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

Ref: COL11172

Delivered: 03/02/2020

IN THE CROWN COURT OF ANTRIM SITTING AT BELFAST

THE QUEEN

v

MAREK MARCIN SINKO

COLTON J

[1] I want to thank all counsel who appeared in this case for their helpful written and oral submissions. Mr David McDowell QC led Mr Michael Chambers for the prosecution. Mr Richard Greene QC led Mr Conleth Rooney for the defendant.

Introduction

[2] The defendant faced one count on the indictment namely murder, contrary to common law. The particulars were that on a date between 20 October 2017 and 23 October 2017 he murdered Eugeniusz Sinko.

[3] He was arraigned on 6 September 2019 and pleaded not guilty.

[4] The trial was listed for Monday 2 December 2019.

[5] On 30 October 2019 the defendant offered to the prosecution to plead to manslaughter by reason of diminished responsibility based on a medical report from Dr Fred Browne, consultant forensic psychiatrist dated 28 October 2019. The prosecution rejected that offer.

[6] On Wednesday 27 November 2019 the defendant notified the prosecution that he was willing to enter a plea to the offence of manslaughter by an unlawful act. This plea was acceptable to the prosecution. By arrangement the defendant was re-arraigned before me on 6 December 2019 when he formally pleaded guilty to manslaughter. This plea was accepted by the prosecution who did not seek a trial on the count of murder.

Background

[7] The deceased in this case is Eugeniusz Sinko. He was born on 15 April 1954 and was aged 63 at the time of his death. He was a Polish national who had lived and worked in Northern Ireland for some time. He has two adult sons Marcin and Cezary.

[8] Eugeniusz Sinko lived with you, the defendant Marek Sinko at 318 Townhill Road, Rasharkin, Ballymena. The deceased was your uncle.

[9] On 22 October 2017 at 10.01 am you telephoned the police and informed them that you had just found your uncle dead at your property. When police arrived they discovered the deceased lying on his back outside on a pathway near to the rear door of the property. The top half of his body was unclothed and his trousers were partially pulled down exposing his genitals. He was not wearing anything on his feet. There was blood present on the upper part of his face which appeared to be from a gash above his left eye. An outside tap had been left on.

[10] Eugeniusz Sinko had been the subject of a prolonged and severe assault. Projected blood matching that of the deceased was found in a number of areas in the kitchen; on the floor beside the cooker, on the front of a washing machine, on the lower cupboard boards and the kick boards of the kitchen units, on the wall by the radiator at an entrance to the living room and a small number of spots of projected blood on the ceiling. This indicated the assault had been committed after the victim had begun to bleed.

[11] You provided an initial account to the responding police officers. You told them that you and your uncle had been drinking the previous night. A physical fight had then developed between the two of you. You admitted that you had punched the deceased in the face several times and that this had caused wounds to his face. You said that you had then gone to bed. When you awoke the next morning you found your uncle dead and you had attempted CPR.

[12] Police enquiries revealed that during the period of time between contacting the police and their arrival you had telephoned a work colleague, Michael O'Hagan, and told him that you and your uncle had a fight. You said "*I think I've killed him*".

[13] Police obtained a number of statements from family and friends of both you and the deceased. A number of witnesses indicated that you both would have regularly consumed large quantities of alcohol. It appears to be undisputed that you both had significant drinking problems. Police also obtained witness statements which showed that there was a history of physical violence between both of you. Physical incidents often occurred when you both had consumed alcohol and fought.

There was evidence that you had previously caused injuries to the deceased as a result of such fights.

[14] Dr Johnston carried out a post mortem examination of the body of the deceased. At the time of his death he was found to have a blood alcohol reading of 67 mg in 100 ml of blood and 241 mg/100 ml of urine. This suggested that the blood alcohol level was considerably higher in the hours prior to death or that there had been a period of survival. Dr Johnston determined that the cause of death was injury to the head.

[15] Dr Johnston identified a number of findings during his examination.

