

Neutral Citation No: [2020] NICC 7

*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

Ref: COL11207

Delivered: 28/02/2020

IN OMAGH CROWN COURT SITTING AT BELFAST

—
R

-v-

JOSEPH DOLAN
—

SENTENCING REMARKS
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COLTON J

[1] Mr Dolan, you faced three counts on the indictment.

[2] On the first count you faced a charge of murder contrary to common law with the particulars being that on a date unknown between 6 November 2018 and 14 November 2018 you murdered Pauline Kilkenny.

[3] On the second count you faced a charge of theft with the particulars being that on a dated unknown between 6 November 2018 and 14 November 2018 you stole a Fiat Panda vehicle belonging to Pauline Kilkenny.

[4] On the third count you faced a charge of perverting the course of justice, contrary to common law. Particulars of the offence alleged that between 13 November 2018 and 16 November 2019 with intent to pervert the course of public justice you did an act which had a tendency to pervert the course of public justice namely you provided police with information during a PACE interview which falsely implicated Colette Wheeler in the murder of Pauline Kilkenny, knowing that such information was false.

[5] You pleaded not guilty to each of the counts at arraignment on 17 May 2019.

[6] Your trial was listed for 9 December 2019. After medical evidence was received from two Consultant Psychiatrists namely Dr Carinne Minne dated 15 October 2019 obtained on your behalf and from Dr Christine Kennedy dated 20 November 2019 obtained on behalf of the prosecution you applied to be re-arraigned on 6 December 2019.

[7] On that date you pleaded guilty on the first count to manslaughter on the grounds of diminished responsibility which was accepted by the prosecution.

[8] You pleaded guilty to the second and third counts.

[9] The matter was then adjourned for a sentencing hearing which was originally listed for 24 January 2020 but was deferred to enable the Consultant Psychiatrists in the case to meet and prepare a joint report. The sentencing hearing then took place on 14 February 2020 and sentence was adjourned until today's date.

[10] I am obliged to counsel in this difficult case for their helpful submissions. Mr Ciaran Murphy QC led Mr Michael McAleer for the prosecution. Mr Jim Gallagher QC led Mr Ian Turkington for the defendant.

Factual background

[11] The deceased, Pauline Kilkenny, was found dead at her home situated at 14 Cornacully Road, Belcoo, County Fermanagh on 13 November 2018. She was born on 22 March 1959. She lived in a remote 3 bedroomed bungalow which she owned and she had resided in since 2004, after she returned home from London where she had lived for some years.

[12] Prior to her death she worked at Lilley's Centra in Enniskillen. She had not turned up for work as expected on 13 November. Her sisters Nuala Wardman and Geraldine Davis were alerted and they attended at her home on the morning of 13 November. In her statement Nuala Wardman indicates that when she arrived at the house the curtains were closed and the house was locked front and back. They gained entry to the house. Once inside, they noticed Pauline's handbag was on a chair in the kitchen, the bag was open and her purse was lying in the bag. The purse was empty. There were no cards in it. Her bedroom door was locked with a key in the outside of the door. Nuala and Geraldine unlocked the door and entered the room to find Pauline's body lying on the floor close to the window. There was blood around her back. There was blood in her hair and her ears. There was also blood at the front of her head which had a large dent in it. Police and paramedics subsequently arrived at the scene. Dr James Mead pronounced life extinct at 18.33 hours.

Post mortem

[13] A post mortem was carried out by Dr Christopher Johnston on 14 November 2018. Cause of death was haemorrhaging from head and neck wounds and brain injury associated with a fracture of the skull.

[14] She had multiple injuries. There were 4 x blunt force injuries to the skin of the scalp in the form of lacerations or a group of lacerations - 2 were to the back of scalp and 2 were at the right side of the scalp.

[15] Dr Brian Herron examined the brain which revealed evidence of traumatic subarachnoid haemorrhage, traumatic cerebral contusion, acute cerebral oedema, evidence of cerebral perfusion failure and possible evidence of traumatic axonal injury. It was his opinion that these injuries occurred as a consequence of at least four blows to the head with an object such as the pans which were found at the scene.

