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29 JANUARY 2018

COURT SENTENCES GARY HAGGARTY

Summary of Judgment

Mr Justice Colton, sitting today in Belfast Crown Court, fixed a minimum term of imprisonment of 35 years to be served by Gary Haggarty. He reduced this by 75% for the assistance given to the prosecuting authorities and then a further 25% for his plea of guilty. The resulting tariff is 6½ years' imprisonment before he can be considered for release by the Parole Commissioners.

Gary Haggarty ("the defendant") was arrested by arrangement on 25 August 2009 and charged in connection with the murder of John Harbinson. He indicated his willingness to assist the authorities within the framework provided by Serious Organised Crime and Police Act 2005 (SOPCA). This legislation provides that defendants who have pleaded guilty to criminal charges and provided information and assistance to the police receive discounting in their sentences. The defendant entered into an arrangement pursuant to SOPCA on 13 January 2010 and was interviewed over a period of two years by officers from the Police Service of Northern Ireland (PSNI) and Police Ombudsman for Northern Ireland (PONI).

The defendant admitted that he was a member of the UVF between 1991 and 2007, rising to the rank of "Provost Marshal". He was deeply involved in terrorist crime involving intimidation, extortion, possession of arms and ammunition and the infliction of serious violence including murder. He pleaded guilty to 200 offences including five counts of murder¹, one count of aiding and abetting murder, and five counts of attempted murder. In September 2017 the defendant pleaded guilty to a further two counts on a Voluntary Bill of Indictment making a total of 202 guilty pleas. He asked for a further 301 offences to be taken into consideration.

Upon his guilty pleas the court imposed the mandatory sentence of life imprisonment for the five offences of murder and the offence of aiding and abetting murder. The court today sentenced the defendant in respect of all the counts to which he has pleaded guilty and fixed the minimum term (or tariff) that he must serve under the Life Sentence (NI) Order 2001 before he can be considered for release by the Parole Commissioners. There is no remission available for any part of the minimum term and it must be served in full.

¹ The sentencing remarks detail the circumstances of the offences in respect of which life sentences were imposed: The murder victims were John Harbinson (August 1997), Sean McParland (24 February 1994), Gary Convey and Eamon Fox (17 May 1994), Sean McDermott (30 August 1994). The defendant also pleaded guilty to aiding and abetting the murder of Peter McTasney on 24 February 1991. The remarks also detail the victims of the offences of attempted murder and conspiracy to murder.

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Mr Justice Colton referred to the guidance to be applied by sentencers when fixing the tariff. The leading case suggests the judge identifies a starting point and then varies it upwards or downwards to take account of aggravating or mitigating factors which relate to either the offence or the offender in a particular case.

Mr Justice Colton also referred to the victim impact statements he received from individual victims and their families which showed the “devastating and permanent” impact of the defendant’s criminality. Some of the statements referred to concern about alleged involvement by police officers in the activities of the defendant and, in particular, that some police officers failed to provide adequate protection to victims and that his evidence was not being relied upon to prosecute individual police officers. The judge said the decision whether or not to prosecute other individuals based on the evidence of the defendant is a matter for the DPP and not the court. The important factor for the court was that the defendant is willing to give evidence if required to do so in any subsequent prosecution.

The Court’s Approach to Sentencing

Mr Justice Colton said he proposed to impose concurrent rather than consecutive sentences given the seriousness and multiplicity of the offences and the totality principle. He dealt with the most serious offences first, namely those involving life tariffs with the sentences for the other crimes being concurrent to those. The judge said he considered whether a whole life term should be imposed but decided this was not appropriate as it would not permit the court to temper its sentence in circumstances where the defendant has pleaded guilty and accepted responsibility for his crimes. A whole life term would also defeat the objects of the SOPCA scheme which has provided statutory recognition of the principle in the public interest in discounting the sentences of those defendants who provide assistance to the prosecuting authorities. The judge noted that he was not aware of any terrorist offences in this jurisdiction in which a whole life tariff has been imposed.

In paragraphs [30] to [88] of his sentencing remarks, Mr Justice Colton set out the aggravating and mitigating factors in each of the murders. He said that if the offences had been committed in isolation he would have come to the view that the appropriate starting tariff for the murders would be one of 25 years. He noted, however, in coming to the appropriate sentence he must have regard to the totality principle and look at the offending of the defendant as a whole:

“The offences which the defendant has admitted are ones of exceptional gravity. The fact that he was involved directly in multiple terrorist murders must be an aggravating factor in the determination of the overall minimum term. In addition to the four separate incidents of murder and the incident of aiding and abetting another murder the defendant has admitted a multiplicity of other very serious offences. In effect he has

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been involved in a terrorist campaign over a 16 year period. That campaign has resulted in deaths for which he was directly responsible. The organisation he has supported and assisted has resulted in untold damage to individual lives and to this society as a whole.”

