

Tariff certified by the Secretary of State under Life Sentences (NI) Order 2001 on 23/01/07

THE QUEEN v LIAM JOHN McBRIDE

DECISION ON TARIFF

Ruling by Kerr LCJ and Sheil LJ

**LCJ Ruling - 10 October 2006
Certified by Secretary of State -**

KERR LCJ

Introduction

1. On 4 April 2000, following a trial before Sheil J and a jury at Belfast Crown Court, Liam John McBride was convicted of the murder on 27 July 1998 of Sally Diver, aged 48 years. Mrs Diver was the mother of Lynsey Diver with whom McBride had had a relationship. A son was born of that relationship. The child was under a year old at the time of his grandmother's murder. The prisoner was then 23 years old. Following his conviction he was sentenced to life imprisonment. On 5 October 2001 McBride's application for leave to appeal was dismissed by the Court of Appeal. He has been in custody since 28 July 1998.

2. Although the prisoner was offered the opportunity to make oral representations through legal advisers on the tariff to be set under article 10 of the Life Sentences (NI) Order 2001, he elected to have this determined on the papers. The tariff represents the appropriate sentence for retribution and deterrence and is the length of time the prisoner will serve before his case is sent to the Life Sentence Review Commissioners who will assess suitability for release on the basis of risk.

Factual background

3. The factual background to the relationship between the prisoner and Lynsey Diver and the events leading up to the murder of Mrs Diver were described by the Court of Appeal in the judgment dismissing the application for leave to appeal: -

“Mrs Sally Diver was stabbed to death by the applicant Liam John McBride in the early morning of 28 July 1998 in her house at 81 Antrim Road, Belfast, sustaining some 26 stab wounds. . .

He commenced a relationship with Lynsey Diver late in 1996. Lynsey then lived with her mother Sally Diver and two of her sisters Tammy Leigh and Shiree in the family home 81 Antrim Road , Belfast, but she and McBride moved into a flat in Cliftonville Avenue. Lynsey already had a child by another relationship. She became pregnant again and their son [. . .] was born in 1997. In March 1998 they were evicted from their flat for non-payment of rent and Lynsey and her children returned to live with her mother. Strains developed in the family and relations between McBride and Sally Diver became very hostile.

There appear to have been various incidents between McBride and Lynsey and her family, but three in particular became the subject of charges in the indictment. The first occurred on 27 April 1998, when an argument developed late at night in a club between McBride, Lynsey and Tammy Leigh Diver, in the course of which he assaulted Tammy Leigh. He was charged with and found guilty of this assault on count 10 of the indictment, but not guilty of a second assault the same night charged on count 11. He went to 81 Antrim Road and demanded access to his son. In the course of an altercation he committed an assault on Sally Diver, in the course of which he punched her in the face and twice seized her by the throat and squeezed it

hard. This assault was the subject of count 6 on the indictment, of which he was also found guilty. He was also charged on count 8 with an assault the same evening on Nicola Harrison, but the jury found him not guilty on that count. McBride took the child to his mother's house, but was later arrested for the assaults. The magistrates' court subsequently made exclusion orders requiring him to stay away from the house at 81 Antrim Road where Lynsey and the child resided and not to molest them.

On 10 May 1998 McBride met Lynsey Diver by arrangement on Antrim Road, Belfast, in order to allow him to take their child for a time. He had been drinking and quarrelled with Lynsey. He struck her on the forehead with a bottle, inflicting a cut in the skin, and kicked her, causing bruising. On 12 May he again encountered Lynsey on Antrim Road. A dispute developed between them and he punched and kicked her. She complained to the police and he was arrested. He pleaded guilty to these assaults, charged on counts 7 and 9 of the indictment.

It appears that McBride was granted bail in respect of these charges but subsequently was detained in prison for failure to observe the exclusion orders. It was established that while in prison he wrote several letters to Lynsey and telephoned her, asking her to withdraw the charges of assault on her, but she did not do so.

