Neutral Citation No: [2023] NICC 4 *Judgment: approved by the court for handing down (subject to editorial corrections)**	*Ref:* **OHA12054** *ICOS No:* **19/005923** *Delivered:* **02/02/2023**

IN THE CROWN COURT IN NORTHERN IRELAND

SITTING IN BELFAST

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THE KING

v

DAVID JONATHAN HOLDEN

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Mr C Murphy KC with Mr S Magee KC (instructed by the Public Prosecution Service) for the Crown
Mr F O'Donoghue KC with Mr I Turkington (instructed by MTB Solicitors) for the Defendant

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SENTENCING REMARKS

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O'HARA J

[1] Having found the defendant guilty of gross negligence manslaughter, I now have to pass sentence on him. I am grateful again to counsel for their helpful submissions which have focused on the relevant issues.

[2] I will not repeat all of the findings which I reached in my judgment of 25 November 2022. I do however highlight the following:

(i) The defendant was 18 years old when he killed Aidan McAnespie in February 1988, almost 35 years ago.

(ii) The defendant has been convicted of manslaughter, not murder. That verdict is based on the fact that he did not intend to kill or cause serious harm.

(iii) He was however grossly negligent because, wrongly assuming that the gun was not cocked, he aimed it at Mr McAnespie and deliberately pulled the trigger.

(iv) The fact that the gun was cocked and ready to fire was the fault of others who had been in the upper part of the sangar before him and those who had not ensured adherence to the safety drill referred to by the prosecution in the opening of the case.

(v) The defendant could not know, just from looking at the gun, whether it was cocked but that very fact should have told him not to pull the trigger.

[3] In his plea of mitigation for the defendant, Mr O'Donoghue KC emphasised the following points:

(i) The defendant's actions were preceded by the similarly negligent actions of other soldiers who are not before the court.

(ii) The army itself is culpable for failing to train and resource its soldiers.

(iii) Few cases of gross negligence manslaughter involve a defendant who is as young as 18 years old and as inexperienced as this defendant was.

(iv) This defendant should be differentiated from offenders such as doctors who are typically highly trained and skilled and are typically much older.

[4] In addition Mr O'Donoghue relied on a series of factors relating to the defendant's personal circumstances:

(i) Albeit in a very limited way, the defendant has already been punished in that his freedom was restricted because he was confined to barracks until December 1988 and then fined when the army disciplinary code was applied to him.

(ii) He himself suffered trauma as a result of his actions which led to him being discharged from the army in 1990.

(iii) He reasonably expected that the criminal case against him was over in September 1988 when the original manslaughter charge was discontinued.

(iv) Had he been convicted in or about 1989 he would, in all likelihood, have been given a suspended sentence in line with the analysis of sentencing found in *R v Graham* [2003] NICA 31 (to which I will return later).

(v) He has no criminal record of any sort, pre-dating or post-dating February 1988.

(vi) On leaving the army, he made a career for himself and a positive contribution to society as evidenced by references from those who worked with him.

(vii) Directly as a result of the present charge he lost his employment and may be unlikely to work again.

(viii) He himself has some health problems, but, more significantly, his wife who has greater problems depends on him. In effect he is her carer.

[5] Mr O'Donoghue submitted that the defendant has shown genuine remorse for his actions. In his evidence during the trial the defendant did not take the opportunity to express remorse. He could have done so, even in the context of contesting the case. That would have been helpful. I accept however that in the pre-sentence report there is reference to him having feelings of guilt and shame in terms of the loss of Mr McAnespie's life and the significant impact that has had on the McAnespie family.

[6] Mr O'Donoghue and Mr Murphy KC for the prosecution agreed that there are no aggravating features in the case save perhaps for the manner in which the defendant contested the charge. It might be helpful at this point to explain an important distinction. In many but not all cases judges give defendants some credit if they plead guilty by reducing their sentences. That is very different from imposing a longer sentence on defendants who plead not guilty and are then found guilty. There are however some cases in which an aggravating feature may be the manner in which the case is defended. In this case, as I have already found, the defendant gave a dishonest explanation to the police and to the court. To some limited degree that is an aggravating feature.

[7] Mr Murphy referred me to a number of manslaughter cases to illustrate the point that the circumstances of such cases vary so much that they provide only limited assistance as to the proper sentence. The one which is perhaps most important is *R v Graham*, already referred to above. That case involved a 22 year old highly trained soldier of good character who was found guilty by a jury of gross negligence manslaughter of a fellow soldier who was killed by a bullet fired from his gun. The defendant had pulled the trigger without checking that the safety catch was on.