- (i) A 4.5 cm x 0.6 cm laceration above the left eye together with significant swelling and bruising.
- (ii) Fourteen separate groups of bruises and abrasions to the head; on the forehead, face, ears and mouth and including two lacerations to the back of the scalp.
- (iii) Two large sets of bruises on the right and left hand sides of the deceased's trunk. These were fresh injuries measuring 12 cm x 15 cm and 8 cm x 19 cm respectively. The bruising extended from the chest around to the side and had a linear shape. These injuries could not be accounted for by any attempt at resuscitation.
- (iv) Five fractured ribs with a haemorrhage over the lung.
- (v) The right transverse processes of the second and third vertebrae were fractured.
- (vi) A large number of other, smaller bruises to the trunk.
- (vii) A large number of bruises, abrasions and scratches to the left and right legs and to the right ankle and foot.
- (viii) An acute subarachnoid haemorrhage on the deceased's brain.
- (ix) Cerebral contusion - this was a traumatic injury and would have been caused by the deceased's head hitting an unyielding object.
- (x) A grade 3 traumatic axonal injury to the brain of the deceased. This is a severe injury to the brain itself. The severity of the injury is usually associated with a road traffic collision, fall from a significant height or assault. The severity of the TAI was sufficient, of itself, to have caused death, albeit death would not have been immediate. However, the

deceased would have lost consciousness fairly quickly, if not immediately, from the time of the infliction of the injury.

[16] Dr Johnston concluded that the injuries to the face, while non-specific in nature, taken together were consistent with repeated punching or kicking, albeit it is accepted that the latter cannot be proven to the requisite standard, to have occurred.

[17] He concluded that the rib fractures combined with the bruising to both sides of the chest were consistent with kicking or stamping with a shod foot.

[18] Dr Johnston concluded that the injuries to the lower and upper legs were consistent with the deceased having been moved across a roughened surface while unconscious (explaining the position of the deceased's trousers when found by the police) and that injuries to his hand could have been defensive or may have been caused by the deceased punching.

[19] You were examined by a doctor and found to have no injuries other than to your knuckles.

[20] You were interviewed by police. You stated that you and your uncle had become involved in a verbal argument over a bottle of vodka and some missing money. You stated that this developed into a physical fight which you ultimately described as a "brutal fight". You stated that you had hit your uncle five times in the face and that this had caused extensive bleeding.

[21] When you gave more detail about the fight you indicated that you had knocked the deceased to the ground before challenging him to get back up. When he did you knocked him down again. You admitted that the punches you had used were hard, powerful punches. You said you left your uncle on the ground and went for a smoke.

[22] When you returned the deceased was outside at a tap washing his face. His tee-shirt had been ripped off during the fight. You said you then cleaned up the blood from the kitchen and ate a bowl of soup before going to bed. You said that when you woke in the morning the deceased was lying outside. You said that you had not realised that your uncle's injuries were so serious and that you did not intend to kill him.

Personal circumstances/background

[23] Your personal circumstances and the background to the relationship with the deceased are important to understand the context of this case. This background emerges clearly from the presentence report, and from medical reports I have received from Dr Carol Weir, Consultant Clinical Psychologist dated 2 December 2019 and Dr Fred Browne, Consultant Forensic Psychiatrist dated 20 October 2019.

[24] You were born on 20 June 1981 and are currently 38 years of age. You are single. You moved to live in Northern Ireland from your native Poland in 2004 to seek out work. You have been fully employed since then. It is clear that you are a skilled and diligent worker. You left school at the age of 18 in Poland having trained in joinery. You have always worked and as indicated you moved here to improve your prospects. I have received references which speak to your excellent work record. It is clear that you are a valued and trusted employee and that you worked long hours. This is an overwhelmingly positive aspect of your character.

