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(subject to editorial corrections)**

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IN THE CROWN COURT IN NORTHERN IRELAND
SITTING AT LAGANSIDE COURTHOUSE

THE KING

v

TAYLOR GEORGE McILVENNA

Mr L McCollum KC with Ms R Walsh KC (instructed by the Public Prosecution Service)
for the Prosecution

Ms E McDermott KC with Mr C O'Neill (instructed by O'Neill & Co Solicitors) for the
Defendant

SENTENCING REMARKS

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McFARLAND J

Introduction

[1] At his arraignment, Taylor George McIlvenna pleaded not guilty to the murder of his partner and in due course the trial was fixed to commence on 22 January 2024. On 8 January 2024 McIlvenna was re-arraigned and pleaded guilty to the murder. The only sentence permissible under law for the crime of murder is life imprisonment, and I imposed that sentence. It remains for me to determine the minimum term of imprisonment which McIlvenna must serve before he can be considered for release by the Parole Commissioners. Article 5(2) of the Life

Sentences (Northern Ireland) Order 2001 prescribes that the minimum term must be the period the court considers appropriate:

“To satisfy the requirements of retribution and deterrence having regard to the seriousness of the offence, or the combination of the offence and one or more offences associated with it.”

On 8 January 2024 I also advised McIlvenna that the Independent Barring Board will include him on the barred list relating to adults by virtue of his conviction.

[2] McIlvenna was born on 19 May 1991 and was 30 years old at the time of the murder. He had been in a relationship with the deceased, who was the same age, for about six years although they did not live together. They had three children, aged four years and twins of three years. There was also an older boy aged eight years who was the deceased’s child by a different father.

[3] At the time of the murder each of the children was the subject of proceedings under the Children (NI) Order 1995. This has some relevance to an aggravating factor in this case. I would remind the public and press that it is a criminal offence to publish any material which is intended or likely to identify any of the children as being involved in proceedings under the 1995 Order (see article 170(2) and (9)). To this end I do not intend to refer to the deceased, her children and her family members by their names. This is done to protect the privacy of the children and is not intended to be disrespectful in any way.

[4] The relationship between the deceased and McIlvenna was volatile in nature with incidents of domestic violence. Both McIlvenna and the deceased had issues with regard to alcohol and drug mis-use. As a result the children were considered to be at risk of harm in their care. Social services were involved with the family and at the time of the murder all four children were on the Child Protection Register and subject to interim care orders. The arrangement, approved by social services, was that the children were to live with their maternal grandmother. McIlvenna was not to have any contact with the children and the mother was only permitted to have contact when supervised by the grandmother.

[5] McIlvenna had a significant criminal record. He had 47 convictions, of which ten were for assault. On 29 March 2009 he assaulted a police officer, conduct which he repeated again on 25 October 2009. He received a probation order for those, and other, convictions on 21 July 2011, but he breached that order and received a suspended five month prison sentence in December 2012. He assaulted two police officers on 23 November 2012 and received another suspended prison sentence of six months.

[6] On 5 October 2012 he committed two further assaults one causing bodily injury and on 25 July 2013 he received a prison sentence of six months. Other offences committed at the time included possession of a weapon, intimidating a witness and making threats to kill. Another assault on 7 June 2013 resulted in another suspended prison sentence of three months in October 2013.

[7] On 31 August 2019 he committed another assault and later on 23 May 2021 wounded a female. He was arrested for the May 2021 offence and was released on bail. Whilst awaiting sentence for that assault, he then drove a vehicle dangerously and failed to provide a specimen on 6 December 2021. He was arrested and again released on bail for the driving offences. He then received a probation order for the August 2019 assault on 9 December 2021. When he committed the murder on 18 December 2021, he was therefore on bail at the time for two separate offences and was subject to a probation order. On 29 March 2023 he received a six month sentence for the wounding offence, a sentence he served whilst on remand for this offence.

[8] On the evening of 17 December 2021, the deceased and her children had an evening meal at the grandmother's home and the deceased then left with the twins to walk to her home. McIlvenna sent two text messages later that evening to the grandmother referring to him seeing the children the next day.

[9] The prosecution estimate that the deceased was murdered sometime in the early hours of 18 December 2021. Based on certain recorded movements of McIlvenna it was probably between 02.00 and 02.30.

[10] On 18 December 2021 the grandmother received messages from McIlvenna accusing the deceased of prostitution. This assertion by McIlvenna was supplemented by screenshots of various matters from the deceased's Whatsapp account. There were postings by McIlvenna concerning this later that morning on Facebook.

