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**IN THE CROWN COURT AT CRAIGAVON
SITTING AT LAGANSIDE COURT, BELFAST**

THE QUEEN

v

**JAMES HOLMES
JAMES ANDREW THOMAS McVEIGH
JAMES ROBERT STEWART
RYAN MARK MEGARRY**

SENTENCING REMARKS

COLTON J

Introduction

[1] The defendants fall to be sentenced on various counts arising out of the murder of Paul Smyth on 17 June 2019 and the attempted murder of Gareth and Rachel Reid on 23 June 2019.

[2] The defendants were arraigned and pleaded not guilty to all counts on the original indictment. The matter was listed for trial on 20 September 2021 and a jury was sworn on this date. On 23 September the prosecution offered no evidence in respect of a fifth defendant (Christina Flanagan) who appeared on the original indictment at count [8] alleging the withholding of information in relation to the murder of Paul Smyth. On the same date the defendant, Ryan Megarry, was re-arraigned on count [4] once the particulars of the offence had been amended to reflect his acceptance that he had encouraged or assisted the commission of one or more of a number of offences, namely burglary or theft.

[3] The defendant, Stewart, was also re-arraigned on 23 September. He entered a guilty plea to count [7] which related to the possession of a firearm and ammunition with intent to endanger life on 23 June 2019. He was also arraigned and pleaded guilty to a new count [10] of possession of the same firearm in suspicious circumstances on 24 June (the day following the attempted murder of the Reids).

The counts of attempted murder [5] and [6] and the count of withholding information count [8] were not proceeded with against him.

[4] Following further discussions between the prosecution and the defence the defendant, Holmes, was re-arraigned on 28 September and pleaded guilty to count [3] (possession of a firearm and ammunition in suspicious circumstances on 23 June) and counts [5] and [6] (the attempted murder of the Reids). Counts [1] and [2] (offences related to the murder of Paul Smyth) were not proceeded with by the prosecution against him.

[5] On the same date the defendant, McVeigh, pleaded guilty to the murder of Paul Smyth (count [1]) and the related firearms offences at counts [2] and [3]. The offences relating to the attempted murder (counts [5], [6], [7] and [9]) were not proceeded with against him.

Factual background

The murder of Paul Smyth

[6] The court is obliged to counsel for the prosecution, Mr Neil Connor QC who led Ms Nicola Aurette, for their clear exposition of the factual matrix and for their assistance to the court.

[7] Ryan Megarry's girlfriend, Danielle Gore, was a friend of the deceased. It appears they were present at the deceased's home on the afternoon of Sunday 15 June 2019. They were present, at Danielle Gore's suggestion, so that Megarry could obtain drugs for his personal consumption. At some stage between 15 and the afternoon of 18 June 2019, Megarry suggested to his acquaintance, James McVeigh, that money and drugs could be obtained at the deceased's home at 7 Coulson Avenue, Lisburn. Whilst it is accepted that Megarry did not contemplate that McVeigh would kill or physically harm the deceased, the identification of his home as a potential source of drugs and money ultimately led to his death.

[8] On the afternoon of 18 June Megarry left the Training Salon he operated in Bridge Street, Lisburn, in his silver VW Golf car and drove to the area of Coulson Avenue with McVeigh as a passenger. Megarry pointed out the house at which Paul Smyth resided.

[9] CCTV footage showed the defendant, McVeigh, out and about in Lisburn during the early hours of 19 June. At 01:24 he was observed in the company of another individual, walking along Benson Street in the direction of the Tesco supermarket. He entered the supermarket at 02:02 and can clearly be seen to be wearing a distinctive grey tracksuit he was observed wearing the previous day at Coulson Avenue. He can also be seen wearing a Northern Ireland football scarf. He leaves the supermarket at 02:19 and is observed walking away from the store along Benson Street at 02:21. He is next observed in the company of another individual

walking across the Union Bridge at 03:49. It is noteworthy that he has changed his clothes. At 06:47 he is observed arriving at the entrance to a block of flats known as Ferndale House. At that time the defendant, Stewart, resided at 14D Ferndale House.

[10] Subsequent interrogation of McVeigh's mobile phone revealed that it was operating in the vicinity of Coulson Avenue between 23:48 and 23:55 on 18 June and was turned off between 23:55 on 18 June and 00:37 on 19 June.

[11] At 12:37 on 19 June the defendants, McVeigh, Holmes and Stewart, appear on CCTV footage leaving Ferndale House. They are next observed in the Rushmere Shopping Centre, Craigavon, at 13:18 and making their way to the JD Sports Shop. McVeigh is observed purchasing a number of items with bundles of cash. It is the prosecution case that these purchases were funded by money taken from the home of Paul Smyth in the early hours of the same date.

[12] Police went to McVeigh's home at Ward Avenue, Lisburn, on the same afternoon. Their attendance was in respect of an unrelated matter. A police video taken at the scene shows a grey tracksuit and a Northern Ireland football scarf drying on a clothes horse in McVeigh's living room. The scarf was subsequently seized and forensically examined. Cartridge discharge residue was located on the scarf which was noted to be similar in composition to the residue found on items retrieved from 7 Coulson Avenue.

[13] Paul Smyth was 50 years old at the time of his death. He lived alone at Coulson Avenue. It appears that he sold controlled drugs from his home on a small scale.

[14] On 21 June a friend of the deceased, Angela Magee, went to his house at around 20:30. She was concerned as she had been trying to contact him without success over the previous day or two. When she arrived at the house she was surprised as the front door was unlocked. Upon entering the property she called out the deceased's name and proceeded into the living room where she found the deceased positioned on the settee to the right of the door. She noticed that his head was tilted to the left and that there was blood staining on his T-shirt and left arm. She touched him and noted his body was cold. She quickly left the house and sought assistance from a neighbour. They arranged for the emergency services to attend.

[15] Ambulance personnel arrived at the scene at 20:41. They noticed that the deceased had suffered a traumatic injury to the chest and that the significant result in blood loss was incompatible with life. A subsequent autopsy, conducted by Dr Christopher Johnson, Assistant State Pathologist, established the cause of death was due to a "shotgun wound to the chest" fired at no more than a few feet away.