[25] The other side of that character is your undoubted abuse of alcohol. It appears that when you were not working your life revolved around drinking. The background to this perhaps lies in your home circumstances. Your father drank heavily and there was frequent arguing within your home. Your upbringing was further disrupted by your mother's poor mental health. She was diagnosed with schizophrenia which affected her behaviour significantly and involved hospital admissions. Much of the responsibility for caring for your mother fell on you but tragically she committed suicide when you were in your teens. Dr Weir's opinion is that you suffered from Alcohol Dependence Syndrome for at least five years prior to this incident. Dr Browne also agreed that you suffer from this condition. Despite your excellent work record you were unable to leave behind you alcoholism and you continued and increased you alcohol consumption up to the time of this offence.

[26] You were originally living at a flat on your own. Ironically given the tragic events that have taken place it was you who arranged for your uncle to move to Northern Ireland so that he too could obtain employment. Regrettably he too appears to have been an alcoholic and unlike you was unable to maintain his employment. As a result he fell into debt with his rent. After approximately 10 years of living on your own you then actually moved in with your uncle to help pay off the rent and other household expenses. It appears that yours was a toxic and volatile relationship. You argued and engaged in physical altercations when you were both under the influence of alcohol. On the day/night of the incident giving rise to these charges it appears that you engaged in what had become common place that of arguing and fighting. You were both heavily intoxicated having consumed large amounts of vodka.

[27] That you uncle was a heavy drinker and prone to fighting is clear from the very moving statement that has been made by his son and your cousin, Marcin Sinko. His insight into the wider family background and the various relationships is illuminating. In his statement he says:

"I never thought it was a good idea for my father to live with Marek because of their drinking problems. I knew they argued and fought on many occasions. It was Marek who would start the fights and he would beat my father on numerous occasions. Family members have had to separate the two of them. No matter how bad his injuries my father

would never go to a doctor or the hospital. ... My father was close with Marek and Gregorz (your brother) when they were young. However when my father drank with Marek there were always problems. My father was behind on the rent. He was supposed to pay £65 a week rent. Marek paid the arrears and paid the other bills."

[28] This background is echoed in the statement from your brother Gregorz which appears in the police papers. He has stated:

"In my opinion, Eugeniusz Sinko is an alcoholic, and so is Marek Sinko. I know they drunk a lot. Sometimes, they could not walk. I worried a lot about them. The whole family worried about them. They were living on the edge, that was a big problem for our family. ... My brother Marek drunk Budweiser beer, and the same type of cheap wine as Eugeniusz. He was drinking after work and the weekends. ... They kept arguing (verbally) about housework, which wasn't done, such as unwashed dishes, etc. They also argued because my uncle Eugeniusz didn't work, so Marek had to pay all household bills. Also Marek took over Eugeniusz's debts. Eugeniusz owed money for the house rent, it was approximately £1,000 in total. Physical fights happened between them, but I don't know if these were reported to the police. All these fights were triggered by alcohol."

[29] This was the context in which the fatal assault took place which has resulted in the untimely, unnecessary and unjustified death of your uncle.

[30] There is no doubt that you are someone who is prone to violence under the influence of alcohol. I have not had sight of your criminal record although it does appear from the papers that you do have a conviction for an assault in Poland. You have never come to the attention of the police since you moved here.

[31] I have no doubt that this offence has had a significant impact on you. It has had a very detrimental effect on relationships between your family, some of whom also reside in Northern Ireland. In the probation report you state that you have struggled to cope with having caused the death of your uncle and deal with the responsibility of that. You have sought assistance from your general practitioner because of mental health issues arising from your struggles. More significantly you report that you have attended at Alcoholics Anonymous meetings and have remained sober since your arrest for this offence. Since the commission of the offence you also have had a positive relationship with a female who has now returned to live in Poland.

[32] You are assessed as a medium likelihood of re-offending and not as someone who presents as a serious risk of serious harm. I agree with both assessments.