[16] Additionally the deceased had received 28 stab wounds. There were 2 on the right side of the face. There were 5 stabs to the neck which would have caused extensive blood loss. There were 19 stab wounds to the chest and the back of the chest. There was also a superficial knife type injury to the right side of her back and 2 stab wounds to the right arm and small incision to the neck. In particular, stab wound 26 caused a large defect within the right lung. Stab wound 12 passed through the right side of the chest to injure the liver. Stab wound 10 passed through the left side of the chest and diaphragm to injure the spleen. Stab wound 9 passed through the left side of the chest to injure the left lung. However, there is a lack of appreciable bleeding within the chest or abdominal cavities which suggested that where stab wounds to the chest were sustained she was either dead or very close to death.

[17] In summary, Pauline Kilkenny was subjected to a blunt force assault leading to scalp lacerations, a skull fracture, a subarachnoid haemorrhage, a cerebral contusion, cerebral oedema, cerebral perfusion failure and possible axonal injury. She was also stabbed a total of 28 times in the face, neck and chest. This resulted in significant injuries to the neck which has caused copious haemorrhage at the scene. In the opinion of Dr Johnston, the death has arisen as a result of the combined effects of external bleeding from stab wounds to the neck and lacerations to the scalp and the main injuries associated with a fractured skull.

The arrest and interview of the defendant

[18] Constable Brian Haire received a radio transmission about the investigation of the murder of Pauline Kilkenny on Tuesday 13 November 2018. It was noted that her private car, a red Fiat Punto was missing. At approximately 14.55 hours he was the front seat observer in a police vehicle when he encountered the missing car. It had stopped on the grass verge on the Derrygonnelly Road, Enniskillen. The police officer approached the vehicle drew his weapon and pointed it towards the occupant who was identified as you, the defendant Joseph Dolan, DOB 6/4/1990. You were handcuffed and arrested on suspicion of the murder of Pauline Kilkenny. You were cautioned and made no reply. At 15.11 hours you were further arrested for theft of the Fiat Punto and cautioned and simply replied "*I did steal the car*". The police interviewed Colette Wheeler who at that time was your girlfriend. She made

allegations of violence against you and confirms that when she returned home at about 2.00 am or 3.00 am on 8 November she saw a red Santander bank card sitting on the kitchen bench in the name of P Kilkenny. You were lying in her bed sleeping at this time. She also confirms that you had £600 or £700 cash on you at that time. She further indicated that on Monday 12 November you were in bed beside her and not in a good mood. She says:

“He said he was going to get the 2.15 bus to Belcoo to see Pauline. I came home around 5.00 and he returned at least an hour after that. He was in Pauline’s car. On Monday night we had a massive row. The police arrived and arrested Joe.”

[19] You were interviewed 12 times in November 2018. You ultimately admitted the killing. In the course of the interviews you attempted to shed responsibility for the killing to Colette Wheeler. In your third interview you admitted that you had stabbed Pauline Kilkenny on Wednesday 7 November, in the evening time having met her about 5.30 pm that day. You confirmed that Pauline had not said anything to you and that there had been no argument and that you stabbed her. You stated that you only remembered stabbing her once but knew you had stabbed her more than that as you ultimately remembered standing over her and that she was lying in a pool of blood. You said that you stabbed her with a knife that you got from the house. You confirmed that you had taken drugs prior to the stabbing namely Pregabalin and Gabapentin prescription medication.

[20] In the course of the interviews you admitted that you had taken Pauline Kilkenny’s car. This forms the basis of the second count on the indictment.

[21] In the course of the fifth and sixth interviews you alleged that Colette had been present and had actually participated in the assault. You specifically alleged that Colette had struck Pauline with saucepans. In your eleventh interview you finally confirmed that Colette Wheeler had nothing to do with the killing. The false allegations you made against Colette Wheeler form the basis of the third count.

Pre-sentence report

[22] The court received a pre-sentence report setting out your personal background. You are a 29 year old single male with no dependants. You originate from the Republic of Ireland having been born and raised in the Cavan town area where you lived with your mother and two older sisters until the age of 11 years. Your father died when you were age 8, following which your mother’s mental health deteriorated considerably. You were received into the care system at aged 11 following which you experienced 3 foster placements until you were discharged aged 18 years. You left formal education aged 16 years of age attaining your junior certificate. Since leaving education you have never engaged in employment or training.

[23] Subsequent to turning 18 you engaged in significant drug misuse and the ensuing years before you arrived in Northern Ireland were typified by periods of homelessness, imprisonment and short term in-patient hospital treatment. Through your sister you came into contact with your victim Pauline Kilkenny in or around 2015. In keeping with her caring personality she provided a home for you and provided you with support and stability.

