

Tariff certified by the Secretary of State under Life Sentences (NI) Order 2001 on 31-01-05 **Date: 19/05/04**

THE QUEEN v VICTOR MAITLAND KERR

DECISION ON TARIFF

1. On 26 May 1995 the prisoner was sentenced to life imprisonment by His Honour Judge Butler QC at Southwark Crown Court for the murder of his 31-year-old girlfriend, Jean Grange (nee Finch) (DOB 19 September 1962) on 9 December 1993. The prisoner has been in custody since 11 December 1993. There was no appeal.

2. In July 1996 the Home Secretary fixed the prisoner's tariff at 10 years. The trial judge's recommendation had been for 12 years but Lord Taylor CJ considered that the appropriate tariff was 10 years and the Home Secretary adopted this recommendation. This tariff no longer applies, however, now that the prisoner has transferred to Northern Ireland.

Factual background

3. The deceased had been romantically involved with the prisoner for some years before 1993. They had lived together for approximately 6 years. In mid November 1993 she began a relationship with another man, Geoffrey Lines. She moved in with Mr Lines on 24 November 1993. After some initial altercations the prisoner, the deceased and Mr Lines became friends and would have drunk together at local Gravesend pubs.

4. At around lunchtime on 9 December 1993 the deceased and the prisoner met for a drink at the Trocadero public house, Windmill Street, Gravesend. At 4.45 pm the deceased told the barman that she was returning to her former flat to retrieve her clothes. She told the barman that if she was not back in two hours he was to tell Mr Lines "to come and rescue her". The message was subsequently relayed to Mr Lines at 5.15 pm. Mr Lines did not go to the prisoner's flat but did look for the couple in various pubs. He says: "I can only say that I never went round to 26, Overcliffe as I thought that if Jean had got back with Kerr, I did not want to [be] responsible for causing trouble."

5. At around 5.00 pm on 10 December 1993 the prisoner's neighbour, John Muncer, heard a banging noise from the prisoner's flat. Between 8.00 and 9.00 pm Mr Muncer heard a voice outside his door asking for an ambulance to be

called. When he investigated nobody was at the door but he went to the prisoner's flat and found the prisoner and the deceased in bed. The prisoner again asked him to call an ambulance, which he did. The ambulance crew arrived at around 9.25 pm and were shown to the prisoner's flat. They entered and found the prisoner and deceased lying in bed. The prisoner's side of the bed was covered in vomit. The ambulance crew touched the deceased and found her to be dead. Police arrived at the scene and the prisoner was removed to the ambulance for medical attention. The prisoner told police at the scene that he had taken 120 paracetamol tablets. He said that he had had an argument with his girlfriend the afternoon of the previous day. Police noticed that the deceased's body had bruising around the neck and what appeared to be a small cut under the chin. The ambulance crew assumed from the demeanour of the couple that they had both taken a drugs overdose. The prisoner was taken by ambulance to Westhill Hospital. He remained in hospital for 10 days as a consequence of his overdose. As the judge said in his summing up: "...there is no doubt he had taken a large overdose."

6. A scenes of crime officer later took possession of a black bin liner within which he found items of clothing, some bloodstained. A shirt was found to bear bloodstains which could have originated from the deceased. Two buttons from the same shirt were found in the bedroom - one on the bed and the other under it. A coat from the wardrobe was found to bear bloodstains that could have originated from the deceased. The forensic evidence supported the proposition that the deceased had had recent oral and vaginal sexual intercourse, that she had bled onto the shirt found in the bin liner and that the buttons found in the bedroom came from that shirt.

7. The deceased was pronounced dead at 10.15 pm on 10 December 1993. The police surgeon at the scene observed scratch marks around her mouth and the presence of two round purple/grey bruises on the left side of her neck. There were also two round purple/grey bruises on the left breast. The bruises were consistent with having been caused by pressure from the thumbs or fingers. Rigor mortis was complete and the skin was cold to the touch. The doctor concluded that the time of death had been about 12 hours earlier i.e. 10.15 am.

8. Post mortem examination revealed evidence of widespread bruising and abrasions over the neck with underlying soft tissue injury and petechiae over the whites of the eyes. There was marked bruising of the right and left arms consistent with forceful gripping. There was a small puncture wound to the base of the right side of the neck, consistent with having been caused by a sharp, cutting end instrument such as a knife. Dr Rouse, Home Office pathologist, concluded that the cause of death was asphyxia, consistent with manual strangulation. Handwritten notes on the autopsy report, presumably by the trial judge, are to the effect that it would be almost impossible to time the death and that the police surgeon's estimate should not be relied upon.