Victim impact

[33] I have set out the background to the relationship between you and your uncle. I have received a further statement from your cousin Marcin who eloquently expresses the devastating effect that your uncle's killing has had on both his life and the wider family's life. He conveys the great distress his father's death has caused to him and to his family. The death has resulted in divisions between the family and he too has struggled with his health in the aftermath of this traumatic death. Any death leaves a gap which can never be replaced. Marcin points out that he not only lost a father but also a cousin.

[34] I take this statement into account fully when determining the appropriate sentence.

Sentencing principles in manslaughter cases

[35] It is somewhat of a cliché to say that offences of manslaughter typically cover a wide factual spectrum.

[36] A very useful starting point for sentencers is the authoritative paper presented by Sir Anthony Hart to the Judicial Studies Board for Northern Ireland on 13 September 2013. He identifies the leading case to be that of **R v Magee** [2007] NICA 21. The paper refers to a wide range of cases which are familiar to me and which I have considered in fixing the appropriate sentence in your case. From the various guideline decisions and decisions at first instance Sir Anthony identifies seven broad sub-categories for sentencing purposes in manslaughter cases. I consider that the most relevant in your case is Category (i) in respect of which Sir Anthony says as follows:

"Cases involving substantial violence to the victim. While sentences range from 6 years on a plea to 14 on a contest, pleas in cases at the upper end of the spectrum attract sentences of 10 to 12 years with sentences of 12 years being common. Sentences of 6 to 8 years tend to be reserved for cases where there are strong mitigating personal factors, or the defendant was not a principal offender."

[37] Under this heading **Magee** is the leading authority. That case was primarily concerned with offences of wanton violence among young males typically committed when the perpetrator is under the influence of drink or drugs or both. In paragraph [26] of the judgment Kerr LCJ says:

“[26] We consider that the time has now arrived where, in the case of manslaughter where the charge has been preferred or a plea has been accepted on the basis that it cannot be proved that the offender intended to kill or cause really serious harm to the victim and where deliberate, substantial injury has been inflicted, the range of sentence after a not guilty plea should be between eight and fifteen years’ imprisonment. This is, perforce, the most general of guidelines. Because of the potentially limitless variety of factual situations where manslaughter is committed, it is necessary to recognise that some deviation from this range may be required. Indeed, in some cases an indeterminate sentence will be appropriate. Notwithstanding the difficulty in arriving at a precise range for sentencing in this area, we have concluded that some guidance is now required for sentencers and, particularly because of the prevalence of this type of offence, a more substantial range of penalty than was perhaps hitherto applied is now required.

[27] Aggravating and mitigating features will be instrumental in fixing the chosen sentence within or – in exceptional cases – beyond this range. Aggravating factors may include (i) the use of a weapon; (ii) that the attack was unprovoked; (iii) that the offender evinced an indifference to the seriousness of the likely injury; (iv) that there is a substantial criminal record for offences of violence; and (v) more than one blow or stabbing has occurred.”

[38] Mr Greene, in his thoughtful submissions, submits that the particular circumstances of this case are akin to domestic disputes because of the particular relationship between you and your uncle. In this regard he refers to category (iv) of the Sir Anthony’s paper where he comments as follows:

“Domestic disputes where there may have been an element of violence and/or provocation by the deceased. In almost every case the defendant was armed with a knife to stab the deceased. On a plea sentences ranged from 4 to 7 years, with the majority attracting sentences of 5 years.”

Aggravating and mitigating features

[39] In determining the appropriate sentence I consider that the following aggravating features are present.

[40] The assault involved substantial violence. It appears that the assault was prolonged and you inflicted multiple injuries on the deceased. On no account could

this be seen as some sort of fight between equals where you have got the better of your victim nor was it a case where death was caused by a single punch. He was no physical match for you and you suffered no injuries during this assault other than to your own knuckles. There is evidence that you kicked or stamped upon the deceased whilst he was on the ground although this was to the torso and not to the head. You showed a callous indifference to the fate of your uncle when you left him outside when the assault was over.

