

# Judicial Communications Office

Thursday 24 November 2011

## COURT OF APPEAL DISMISSES APPEAL AGAINST SENTENCE BY STEPHEN BROWN

### Summary of Judgment

The Court of Appeal today dismissed an appeal by Stephen Brown against his 30 year tariff imposed for the murders of David McIlwaine and Andrew Robb.

The Lord Chief Justice, delivering the judgment of the Court, said that multiple and extensive injuries were inflicted on both victims. He added that the evidence indicated that Brown took pleasure in the infliction of injuries upon the deceased. He said that these factors had a bearing on the Court's assessment of Brown's culpability and it was that culpable aspect of Brown's behaviour that was represented by the trial judge's reference to there being evidence of sadism or gratuitous violence.

The Lord Chief Justice considered the fact a second murder was carried out was a feature that made the crime especially serious. He said it was plain that Brown and Noel Dillon (now deceased) planned how they were going to carry out the murders and David McIlwaine's death was clearly either consequent upon the plan or because of his presence as a witness. The Court accepted there was no direct evidence that Brown saw the knife which Dillon had before it was used in the attack on David McIlwaine but was satisfied that the trial judge was correct to conclude that Brown was aware of the knife and that this inference was amply supported by the evidence.

It was submitted on behalf of Brown that the tariff made no allowance for his youth at the time of the murder or for his family circumstances and lifestyle. The pre-sentence report stated that he was 19 when the murders occurred. Brown's mother was killed in a fire at the family home shortly after he was born. His father was subsequently convicted of her murder. Brown was cared for initially by his grandparents but was then placed in foster care. The pre-sentence report noted that while Brown had a troubled childhood and transient lifestyle in adulthood, he had demonstrated a strong work ethic and capacity to support himself financially. He had eight previous convictions but none for offences of violence.

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The Lord Chief Justice stated that while age can be a mitigating factor it is likely, where the offender has reached the age of 19, that it will be at best modest. The Court agreed with the trial judge that in the areas of retribution and deterrence the strength of such seriously aggravating features would significantly outweigh mitigating features relating to personal background.

The Court of Appeal was satisfied that this was a very serious case within the terms of the Practice Statement and therefore required a substantial upward adjustment to the tariff:

“These were planned murders involving the taking of these teenage boys to an isolated part of the countryside where they would be rendered vulnerable to attack. Multiple injuries were inflicted on each of them and sadistic and gratuitous violence was also used. [Brown] and Dillon were armed in advance and carried out multiple murders. [Brown] demonstrated triumphalism after these killings. He made significant efforts to escape detection and successfully managed to hide the murder weapon which has never been found. He threatened Burcombe [his co-defendant] that he would cut his throat if he disclosed what had occurred and then subsequently sought to persuade him to change his evidence when they were in a prison van coming from Newry Courthouse.”

The Court of Appeal concluded that while it recognised that this was a stiff sentence, it could not say on the basis of the features of the case that the 30 year tariff was manifestly excessive. It dismissed the appeal.

## 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.

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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. In the most serious cases, a substantial upward adjustment may be appropriate. In suitable cases, the result might even be a minimum term of 30 years (equivalent to 60 years as there is no remission on a tariff). In cases of exceptional gravity, the judge, rather than setting a whole life minimum, can state that there is no minimum period which could properly be set in that particular case.

**ENDS**

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