Mr Justice Colton imposed an overall minimum life tariff term of 35 years’ imprisonment in respect of the five murders and the offence of aiding and abetting murder.

Discount for assistance under SOPCA

Mr Justice Colton said it was important to understand the public interest principles behind discounting sentences for those who agree to provide assistance to the prosecuting authorities. Case law states that the stark reality is that those who betray major criminals face torture and execution and the solitary incentive to encourage co-operation is provided by a reduced sentence. The judge said this was not a case where the defendant has had a “road to Damascus” conversion:

“He is not someone who wishes to atone for his crimes. His motivation is undoubtedly one of self-interest and pragmatism. Notwithstanding this there is a well-established public interest in discounting sentences in these circumstances.”

The SOPCA does not include any guidance as to the appropriate level of discount to be provided but the general principles are well established in a series of decided cases to which Mr Justice Colton referred in paragraphs [142] – [159] of his sentencing remarks. Factors to be taken into account include the quality and quantity of the material provided by the defendant and subsequent prosecution of crime. Particular value should be attached to those cases where the defendant provides evidence in the form of a witness statement or is prepared to give evidence at any subsequent trial particularly where the information either produces convictions for the most serious offences including terrorism and murder, or prevents them, or which leads to disruption to or indeed the breakup of major criminal gangs. Mr Justice Colton said that a review of the reported cases confirmed a range of between 25% and 75% being appropriate discounts depending on the circumstances of a particular case. In the leading NI case, a reduction of 75% was given in respect of multiple offences committed over a 15 year period when the defendant was part of a loyalist paramilitary organisation.

Sentencers are discouraged from taking an overly mathematical approach as it is liable to produce an inappropriate answer, and case law states that the totality principle is fundamental. Mr Justice Colton considered it would be wrong in this case to provide a percentage discount for assistance pre-SOCPA (in respect of the defendant acting as a covert human intelligence source (“CHIS”) between 1993 and 2004/5), then a percentage discount for SOPCA assistance to be followed by a

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further discount for a plea of guilty which would result in either no sentence of imprisonment or a derisory one.

Mr Justice Colton stated that as a result of the information provided by the defendant, he has been charged with the offences in this case and the prosecution has been provided with a significant amount of information in relation to very serious criminal activity. The defendant is willing to give evidence in court in relation to any of the matters he has disclosed in the course of his interviews and the DPP has indicated that it intends to prosecute in one case which involves murder and in which the defendant will be required to give evidence. The judge noted that the nature and extent of the personal risk to and potential consequences faced by the defendant are extremely serious. He has been held in solitary confinement in prison and when released he will require a new identity and will remain under threat for the rest of his life. Mr Justice Colton also referred to the material provided by the defendant when operating as a CHIS which allowed the police to have prior knowledge of approximately 44 potential incidents and mitigate the threat in respect of at least 34 individuals. The defendant also provided material which enabled the police to conduct searches which resulted in arrests and recovery of firearms and explosive devices.

Mr Justice Colton concluded that the assistance provided by the defendant whilst operating as a CHIS and pursuant to the SOPCA agreement was substantial. He said it went beyond what might be described as “normal” and as a result of that assistance the defendant has placed himself at considerable personal risk which will have a significant impact for the rest of his life. Taking all of these factors into account the judge considered that the appropriate discount for all of the assistance provided should be 75% (60% of the discount attributable to SOCPA assistance and 15% to assistance while acting as a CHIS).

Discount for Guilty Pleas

The defendant is entitled to a discount by reason of his pleas of guilty. The judge said he admitted all of his offences in the course of interview and therefore made admissions at the earliest opportunity. He said that many of the offences admitted to were undetected and would not have resulted in convictions but for the defendant’s confessions. Mr Justice Colton concluded that the appropriate discount for the guilty pleas in the life tariffs in this case should be 25%. A schedule to the judgment sets out the final sentences imposed in respect of each of the counts after applying the discount for all assistance and for the guilty plea.

Mr Justice Colton referred to the headline figure in Count 17, the murder of Sean McParland. He determined that the appropriate starting sentencing point including aggravating and mitigating factors, but excluding discount for assistance and plea of guilty, is a minim tariff of 35 years imprisonment:

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“When this is reduced by 75% discount for all assistance pre and post-SOPCA and by a further 25% for his plea of guilty this results in a tariff of 6 ½ years’ imprisonment before the defendant is entitled to be considered for release by the Parole Board. All the sentences imposed are concurrent. [The defendant will be entitled to credit for the time he has spent on remand.] The sentences on the counts in the Voluntary Bill will run from 8 September 2017.”

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 Judiciary NI website (www.judiciary-ni.gov.uk).

ENDS

If you have any further enquiries about this or other court related matters please contact:

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