[11] The grandmother telephoned the deceased at 10.15 on 18 December 2021 and when there was no reply she walked the short distance to her house with the two older children. She found the blinds in the house to be closed and the front door unlocked. The living room was very untidy, and the back door was ajar. When she went upstairs the boys preceded her. The four year old boy said that one of the twins was in the bathroom and was bleeding. This was a reference to the deceased's blood on the child. The eight year old then came out of the deceased's bedroom and told her that she should not go in as his mother was in there "in a bad way all beat and covered in blood." She then entered and found her daughter lying on the floor. The other twin was lying beside her touching her and repeating "mum, mum, mum." The twins were three years of age at the time.

[12] Police and the ambulance were called. The paramedics describe finding the body facing the wall, with the knees bent up. She was wearing a top and her trousers were pulled down to her knees exposing her genital area.

[13] Examination of the home by police revealed multiple blood drops and smears throughout the home, particularly in the bedroom. There were three areas of physical impact-type damage to the plasterboard in the bedroom. A fake nail was found on the bed and a fake eye-lash on the floor. Hair extensions and clumps of what appeared to be hair were also found on the floor.

[14] The post-mortem examination carried out on 20 December 2021 indicated that the deceased had suffered a blunt force head injury which had resulted in her death. The injuries included two black eyes, a broken nose, bruising and laceration to the lips and a number of bruises and abrasions to the face and left side of the scalp. There was an extensive deep bruise of the scalp. There was a subdural haemorrhage, and the brain was swollen. The pathologist suggested that these injuries were consistent with an assault using a mild to moderate degree of blunt force and given the nature and extent of the injuries they represented the application of at least ten blows.

[15] The brain sustained an injury consistent with an impact to the head against an unyielding surface. Two areas of acute traction alopecia were located on the scalp consistent with forceful hair removal. Petechial haemorrhages in the eyes were also consistent with possible asphyxia.

[16] A low concentration of alcohol was present in the deceased's blood, although toxicological analysis revealed the presence of cannabis and cocaine, the latter being at a low level.

[17] At 3am, a friend of McIlvenna's saw him kick that friend's vehicle outside his home. A short time later windows at the home of McIlvenna's cousin were broken and McIlvenna sent abusive text messages to the cousin. McIlvenna was also seen banging on the door of his brother at or about the same time. At 7am McIlvenna arrived at another brother's home and remained there until his arrest by police at 12.40pm.

[18] McIlvenna was then interviewed by police in the presence of his solicitor. He refused to answer any of the questions, but did provide two written statements. The first on 19 December 2021 said that he had entered the house and found the deceased upstairs under the influence of drink and drugs. He then struck her twice with his hand and left. In the second statement on 21 December 2021 he said that he confronted her about prostitution which she admitted and then he struck her.

[19] In *R v McCandless* [2004] NI 269 and more recently in *R v Hutchinson* [2023] NICA 3 and *R v McKinney* [2024] NICA 35, the Court of Appeal directed courts in

this jurisdiction to adopt the approach prescribed by Lord Woolf CJ in the *Practice Statement* [2002] 3 All ER 412 when fixing the minimum term to be served by an offender convicted of murder. The *Practice Statement* provides for two starting points. It states:

“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."

[20] Recently on 3 May 2024 the Court of Appeal in *R v McKinney* [2024] NICA 35 at [53] added coercive and controlling behaviour towards a victim as an example of an aggravating factor to paragraph [12] of the *Practice Statement*. In other words, such conduct may place a case into the higher starting point.

[21] It is important that the court does not get sidetracked into attempting an overly mechanised approach to starting points. This was recognised in both *McCandless* and *Hutchinson*. In the later case, the Lady Chief Justice at para [41] stated:

“Sentencing should not be overly mechanistic or rigid or explained by way of arithmetical formula.”

[22] A case which has a lower starting point may through the consideration of aggravating factors increase well above the higher starting point. A lower starting point case is not capped at 15 years which is the starting point for the higher range. Ultimately, my role is to determine a fair tariff which satisfies the requirements of retribution and deterrence having regard to the seriousness of the offence.

Victim impact

[23] I have received a number of statements from members of the deceased’s family – from her mother, her father, three sisters, her brother, a brother-in-law and her niece and nephew. Each, in its own way, is a document setting out the personal devastation suffered by the sudden death of a much loved daughter, sister, sister-in-law and aunt. The circumstances of the death with the twins in the house at the time, and with the young boys discovering the murder scene, have added to the distraught suffered.

[24] Some of the statements refer to the impact of the death on the children. I have received Art and Play therapy assessments in respect of the twins and one of the older boys. These reports have given me valuable insight into the trauma suffered by the children and the guarded progress that has been made.

Aggravating factors

[25] I now wish to set out the relevant aggravating factors. They will determine the starting point and then any increase from that point before the application of any reduction for mitigation and for the plea of guilty.