[24] You describe how you developed an intimate relationship with Ms Colette Wheeler which was fraught with difficulties and domestic violence. You say that the demise of your relationship with her was a significant stressor in your life around the period in which you killed Ms Kilkenny. In relation to your account of the killing you refer to your increased low mood, anxiety and paranoia arising from your deterioration in your relationship with Ms Wheeler. It was this anxiety and paranoia which formed the background to your actions.

[25] You provide very little detail of the incident itself and you report the only recollection you have is of standing over Pauline's dead body with a knife in your hand. You report feeling serious shock at what you had done and thought that it was a dream. You say that you sat on the bed and "watched her" for about one hour following the incident. You did not contact the emergency services upon the realisation that something terrible had occurred. Rather you phoned a friend for a lift into town to visit your girlfriend. It appears from other evidence in the case that you must have returned to the scene where you stole the vehicle which forms the basis of the second count.

[26] Notwithstanding the fact that you reported feeling devastated in relation to your actions the report records that you exhibited no emotional expression during the course of the interview. The probation report refers to your extensive criminal record. You have 36 previous convictions, 34 of which occurred in the Republic of Ireland and 2 in this jurisdiction. The index offences noted in your criminal record in the Republic of Ireland include the use of violence, the use of weapons, the desire for financial gain and substance misuse. You have convictions in relation to an attack upon a taxi driver during which you used a knife (the victim sustained 2 stab wounds to the head and 6 stab wounds to the back and shoulders). You assaulted a senior citizen with an umbrella which was broken during the assault.

[27] You accepted you have had many violent episodes during your entire life (including childhood/fights).

[28] The probation report assesses you as a person who presents as a high likelihood of further offending and that you are an offender who represents a significant risk of serious harm.

[29] I agree with these assessments to which I will return later.

Diminished responsibility

[30] The court received the following medical reports:

- (a) Reports from Dr Carinne Minne, Consultant Psychiatrist prepared on the instruction of the defendant's solicitors dated 15 October 2019, and 16 January 2020.
- (b) Report from Dr Muzaffar Husain, Consultant Psychiatrist dated 16 January 2020 prepared on the instruction of the defendant.
- (c) Reports from Dr Christine Kennedy, Consultant Psychiatrist dated 28 November 2019 and 1 February 2020 prepared on the instruction of the prosecution.
- (d) Finally, on the instructions of the court Dr Kennedy and Dr Minne prepared a joint statement dated 4 February 2020.

[31] I am grateful to the Consultant Psychiatrists, particularly Drs Minne and Kennedy for their comprehensive and helpful reports and for the expedition with which they were prepared. The preparation of the joint statement was particularly helpful and in my view should be the norm in cases of this type.

[32] With regard to diminished responsibility, section 5 of the Criminal Justice Act (Northern Ireland) 1966 as amended by section 53 of the Coroners and Justice Act 2009, sets out the requirements which must be established in order to establish the partial defence of diminished responsibility. The defendant must be suffering from an abnormality of mental functioning which -

- (a) Arose from a recognised medical condition.
- (b) Substantially impaired his ability to do one or more of the things mentioned in the statute.
- (c) Provides an explanation for the defendant's acts and omissions in doing or being party to the killing.

[33] The things referred to in the statute are -

- (a) To understand the nature of the defendant's conduct.
- (b) To form a rational judgment.
- (c) To exercise self-control.

[34] The Consultant Psychiatrists agree that you suffer from a mental disorder, known as personality disorder. Furthermore, it is agreed that this personality disorder contains traits from several sub-categories of personality disorders and can be described as mixed personality disorder.

[35] All psychiatric opinion before the court is in agreement that your mental state (of extreme distress, fear, terror and abandonment rage) arising from your emotionally unstable personality disorder characteristics substantially impaired your ability to form a rational judgment and to exert self-control at the time of Pauline Kilkenny's killing. This is the basis upon which the partial defence of diminished responsibility has been accepted in this case.

Victim impact

[36] Before determining the appropriate sentence it is essential to remember the victim Pauline Kilkenny in this case and acknowledge the impact her brutal and violent death has had on her many friends and relatives.

[37] I have been provided with victim impact statements from Pauline Kilkenny's mother, from her nieces Cara, Ashlene and Noelle, from her sisters Martina, Nuala and Geraldine (who were both particularly traumatised by discovering their beloved sister's body) and from a neighbour in London, Sandra.