Another note stated that it would have taken around 30 seconds to cause the bruising and that death would have occurred several minutes later.

9. In a follow up report dated 27 February 1995 Dr Rouse commented on the police surgeon's estimated time of death. He stated:

"It is not possible to be accurate about the timing of death, especially in the absence of rectal temperatures, which is supposedly the most accurate indicator as to the time of death. Even with this method the accuracy is a little more than within an 8 hour time span in the first 24 hours. I personally never expressed an opinion as the time of death, merely in this case to suggest that death occurred 24 hours prior to Dr Dott's examination."

10. At the time of death the deceased had 158 mgs alcohol per 100 mls of blood, equating to approximately twice the legal limit for driving. The accused's blood contained a concentration of paracetamol representative of an overdose. The overdose would not have had any significant influence on the prisoner's state of mind.

11. In police interview (29/12/93) the prisoner stated that the deceased arrived separately at his flat, they made love and when he awoke she was gone. He then took tablets and had no recollection of further events. He denied having been out of the flat between then and the ambulance arriving.¹ He denied killing Ms Grange, saying: "See Jean was my life, I couldn't never have touched Jean, she meant more to me than anything else in this world..." He said that their prior meeting in a local pub had been by chance [Mr Lines contended that the prisoner had met with the deceased by arrangement]. The prisoner claimed not to be sure why he wrote the suicide note. He suggested that he had not consumed alcohol for 16 months prior to the day in question. The prisoner denied that he and the deceased had a violent relationship.² He repeats that assertion in the second interview (30/12/93). He continued to deny that he went out to buy cigarettes on the Friday morning. He denied that he made attempts to dispose of the deceased's clothing after the murder.

¹ Evidence from the shop assistant at a local garage and a neighbour suggested that the prisoner was up and about on the morning of Friday 10 December 1993.

² Susan Finch, the deceased's sister made a statement to the police on 12 December 1993 in which she recounted that the prisoner and her sister had been in a relationship for the previous 6 years. The relationship had been troublesome and it was said that the prisoner would often become violent towards the deceased, especially when he had been drinking. She also recalled that the prisoner often overdosed on tablets. He would do this whenever the deceased threatened to leave him: "It was his way of trying to get her sympathy so she would come back to him. Jean always gave in to him." Miss Finch described the prisoner as "very possessive and jealous". Both the prisoner and the deceased appear to have been very seasoned drinkers. The deceased's family clearly saw the prisoner as manipulative - their statements are littered with incidents of violence.

A third interview later that same day lasted a few moments and nothing of note was covered. A fourth interview was held later again that day. In the course of this the prisoner denied being responsible for any of the injuries found on the deceased's body.

12. In his summing up the judge referred to the fact that the prisoner had admitted manslaughter of the deceased on the basis that there had been a suicide pact between them. The charge also dealt with the question of provocation. It seems that the prisoner claimed that the deceased had called his mother a "whore" but that he had recovered from his initial reaction to this remark and accepted that it did not provoke subsequent events.

13. The judge summarised the prisoner's version of events as follows: The pair met at the pub by chance. After some drinks the prisoner left alone and returned to his flat. He was drunk. The deceased went to the flat soon after. She found the prisoner had taken tablets in order to take his own life. She hit him and was restrained by the prisoner. They made love and she said, "Why don't we do what we'd planned before", referring to a previous suicide pact. She said: "If you love me the way you say you do you'll help me to do it." The prisoner told the court: "I caught her by the throat and squeezed. I got the belt after I'd squeezed her throat and put it round her neck to make sure she was dead. It had a buckle on it. After this, I threw the belt out of the kitchen window. I got on to the bed and put my arm around Jean. That is the last I remember. At some stage I woke up and took some more tablets. I wanted to die..." The judge referred to alleged suicide notes found at the scene. The prisoner said that he had written the notes at the deceased's dictation before the couple made love.

14. The prosecution case was that the prisoner, in a fit of jealous rage by reason of the deceased having left him, attacked and strangled her. They pointed to the fact that the prisoner asked his neighbour to call an ambulance; police evidence that the prisoner had admitted to an argument; evidence from a local shop keeper and a neighbour that the prisoner had gone out to buy cigarettes on the morning of 10 December 1993; and evidence of an attempt to dispose of bloodstained clothing. The prisoner's account in police interview differed substantially from that offered in evidence. The prosecution contended that he changed his story from absolute denial to suicide pact when faced with forensic and other evidence.

