

# Judicial Communications Office

Wednesday 7 September 2011

## **COURT OF APPEAL REDUCES TARIFF TO BE SERVED FOR MURDER OF PATRICK FLEMING**

### Summary of Judgment

The Court of Appeal today reduced the minimum tariff to be served by Desmond Heaney for the murder of Patrick Fleming from 22 years to 20 years.

Desmond Andrew Heaney was among a group of people drinking at a flat in Coleraine on Monday 14 May 2006. There had been a fight outside the flat involving Patrick Fleming's brother. Patrick Fleming, his brother and another friend then arrived. A further fight broke out. The Court heard that Patrick Fleming was standing at the doorway to the living room, apparently blocking anyone from leaving the flat. Heaney came out of the kitchen with a knife and stabbed Patrick Fleming 5 times in the chest. He later died in hospital.

Heaney was convicted on 16 May 2008 of the murder of Patrick Fleming and sentenced to life imprisonment with a minimum tariff of 22 years. The Court heard that he had more than 150 previous convictions including convictions for serious assault and possession of offensive weapons. Heaney was assessed as giving rise to a high risk of reoffending and a significant danger to the public. The Court of Appeal heard his application for leave to appeal the minimum tariff on the grounds that it was manifestly excessive and wrong in principle. Heaney contended that this was not a case where the higher starting point should have been applied.

Delivering the judgment of the Court, the Lord Chief Justice said he was satisfied that the trial judge was correct to treat this as a higher starting point case. There were multiple injuries inflicted prior to death. Heaney had suggested that the speed with which the injuries were inflicted did not have the character of a prolonged or sadistic attack contemplated by the Practice Statement but the Court of Appeal did not accept this submission. Heaney claimed that he had armed himself with a knife which had been thrown onto a stool beside him by someone else. The Court of Appeal said that the trial judge was satisfied that Heaney had in fact gone into the kitchen to get the knife. The Lord Chief Justice commented that this clearly constituted arming himself with a weapon in advance before putting himself into a position where he could commit the offence. He concluded that this was an aggravating factor.

Heaney also claimed that the attack was spontaneous and lacked premeditation. The trial judge had accepted that there was a perception of fear as a result of the appearance of Patrick Fleming, his brother and his friend. Heaney went into the kitchen to get the knife once the fighting broke out. The trial judge accepted that these facts demonstrated a degree of spontaneity and lack of premeditation. The Lord Chief Justice said that the absence of any planning will always be a significant factor in the determination of any sentence. He

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accepted that the tariff of 22 years was manifestly excessive and substituted for it a period of 20 years.

## 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 Commissioners 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.
3. Minimum terms (also known as tariffs) are set by the court in accordance with the approach set out in the case of R v McCandless & Others [2004] NI 269 and the Practice Statement [2002] 3 All ER 417. The Practice Statement sets out two starting points. The lower point is 12 years imprisonment, and the higher starting point is 15/16 years. The minimum term is the period that the court considers appropriate to satisfy the requirements of retribution and deterrence having regard to the seriousness of the offence. 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 the aggravating or mitigating factors which relate to either the offence or the offender in the particular case.

**ENDS**

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