[38] Those detailed and carefully crafted statements eloquently convey the devastation that Pauline's death has caused. They also are a testament to her character. What emerges from the statement is a family member who was greatly loved and who had a special place in the hearts and minds of her many relatives. She made a positive impact on all of those who have taken the trouble to prepare their victim impact statements.

[39] It is was clear that she was a kind and trusting person. Indeed, it was this very kindness that led to your involvement with Ms Kilkenny. She took you in at a time when you were desolate and homeless. She looked after you, provided a home for you and provided some much needed stability in your life. It is one of the greatest tragedies of her death that it was her kindness and desire to help people that brought her into contact with her killer.

[40] Whilst it is the court's responsibility to deal with you on the basis of the relevant sentencing principles it does so fully cognizant of the impact of Pauline Kilkenny's brutal and unjustifiable death.

The appropriate sentence

[41] You fall to be sentenced within the framework of the Criminal Justice (Northern Ireland) Order 2008 ("the 2008 Order"). Any reported decisions prior to the implementation of the Order should be treated with care.

[42] The key authority for the approach to be adopted in this type of case is the decision of the Court of Appeal in **R v Sean Hackett** [2015] NICA 57.

[43] In a case such as this where a defendant has pleaded guilty to manslaughter on the grounds of diminished responsibility the first issue for a sentencer to determine is whether or not a Hospital Order, with or without restrictions, would be an appropriate disposal. Whether this is the right course will primarily depend on the medical evidence before the court.

[44] In her report dated 16 January 2020, on this issue Dr Minne supported a Hospital Order as an appropriate disposal. This was not accepted by Dr Kennedy who in her report dated 1 February 2020 points out that personality disorder is excluded as a detainable mental disorder under the Mental Health (Northern Ireland) Order 1986(“the 1986 Order”).

[45] However, subsequent to a joint meeting between the psychiatrists it is agreed that a Hospital Order is not an appropriate disposal in this case. At paragraph 1.6 of the joint statement prepared by Drs Kennedy and Minne they say the following:

“In custody, Mr Dolan can access risk reduction psychological interventions but not the broader range of interventions required for the optimal treatment of his personality disorder. Mr Dolan can also access the mental health team within the prison for psychiatric review, medication management for referrals to clinical psychological and addiction services as needed. However, in order for his deeply ingrained and chronic Personality Disorder to be optimally treated, he would need specialised treatment (individual and group therapies) within a 24/7 therapeutic environment. In England this can be provided in some prisons (eg through therapeutic communities) or can be provided in a high secure hospital over a period of several years. Unfortunately, in Northern Ireland and in Scotland (which provides high secure care services to Northern Ireland), the provisions under the respective mental health legislations do not support hospital orders when the primary diagnosis of mental disorder is a personality disorder as it is in this case. Neither does Northern Ireland have hybrid orders, which, should the court be minded, are a suitable alternative to a Hospital Order with restriction. A hybrid order in England and Wales allows for a custodial sentence with transfer to an appropriate hospital for treatment for the duration required and then returned to custody to complete the sentence).”

[46] Since the medical evidence does not support the imposition of a Hospital Order which the court has the power to impose under Article 44 of the 1986 Order it is not necessary for me to consider whether the most suitable means of dealing with you is by means of a Hospital Order. Even if there had been medical support for such a disposal I would in any event have shared the concerns of the Court of Appeal in the **Hackett** case concerning the premature release of a dangerous offender.

Appropriate disposal under the 2008 Order/dangerousness

[47] Manslaughter is a “specified offence” and a “serious offence” for the purposes of Chapter 3 of the 2008 Order.

[48] Since a Hospital Order is not appropriate in this case you fall to be sentenced in accordance with Article 13 of the 2008 Order where the sentence will be imprisonment for life or an indeterminate custodial sentence or an extended sentence, where the court is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission of further offences by you. Serious harm means death or serious personal injury, whether physical or psychological (Article 3).

[49] The principles to be applied in assessing “dangerousness” are well established. In this jurisdiction see **R v EB** [2010] NICA 40, **R v Kelly** [2015] NICA 29 and **R v Mongan** NICA 5/11/2015.

[50] The court also has to have regard to the factors set out in Article 15 of the 2008 Order.

[51] In this case I have no doubt that you come within the provisions of Article 13 of the 2008 Order and that there is a significant risk to members of the public of serious harm being occasioned by the commission by you of further specified offences.