[16] Police arrived at the scene and examined the deceased's laptop and mobile phone.

[17] In short, it is the prosecution case that the defendant, McVeigh, entered the home of the deceased during the early hours of 19 June 2019 and shot him at close range with a firearm which he had obtained in advance of the incursion. It is the prosecution case he took a quantity of cash from the deceased before fleeing the scene.

The attempted murder of Gareth and Rachel Reid

[18] Gareth Reid and his wife, Rachel, were at home at 9 Mill Street, Lisburn, during the early hours of 23 June. At 02:50 Mr Reid was woken by his dogs barking. He got out of bed and opened the blinds of the first floor, front bedroom window. When he did so, he observed a male in a dark tracksuit on the street below. His head was covered by a hood and he was masked. The male asked about the whereabouts of a Wayne Kirkwood who it appears was previously associated with the address at Mill Street. Mr Reid told them that he did not know him and that he did not live at the address. At this point a second male emerged from the side of the house and stood on the road beside the first male. Mr Reid observed that the second male was holding a sawn-off shotgun and quickly moved away from the window shouting for his wife to "get down." They heard a loud bang and the bedroom window shattered. Thankfully neither of the Reids sustained injury. It is the prosecution case that the first male was the defendant, James Holmes.

The possession of firearm and ammunition charges

[19] CCTV footage obtained by police portrayed the defendants, Holmes and Stewart, in the company of two other males a few hours before the attack at Mill Street. One of the males was noted to be carrying a distinctive red holdall which contained the firearm used in the attack. At 02:54 three of the males are observed walking along Mill Street in the direction of No. 9. The first person is identifiable as Stewart by reason of the distinctive "rips" on the front of his jeans which he can still be seen wearing the following day. The second male can be seen to be holding a firearm. He is followed closely by the third male, James Holmes.

[20] Later the same day at 23:47 further footage shows Holmes and Stewart leaving Ferndale House. Holmes is observed carrying the red holdall containing the firearm. Approximately one hour later in the very early hours of 24 June, CCTV footage shows McVeigh and Holmes walking along a pathway and on to Ashmount Gardens in the Hill Hall estate. McVeigh is carrying a barrel of the shotgun and Holmes is still carrying the holdall he was observed to be carrying earlier. Around 45 minutes later, both can be seen crossing the car park at the rear of Gregg Street. They have divested themselves of the holdall and firearm by this stage. A short time later both are apprehended by police as they walked along the

Low Road. McVeigh was searched and two shotgun cartridges were located in his jacket pocket.

[21] On 1 August a member of the public located the holdall and firearm in undergrowth adjacent to the car park at Gregg Street. The firearm was test fired and examined by forensic scientists. An impact damaged green plastic combination wad received from the scene at 9 Mill Street and another impact damaged screen combination wad recovered from the body of the deceased were also examined. There were matching striated marks on these wads and on the test fired wads which lent strong support to the proposition that all the wads were fired from the same gun.

Police interviews

[22] All four defendants were interviewed by police. McVeigh denied knowing Paul Smyth or having been to Coulson Avenue. He stated he was at home from 20:00 on the night of 18 June before leaving his house the next morning at 07:30. He denied having access to firearms. He denied knowing Ryan Megarry. He answered "No comment" when asked about the cartridges found in his pocket. He offered no explanation as to how he was in possession of the large amount of cash he had with him at the shopping centre in Craigavon. When the CCTV footage of the 19 June was put to him he stated that he must have got his days mixed up. When asked about the red holdall he replied "No comment."

[23] A short statement, in which he denied involvement in the attempted murders, was read out on behalf of James Holmes at the commencement of his interviews. Thereafter, he refused to answer police questions.

[24] The defendant, Stewart, refused to answer any questions.

[25] Ryan Megarry read out a short statement denying any involvement in the murder of Paul Smyth although he accepted being at the home of the deceased on the Sunday prior to his death. Thereafter, he refused to answer police questions.

The court's sentences

James McVeigh

Count 1 - The murder of Paul Smyth

[26] Having pleaded guilty, the court imposed upon the defendant the only sentence permitted by law for that offence, one of life imprisonment. It is now the task of the court in accordance with Article 5 of the Life Sentences (Northern Ireland) Order 2001 to determine the length of the minimum term the defendant is required to serve in prison before he will first become eligible to have his case referred to the Parole Commissioners for consideration by them as to whether, and if so, when he is

to be released on licence. If, and when, he is released on licence he, for the remainder of his life, will be liable to be recalled to prison if at any time he does not comply with the terms of that licence.

[27] In considering the appropriate tariff I should impose I am grateful for the helpful submissions I have received from counsel in this case. I have already referred to counsel for the prosecution and the assistance they provided. Mr Brendan Kelly QC led Mr Joel Lindsay for the defendant. It is clear from the contents of the medical evidence and the probation report in relation to the defendant, and indeed, from my own observations that the defendant's lawyers took great care in advising the defendant and resolving the issues in the case culminating in an able and sensitive plea in mitigation on his behalf.

Victim Impact

[28] Before considering the appropriate tariff in this case it is essential that I highlight the Victim Impact Statements that I have received from some relatives of the deceased. It appears from all the evidence in the case that Mr Smyth lived a somewhat solitary life. He suffered from depression and had a long standing addiction to alcohol. Despite these difficulties he was someone who was loved and valued. I have received statements from his sister, Teresa Valliday, his nephew Ryan Smyth, and his cousin, Lisa Danielson. These statements speak movingly about how his death has had an enduring and debilitating effect on them and the wider family.

[29] I take that impact fully into account when setting the appropriate tariff. In doing so I recognise that the loss of Mr Smyth's life cannot be measured by the length of any tariff that I impose.

[30] It is the responsibility of the court to impose a tariff on the defendant in accordance with legal principles. I do so fully cognisant of the impact of Mr Smyth's death, so movingly expressed in the Victim Impact Statements I have read.