[41] Normally the fact that alcohol played a role in the offending would be an aggravating feature but I consider that in the circumstances of this case I need not treat it in this way. It is clear from the medical evidence that you suffer from a recognised medical condition in the form of Alcohol Dependence Syndrome. The assault occurred in the course of a scenario where you were consuming alcohol with the victim. It is not a case where you chose to become intoxicated and then engage in fights. On reflection and on balance because of your particular circumstances and the circumstances of this fight I do not propose to treat your drinking as an aggravating feature in this case.

[42] In mitigation I acknowledge your excellent work record. I recognise that you initially sought to assist your uncle in terms of finding him employment and clearing his debts. I accept that you have genuine remorse for your actions. You are entitled to substantial credit for your plea.

The Appropriate Sentence

[43] In determining the appropriate sentence in this case I consider the most compelling factor is the degree of violence you inflicted on the victim. As I have said earlier this was a prolonged assault in which multiple injuries were inflicted by you on your victim. Whilst an over-reliance on comparison with individual cases can be invidious it is this factor which places your case in the range of between 8-15 years as suggested by **Magee** and not in the domestic violence type of case analysed by Sir Anthony Hart in his paper. The wide range suggested in **Magee** gives the court adequate flexibility to take into account the particular nature of the relationship between you and your uncle in choosing the appropriate sentence within that range.

[44] Manslaughter is both a “serious” offence for the purpose of Schedule 1 Part 1 of the Criminal Justice (Northern Ireland) Order 2008 (“the 2008 Order”) and is a “specified violent offence” for the purpose of Schedule 2. In these circumstances the court is obliged to consider whether you meet the test of dangerousness as set out in Article 13(1)(b) of the Order to the effect that the test is met where:

“(b) The court is of the opinion that there is a significant risk to members of the public of serious harm by the commission by the offender of further specified offences.”

[45] I consider that you do not meet the test of dangerousness under the order. I am persuaded of this because of your lack of criminal convictions, your acceptance of responsibility for your offence, your insight and remorse into your actions and the lifestyle changes that you have made since you committed these offences, particularly your abstinence from alcohol. Taken together with your excellent work record I consider that all these factors lead me to the conclusion that the test has not been met.

[46] I consider therefore that your case can be fairly disposed of by the imposition of a determinate custodial sentence.

[47] Having regard to the principles I have referred to above and the aggravating and mitigating factors which I have identified in your case I consider that the appropriate sentence on a contest would be one of 10-11 years, say 10½ years.

[48] As indicated however you are entitled to substantial credit for your plea of guilty. It is a long and firmly established practice in sentencing law in this jurisdiction that when an accused pleads guilty the sentencer should recognise that fact by imposing a lesser sentence than would otherwise be appropriate.

[49] In determining the lesser sentence the courts look at all the circumstances in which the plea was entered including the way you met the charge. From the outset you accepted that you were responsible for the death of your uncle. This was apparent when you rang both a colleague at work and the PSNI to inform them of the death. In the course of interviews you accepted that you had assaulted the deceased causing his death. It is correct that you did not plead guilty when initially arraigned on the count of murder but you indicated your intention to plead guilty to manslaughter in advance of trial with your counsel having engaged in discussions in that regard from a relatively early stage. In fact you pleaded to manslaughter on the first indication that this would have been acceptable to the prosecution.

[50] In all of these circumstances I consider that you are entitled to very substantial credit for your plea.

[51] I consider that the appropriate sentence therefore is one of 8 years in custody. Standing back I consider that this meets the broad circumstances of the case.

[52] Under the provisions of Article 8(2) of the Criminal Justice (Northern Ireland) Order 2008 I am obliged to specify a period referred to as the custodial period at the end of which you are to be released under Article 7 of the Order. Under Article 8(3), the custodial period shall not exceed one half of the term of the sentence. I therefore specify that the custodial period of the sentence is to be one of 4 years with the licence period being one of 4 years.