[52] The probation report assesses you as a person who is assessed as having a high likelihood of further offending. The report also regards you as currently meeting the threshold as representing a significant risk of serious harm. The report identified the following factors as being relevant:

- Your criminal record includes previous violence targeted at innocent members of the public.
- Use of violence and aggressive behaviours in the escalation and seriousness of your actions.
- Use of weapons to inflict serious harm and death on someone who was vulnerable and who provided care and support to you.
- Adverse police attention in this jurisdiction in relation to a domestic incident involving Ms Wheeler.

- Evidence of destabilising factors such as your chronic substance abuse history, personality and mental health issues, with your lack of insight which the report assesses as carrying an associated risk.
- Non-compliance with statutory services in the past, in relation to probation and poor compliance with mental health services.
- Self report of no apparent trigger or motivation for the use of extreme violence.
- Lack of family/support systems.

[53] All of this is reinforced by the medical evidence in the case.

[54] In paragraphs 2.8 and 2.9 of her addendum report dated 13 January 2020 Dr Kennedy opines as follows:

“2.8 Mr Dolan has a substantial number of historical risk factors which link to a risk of future violence. The risk factors of high relevance to future violence risk management and needing intervention are his violent offences, pattern of relationships and attachments, his drug and alcohol use inclusive of prescription medication use, his Personality Disorder(s), his dysfunctional and traumatic personal background, his poor insight into his mental disorders, risk profile and need for treatment, and his poor engagement with services. At present Mr Dolan is disclosing very little of his understanding of the index offence and it is unclear how much of this is strategic as opposed to an avoidant response. It is probable that greater understanding of the offence will only occur in the years post-sentencing through professional intervention.

2.9 As said there is no risk assessment tool that can predict whether a future serious offence will occur. What can be said is that the risks around Mr Dolan’s Personality Disorders and insight, his dysfunctional childhood, his poor reliance especially in the face of loss events, and his chronic use of alcohol/drugs from early adolescence onwards are on-going matters. Personality traits are generally considered persistent over time. Addiction is an on-going disability and even if abstinence is achieved the condition can always relapse. Personality Disorder can be treated to various extents and managed but can decompensate with both predictable and unpredictable stresses, and especially with non-compliance with management advice. It is not possible at present to say when all his various risk factors might be sufficiently addressed. If a similar constellation of risk factors as was present at the time of the index offence was to recur,

mindful that the most severe level of violence has already occurred, there is the potential for recurrence. The future violence risk for life threatening harm in my view is thus a significant one, which will require indefinite management and supervision."

[55] In the joint statement prepared by Dr Kennedy and Dr Minne at paragraph 1.4 they say:

"We both agree that the nature of Mr Dolan's personality disorder, which includes traits from Dissocial Personality Disorder, combined with his proven history of violence, means that unless his Personality Disorder is treated or effectively managed, he will remain dangerous."

[56] I am therefore satisfied that the Article 13 threshold is met in your case.

[57] Having come to that conclusion I must consider whether or not the seriousness of the offence is such as to justify the imposition of a life sentence. If I decide not to impose such a sentence I should consider whether an extended custodial sentence is appropriate under Article 14. However, having regard to the medical evidence to which I have referred and the potential indefinite risk presented by you I consider that an extended custodial sentence would not be adequate for the purpose of protecting the public from serious harm occasioned by the commission by you of further specified offences.

[58] The issue therefore is whether to impose a life sentence or an indeterminate custodial sentence. In submissions from counsel the assumption appeared to be that an indeterminate custodial sentence was appropriate in this case. The difference between counsel focused on your residual culpability which primarily impacts on the tariff I should impose.

[59] In approaching this issue I am guided by the Court of Appeal's judgment in the case of **R v Hackett** [2015] NICA 57.

[60] At paragraph [52] the court says as follows:

*"The approach which the court should take in applying the similar provisions in England and Wales was addressed in **R v Kehoe** [2008] EWCA Crim 819, [2008] 1 Cr App R(S) 41 and is helpfully encapsulated in paragraph [17]:*

'When, as here, an offender meets the criteria of dangerousness, there is no longer any need to protect the public by passing a sentence of life imprisonment for the public

are now properly protected by the imposition of the sentence of imprisonment for public protection. In such cases, therefore, the cases decided before the Criminal Justice Act 2003 came into effect no longer offer guidance on when a life sentence should be imposed. We think that now, when the court finds that the defendant satisfies the criteria for dangerousness, a life sentence should be reserved for those cases where the culpability of the offender is particularly high or the offence itself particularly grave'."

