

THE QUEEN

-v-

OLIVER JUNIOR JOSEPH SHORTT

DECISION ON TARIFF

Ruling by Kerr LCJ

1. At Craigavon Crown Court on 23 March 2000 the prisoner, Oliver Junior Joseph Shortt, was found guilty of the murder of a 35 year old woman, Donna Rose Murray, in the early hours of 13 October 1998. He was also convicted of the attempted murder of the deceased's 18-year-old son, Christopher Murray and of arson of the house in which the deceased and her son lived. He was sentenced to life imprisonment on the murder charge; to fifteen years for the attempted murder; and to eight years on the arson charge. On 9 February 2001 his application for leave to appeal his conviction was dismissed. The prisoner has therefore been in custody since his arrest on 16 October 1998.

2. On 15 November 2004 I sat to hear oral submissions on the tariff to be set under Article 11 of the Life Sentences (NI) Order 2001. 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. At 7.20am on 13 October 1998 the Fire Brigade was called to the deceased's home at 314 Ardowen, Craigavon. A neighbour had reported the fire. Investigation of the scene revealed the charred body of the deceased lying near the living room window. The deceased's son, Christopher, was rescued from the blaze. Christopher, who has learning difficulties, was discovered in an upstairs bedroom and taken to hospital. The fire crew found

two seats of fire: one in the living room and the other in a cupboard off the hallway. An investigation ensued, during which it became apparent that a number of witnesses had seen the prisoner at the deceased's house on the evening of 12 October 1998.

4. When police first asked the prisoner about the events of 12/13 October 1998 he said that he had gone to the deceased's house at about midnight. He left her house to buy alcohol, but returned soon after. He said that they drank until 4am when the deceased ordered him out. He alleged that he returned home to bed. The prisoner gave police a false description of the clothing that he was wearing on the night of the murder. He was arrested at 9.55pm on Tuesday 13 October 1998. Medically examined at Lurgan police station, he was found to have a small cut to one knuckle but otherwise to be healthy.

5. When first interviewed Shortt gave police an account of an entirely innocuous evening at the deceased's home. He said that he had left the house at between 3 and 4 am. He said that there had been no sexual contact between the deceased and himself. Only when it was put to him that there may have been evidence of sexual contact did the prisoner say that they had engaged in sexual intercourse. The prisoner said that he had asked the deceased whether the sex had been all right and that she had laughed but that he did not take this as mockery of his performance. He said that he left the house for the last time about 20 minutes after the sexual encounter. He denied that there had been any confrontation between the deceased and himself.

6. The prisoner's mother gave evidence that he called at her home at 5.30am looking wide eyed and excited. She noticed that his trousers were bloodstained and he offered an elaborate, fictitious account of having attacked another man. He told her that it was likely the police would be looking for him and he asked her to tell them that he was wearing different clothing. He also asked her to tell the police that he had arrived at the house at 2.30am. The prisoner washed some of his clothing and discussed washing other items. He went out and threw the jeans he had been wearing into a bin. At trial the prisoner claimed to have no recollection of this conversation with his mother.

7. The only direct evidence of what took place in the early hours of 13 October 1998 came from the prisoner. On his trial he raised defences of both provocation and self-defence. The prisoner gave evidence that he had engaged in sexual intercourse with the deceased. He said that when he asked her if it had been "all right" she laughed at him in a way that hurt and humiliated him. The prisoner said that he then made an allusion to the deceased's sexual history at which point she ran at him with a butter knife, speaking so quickly that he could only make out the word "bastard" which punctuated the tirade. He said that he was in a state of fear. He gave evidence that he pushed her away and went to the kitchen, aiming to go to

the kitchen door, but before he could leave the deceased appeared behind him, brandishing the knife. The prisoner said that he pushed the deceased away but she tried to run at him with the knife. He saw a knife sitting beside the sink and lifted it, pushing her away. He knew the deceased to be violent when she had drink taken. The prisoner said that he held the deceased by the wrists, pushing her away, but as he could not repel her attack he swung the knife, catching her (possibly) on the shoulder. His next memory was of them rolling on the floor, but he was unaware how they got there. He said that both were still armed with their knives. He said that he disarmed the deceased and held her down by the neck on the floor. The prisoner said that he could not remember anything further about the incident after he had disarmed the deceased and she was on the floor of the living room with his hand around her neck. His next recollection was said to be arriving at his own home. The prisoner admitted having lied to the police during interview. He told the court that he had been confused.

8. The State Pathologist, Professor Jack Crane, concluded that the cause of death was manual strangulation. Bruising was found on the deceased's neck and conjunctival bruising in the eyelids and mouth. The deceased had received blows about the head, neck and back. At least 3 or 4 blows of significant severity were struck to the head of the deceased with a blunt object such as an ornament (blood was found on a broken ornament in the living room), a number of shallow stab wounds were made to the deceased's back, an incision was made in the neck sufficient to penetrate tissue, a significant cutting wound was inflicted to the deceased's mouth and a wound of depth was caused by stabbing. The blow that had caused that injury had also nicked a rib. Professor Crane, gave evidence that the neck injury must have been inflicted while the deceased was immobilised and on the ground. The Crown suggested that the prisoner had mounted a sustained attack while the deceased was unable to resist him.

