincaid claimed he did not connect Fleming with the murder of Geoff Kerr because “it wasn’t his form”. Despite knowing about the murder and that Fleming had been charged, Kincaid still did not tell the police what he knew about Fleming’s movements that night. Mr Justice Hart said that “despite the suspicions that Kincaid was much more deeply implicated in this matter than he admits I must sentence him on the basis of what he has admitted and not what is suspected about him”. The judge said it was clear that Kincaid had deliberately suppressed relevant information which he knew would be of assistance to the police. He took into effect, however, Kincaid’s poor health and his plea of guilt. Kincaid was sentenced to 12 months imprisonment suspended for 2 years in view of his poor health.

# Judicial Communications Office

## NOTES TO EDITORS

1. This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available on the Court Service website ([www.courtsni.gov.uk](http://www.courtsni.gov.uk)).
2. The minimum term is the term that an offender must serve before becoming eligible to have his or her case referred to the Parole Commission for them to consider whether, and if so when, he or she can be released on licence. Unlike determinate sentences, the minimum term does not attract remission. If the offender is released on licence they will, for the remainder of their life, be liable to be recalled to prison if at any time they do not comply with the terms of that licence. The guidance is set out in the case of R v McCandless & Others [2004] NI 269.

**ENDS**

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