The defendant's personal circumstances

[31] The defendant, James McVeigh, was born on 24 November 1989. He is 32 years old.

[32] He has an extensive criminal record with 62 previous convictions dating back to 2006, when he appeared at Craigavon Youth Court for a section 47 common assault. He had subsequent convictions in the Juvenile Court for offences which included aggravated assault on a male child, assault occasioning actual bodily harm and a number of convictions for common assault and possession of offensive weapons.

[33] As an adult he has further convictions for common assaults, burglary and public order matters. Some of these convictions related to further violent offending including aggravated assault (24.11.08) and assault occasioning actual bodily harm x 2 (08.03.11). He received an extended custodial sentence for the offence of causing grievous bodily harm with intent on 23 February 2012. This conviction arose out of an attack on a neighbouring couple with a hammer and Stanley knife after they had called to complain about noise. He was ultimately released from prison in connection with this matter on 11 February 2019 as his licence had been revoked and he was recalled to prison on a number of occasions.

[34] At the time of the commission of the instant offence he was on police bail as a result of his release from custody on 29 May 2019 after he had been arrested in connection with an allegation that he had discharged a firearm at a window of a residential property on 21 May. Similarly, on 14 June he was arrested on foot of an allegation that he had fired a shot through a bedroom window on 7 June. He was released on pre-charge bail on 14 June.

Pre-sentence report

[35] The court has received a detailed probation report which provides an insight into his personal background and circumstances.

[36] The picture which emerges provides grim reading. He had an unsettled childhood with parents who struggled with alcohol addiction. They separated when he was two years old. He was subject to violence and abuse throughout his youth. Social services became involved with his family and he was essentially raised by his grandmother and uncle. He has had a childhood diagnosis of ADHD. He has no formal qualifications. He has no experience of training or employment other than occasional casual work with a landscape gardener whom he knew personally. He has misused drugs and alcohol since he was 12 years old.

[37] Unsurprisingly, given his background and his criminal convictions, the Probation Board consider Mr McVeigh as presenting as a high risk of reoffending and as someone presenting a significant risk of serious harm. The report records that he has consistently failed to engage in work aimed at addressing his issues of substance abuse, absence of internal controls and a propensity for violent offending, impulsivity/risk taking and the use of reactive and instrumental violence, volatility/absence of self-control, negative/pro-criminal peer associations and his willingness to use weapons.

[38] The picture presented in the probation report is developed in a medical report prepared by Dr Victoria Bratten, who is a Senior Specialist Psychologist. She has prepared her report based on a lengthy consultation with the defendant and having had access to his medical notes and records. She describes his presentation as "exceptionally complex." He suffers from poor mental health. He has been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) and a potential

diagnosis of Autism Spectrum Disorder (ASD). He presents with a cognitive ability in the low average range but exhibits a significant weakness in the area of processing speed. Dr Bratten also notes PTSD symptomology recorded in his prison GP notes and a possible previous diagnosis of Borderline Personality Disorder. She considers that he is considerably impaired by his neuro development profile. She considers that further assessments and treatments will be required whilst in prison. In particular, she recommends that a professional with expertise in the area of ASD assessments in the forensic population be consulted to carry out part of the assessment in prison or to supervise the overall assessment. Dr Bratten's report should be made available to the prison authorities to guide those who will be working closely with him whilst in prison.

The relevant legal principles

[39] Article 5(2) of the 2001 Order provides that the minimum term:

“... shall be such part as the court considers appropriate to satisfy the requirements of retribution and deterrence having regard to the seriousness of the offence, or of the combination of the offence and one or more offences associated with it.”

[40] The legal principles that the court should apply in fixing the minimum term are well settled.

[41] In *R v McCandless & Ors* [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 are required to fix tariffs under the 2001 Order.

[42] The Practice Statement identifies a normal starting point of 12 years in paragraph 10. In paragraph 11 factors are identified which might justify reducing the normal starting point.

[43] Paragraph 12 identifies a higher starting point of 15 to 16 years. The higher starting point would apply to cases where the offender's culpability was exceptionally high or the victim was in a particularly vulnerable position. The paragraph goes on to identify features which might make a crime especially serious.

[44] The Practice Direction recognises that starting points can be varied upwards or downwards and identifies aggravating and mitigating factors which relate to either the offence or the offender in the particular case.

[45] Those features or factors are set out in paragraphs 14 to 17.

[46] Paragraphs 18 and 19 deal with particularly grave cases which would justify a term of 20 years and upwards.

[47] In applying the Practice Statement I bear in mind that it is not to be interpreted as a straitjacket designed to create a rigid, compartmentalised structure into which each case must be shoehorned. As the Court of Appeal said in *McCandless*:

“... the sentencing framework is, as Weatherup J described it in paragraph 11 of his sentencing remarks in *R v McKeown* [2003] NICC 5, a multi-tier system. Not only is the Practice Statement intended to be only guidance, but the starting points are, as the term indicates, points at which the sentencer may start on his journey towards the goal of deciding upon a right and appropriate sentence for the instant case.”

[48] Thus, the selection of a starting point is not a mechanistic or formulaic exercise. The guidelines are there to assist the court to proceed to, in the circumstances of the case, what it considers as a just and proportionate sentence having regard to the guidelines. In the words of the statute the tariff should “be appropriate to satisfy the requirements of retribution and deterrence.”

[49] There is no dispute, and I unhesitatingly agree, that the appropriate starting point under the Practice Statement in this case is one of 16 years.

[50] At the heart of setting the starting point is the offender’s culpability. Turning to the Practice Statement the fact that this killing was done for gain is a feature pointing to high culpability justifying the higher starting point of 16 years.

[51] There are clearly other aggravating features in this case. The victim was a vulnerable man. The murder involved an incursion into his home during the early hours of the morning.

[52] In the course of his interview with the Probation Service the defendant sought to distance himself from his plea. In particular, he suggests that the weapon was discharged when the deceased approached him from behind and sought to grab the weapon at which stage it was discharged.