[53] Lord Judge CJ returned to this issue in **R v Wilkinson** [2009] EWCA Crim 1925, [2010] 1 Cr App Rep (S) 628 where he said that the crucial difference between a discretionary life sentence and a sentence of imprisonment for public protection arising at the time of sentence is the seriousness of the instant offence as assessed in the overall statutory context. He continued at paragraph [19]:

*'In our judgment it is clear that as a matter of principle the discretionary life sentence under Section 225 should continue to be reserved for offences of the utmost gravity. Without being prescriptive, we suggest that the sentence should come into contemplation when the judgment of the court is that the seriousness is such that a life sentence would have what Lord Bingham observed in **R v Lichniak, R v Pyrah** [2002] UKHL 47, [2002] 4 All ER 1122 would be a 'denunciatory' value, reflective of public abhorrence of the offence, and where, because of its seriousness, the notional determinate sentence would be very long, measured in very many years'."*

[61] In **Wilkinson** the court was dealing with a case in which the appellant had established a gun factory altering blank firing replica submachine guns purchased by him to firearms. It was established from the recoverable material that the firearms had been involved in 51 shootings resulting in eight fatal shootings and some 13 instances of injury. Of the 90 replicas bought by the appellant 37 had not been recovered. Unsurprisingly this was treated as an offence of the utmost gravity.

[62] On this issue the most important matter is the protection of the public, something which was movingly referred to in some of the victim impact statements. The 2008 Order is in effect a “game changer” in terms of the appropriate sentence in diminished responsibility cases. There is no longer any need to protect the public by passing a sentence of life imprisonment because the public is now properly protected by the imposition of the sentence of an indeterminate custodial sentence. This was undoubtedly a shocking and grave offence. I will deal with your culpability later. Whilst it was undoubtedly diminished by your mental condition I do not consider that it was low. Nonetheless I do not consider that this is a case which requires the imposition of a life sentence. In the circumstances of this case and having regard to the statutory context of the 2008 Order I consider that the appropriate sentence is an indeterminate custodial sentence. I consider this is a sufficient sentence to provide appropriate protection to the public. I will turn to the issue of the appropriate tariff shortly. However, I would emphasise that irrespective of any tariff I impose you will only be released on licence if this is approved by the Parole Commissioners who will be best placed to assess the risk you pose to the public at any given time. It is imperative in my view that the Parole Commissioners have access to the pre-sentence report in this case and all the medical evidence I have considered in the event that they are considering your release in the future. Given the contents of the medical evidence I have received any consideration of your release will require the most intense scrutiny.

The appropriate tariff

[63] Having decided that I should impose an indeterminate custodial sentence it falls on the court to determine the length of the minimum term you will be required to serve in prison before you first become eligible to have your case referred to the Parole Commissioners for a consideration by them as to whether, and if so, when you might be released on licence.

[64] In the course of submissions I have been referred to a number of reported cases in which the court set tariffs in cases involving manslaughter on the basis of diminished responsibility.

[65] I have also gained assistance from the paper on sentencing in cases of manslaughter prepared by Sir Anthony Hart on 9 March 2011.

[66] In the relevant section of his paper, in relation to manslaughter cases involving diminished responsibility he says:

“Where the defendant was suffering from diminished responsibility at the time of the offence, and the psychiatric history shows that he may continue to be a danger to members of the public in future, sentences of life imprisonment with a minimum term of 5-6 years are

almost always imposed, although in one case (Murray) a minimum of 12 years was imposed."

[67] The case of **Murray** involved a defendant with a significant criminal record who brutally murdered an elderly man in his home and who also raped another woman in the same house.

[68] Whilst I have derived assistance from all the cases to which I have been referred as a general proposition the court should be careful of comparing sentences imposed in other cases which are inevitably fact sensitive.

[69] In setting the appropriate tariff I should look at the gravity of the offence and the culpability of the accused.

[70] Self-evidently this was a shocking offence. It is aggravated by a number of features including:

- The victim was extremely vulnerable.
- The attack was unprovoked.
- Extensive and multiple injuries were inflicted.
- Weapons including a knife and blunt objects including a saucepan were used.
- The attack occurred in the victim's own home.
- You were clearly indifferent to the seriousness of the likely injury you inflicted.
- Associated offences were committed at the time including the theft of Ms Kilkenny's vehicle and providing a false account in initially attempting to place some responsibility upon another person. (I propose to take these matters into account as aggravating features rather than impose consecutive sentences).
- The traumatic effect upon the family of Ms Kilkenny.