[8] The trial judge described this as a "grossly negligent act." Despite the soldier's very good record, both in and out of the army, his clear remorse, and his family circumstances he was sentenced to two years' imprisonment. The Court of Appeal considered the appeal against sentence and concluded as follows at paragraph [14]:

> "… [We] cannot escape the conclusion that this was an inexcusably dangerous act, wholly contrary to all the applicant's training. In our judgment it was one which required a sentence of immediate custody and a suspended sentence would not sufficiently recognise the seriousness of the applicant's acts and omissions. We

> consider that the sentence imposed by the judge fell within the proper range applicable to such cases, and that it could not be said to have been manifestly excessive."

[9] I note however that at paragraph [13] the Court of Appeal said:

> "We considered several [cases] involving negligent discharges by soldiers on duty in sangars, who had generally omitted to clear their weapons properly or follow standard procedure in handling them. In these cases the court suspended the sentence, the common factor in them appearing to be the effects of prolonged duty in sangars."

[10] I will refer only to one other case, *R v Robert Reid Davidson.* The details available are very limited because no report can be found. The case involved a 20 year old soldier in a sangar who in April 1980 negligently discharged a GPMG at a vehicle checkpoint in Strabane. Once again, the standard operational procedure for handover from one soldier to the next had not been followed. The defendant had picked up the gun, put it to his shoulder and squeezed the trigger not expecting it to fire – but it did. A lady in the back seat of a car approaching the checkpoint was killed. The defendant pleaded not guilty but was convicted. His sentence, in 1981 was 12 months in a young offenders' centre suspended for 2 years.

[11] Mr Murphy's submission highlighted two further main points:

(i) That in gross negligence manslaughter cases defendants are often of previously good character and are being prosecuted for consequences which they never intended or desired. This makes sentencing especially difficult.

(ii) The current Sentencing Guidelines which apply in England and Wales indicate that greater importance should now be focussed on the consequences of the offence than was perhaps the case before. While the Guidelines do not apply in Northern Ireland, in this jurisdiction we typically take into account the principles which they identify.

[12] It is therefore appropriate at this point to consider at some length the consequences of the killing of Aidan McAnespie. I do this by reference to the Victim Impact Statements of his sister Margo, his brothers Gerald, Sean and Vincent and his niece Una, the daughter of his late sister Eilish. Aidan was the youngest of the six McAnespie children. His father died recently, during the course of these proceedings. His mother died some years earlier and his sister Eilish, who had been very prominent in a campaign to "see justice done" for Aidan, herself died relatively young.

[13] The statements describe the devastating effect which Aidan's killing had on the whole extended family, how it changed their lives and how hugely challenging it has been over decades to recover. I have no doubt from the statements that this was made worse by the family's sense of injustice that Mr Holden was not brought to trial at the time. This is something which the family shares with far too many families in our society who have not seen anyone held to account for all manner of killings, bombings and shootings.

[14] Included in the statements is a haunting description of Mrs McAnespie walking from her home every night, past the army checkpoint, to the spot where her son was killed, in tears, saying the rosary. It takes no imagination to realise how heart-breaking that was for Mrs McAnespie and how equally heart-breaking it was for her family to observe. Such are the consequences of grossly negligent acts causing death.

[15] It appears from the statements that the trial in this court has helped the family in some very limited way but I and everyone else, especially the McAnespies, know that the pain, hurt and loss they suffered in February 1988 will stay with them whatever I decide today. As Sean McAnespie said in his statement:

> "Many describe Aidan's case as a legacy case. There is nothing legacy about it. Aidan was a real person whose loss is not a legacy, but a current and continuing loss to all our family."

[16] When I consider the sentence which I should impose on this defendant for this manslaughter, I bear in mind everything which is put before me by counsel and by the McAnespie family. What has been done with other defendants in the past assists me in reaching my decision but does not bind me. That is because no two sets of circumstances are the same. For instance, the soldier *Graham* in the 2003 case who was sentenced to 2 years in jail was older and better trained that this defendant but showed greater remorse than I have detected in Mr Holden. On the other hand, I find it difficult to match this present case exactly with those which were said in *Graham* to relate to "the effects of prolonged duty in sangars." This killing was not the result of the defendant being on prolonged duty in a sangar.

[17] Taking all of the relevant considerations together, I impose on the defendant a sentence of three years in prison. I will however suspend that sentence for three years, primarily because of his otherwise clear criminal record and his positive work record. It is perhaps ironic that the delay of more than three decades in bringing the case to trial has left the defendant in an arguably better position than he would have been if his trial had proceeded in 1988 or 1989. I do accept however that he is entitled to have that life recognised and credited in his favour in the same way as he would have been disadvantaged had he subsequently behaved badly.

[18] I must explain to the defendant that if he commits another offence within the next three years which is punishable by imprisonment, a court may order that he serves the three year sentence for the killing of Mr McAnespie which I am suspending today irrespective of what sentence it imposes for the further offence.