[53] In the course of his plea Mr Kelly made it clear that the defendant accepted his plea of murder, and that it was a proper, unambiguous plea. The defendant took issue with the prosecution suggestion that the murder had the hallmarks of a premeditated “execution.” However, the defendant accepted that he went to the scene with a lethal firearm that had been adapted for unlawful use. The firearm was loaded. He entered the premises with the intention to commit a robbery. He pulled the trigger when a short distance from the deceased which resulted in the death.

[54] I did consider whether or not a Newton hearing would be appropriate. Mr Kelly frankly indicated that in such an event the defendant would not be giving any evidence. However, I felt that the court could proceed to impose a just sentence on the basis that the culpability of the defendant was exceptionally high. A court can never know beyond a reasonable doubt whether the murder was the result of a planned execution but, in truth, given the admitted significant aggravating features as set out above not much turns on this difference.

[55] A further aggravating feature is the fact that this murder was committed whilst the defendant was on police bail for serious offences involving the use of firearms and his extensive previous convictions and, in particular, those which relate to his violent offending. The court notes that he has previously been assessed as a dangerous offender and had only been released from custody a few months prior to the commission of the instant offence.

[56] The court also notes that after the commission of the offence the defendant had continued involvement with the firearm used in the murder as he sought to return it to the hide.

[57] The court considers this can be properly regarded as a further aggravating factor, but in approaching the sentencing exercise will have regard to the totality of the sentences imposed taking into account his plea to the firearms offences at counts [2] and [3].

[58] In terms of mitigation the court takes into account the contents of the pre-sentence report and that of the medical evidence from Dr Bratten. However, given the serious nature of the offending his personal circumstances are of marginal benefit to him in terms of mitigation for this offence. In truth, the reports are of greater relevance for the future, particularly with regard to any licence conditions that might be imposed should he be released from prison.

[59] The remaining issue to be considered is what is the appropriate reduction, if any, for the guilty plea in this case?

[60] 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. The defendant is clearly entitled to a reduction in the tariff for his guilty plea in this case.

[61] In considering the appropriate discount for a plea of guilty in a murder case it is necessary to take into account the guidance issued by the Court of Appeal in the case of *R v Turner and Turner* [2017] NICA 52.

[62] In that case the Court of Appeal considered the discount which was appropriate in tariffs in murder cases and came to the conclusion, at paragraph [40]:

“We consider, therefore, that there are likely to be very few cases indeed which would be capable of attracting a discount close to one-third for a guilty plea in a murder case. The circumstances of a mercy killing for example might possibly achieve that outcome. Each case clearly needs to be considered on its own facts but it seems to us that an offender who enters a not guilty plea at the first arraignment is unlikely to receive a discount for a plea on re-arraignment greater than one-sixth and that a discount for a plea in excess of 5 years would be wholly exceptional even in the case of a substantial tariff.”

[63] The court however did go on state that:

“We have concluded, however, that it would be inappropriate to give any more prescriptive guidance in this area of highly fact sensitive discretionary judgement. Where, however, a discount of greater than one-sixth has been given for a plea in a murder case the judge should carefully set out the factors which justify it in such a case.”

[64] In determining what the lesser sentence should be the court should look at all the circumstances in which the plea was entered.

[65] The prosecution accept that the defendant’s plea, whilst late in the day, was of considerable value to the prosecution. A lengthy trial, in difficult circumstances, was avoided. The court also recognises that the contents of the medical evidence and the cognitive and psychological difficulties from which the defendant undoubtedly suffers may explain some of the delay in entering a plea.

The appropriate tariff

[66] Taking into account the appropriate starting point of 16 years and the aggravating and mitigating features prior to the consideration of any discount for a plea, I have come to the conclusion that the appropriate tariff would be one of 22 years’ imprisonment to reflect the gravity of this offence and the significant aggravating features. That is the tariff I would have imposed in the event of a conviction after a contested trial.

[67] Looking at all the circumstances in which the plea was entered and having regard to the guidance of the Court of Appeal in *Turner* I propose to reduce the final tariff to one of 18 years. This represents a discount of approximately one sixth for his plea of guilty.

[68] Taking account of all the factors in this case I consider that a tariff of 18 years is the right and appropriate tariff in accordance with the legal principles set out in *McCandless* and *Turner*.

[69] Mr McVeigh, a sentence of life imprisonment has already been imposed on you pursuant to your plea to the count of murder (count [1]). Pursuant to Article 5 of the Life Sentences (Northern Ireland) Order 2001, I determine the minimum term that you must serve in prison before you will first be eligible to have your case referred to the Parole Commissioners for consideration by them as to whether you should be released on licence is one of 18 years.

[70] You shall be given credit for a period of 735 days which is the period you spent on remand in custody prior to the imposition of the life sentence on 27 September 2021.

Counts 2 and 3 - possession of a firearm and ammunition with intent and possession of a firearm in suspicious circumstances

[71] In respect of counts [2] and [3] to which you have pleaded guilty these are clearly serious offences. They have been taken into account to an extent as aggravating features in relation to the tariff imposed for the murder conviction. In light of the fact that a life sentence has been imposed I do not consider it necessary to consider the issues of dangerousness and the imposition of an extended custodial sentence or an indeterminate custodial sentence under the Criminal Justice (Northern Ireland) Order 2008. I impose a sentence of 12 years' imprisonment in respect of count [2] and one of six years in respect of count [3]. In so far as it is necessary to do so under Criminal Justice (Northern Ireland) Order 2008, I direct that the custodial period for these counts shall be six years and three years respectively, which is the maximum permitted under Article 8(3) for such terms. For the avoidance of doubt these sentences are to run concurrently with each other and the life sentence and tariff imposed.

James Holmes

Counts [3], [5] and [6]

[72] The defendant, Holmes, was born on 7 February 1987. He is 35 years old. He has pleaded guilty to two counts of attempted murder (counts [5] and [6]) and possession of a firearm in suspicious circumstances (count [3]) when he was jointly involved with his co-defendant, McVeigh, in returning a firearm used in the attempted murder to the hide.