[71] In terms of your personal circumstances you have failed to respond to previous sentences.

[72] In terms of mitigating features Mr Gallagher submits there is some evidence of remorse on your behalf. In particular he refers to an entry in your medical notes and records when you were referred to the Mental Health Team in Maghaberry Prison. The record notes "*feels remorseful about what he has done*".

[73] On this issue I am not persuaded that you have demonstrated any real remorse for your actions. Indeed a chilling feature of this case is your apparent emotional indifference to the plight of your victim or her family during the course of police interviews, during your interview for the pre-sentence report and in the medical reports that I have considered.

[74] In truth the only true mitigating factor (prior to any consideration for discount in respect of your plea) relates to your undoubted diminished responsibility. The court must do its best to make some assessment of your residual degree of culpability having regard to the circumstances of the case and the medical evidence it has received. In this respect the medical experts disagree. Dr Minne is of the view that your degree of culpability is low. It is her opinion that the killing of Ms Kilkenny is almost completely determined by abandonment rage attributable to you mental state (interestingly Dr Husain relates "abandonment rage" as relating to Ms Kilkenny as opposed to Ms Wheeler - but the consensus seems to be that the abandonment refers to the latter). In paragraph 4 of her addendum report dated 10 January 2020 she says as follows:

"Regarding the issue of culpability, in my opinion, Mr Dolan's culpability for the killing is low, given that this catastrophic offence occurred in the context of him being in a distressed state of mind, when he could no longer think clearly, focusing only on the rage and distress that his girlfriend was going to leave him, this abandonment in itself mobilising earlier (childhood) traumas and distressed states of mind in relation to experiencing abandonment by his mother. The nature of the attack on Ms Kilkenny, 28 stabbings, is indicative of what could be described as an out of control physical self-preservative extreme violence, where Mr Dolan's whose sense of self felt under threat and a violent physical solution materialised to attempt to deal with the intolerable psychological state. Mr Dolan tragically directed this towards the person present at that moment, a woman who cared for him, as opposed to a planned and controlled dissocial, conscious decision to kill her. It is likely that if Ms Kilkenny had not been physically present with him at that moment, the rage impulse may have been directed towards himself and he may well have suicided instead of carrying out a homicide."

[75] Dr Kennedy accepts that your abnormality of mind provides an explanation for your involvement in the killing. She does however point to partial evidence of violent attitudes. She also points to some evidence of rational thought post the initiation of the offence. In their joint statement the doctors say the following on this issue:

"1.14 The initiation of the offence is likely to have been substantially mediated by abnormal mental state and irrational thought process. How things unfold thereafter is unknown and whether this irrationality persisted for the entire duration of the offence. Punching, stabbing and the use of blunt force with improvised weapons (kitchen pans) were employed. The victim took at least 30 minutes to die

and 19 stab wounds were perimortem. Dr Kennedy states that Mr Dolan appeared to have been capable of some rational thought process during the offence (she was making noises that she got banged on the head) and afterwards (changing clothes, washing handles of pans). He took a bank card and carried on as usual. In Dr Minne's opinion, what followed during the period of time of the index offences is more likely to have been on-going irrational thought processes and that these behaviours can appear as if driven by rational thoughts. In her experience, it is not uncommon at the time of such catastrophic violent acting out that the original violent impulse carried out leads to the person's mind psychically defending itself against the intolerable reality of what just happened, which can lead to further irrational behaviours whilst in a dissociated state, including the seemingly callous use of the victim's car, which in her opinion, is more likely to be further irrational behaviour based on an attempt to repair the relationship with his girlfriend whilst his mind disavows (does not acknowledge) what he just did to Ms Kilkenny. Dr Kennedy's opinion is that Mr Dolan may well have been capable of rational thought immediately following the index offence and that these thoughts were more likely to be associated to his dissocial personality traits. Again, there is no test as to which view is correct."

[76] The last sentence is instructive. Both Dr Kennedy and Dr Minne emphasise that the evaluation of what went on in Mr Dolan's mind for the entire duration of the offence relies on personal evaluations and interpretations. It is simply not possible for a psychiatrist to say precisely to what degree each aspect of mental state has contributed to the totality of the offence behaviour. Ultimately, this is a matter for the court on assessing all the evidence available.