McBride was granted compassionate bail for a number of hours to attend his brother's wedding on Saturday 25 July 1998. He was upset by being told that Lynsey was seeing another man. He was allowed by Lynsey to take their son to the wedding reception, but was further distressed when Sally and Tammy Leigh Diver arrived with police officers at the reception to take the child home. At

the wedding reception he got drunk and decided not to return to prison that night. The next day, Sunday 26 July, he spent drinking and failed to return to prison. On Monday 27 July he bought some clothing for his son in Belfast, then met his father in the late afternoon. He told Dr Browne that he had his first drink that day at about 5.30 or 6 pm. During the evening he then consumed quite a substantial quantity of alcohol.

Somewhere about 5am the following morning he approached the Diver house at 81 Antrim Road, bringing with him two pairs of handcuffs and a roll of broad sticky tape. He entered through a back window and took from a drawer in the kitchen a knife which he had previously used in his work at a meat plant and which he knew he would find there. He made his way quietly upstairs, ascertaining en route that Sally Diver and Tammy Leigh's boyfriend Andrew Mercer were in bed asleep. He went into the bedroom where Lynsey and her children slept and woke her up. He threatened to stick the knife in her if she made a noise. He handcuffed her hands behind her back. He accused her of going out with another man and searched her handbag to see if her contraceptive pills had been used. He then wound a strip of tape over her mouth and round her head. He went into Tammy Leigh's room and handcuffed and gagged her in similar fashion. Then he returned to Lynsey's room for a short time before proceeding downstairs, saying, according to her account, that he was going down to "do" her mother now. In his evidence McBride denied saying this and stated that he had heard movement downstairs and wished to get out of the house.

McBride deposed that he was running through the hall when the living room door opened and he saw Sally Diver putting the telephone down.

According to him she said "Birdie, I'm sorry" (Birdie was his nickname) and Lynsey and Tammy Leigh said that they heard her shout "Don't, Birdie". McBride professed, perhaps correctly, to have no subsequent recollection of his attack on Sally Diver, but it is clear that he stabbed her with the knife which he was carrying and inflicted multiple stab wounds to the chest and upper abdomen, affecting the front, right side and back of the body. Death would have been rapid. Andrew Mercer came on the scene and tackled McBride. A fight took place, in the course of which Mercer sustained stab wounds. The attack on him was the subject of count 2, but the jury found McBride not guilty of attempted murder on that count. He made his escape from the house, kicking in a glass panel to do so. He swallowed a large number of tablets in a nearby garden, but vomited them up. Shortly afterwards he was arrested near the top of New Lodge Road.

McBride's precise motives and intention are difficult to fathom, and may well have been mixed or confused. He had passed Sally Diver's room, having seen her asleep, which may support his assertion that he did not set out to attack her. He averred to the medical examiners and in his evidence that he wanted to frighten the Diver sisters into withdrawing their complaints against him. Exactly how he proposed to do that he did not specify. The sequence of events gives some support to the proposition that his attack on Sally Diver was an unpremeditated reaction to finding that she had been using the telephone to send for the police, although his assault went far beyond what would have been required to prevent her from pursuing a summons to the police and savoured of a murderous frenzy."

The prisoner's personal background

4. The prisoner is the second eldest of a family of five boys, none of whom (apart from the prisoner) has had any significant behavioural problems or criminal convictions. Early family life was unsettled to some degree by his father being absent from the family home while working in England during the years 1985 to 1988. There were also marital problems between his parents, mostly related to his father's heavy drinking before he went to England. The prisoner, despite his relatively normal family and upbringing, has been plagued from a young age by psychological problems, which might have been caused by physical trauma as a child. He was deprived of oxygen at birth and had difficulty breathing and because of that difficulty was transferred for care to a neonatal unit. Following this he suffered feeding difficulties, vomiting and diarrhoea. Just before his second birthday he was in hospital with pneumonia and the day before he was due to be discharged he fell out of his cot. His convalescence from this incident was difficult and he was again admitted to hospital three months later and was an in-patient for four weeks. Three months after that he was admitted to hospital again having fallen down thirteen steps at home and struck his head; he did not lose consciousness but he vomited. He had swelling of his right forehead but an x-ray revealed no fracture.