[26] The deceased was murdered in her own home, a place where everyone is entitled to feel safe and secure. There has been some debate about whether or not the deceased was a victim of coercive and controlling behaviour. The provisions of the Domestic Abuse and Civil Proceedings Act (NI) 2021 were not in force at the time so do not apply. That Act only provided a statutory definition to this type of behaviour and made it a statutory aggravating factor. It did not change the substance of sentencing law and practice as the courts have long recognised this type of behaviour as an aggravating factor.

[27] The prosecution has sought to argue that certain background factors are relevant to this issue. They refer a previous assault of the deceased on 31 August 2019 and to the assault of a female on 23 May 2021 (see [7] above). They further submit that the evidence of a sister indicates that she had to come to the aid of the deceased on occasions. Finally, they make reference to the monitoring of the deceased's activities on her mobile telephone and the accusations made by McIlvenna about her promiscuity as evidence of a controlling attitude.

[28] The convictions for the assaults certainly show a propensity to violence against females (which I will deal with shortly). The August 2019 assault on the deceased was committed in a fast-food restaurant and was captured on CCTV. The deceased declined to make a statement. The May 2021 incident occurred when McIlvenna and the deceased had been out for a meal with another couple and afterwards in the deceased's home the other female was struck by McIlvenna. Again, the deceased declined to make a statement.

[29] I do not consider it appropriate for the prosecution to raise the content of the sister's statement at this point as at no stage during the trial process did they seek to adduce that evidence under the 'hearsay' and 'bad character' provisions. I do however accept the general monitoring of the deceased's conduct which was clearly motivated by a jealous attitude. It is, however, unclear whether this monitoring extended to the deceased's day to day activities (see section 2(3)(c) of the Act).

[30] My overall assessment of this issue is that the conduct of McIlvenna prior to and on 18 December 2021 was not part of what could reasonably be described as a pattern of specific coercive control. That is not to say that the background and context is not relevant. It clearly is and will be taken into account. This was an attack on a particularly vulnerable woman within her own home and by a man with whom she was in a relationship.

[31] The nature of the attack also gives rise to a further aggravating factor. The deceased suffered a devastating attack involving multiple blows, collision with a hard surface which was almost certainly the bedroom wall, hair loss through pulling and an element of asphyxiation. The pattern of blood splattering indicates that the attack was both downstairs and upstairs within the home and was therefore a prolonged incident.

[32] The twins were also in the house at the time. As I had previously mentioned the children were the subject of interim care orders and the mother was not permitted to be in contact with them without the grandmother supervising that contact. The twins should not have been present with the deceased at the time. The prosecution are unable to prove that McIlvenna was aware of their presence in the home, and it could have been a reasonable assumption on his part that they were not present. This does not mean that the involvement of the children is not an aggravating factor. It would have been a reasonable assumption to make that some

or all of the children could have been exposed to the aftermath of the incident. Having left the deceased in the home and by not calling for assistance, McIlvenna must take responsibility for the fact that each child was exposed to their mother's dead body and the blood splattered scene in the home.

[33] McIlvenna's failure to summons medical or other assistance and his sudden departure from the scene not only created the risk of exposure of the scene to the children but is in itself a separate aggravating factor.

[34] I am satisfied that the partial removal of the deceased's clothing and the exposure of her genitals was a deliberate and degrading act, committed either during the assault or afterwards. This is a further aggravating factor.

[35] In addition to these aggravating factors relating to the deceased and the actual murder, there are three aggravating factors specifically relating to McIlvenna.

[36] The first is that at the time he had consumed cocaine at a level over and above his normal level of misuse.

[37] The second is his criminal record. I have already mentioned his numerous convictions and particularly his 10 previous convictions for assault reflecting a prolonged and extended history of a propensity to use violence, including violence in a domestic setting. One telling feature is McIlvenna's absolute failure to respond in a positive way to the efforts shown by the courts and the probation service to attempt to rehabilitate him. He had received probation orders and suspended sentences but was unable or unwilling to modify his conduct.

[38] This brings me to the final aggravating factor which is the fact that at the time of the murder McIlvenna was the subject of a probation order and had been granted bail for two separate offences.

Mitigating factors

[39] I consider it important to record the mental health of McIlvenna at the time. This is relevant as it will have impacted on his conduct as displayed before, during and after the murder. As such, it may affect the full impact of some of the aggravating factors that I have mentioned and will be a separate mitigating factor. I have had the benefit of two psychiatric reports. There was an element of disagreement, but there were common themes within the reports.

[40] The reports were primarily prepared in respect of the partial defence to murder based on McIlvenna's diminished responsibility. McIlvenna's history included two in-patient admissions to a psychiatric hospital in 2020. Both resulted from psychotic incidents, and the second was a compulsory detention. During this detention he required physical and chemical restraint. He was discharged with a

diagnosis of the generalised condition of schizophreniform disorder. He was prescribed anti-psychotic medication Olanzapine but does not appear to have been taking it when his prescription of September 2021 ran out.