Previous convictions

[73] The defendant has an extensive criminal record of some 43 previous convictions dating back to 2005 when he was 18 years of age. Many of the

convictions on his record relate to motoring offences. However, he has four convictions for common assault, two convictions for assault occasioning actual bodily harm, two convictions for the possession of offensive weapons and/or knives and a further conviction for making threats to kill. He was on bail at the time of the conviction for the instant offence. The convictions for assault occasioning actual bodily harm and threats to kill occurred in October 2010 and February 2011 and relate to domestic assaults. He was subject to PPANI monitoring after this as a category 2 offender. This monitoring ceased when he was downgraded to a category 1 offender in March 2013. Five convictions on the defendant's record are for common assault, four of which date back to 2004. The remaining conviction for common assault relates to April 2019 and was committed alongside three counts of criminal damage in the context of a "domestic incident." In 2009 he was convicted of public order offences alongside possession of an offensive weapon and possessing an article with a blade or a point. There is a history of violence and aggression in relation to domestic offending. He has no contact with his children.

[74] He has been subject in the past to a range of sentences. He has been fined, subject to immediate and suspended custodial sentences and community sentences. He previously breached a probation order and failed to complete programme work in relation to his domestic offending. This order, when breached, was replaced with a community service order which was completed.

Pre-sentence report

[75] The court has received a detailed pre-sentence report prepared by the Probation Board for Northern Ireland. The report provides important background in relation to the defendant's personal circumstances. He describes a reasonably happy childhood, although his parents separated when aged 13. He did obtain GCSEs having completed his secondary education at Malone College in South Belfast. He attended a further education college and completed his qualifications in bricklaying. After leaving college his employment history was sporadic. He was mostly employed in temporary work in warehousing and labouring. He also spent time caring for his grandfather who died in 2011. It appears that during his teenage years the defendant began to experiment with drugs and abuse alcohol. Drug abuse has been a feature of his life ever since.

[76] He has had significant traumatic incidents in the course of his life. In April 2006 he was a back seat passenger in a stolen vehicle which failed to stop for police. His friend, who was also in the vehicle, was fatally wounded when the police opened fire on the vehicle.

[77] In May 2007 his brother died suddenly as a result of a motorcycle collision.

[78] In August 2012, his then partner and mother of his first child, took her own life by hanging whilst he was present in her home. He also was upset by the death of his grandfather in 2011.

[79] The defendant had difficulty dealing with all of these deaths which he feels have contributed to his poor mental health. He has previously engaged in self-harming behaviours and suicide attempts.

[80] He has lived in Lisburn for about 18 months where he came to know his two co-defendants, James Stewart and James McVeigh. He states that in the period leading up to the commission of offences he had been consuming alcohol to excess, misusing Lyrica, Tramadol, morphine patches and smoking heroin.

[81] It appears that in prison he has been on an enhanced regime for around nine months and is working and engaged with addiction services. He has passed a total of four drug tests, failed three and has refused one. He has had a number of adjudications, none of which relate to violence.

[82] The probation officer has assessed the defendant as presenting with a high likelihood of reoffending. He has also been assessed as presenting as a significant risk of serious harm at this time.

Medical report

[83] In addition to the report from the Probation Board for Northern Ireland the court also has the benefit of a medical report from Dr Aidan Devine, Specialist Clinical Psychologist. He has interviewed the defendant on two occasions and had sight of his medical notes and records.

[84] He confirms much of the history as set out in the probation report. He concludes that Mr Holmes is a gentleman with low average intelligence, he suffers from PTSD with secondary depression and anxiety. He also struggles with addiction. These are chronic issues in that they have been a feature throughout his adult life.

[85] He rehearses the defendant's difficulty in the context of his adverse childhood experiences and the significant multiple traumatic events he has witnessed. He confirms that the defendant has used alcohol and illegal substances to regulate his distress and cope over the years. He considers his engagement with the ADAPT Programme in prison and his realistic expectations regarding his drug use to be protective factors.

The appropriate sentence

[86] In *R v Michael Loughlin (DPP's Ref: No.5 of 2018)* [2019] NICA 10 the Court of Appeal provided guidance on the appropriate sentencing range for the offence of attempted murder. At paragraph [19] the court stated:

“[19] The circumstances in which this offence is committed can vary considerably. ... The paper produced by Sir Anthony Hart reviewing relatively recent decisions in this jurisdiction, shows a variation between 12 and 22 years as the starting point in those non-terrorist attempted murder cases.”

At paragraph [20] the court continued:

“[20] We agree with the Sentencing Guidelines Council that the culpability of the offender is the initial factor in determining the seriousness of the offence. The fact that the offender had an intention to kill demonstrates of itself a high level of culpability but there is a distinction to be made between planned, premeditated, professional attempts to kill and those that arise spontaneously. We also consider that the extent of harm caused is relevant to the overall sentence but that the court also has to take into account the harm that the offence was intended to cause or might foreseeably have caused.”

The court continued at [21] by saying that:

“[21] ... the intention to kill is a significant factor suggesting a materially higher range of sentencing than that adopted in *McCauley* and *Seaward*.”

[87] In that case a range of seven to 15 years was identified for offences, contrary to section 18 of the Offences against the Person Act 1861.

[88] In terms of the counts of attempted murder as indicated, intention to kill of itself demonstrates a high level of culpability. In addition, there are significant other aggravating factors present in the commission of these offences.

[89] The attack was pre-planned. A loaded, unlawfully adapted and lethal firearm was obtained in advance. The weapon was discharged by firing into the home of the Reids in the early hours of the morning. Their nine year old child was present. This attack took place in a residential area – 9 Mill Street is a mid-terrace house. He sought to conceal his identity by the use of a mask. His further involvement with the firearm two days after the attack when it was returned to its hide could, of itself, be regarded as an aggravating feature. The court, however, will apply the totality principle in coming to a final sentence.

[90] Whilst it is right to say that none of the potential victims were physically injured the attack unsurprisingly had a substantial effect on the occupants. In

particular, Rachel Reid has suffered psychological harm and the family felt they could no longer reside in the property.

