



**HMA**

**v**

**AARON MCCONVILLE, JASON MCFADDEN, GEORGE  
O'CONNOR, JOHN MCGRORY, IAIN STEVENSON, ALEXANDER  
DAVID THOMAS HARVEY AND JACQUELINE MCCONNELL**

**3 October 2007**

**Today at the High Court in Glasgow temporary Judge Rita Rae QC  
sentenced the above in relation to the culpable homicide of William Smith  
in Glasgow on the 29<sup>th</sup> December 2006.**

**On sentencing the Judge made the following statement.**

“There has been considerable publicity over recent years lamenting the level of street violence committed by youths, fuelled by excessive alcohol and armed with weapons. Such behaviour is the plague of local communities.

The term anti social behaviour is used but on occasions such as this, it does not truly reflect the extent of violence in which some youths appear to revel.

Little regard appears to be had to the potentially tragic consequences of such behaviour. I trust the sentences I am about to impose will bring home to you and other like minded young men that such conduct will be dealt with severely by the courts.

The current charges arose out of what appears to have been a running battle between two groups of youths, all of whom had consumed alcohol. There appears to have been fighting and chasing on both sides and it is said there were elements of provocation accepted by the Crown, leading to a reduction in this charge from murder to culpable homicide in respect of four of you. I do accept that the first ones to arm themselves with weapons were the deceased and his friend and I have to have regard to the fact that charge 3 is no longer a charge of murder.

However at the point when Mr Smith was killed he had been chased by three of you. According to the agreed narrative, he was kicked to the ground by you, Mr McGrory, although you then left and took no further part in what occurred.

Thereafter, while on the ground, at that point defenceless, Mr Smith was set upon by Messrs McFadden, O'Connor, Stevenson and Harvey and subjected to a sustained, brutal assault leading to numerous serious injuries whereby he died some days later in hospital.

I note in particular that he had several fractures to his skull, brain injury and his kidney was described as being like "pulp".

There were other injuries which I need not detail.

You have all pleaded guilty to a greater or lesser degree for your part in the events which resulted in the tragic loss of a young man and a young father. That is to your credit and I shall give appropriate discount in due course. I also have to have regard to your relative youth and in some cases a lack of a schedule of prior offending.

In your case Mr Harvey there is a recent history of employment and I have considered the references produced.

But these factors do not detract from the level and brutality of the violence used in this case towards the deceased at the end by four of you.

In addition from the information put before me it would appear that the consequences of this event have had questionable effects upon some of you because, despite the protestations of remorse, there have been attempts through your representatives to place a large measure of blame on the deceased and his friend.

In addition the fact that despite being on bail for a crime which you, Mr Harvey, claim you felt "gutted" about (to use your word) it is revealed in your social enquiry report that you became involved in a further three episodes of public disorder including police assault and for which you await sentence.

I propose to deal with you individually but out of order.

Before doing so let me make clear that I have had no regard to the newspaper report referred to in submissions this morning and have ignored it completely, as the information contained therein about the UTUBE video, although it could have been investigated by the Crown, was not put before me and there has been no confirmation whatsoever of its accuracy.

#### AARON McCONVILLE

You Mr McConville have pleaded guilty to the breach of the peace charge only, committed while on two bail orders. This was, from the information put before me, a serious incident but you left at a very early stage before any violence. You appear from the social enquiry report to deny involvement despite your plea and that does not seem to indicate to me someone who has learned anything from this experience. However until I released you on bail on 2 August you had been in custody for a period 7 months. For that reason and having regard to your plea I have decided as suggested by your counsel to defer sentence for a period of six months for you to be of good behaviour.

#### JOHN McGRORY

You have pleaded guilty to the breach of the peace charge and an assault on the deceased while on bail. You left the scene before the serious assault took place. No injury is libelled.

You have a short record of previous convictions disclosing one for possession of a knife in July 06

I note that, not only were you on bail at the time of this event, but you were also on three deferred sentences

However you have been in custody now for about nine months and you have had a murder charge hanging over you. You are still only 17 and it is said that after the period in custody you appear motivated to change. You have had some social work support in the past and there is focus to support you in the future.