[41] His mental condition was exacerbated by a history of excessive alcohol and drug misuse. As with his failure to take his prescribed medication, these were voluntary acts on his part.

[42] After his arrest, when remanded into custody, he remained in a highly distressed state, and this continued into the early months of 2022. There were expressions of suicidal ideation with an attempt to hang himself. His condition has improved as a result of him taking his medication and the restricted availability of drugs and alcohol within the prison regime.

[43] Dr Anderson was of the opinion that there was a diagnosis of paranoid schizophrenia, although this was challenged by Dr Brennan who preferred a diagnosis of recurrent brief psychotic episodes in the context of withdrawal from alcohol and intoxication with drugs.

[44] I am satisfied that the underlying mental health condition of McIlvenna at the time of the murder, whatever its diagnosis, is a mitigating factor, notwithstanding the fact that his voluntary conduct in relation to his failure to take his prescribed medication and the consumption of alcohol and drugs would have exacerbated the condition.

[45] It is within a medically controlled state that McIlvenna is now displaying elements of remorse. This was not the situation in the immediate aftermath of the murder. I accept that his conduct in admitting the physical attack on the deceased (albeit by minimising the extent of the attack) from the outset and his later abandoning of a potential workable defence of diminished responsibility is evidence of genuine remorse as opposed to self-pity. Running that defence would have required the family members to give evidence and would have prolonged the impact to them of the deceased's death.

Pre-sentence report

[46] In accordance with established practice, a pre-sentence report was received from the Probation Service. An addendum report was also provided. It is not surprising that the report concludes that McIlvenna poses a significant risk of serious harm and given the plethora of risk factors and absence of protective factors reoffending could be imminent on McIlvenna's release. The conclusion is that "In the absence of external controls and interventions Mr McIlvenna's risk of further serious violence is high."

[47] This is, of course, of only limited relevance to the tariff which relates to the requirements of retribution and deterrence. It is clearly relevant to any decision-making of the Parole Commissioners at the expiry of the tariff.

Starting point

[48] Earlier I referred to the need to avoid an overly-mechanised approach to selection of the tariff. The *Practice Statement* at [11] and [12] refers to the lower starting point for cases when the culpability is significantly reduced and the higher starting point for cases with exceptionally high culpability or there is a particularly vulnerable victim. Examples for each starting point are then given, but these examples are not exhaustive. There was some dispute as to whether the 12 year lower starting point is applicable or whether it should be the 15/16 year higher starting point. I consider that it would be a pointless exercise to get too absorbed into this discussion. The court will always avoid double-counting of aggravating and mitigating factors.

[49] The defence, in its submission, argues for the lower starting point based on the borderline between murder and manslaughter and McIlvenna's mental health lowering the degree of criminal responsibility. However, it also acknowledges the vulnerability of the deceased as an aggravating factor. The particular vulnerability of a victim is a recognised example of the higher starting point (see [12] (f) of the *Practice Statement*).

[50] This is a higher starting point case because of the overall context creating the particular vulnerability of the deceased. I will therefore start with 15/16 years.

[51] I am conscious that double counting of aggravating factors needs to be avoided. Apart from the deceased's vulnerability there are however significant aggravating factors - the nature of the attack, the impact on the children, the post-murder conduct, the criminal record and the fact he was on probation and on bail. Taking these into account, I will increase this starting point to 22 years.

[52] Looking at the two recent Court of Appeal decisions in *Hutchinson* and *McKinney* where starting points, before mitigation and reduction for a plea, of 24 years and 20 years respectively were approved, I consider that this figure of 22 years is appropriate.

[53] I have then considered the mitigating factors. In my view this would reduce the tariff to one of 19 ½ years.

Reduction for the plea

[54] Finally, I have considered what reduction I should give for the plea of guilty. There was an early admission of responsibility for the killing of the deceased. McIlvenna had a workable partial defence to the charge of murder. Although there was a disagreement between the experts and the burden rested on McIlvenna to prove his diminished responsibility on the balance of probabilities, it would have still been an option to run the case before the jury. I accept the submission on behalf of McIlvenna that he decided not to do this because of a desire to avoid the deceased's family members having to give evidence.

[55] The Court of Appeal in *R v Turner* [2017] NICA 52 spoke of the normal one third reduction for a guilty plea not applying to murder cases and stated that for a late plea a discount in excess of one sixth would be unlikely.

[56] Notwithstanding the lateness of the plea, I consider that a reduction of two and a half years (approximately 13%) is appropriate.

[57] In the circumstances the tariff will be 17 years the equivalent of a prison sentence of 34 years.

[58] I direct that any time served on remand for this offence should be taken into account, save for the period served in 2023 in respect of the six month sentence of imprisonment for the wounding offence.