5. Professor Fenton, a consultant psychiatrist who was retained on behalf of the prisoner, gave evidence at his trial. He said that the prisoner's behavioural problems started from an early age, possibly as young as two years old. The prisoner had a two month period of in house psychiatric treatment in a child psychiatry unit when aged about eight. Subsequently, he was under the care of social services from December 1986 to July 1989. He was referred to Whitfield School, a school for disturbed children, on a part time basis. After that he spent some time in Saint Patrick's Training School under a training school order. Staff there found him difficult to manage and he absconded frequently. He was eventually sent to Lisnevin Young Offender's Centre because this provided greater security. In his teenage years the prisoner became involved in various crimes and he served some period in custody. Between the ages of 14 and 20 he became caught up in glue sniffing on a regular basis and occasionally used other illegal drugs such as LSD, amphetamines, Ecstasy and cannabis. When he was twenty years old he started abusing alcohol instead of glue and from the age of 20 he was frequently intoxicated. Professor Fenton stated that there could be no doubt that during this time Liam McBride became addicted to alcohol. Thereafter he became depressed and in May 1998 he took an overdose of his father's tablets. Because he was considered to be at risk of committing suicide he was admitted to Knockbracken Healthcare

Park. There he was seen by a psychiatrist who concluded that the prisoner's depression had settled. The psychiatrist noted that the prisoner had a serious personality problem. He left the hospital the day after being seen by the psychiatrist. He did not return.

6. As a result of his examination of the prisoner on 18 January 2000 Professor Fenton concluded that he was suffering from an adjustment disorder with reactive depression from time to time. He said this about the prisoner's condition: -

“... [he has] severe personality disorder with behavioural difficulties since childhood and a low tolerance to frustration and a low threshold for being violent and a strong tendency to behaving impulsively without regard for the consequences of his actions and an incapacity to learn from previous experience, which is another feature of severe personality disorder. . . . Another feature of severe personality disorder is consistent irresponsibility.”

7. Professor Fenton gave evidence that “this severe personality disorder was clearly present at the time of the offence; it constituted an abnormality of the mind which is likely to have substantially impaired his mental responsibility at the time of the killing. Someone with this type of severe personality disorder has great difficulty in controlling their feelings and impulses and, therefore, may suddenly explode in this uncontrollable frenzied way.”

8. The prisoner was also examined by Dr Fred Browne on behalf of the Crown. The Court of Appeal judgment summarised his conclusions in the following passage: -

“Dr Browne (*for the Crown*) went through his lengthy reports in evidence to the jury. In the course of his evidence he agreed with Professor Fenton that McBride was suffering from a severe personality disorder and that the degree of his craving for drink satisfied the criteria for alcohol dependence. Where he differed from him was in his assessment of the degree of impairment of

McBride's responsibility for his acts. He concluded his evidence in chief by expressing the opinion (20 March, page 52):

"My view is that Mr McBride does have deficiencies in his personality but I do not consider that his problem of personality disorder substantially impairs his mental responsibility."

Previous convictions

9. The prisoner has appeared before the juvenile court and the magistrate's court on sixteen previous occasions in respect of theft (13 convictions), criminal damage (4), burglary (8), breach of court orders (3), road traffic offences (4), driving licence regulations (1), obstructing police (2), and handling stolen goods (1). In addition, he was convicted on 25 July 1996 of assaults on the police on 11 August 1995. These occurred when he was at home in the company of his brothers. They were drunk and the police came to arrest one of his brothers. A fight broke out and the assaults took place. The prisoner served a month in prison on foot of these convictions.

Practice Statement

10. In *R v McCandless & others* [2004] NICA 1 the Court of Appeal held that the *Practice Statement* issued by Lord Woolf CJ and reported at [2002] 3 All ER 412 should be applied by sentencers in this jurisdiction who were required to fix tariffs under the 2001 Order. The relevant parts of the *Practice Statement* for the purpose 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.”

Victim representation

11. The deceased’s brother in law, Gerard Martin Diver, submitted a written representation. It is in the following terms: -

“My name is Gerard Diver. I am the brother of Thomas Diver who was the husband of Sally Diver. Sally’s daughters and sisters have asked me to express our family’s feelings in regards to our loved ones death. As individuals they had tried to commit their feelings to writing but the pain was still too raw to permit this.