Having regard to your plea I have decided that in your case it would be appropriate to impose a probation order for 2 years with an extra condition of 200 hours of unpaid work and alcohol counselling.

Any discount is reflected in the fact that I have selected a non-custodial disposal

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That leaves the four who have pleaded guilty to the culpable homicide charge and three to the breach of the peace. As you may have expected a custodial sentence is in my view the only appropriate disposal having regard to the very serious nature of these charges and the extent of the violence used which was considerable, putting this in the higher range of culpable homicide.

Having regard to the pleas tendered at different times I have to calculate an appropriate discount but I shall have to decide on the starting point for each of you.

I can tell you that in the case of Mr McFadden the discount will be 25% because a plea in the present terms was tendered at the first Preliminary Hearing. I was informed that a section 76 letter was tendered at an earlier stage but it was not in the terms of the plea now accepted accordingly the discount is calculated at the point of the Preliminary Hearing

In the case of the others the discount will be 20% because of the stage at which the pleas were tendered, which as I understand it, was after the second Preliminary Hearing.

### IAIN STEVENSON

You have pleaded guilty to the culpable homicide charge.

You also have a significant record despite your youth (age 19). You were released early from custody only a month before these events. That was from a sentence of 30 months for assault to severe injury. There is an unexpired portion of that sentence which would be in the region of 14 months and I would be entitled to re-impose that period under section 16 of the Prisoners and Criminal Proceedings (Scotland) Act.

You have however been in custody since 8 January and if I were to impose a period of the unexpired portion in terms of section 16, I could not backdate that sentence.

What I have decided to do is not to impose a period under section 16 but I am **not** going to backdate the sentence for the new offence so that sentence will date from today.

In effect you will get credit for the period in custody by my not imposing any period under section 16.

I am also going to impose an extended sentence because your record and the nature of the present offence would suggest that the risk of serious harm which you present to the public requires an extra period of supervision in the community after your release.

Having regard to the nature of this charge and your violent record the custodial sentence would have been 10 years but for your plea which will be 20% therefore 8 years detention.

A further extended period of three years will be added in terms of section 210A of the Criminal Procedure Scotland Act 1995

Total 11 years – custodial part 8 years dating from today

#### JASON McFADDEN

In your case you were on bail at the time of these offences.

On the breach of the peace charge - the sentence would have been 12 months less one quarter for the plea – therefore 9 months.

On charge 3 the custodial sentence would have been 10 years 6 months with the 6 months attributable to the bail aggravation.

Having regard to your plea a discount of 1/4 will be applied to the 10 year part only. Therefore sentence will be 8 years detention with six months for the bail aggravation.

Those sentences will run concurrently and will be backdated to 2 August 2007

#### George O'Connor Age 18

You are in a similar position to the accused, McFadden, except for the discount and the particular risks which you present as identified in the risk assessment.

On the breach of the peace charge the sentence would have been 12 months less 20% for the plea which amounts to 292 days

On charge three the custodial part will be 10 years 6 months with six months attributable to the bail aggravation.

The discount will be 20% on the 10 year part leaving a custodial sentence of 8 years and 6 months with six months attributable to the bail aggravation

A further extended period of three years will be added in terms of section 210A of the Criminal Procedure Scotland Act 1995 because of the particular risks you present.

These sentences will be concurrent and run from 2 August 2007 – so a total of 11 years 6 months with a custodial part of 8 years 6 months.

#### ALEXANDER HARVEY

You are in exactly the same position as Mr O'Connor except that you were not on bail at the time

On the breach of the peace charge the sentence would have been 12 months less 20% for the plea which amounts to 292 days

On charge three the custodial part will be 10 years

The discount will be 20% thus a custodial sentence of 8 years detention

A further extended period of three years will be added in terms of section 210A of the Criminal Procedure Scotland Act 1995 because of the particular risks you present as disclosed in the social enquiry report.

These sentences will be concurrent and run from 2 August 2007 – so a total of 11 years with a custodial part of 8 years”.