[91] In terms of the offence it is correct to say that the defendant was a secondary party to the attack with the weapon being discharged by an associate.

[92] In terms of mitigation, Mr Brian McCartney QC who led Mr Connor Lunny for the defendant points to the personal circumstances of the defendant. Whilst it is undoubtedly true that he has suffered much trauma in his life, given the serious nature of these offences these matters are only of marginal benefit to him in terms of mitigation.

[93] The most significant mitigating factor is his plea of guilty.

[94] Whilst it is right to say that this plea was late in the day there is no doubt that it was of considerable value to the prosecution. It avoided a lengthy trial in difficult circumstances. It is clear from the history set out above that there were discussions between the defence and prosecution which resulted in counts [1] and [2] not being proceeded with by the prosecution against this defendant.

[95] The offences of attempted murder are “serious offences” under Article 12(2) of Schedule 1 of the Criminal Justice (Northern Ireland) Order 2008 (“the 2008 Order”). That being so I must consider whether there is a significant risk of “serious harm” occasioned by the defendant committing further “specified offences” under Article 13(1)(b) and 15 of the 2008 Order.

[96] In making the assessment referred to in paragraph (1)(b) I take into account the provisions of Article 15(2), namely:

- (a) All such information as is available about the nature and circumstances of the offence,
- (b) Any information about any pattern of behaviour of which the specified offence forms a part; and
- (c) Any information about the defendant.

[97] Although not bound by them, I accept both conclusions of the Probation Service that the applicant presents as a high likelihood of reoffending and that he does present as someone who is a significant risk of serious harm.

[98] In coming to this conclusion I have regard to the circumstances of this offence and, in particular, the applicant’s willingness to be involved in an enterprise involving the use of a lethal and unlawfully adapted weapon to attempt to kill two victims who were at their home sleeping in the early hours of the morning.

[99] This has to be seen in the context of a history of violent offending, although nothing of this seriousness. That history includes the use of violence in the domestic context. Notwithstanding the fact that the defendant reflects on his own experiences of witnessing a traumatic death, this was not a deterrent to him in his actions on this occasion.

[100] Quoting from the probation report:

“Mr Holmes’ offending behaviour has escalated beyond general offending. He presented with limited ability to manage his own behaviour. Whilst he states the initial plan was to back up his associate in a fight he took no remedial action to prevent the offence happening when he and his co-defendants stopped to collect the gun and masks.

It is acknowledged that his ability to think clearly may be impaired by drugs and alcohol, however, he demonstrated the forethought to attempt to conceal his identity.”

I also note that the applicant was on bail at the time of this offending.

[101] The offence of attempted murder does carry a discretionary life sentence but I consider that the seriousness of the offence does not justify the imposition of such a sentence under Article 13(2).

[102] Under Article 13(3) I must ask would an extended sentence not be adequate to protect the public from “serious harm” as occasioned by the defendant committing further “specified offences.” I consider the answer to this question is “No” and I should therefore impose an extended custodial sentence under Articles 7 and 14.

[103] In coming to this conclusion I have regard to some of the protective factors identified in the probation report. I note he appears to have settled well into the custodial environment. He reports that he has been on an enhanced regime in the prison for around nine months and that he is working and engaged with addiction services. He has passed a total of four drugs tests, failed three and has refused one whilst in prison. The probation report recommends specific licence conditions which should reduce the risk of further offending and the risk of significant harm to the public when he is released from prison.

Appropriate sentence

[104] In light of the above findings I impose an extended custodial sentence on the defendant in respect of counts [5] and [6].

[105] I consider that the appropriate custodial term, in the absence of a plea would be one of 17 years, consistent with the guidance in *Loughlin* and having regard to the factors set out above at paragraphs [88] to [92].

[106] In respect of counts [5] and [6] I determine that the appropriate custodial term, prior to any discount for a plea to be one of 17 years' imprisonment. I propose to reduce this to a custodial term of 13 years by way of discount for his plea of guilty, which represents a discount of between 20%-25%.

[107] I impose an extension period of three years for which the defendant is to be subject to a licence. I consider that this period is necessary for the purpose of protecting members of the public from serious harm occasioned by the commission by the defendant of further specified offences.

[108] Thus the extended custodial sentence is one of 16 years in respect of counts [5] and [6], to run concurrently.

[109] In respect of count [3] I propose a determinate custodial sentence of five years' imprisonment with a custodial period of two and a half years and two and a half years on licence. I have not considered the question of an extended custodial sentence in light of the sentence imposed in respect of counts [5] and [6]. This sentence is to run concurrently with the sentence imposed in respect of those counts.

James Stewart

Counts [7] and [10]

Previous Convictions

[110] Mr Stewart was born on 14 March 1990. He is 32 years old. He has an extensive criminal record. He first appeared in court in 2003, aged 13, for an offence of common assault. Over the following years he was convicted of several offences, including theft, criminal damage, burglary, possession of drugs and disorderly behaviour. This type of offending continued throughout his twenties, with additional offences of car crime, assault on police and one offence of possession of a blade. He was also convicted of breaches of non-molestation orders in 2018. He was on probation at the time of the commission of these offences. He has been subject to probation supervision on a number of occasions since he was 14 years old. He breached a number of these orders, through to the most recent probation orders imposed on 25 October 2018.

Pre-sentence report

[111] As in the case of his co-defendants, McVeigh and Holmes, the defendant's personal history reveals strikingly similar themes. His parents separated when he was 2 years of age. He was raised by his father who was an alcoholic and could not

manage. He was taken into care and fostered from the age of 12 to 16. When he was 13 years of age he witnessed the aftermath of the death of a young friend who was killed by an oncoming train. At the age of 16 he was in a car accident in which his father died at the scene. The defendant has had no relationship with his mother.

[112] He began abusing solvents from the age of 12 and this progressed to the abuse of cannabis and alcohol.

[113] He has been diagnosed with PTSD, depression and anxiety.

[114] He has led a largely transient lifestyle throughout his adult years marred by addiction and mental ill health.