[77] In terms of residual culpability there are a number of matters which influence my view. The first is that as both doctors agree it is unusual for a defendant to have been convicted of manslaughter with diminished responsibility on the basis of a personality disorder in Northern Ireland. It is also relevant in my view that you knew that drug use increased your risk of behaving dangerously based on your previous violent conduct.

[78] In my view there is evidence of some rational thinking by you during the course of your horrific actions. I refer to the matters identified by Dr Kennedy. In addition I note that after this event you locked the bedroom door and the outside door after you initially left the scene. Your actions in returning to the scene and stealing the victim's car and your carrying on as normal, despite what you knew must have happened indicate to me that you were capable of rational thought following the index offence. I also share some of the reservations expressed by

Dr Kennedy in her report that you are a poor and unreliable historian generally. At paragraph 7.12 of her report of 26 November 2019 she points out that you omitted significant information from your narrative and on occasion told untruths, particularly evident with reference to substance abuse. She also points out that the contemporaneous interviews demonstrate changeable accounts and that in the course of her interview you appear to have less memory of events than when interviewed by the police. In coming to this conclusion I acknowledge that Mr Gallagher points out that the height of what Dr Kennedy says is that "*Mr Dolan may well have been capable of rational thought immediately following the index offence*".

[79] Considering all the material before me I do not consider that your responsibility was minimal. It is not possible to assess your residual culpability in any scientific way but in all the circumstances I consider it to be medium at the very least. In the court's view your degree of culpability is such as to require a tariff well in excess of the 5-6 years referred to in Sir Anthony's paper.

[80] Had you been convicted of murder on a contest on the basis of the principles set out in the case of **McCandless and Others** [2004] NICA 1 a tariff in the range of 18 to 20 years would have been appropriate perhaps reduced to 15 years in the event of a plea.

[81] Given your diminished culpability I consider that in the event of a conviction after a trial the appropriate tariff would have been 13 years.

[82] You are entitled to credit for your plea of guilty. I accept that this was a timely plea and that it was necessary to obtain medical evidence from Consultant Psychiatrists in relation to your mental state before entering a plea in this case. Indeed when it became clear that the prosecution would accept a plea to manslaughter on the grounds of diminished responsibility this was arranged promptly. It is a long and firmly established practice in sentencing law in this jurisdiction that where an accused pleads guilty the sentencer should recognise that fact by imposing a lesser sentence than would otherwise be appropriate. A plea is a recognition of your guilt, saves public expense and spares the family of the victim the ordeal of a trial. I therefore consider that you are entitled to substantial credit for that plea and in the circumstances I propose to impose a tariff of 10 years' imprisonment.

[83] Overall, standing back, I consider that the tariff of 10 years is one which is appropriate in all the circumstances of the case.

[84] In conclusion I should refer to the concluding remarks in the joint statement of Dr Kennedy and Dr Minne at paragraph 1.17 where they say:

"1.17 To conclude, whilst we both agree on the diagnosis and the nature of the treatment that would be needed to treat this disorder (as opposed to risk reduction and

containing symptoms), we both express our regret that this cannot be made available to him in Northern Ireland. We appreciate that it is even unusual for him to have been convicted of manslaughter with diminished responsibility on the basis of his personality disorder in Northern Ireland. We also appreciate that this, and our agreement, that in an ideal world he would be treated, does not in any way mean that the seriousness of his crime, the killing of Ms Kilkenny, is in any way lessened - quite the contrary, we are so concerned about his dangerousness and his need of treatment that we want to emphasise the importance of him, and others like him in Northern Ireland, having equitable access to services as those in England and Wales, not just for his benefit but for the benefit of the whole community because he would be released back into the community eventually."

[85] I therefore impose an indeterminate custodial sentence in respect of the offence of manslaughter by reason of diminished responsibility to which you have pleaded guilty. I specify a tariff of 10 years pursuant to Article 13(3)(b) of the 2008 Order as the period appropriate to satisfy the requirements of retribution and deterrence in respect of the manslaughter conviction by reason of diminished responsibility, which tariff must be served before you can be considered for release on licence.

[86] In respect of the second count I impose a sentence of 12 months' imprisonment.

[87] In respect of the third count I impose a sentence of 12 months' imprisonment.

[88] The sentences imposed in relation to Counts 2 and 3 are to run concurrently with the sentence imposed in respect of Count 1.