Each of Sally’s daughters is haunted by the terrible event of that awful night. Images of the brutal death of their mother are always close to the surface and are triggered by what in other occasions would be innocent comments. They all know that this is now part of their lives, a part which cannot be erased. Lynsey and Tammyleigh, two of McBride’s other victims are having a particularly difficult time adjusting to normality. Given the facts of their handcuffing and gagging during their Mother’s murder, I can understand their suffering. Having heard the court case first hand I can only imagine the extent of mental torture my nieces were forced to endure.

My brother Tommy is a stranger to me – he rarely leaves the family home and is constantly seeking to hide from reality by taking alcohol. If it was not for the constant attention of his daughters he too would not be with us. Without their support he would have the most difficult time in dealing with the simple tasks of everyday life.

Sally's wider family and friends are all suffering from the brutal nature of Sally's death. Her sisters in particular carry strong emotional feelings about the death of their eldest sister who was somewhat of a mother to them all throughout their lives. It is obvious to me that the pain associated with Sally's death is very close to the surface. In conversation the most innocent of comment about a news story or local incident can bring tears as they associate the incident with their own pain.

The notes on this section ask how the family have been affected in an emotional, physical, financial and social manner. I can only say that all of our families' lives have been affected in all of these areas by the terrible acts of Liam McBride. However, these words, specific as they may be, do not permit me to adequately present the deep and individual nature of the pain felt by the family of Sally Diver."

Representations from prisoner's legal representatives

12. Written representations from counsel were received. These contained the submission that although murder by multiple stabbing normally indicated a higher starting point of 16 years, there were a number of features which warranted the adoption of a "lower than normal starting point". These features were that the prisoner had a mental disorder and that he was provoked (in the non-technical sense) by being prevented from access to his son.

13. The aggravating features identified by the Crown on trial should not, counsel for the prisoner argued, be so regarded. It had been suggested that the killing had been planned but there was no acceptable evidence of this, counsel suggested. To the suggestion that the prisoner had armed himself with a knife in order to carry out the murder, counsel rejoined that he had obtained the knife for the purpose of intimidating Lynsey Diver and not with the intention of using it on anyone.

14. It was suggested on behalf of the prisoner that a number of mitigating features were present: lack of pre-meditation; the prisoner's youth;

evidence of remorse or contrition; and the prisoner's acceptance of his guilt. On the last of these, counsel made the following submission: -

"The defendant instructed his legal team to enter a plea of guilty to the murder charge after he had been arraigned and prior to the trial commencing. His instructions were that he wished to spare the family further trauma. At that stage medical reports had been received which demonstrated that the defendant suffered from a mental disorder which in [the] view of the experts amounted to an abnormality of the mind which was present at the time of the offence and which was likely to have substantially impaired his mental responsibility at the time of the killing. In those circumstances the defendant was advised that he should not plead guilty and further advised that there was no benefit to entering a plea of guilty to the offence of murder given that if convicted he faced a mandatory life sentence and would not get credit for a plea. As the Court will appreciate the tariff system was not in place at the time the trial was listed and there was no reason to believe that any benefit would accrue to the defendant by entering a plea of guilty. More importantly, the medical reports demonstrated that the defendant had a possible defence to an allegation of murder on the grounds of diminished responsibility. While it is undoubtedly the case that an early plea would have benefited the family of the deceased and avoided the necessity of a trial nonetheless the Court is asked to be mindful of the fact that the defendant did instruct his legal representatives to enter a plea of guilty to the murder charge to spare the family further trauma."

Representations from the prisoner's family

15. Written submissions were also received from the prisoner's uncle in which it was claimed that the prisoner's actions in killing Mrs Diver were completely out of character and were the product of depression. It was

said that the depression and suicidal thoughts from which he was also said to suffer were caused by Mrs Diver refusing to let him see his son. The prisoner had become used to looking after his son five days a week when Lynsey was at work and he felt the separation from his child acutely. He found life without his son meaningless; the baby had been the centre of his life. He was also very depressed because of the break up in his relationship with Lynsey. He was suicidal when the relationship ended and had a short stay in a mental hospital. It was emphasised that he felt great remorse for what had happened.