[115] His association with his co-defendants appears to be based to a large extent on a common bond of drug abuse.

[116] Unsurprisingly, the Probation Board assess the defendant as presenting a high risk of reoffending. I agree with this assessment.

[117] Given that he has pleaded guilty to serious offences under the Criminal Justice (Northern Ireland) Order 2008 ("the 2008 Order") it is necessary to assess whether there is a significant risk of serious harm being occasioned by the defendant committing further specified offences.

[118] This matter has been addressed by the Probation Service who have not assessed the defendant as posing a significant risk of serious harm at this time.

[119] The court has taken into account the statutory considerations set out in Article 15(2) of the 2008 Order and whilst it considers this matter finely balanced has come to the conclusion in agreement with the Probation Service that he does not pose a significant risk of serious harm under the Order. There is evidence of aggressive behaviour in his criminal record but this has been in the context of anti-social behaviour. He has no convictions for serious violence. The court notes that whilst in prison he has made significant progress. After an unsettled start he has actively engaged in training courses in Maghaberry and has achieved significant qualifications confirmed by the prison authorities. He is employed now as a landing orderly and has been on enhanced status since 11 February 2021. As per the probation report it appears that he has benefited from the structured routine and boundaries of prison life, in contrast to the chaotic nature of his lifestyle in the community. This has allowed him to make pro-social choices and plan for his future.

[120] Therefore, notwithstanding the very serious nature of the offences in which he was involved the court does not find the defendant to be "dangerous" within the meaning of the 2008 Order.

Appropriate sentence

[121] At the outset it is noted that in the probation report the defendant sought to distance himself from his plea and his involvement in the index offences. In the course of his able plea Mr Gavin Duffy QC who appeared with Mr Jonathan Browne confirmed that after further consultation the defendant is accepting of his plea, the basis of that plea and of his involvement in these offences. The defendant accepts that the Crown opening accurately reflects the circumstances of his role in these offences.

[122] Self-evidently the defendant has pleaded guilty to serious offences.

[123] Offences under Article 17 of the Firearms (Northern Ireland) Order 1981 (the predecessor of Article 58 of the Firearms (Northern Ireland) Order 2004) and Article 58 of the 2004 Order itself have been considered in a number of Court of Appeal decisions in this jurisdiction, namely *Attorney General's Ref (No 3/2004)* [2004] NICA 20; *R v McGuigan* [2014] NICA 78; *R v Corr* [2019] NICA 64 and *DPP Ref: (No 6/2020)* [2019] NICA 8.

[124] The effect of these cases are that the offence of possession of a firearm and ammunition with intent to endanger life should normally be dealt with by sentences of between 12 and 15 years.

[125] The guidelines largely adopt the reasoning set out in the leading decision of *R v Avis* [1998] 1 Cr App Rep 420, [1998] 2 Cr App Rep (S) 178.

[126] The principles identified in *Avis* can be distilled into a number of questions set out in the judgment of the court as follows:

“The appropriate level of sentence for a firearms offence, as for any other offence, will depend on all the facts and circumstances relevant to the offence and the offender, and it would be wrong for this court to seek to prescribe unduly restrictive sentencing guidelines. It will, however, usually be appropriate for the sentencing court to ask itself a series of questions:

- (1) What sort of weapon is involved? Genuine firearms are more dangerous than imitation firearms. Loaded firearms are more dangerous than unloaded firearms. Unloaded firearms for which ammunition is available are more dangerous than firearms for which no ammunition is available. Possession of a firearm which has no lawful use (such as a sawn-off shotgun) will be viewed even more seriously than

possession of a firearm which is capable of lawful use.

- (2) What (if any) use has been made of the firearm? It is necessary for the court, as with any other offence, to take account of all circumstances surrounding any use made of the firearm: the more prolonged and premeditated and violent the use, the more serious the offence is likely to be.
- (3) With what intention (if any) did the defendant possess or use the firearm? Generally speaking, the most serious offences under the Act are those which require proof of a specific criminal intent (to endanger life, to cause fear of violence, to resist arrest, to commit an indictable offence). The more serious the act intended, the more serious the offence.
- (4) What is the defendant's record? The seriousness of any firearm offence is inevitably increased if the offender has an established record of committing firearms offences or crimes of violence."

[127] This was a genuine firearm which had been adapted, such that it had no lawful use. It was loaded and was discharged in circumstances giving rise to a count of attempted murder by a co-defendant. It is, of course, correct that the defendant had no intention to kill nor did his role involve his personal physical possession or handling of the gun. Nonetheless, it is accepted through his plea that the defendant had the specific intent to endanger life. He was part of a group of three men associated with a firearm and by his presence he encouraged and aided the offences, intending to do so. He does not, to his credit, have an established record of committing firearms offences or crimes of significant violence.

[128] In addition to the most serious offence (count [7]) he was also involved in the subsequent movement of the gun in returning it to its hide (count [10]). I propose to have regard to the totality principle by imposing concurrent sentences in respect of each of these counts.

[129] Fortunately, none of the occupants of the house into which the gun was discharged were physically injured. The court nonetheless accepts that this had a significant impact on the victims and they no longer felt safe in living in the premises.

[130] In terms of mitigation there is little by way of personal mitigation that can be relied on by the defendant, given the serious nature of these offences.

[131] Taking into account the nature of the offending, the defendant's antecedents and the set of principles set out by the Northern Ireland Court of Appeal, I consider that the appropriate sentence before any discount for a plea would be one of 13 years' imprisonment. This is the sentence I would have imposed had the defendant been convicted after a contest.

[132] The defendant is undoubtedly entitled to a discount for his plea of guilty. It was late in the day. However, it was the first occasion that it had been indicated that the Crown would add count [10] and make concessions on the more substantive counts. As a result of his pleas a lengthy trial in difficult circumstances was avoided.

[133] I consider that discount for his plea should result in a determinate custodial sentence of 10 years which represents a discount of between 20%-25%.