Antecedents

9. The prisoner has a lengthy previous record, consisting of 20 separate appearances in the criminal courts between 1990 and 1999. Two types of offence dominate: burglary (15 offences) and road traffic violations. The prisoner has one previous conviction for arson, dealt with by Craigavon Magistrates' Court in December 1997, for which he was imprisoned for 12 months. The record does not reveal any convictions for offences of violence.

The NIO papers

10. The deceased's sister submitted a written representation in which she stated that the murder had devastated her family. Their father died 6 months after the murder and their mother never got over the loss and found it hard to cope. The deceased's son has a learning disability and he still finds it difficult

to talk about his mother. The submission stated that he witnessed the offence. Her brothers have also had difficulty coming to terms with events and one has started to drink alcohol to excess. Miss Murray said that she missed her sister very much. She was also worried for her own children, afraid to let them out of her sight. The pressure led to the breakdown of her relationship. Miss Murray referred to her sister having been raped by the prisoner.

11. The prisoner's solicitor, Patrick McMahon, submitted a written representation in which he contested two assertions in Miss Murray's submission: the deceased was not raped, he claimed, but submitted to consensual sexual relations and her son Christopher did not witness the murder.

12. Mr McMahon contended that the prisoner had been provoked in a non-technical manner by the reference to his sexual performance. He argued that the prisoner's culpability was not exceptionally high as he was intoxicated. The deceased was not, Mr McMahon claimed, particularly vulnerable. He contended that the offence was unplanned and spontaneous, although he accepted that the prisoner had attempted to destroy the crime scene. Mr McMahon pointed out that the prisoner had accepted at trial that he was responsible for the death. He had since taken steps to advance his rehabilitation by training in Braille and addressing his alcohol use. Mr McMahon referred to the prisoner's genuine remorse.

13. The prisoner submitted a hand written letter in which he apologised to the Murray family and acknowledged the pain that he has put them through. He said that he was truly sorry for his actions and that he had been both intoxicated and depressed at the relevant time. The prisoner stated that he was not in his right state of mind but accepted that this does not excuse his actions. He said that not a day goes by without him regretting what he did.

Practice Statement

14. 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."

The submissions made on the offender's behalf

15. Mr David Russell, who appeared for Shortt at the hearing on 15 November 2004, submitted that the normal starting point should be chosen in this case. It was an instance of "the killing of an adult victim, arising from a quarrel or loss of temper between two people known to each other". It was also argued that the violence perpetrated by the offender did not qualify as 'gratuitous' as that expression was used in paragraph 12 (i).

16. Mr Russell suggested that the offender was provoked in a non-technical sense and that this should be recognised as a mitigating feature justifying a reduction of the minimum period. He accepted, however, that the attempt to destroy the crime scene must be viewed as an aggravating feature. He suggested that the offender's claims to be remorseful were genuine and should be accepted and that this was another reason to vary the starting point downwards.

Conclusions

17. The offender's claim to be acting in self-defence was unsurprisingly rejected by the jury. He was found to be virtually uninjured at the time of his arrest. His claims to have been provoked must also be treated with caution in view of the various lies that he told his mother and interviewing police officers. In any event, the multiplicity of the injuries suffered by the deceased suggests that this was a prolonged attack on her. I consider that these injuries betoken gratuitous violence on the offender's part, justifying the selection of the higher starting point.

18. In any event, the attempt to burn the house down while, as the offender knew, Christopher was in it gives good reason for the choice of the higher minimum period. Two points should be made about this. Firstly, although the *Practice Statement* does not suggest that an attempt to murder another person will invoke the higher starting point, as has been repeatedly said, the examples given in the *Statement* are merely illustrative of the type of case that will be regarded as deserving of particularly condign punishment. Secondly, although the offender has been punished for the separate crime of attempted murder, I consider that I am bound to take the attempt to kill Christopher into account in deciding the minimum term for the murder of his mother. This is not a case of multiple murders such as is described in the *Statement* but the attempt to kill Christopher was intimately connected to the murder of Ms Murray. That circumstance alone would warrant the conclusion that this was a higher starting point case.

19. Since there are two factors present in the case, each of which would singly justify the selection of the higher starting point category, I am bound to

consider whether paragraph 18 of the *Practice Statement* should be applied. I have given careful consideration to this but have concluded that this is not the type of case that one could say that there were “several factors identified as attracting the higher starting point present”. I believe, however, that the fact that more than one such factor is present calls for a variation of the higher starting point, albeit not to the extent suggested in paragraph 18.

20. I do not consider that the provocation claimed by the offender should operate to reduce the minimum period. The type of provocation envisaged by the *Practice Statement* is of an altogether different character from that claimed by Shortt. Moreover, his claims must be regarded with some scepticism in view of the scale of injury suffered by the victim.

21. Taking all these factors into account and having due regard to all that has been said on the offender’s behalf, I have concluded that the appropriate tariff in his case is seventeen years. This will include the time spent on remand.