15. On the plea in mitigation the prisoner's counsel submitted that his remorse was genuine, that he had truly loved the deceased and that he was not a danger to the public. In passing sentence the judge said:

"Victor Kerr, you murdered Jean Grange solely because you were consumed with jealousy because she had left you for another man. The

elaborate defence that you raised was nothing but a sham....”

The NIO papers

15. The victim’s brother, Patrick Michael Finch, submitted a written representation. In it he stated that his mother has not been the same since the murder. She suffers flashbacks. She regrets allowing her daughter to go alone to the prisoner’s flat to retrieve her clothes. Mr Finch commented that the murder devastated his entire family. The victim was the youngest of 11 children. Several of her siblings are said to have been badly affected: “some of them so disturbed life can never be normal again”. Mr Finch referred to the judge’s sentencing remarks and in particular that he asked that it be noted that the defendant pleaded not guilty throughout the trial, only changing his plea at the last.

16. A separate representation from the victim’s sister, C Martin, made similar points. She said:

“Our mother still cannot look at a photo of Jean and will not attend any family parties or functions, wedding or christenings as she finds it too distressing as she can only think that Jean should be there enjoying herself along with her family. This has completely ruined the last years of our mother’s life. She cannot sit and relax as her mind wanders to Jean and the way she died, so much so she reads a book while eating her breakfast to stop her mind wandering. Myself I will never get over the way Jean died and cannot bear to be in the house on my own.”

Ms Martin also emphasised the damage that has been done to siblings and nieces and nephews of the deceased.

17. The prisoner’s solicitor G R Ingram has made a written submission. The solicitor stated that the prisoner does not wish to make any representations about the actual offence except to confirm that he did plead guilty. [This must be a reference to the plea of guilty to manslaughter]. The prisoner has said that he “lives with the offence” every day of his life. The solicitor made the point that the prisoner had no criminal record. He also referred to the trial judge’s comment that he would not regard the prisoner as a danger to the public and that he considered the possibility of further offending to be remote.

Antecedents

18. The prisoner was previously a man of good character. While the prisoner's criminal record states that he has no convictions the police summary under the rubric 'matters known' states that he appeared before magistrates on 20 April 1983 charged with being drunk and disorderly and was fined £35. This is not relevant for present purposes, except perhaps as an indicator of the prisoner's problems with alcohol.

Consideration

19. In a judgment recently handed down by the Court of Appeal in this jurisdiction, *R v McCandless & others* [2004] NICA 1, it was concluded that judges fixing tariffs under article 5 of the Life Sentences (Northern Ireland) Order 2001 should follow the *Practice Statement* issued by Lord Woolf CJ and reported at [2002] 3 All ER 412). This dealt with the minimum terms for both adult and young offenders. It replaced the previous normal starting point of 14 years (recommended in an earlier *Practice Note* reported in [2000] 4 All ER 831) by substituting a higher and a normal starting point of respectively 16 and 12 years. These starting points then have to be varied upwards or downwards by taking account of aggravating or mitigating factors.

20. In the following passage, the Court of Appeal in *McCandless* emphasised that the *Practice Statement* was not to be applied inflexibly: -

“We think it important to emphasise that the process is not to be regarded as one of fixing each case into one of two rigidly defined categories, in respect of which the length of term is firmly fixed. Rather 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.”

21. I consider that the appropriate starting point in this case is 12 years. Aggravating features include the prisoner's attempts to clear the crime scene; the attempt at deception by the preparation of the suicide notes and the subsequent suicide pact defence. There is also a suggestion that the prisoner's relationship with the deceased was marked by domestic violence, although in the absence of clear evidence to support this, it would be unfair to penalise the prisoner for the allegation.

22. The prisoner has been aware that the tariff fixed by the Home Secretary was 10 years. In transferring to Northern Ireland, however, he knew that this tariff could no longer be regarded as binding. Nevertheless it is a matter that I consider should be taken into account and the recent decision of the House of Lords in *Flynn & others v HM Advocate* is authority for the proposition that such a consideration is relevant in deciding on the appropriate tariff.

23. I have concluded that the tariff that will properly reflect all these considerations is 11 years.