

Judicial Communications Office

Thursday 23 June 2011

COURT OF APPEAL REDUCES MINIMUM TERM OF IMPRISONMENT

Summary of Judgment

The Court of Appeal today reduced the minimum term of imprisonment imposed on Paul James Morrin for the murder of Gerald Martin O'Hagan from 20 years to 18 years.

Gerald O'Hagan was found dead in Morrin's flat at Galliagh Park, Londonderry in the early hours of 3 February 2006. The two men had spent much of the previous day and night drinking along with Sean Devlin who was the best friend of the deceased and the son Morrin's former partner. The Crown Court was told that Gerald O'Hagan was found in a kneeling posture beside a bed with his knees on the floor, and his head and trunk lying face down on a duvet on the bed. He died as a result of a large number of stab wounds, one to the side of his neck and the rest to the back of his trunk.

Morrin was convicted following a jury trial in March 2008. The prosecution case was based on forensic evidence, inferences to be drawn from comments made by, and actions of, the defendant when he made a "999" call, and a photograph of the deceased body's which he took on his mobile phone after the 999 call and before the ambulance personnel arrived. On 23 April 2008 Morrin was sentenced to life imprisonment with a minimum term of 20 years imprisonment before he could be considered for release by the Parole Commissioner.

Delivering the judgment of the Court of Appeal, Mr Justice Hart said that it was clear that Gerald O'Hagan had died as the result of a large number of blows inflicted as he was struck repeatedly from behind. The judge said that what happened prior to the attack, or why he was attacked, is unknown, but he was clearly completely defenceless when he was attacked in this fashion from behind, a conclusion supported not just by the posture in which his body was found and the wounds having been inflicted from behind, but by his being of intoxicated and of slight build when compared to the defendant.

Counsel for Morrin argued that the minimum term of 20 years imprisonment was wrong in principle and manifestly excessive because the trial judge

Judicial Communications Office

engaged in double counting of the aggravating features of the case and penalised Morrin for contesting the case and the manner in which it was contested.

Mr Justice Hart referred to the violence inflicted on the deceased as well as a number of macabre features which were identified at the Crown Court trial. The trial judge, Mr Justice Treacy, said that “[Morrin] took a perfectly framed photo of the deceased after he had been murdered. This had all the appearance of a trophy photograph. Cigarette ash was also found on the back of the deceased’s body, indicating that [Morrin], after he murdered the young boy, was standing over the body smoking. A meat cleaver was also found under the cushion of a chair in the living room, whose purpose and location also remains unexplained”.

The Court of Appeal took account of all these circumstances, namely the vulnerability of the deceased at the time he was attacked, the extensive nature of the injuries inflicted upon him, the cold and casual viewing of the deceased’s body, and the presence of cigarette ash on his back, indicative of Morrin having smoked at a point where the body was lying in front of him. It concluded that this was a proper case in which to impose a minimum term significantly in excess of 15 to 16 years.

The Court then dealt with the submission that the trial judge appeared to have penalised the accused for contesting the trial. Mr Justice Hart said that it has long been recognised that a defendant cannot be penalised for contesting a case, no matter how much the defence advanced may be lacking in credibility, because every defendant has the right to plead not guilty, and that to impose a heavier sentence than otherwise would be the case because the case was contested is impermissible. The Court of Appeal considered that the trial judge’s apparent acceptance of the prosecution’s submission that Morrin’s attempt to evade responsibility was an aggravating factor, and his remarks that Morrin showed no remorse in contesting the case “on a completely spurious basis, in the teeth of damning and overwhelming forensic evidence” lent support to the submission that the judge penalised Morrin for the manner in which he contested the case by treating this as an aggravating factor.

The Court of Appeal considered the sentence afresh and determined that the appropriate minimum term should be one of 18 years imprisonment.

The Court of Appeal then went on to give guidance to judges in how to assess the appropriate minimum term of imprisonment in cases such as this. It said that judges should consider the various factors in stages:

Judicial Communications Office

- Firstly, the judge should identify the appropriate starting point and explain why this has been chosen;
- The judge should then proceed to consider whether the appropriate starting point should be varied upwards or downwards to take account of any aggravating or mitigating factors;
- Thirdly, and particularly in those cases where the aggravating factors are such that a minimum term in excess of 15 or 16 years is appropriate, the judge should decide on a figure which properly represents the minimum term for which the perpetrator of the crime should be detained before his release can be considered; and
- Finally, the judge should stand back and look at the overall sentence to ensure that the sentence is appropriate having regard to all the circumstances.

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).
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.
3. A Practice Statement, [2002] 3 All ER 417, sets out the approach to be adopted by the court when fixing the minimum term to be served before a person convicted of murder can be considered for release by the Parole Commissioners. It also sets out two starting points. The lower point is 12 years, and the higher starting point is 15/16 years imprisonment. 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 aggravating or mitigating factors which relate to either the offence or the offender in the particular case.

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