Conclusions

16. This is clearly a higher starting point case. We consider that the prisoner's culpability is extremely high. This was a merciless and brutal killing of a woman who was unable to offer the slightest defence to the murderous attack on her. She was repeatedly stabbed and the manner of her killing certainly fits the description 'extensive and/or multiple injuries ... inflicted on the victim before death'. We reject the suggestion that the prisoner's mental condition or the avowed provocation can affect the selection of the higher starting point. They can be taken into account in deciding whether the starting point should be varied but not in the identification of the correct starting point itself.

17. The planning of a murder is an aggravating factor which will almost invariably warrant an increase in the starting point. It is suggested that this murder was not planned but that it was the result of an explosion of rage on the prisoner discovering that Mrs Diver had telephoned for help. We cannot accept that claim. There are several aspects of the events on the occasion of the murder that militate against this suggestion and which strongly support the conclusion that the killing was planned. In the first place, McBride armed himself with a knife as soon as he entered the house. He knew where to find the knife, having used it previously in his employment. Secondly, he handcuffed the two sisters; he had brought the handcuffs with him to the house. Mrs Diver's daughters were effectively disabled from helping their mother or from hindering McBride's attack on her. Thirdly, he had with him medication with which he attempted suicide after the murder. Finally, although he denied having said it, he was heard by Lynsey to say that he was going to "do" her mother. All of these factors point strongly to a plan to carry out an attack on Mrs Diver. We consider that all the available evidence establishes clearly this was a planned attack.

This is a substantial aggravating feature which requires a significant increase in the starting point tariff.

18. The prisoner armed himself with a knife before the killing and this is to be treated as an aggravating feature according to the Practice Statement. We consider, however, that this was an element of the plan that he had conceived to carry out the murder and we do not believe that it would be appropriate to increase the tariff further on that account.

19. The murder of Mrs Diver had been preceded by a number of attacks on her and Lynsey. This is a significant aggravating feature on its own account. The prisoner had been the subject of an exclusion order. He broke into the Divers' home during the hours of darkness. He handcuffed two sisters in what must have been a terrifying ordeal for them. They must live with the knowledge that while they were thus immobilized McBride murdered their mother. All these aspects of the killing amount to considerable aggravating features in our judgment. They require substantial increase in the starting point.

20. For the reasons that we have given, we reject the claim that the killing was not premeditated. Of the other mitigating factors canvassed, we consider that the prisoner's age is not a reason to reduce the minimum term. He was fully mature at twenty three when the murder took place. His claimed remorse must be viewed with some caution. As we have said previously, a clear distinction must be drawn between true repentance and sorrow for one's own plight. We do not believe that there is clear evidence of genuine remorse on the part of the prisoner but we are prepared to allow some measure of mitigation on this account.

21. There was a clear divergence of view between Dr Browne and Professor Fenton as to the effect of the personality disorder on the prisoner's responsibility for his actions. That the prisoner has a severe personality disorder is beyond doubt, however, and it appears from Dr Browne's report that he considered that this had *some* effect on his responsibility. We consider, therefore, that some weight must be given to this in mitigation of the minimum term to be imposed.

22. We do not consider that the prisoner's acceptance of guilt constitutes a mitigating factor. While there may have been valid reasons for pleading not guilty, the fact remains that the prisoner did not plead guilty and the

reduction in sentence that accrues for this factor will only be appropriate when a plea of guilty has been made.

23. Likewise, we reject the suggestion that the claimed provocation of the prisoner should operate as a mitigating factor. In the first place, there is no clear evidence that Mrs Diver denied the prisoner access to his son as he claimed. Furthermore, it is at least highly questionable that this was the factor that precipitated his attack on her. The statement that he was going to “do” Mrs Diver suggests a deliberate, planned attack rather than the product of sudden provocation.

24. Having considered all these factors, we have concluded that the appropriate minimum term should be seventeen years. This will include the time spent by the offender in custody on remand.