[133] Under Article 8 of the 2008 Order I am obliged to specify the custodial period at the end of which the defendant is to be released on licence under Article 17. Under Article 8(3) the custodial period shall not exceed one half of the term of the sentence.

[134] I consider the defendant should serve the maximum period permitted, namely one half of the term of the sentence. Therefore, the custodial period will be one of five years with five years on licence.

[135] Therefore, the sentence on count [7] is a determinate custodial sentence of 10 years with five years custody and five years on licence under Article 8(3) of the 2008 Order.

[136] In respect of count [10] I impose a determinate custodial sentence of six years' imprisonment. The custodial element shall be three years with the licence period being three years. The sentence is to be served concurrently with the sentence imposed in respect of count [7].

Ryan Megarry

Count 4

Previous convictions

[137] The defendant, Megarry, was born on 12 December 1982. He is 39 years old. He appears before the court with 30 previous convictions. The convictions indicate a clear pattern of driving offences. He has three convictions for assaults in the domestic context which include assault occasioning actual bodily harm (13 July 2016); common assault (3 March 2019) and improper use of telecommunication to cause anxiety (13 November 2020) which were perpetrated against three different female partners.

[138] As a result of those convictions he was reviewed under the Public Protection Arrangements of the Northern Ireland PPANI. He engages with the PSNI on a voluntary basis as part of these arrangements.

[139] He received a two year probation order on 8 February 2018 for possession of an offensive weapon, namely a large knife (2 April 2017). Following a series of missed opportunities and reoffending the order was breached and a warrant sought on 21 May 2019. The order was replaced by a three month custodial sentence.

Pre-sentence report

[140] The court has the benefit of a pre-sentence report in relation to Mr Megarry.

[141] There was nothing of note in his childhood/teenage years. He secured work with Northern Ireland Railways in a repairing and servicing role after leaving school. He worked there for 18 years before suffering an industrial injury which required him being medically retired from the service. The injury was a condition known as HAVS (Hand Arm Vibration Syndrome) which affects the nerves in his hands and arms. He owned a sunbed shop for a number of years but this was not financially viable in the long term. He currently works one day a week with a car body repair service.

[142] Following his work accident he began misusing pain relief medication, in particular, Pregablin. At the time of the index offences he was abusing illegal prescription drugs in addition to his own medication on a daily basis.

[143] He has been assessed as a medium likelihood of reoffending. He has not been assessed as a significant risk of serious harm. I agree with both of these assessments.

Consideration of sentence

[144] Mr Megarry has pleaded guilty to the offence of encouraging or assisting the commission of one or more of a number of offences, namely burglary or theft.

[145] Through his plea he accepts that he identified the victim, Paul Smyth, as someone from whom his co-defendant could obtain drugs and money. He indicates that he had obtained drugs from the deceased on a previous occasion. He went so far as to drive past the deceased's home and identify it to his co-defendant. He got to know his co-defendant through their attendance at his sunbed business.

[146] Importantly, it is accepted that the defendant had no knowledge or indication that his co-defendant would harm or kill the deceased. His actions were capable of encouraging or assisting the offences of theft or burglary.

[147] In approaching sentencing the relevant principle in this type of scenario is that the sentence generally will not differ significantly, and may perhaps not differ at all, from the sentence appropriate for the anticipated offence or for conspiracy to commit the anticipated offence.

[148] The maximum sentence available is that applicable to the offence he encouraged or assisted (in this case burglary), which carries a maximum sentence of 14 years' imprisonment.

[149] Had the defendant entered the deceased's premises and stole money or drugs from him what would have been the appropriate sentence? The amount stolen appears to be somewhere in the £500 region. The anticipated offence involved entering a vulnerable man's home and stealing from him. The court cannot be blind to what actually occurred in this case and the devastating consequences for Mr Smyth and his family. That said, I repeat, it is accepted that the defendant had no contemplation that this would be the outcome of his actions.

[150] The defendant has no previous convictions for dishonesty.

[151] Mr John Kearney QC who appeared with Mr Taylor Campbell focuses on the defendant's current position. He has removed himself from the area in which this offence occurred. He self-reports that he has tackled his drink and drug problems. Since serving a short period in prison between November 2019 and April 2020 his personal situation has changed for the better. He is working one day per week and hopes to increase this if he can. He is actively and voluntarily engaging with the police service.

[152] Mr Kearney suggests that were it not for the tragic consequences of the actions of others this is a matter which could have been dealt with in the Magistrates' Court. He says that the court should adopt the approach adopted by Carswell J in the case of *Dunlop* and not interfere with positive steps taken by the defendant demonstrating his rehabilitation. It is to be noted, however, that in *Dunlop* the defendant was actually engaging with the probation service and completing a probation order. In this case the extent of the defendant's involvement with the authorities is in relation to the PPANI which involves the police visiting him every four to six weeks. He failed to properly engage with a probation order imposed as recently as 8 February 2018 which ultimately resulted in him serving a short custodial sentence.

[153] Whilst the scale of this defendant's offending is in an entirely different category from that of his co-defendants, the fact remains that he has pleaded guilty to a mean offence. He identified a vulnerable victim and went to the extent of pointing out his property to McVeigh. In doing so he initiated a series of events which resulted in the murder of a vulnerable man in his own home in the early hours of the morning. The common denominator amongst the co-defendants is their abuse of drugs. There can be no more devastating example of the ruinous effects of

drug addiction on individuals and on society than the circumstances giving rise to this case.

[154] I repeat that Mr Megarry never contemplated that his actions would in any way lead to the murder of Mr Smyth. I repeat that his offending is of an entirely different scale and character than that of his co-defendants. Nonetheless, his conduct and the consequences of that conduct are such that I consider the custody threshold is met in his case and that a custodial sentence is required to mark his offending.

[155] I consider that the appropriate sentence before taking into account any reduction for his plea is a determinate custodial sentence of two years. I propose to reduce this to a sentence of 18 months' imprisonment to reflect his plea of guilty. I further direct that in accordance with Article 8(3) of the 2008 Order the appropriate custodial period in respect of the 18 month sentence is one of nine months with nine months to be served on licence.