



News Release

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PPS ANNOUNCES DECISIONS ON REFERRING SENTENCES OF ASSISTING OFFENDERS

The Public Prosecution Service for Northern Ireland (PPS) today announced that it will be referring Neill Hyde back to the court which sentenced him for his involvement in the murder of Martin O'Hagan and other offences. It also confirmed that it will not be referring either Robert or David Stewart back to the court which sentenced them for their role in the murder of Thomas English and other terrorist related offences.

The Director of Public Prosecutions, Barra McGrory QC said: "**Section 74 of the Serious Organised Crime and Police Act 2005 sets out the requirements for how these decisions are to be made.**

"In each case the specified prosecutor must firstly determine whether there is evidence that the assisting offender knowingly failed to comply with the terms of the agreement into which he entered with the Public Prosecution Service under section 73 of the 2005 Act.

"If there is, the question then arises whether the interests of justice require that he be referred back to the original sentencing court which can only be done if the assisting offender is serving his sentence. If referral is to be made the burden is on the prosecution to satisfy the court beyond a reasonable doubt that he knowingly breached his agreement. If so satisfied it is a matter for the court to decide what, if any, part of his discounted sentence the assisting offender should serve.

Pamela Atchison, Deputy Director of Public Prosecutions in outlining her decision not to refer either Robert or David Stewart back to the court, said: "**As the specified**

prosecutor in this case, I have given very careful consideration to all the circumstances, and in particular, the detailed judgment of the trial judge, the Honourable Mr Justice Gillen, in the case of R v Haddock and Others, and have concluded that Robert John Stewart and David Ian Stewart each knowingly breached the terms of their respective agreements during the course of giving evidence.

“In relation to the interests of justice, I had to balance a number of different considerations, including the significance and consequences of the breaches of the agreements. In this regard, it is important to point out that none of the breaches that I identified falsely implicated any individual in the commission of a crime and none would have led to the conviction of any of the accused in the trial. I also concluded that the breaches did not play a significant role in the outcome of the trial.

“Other relevant interests of justice considerations which I had to balance included the nature and extent of the assistance provided by each of the Stewart brothers to police and in evidence, and expert medical evidence received by the PPS in relation to the likely effect of any referral on their physical and mental health.

“Having regard to all the circumstances I have concluded that the interests of justice do not require either of the Stewarts to be referred,” she added.

Confirming the decision to refer Neill Hyde, Barra McGrory QC said: **“The specified prosecutor in this case has concluded that there is sufficient evidence that Neill Hyde knowingly breached the terms of his agreement and that it is in the interest of justice that the case be referred back to the original sentencing court.**

“As this matter is now before the courts it would inappropriate to comment further.”

Notes to editors

Section 74 of the Serious and Organised Crime and Police Act 2005

The power to review a sentence under section 74 arises where a Crown Court has passed a sentence on a person and that person falls within one of the categories identified in section 74(2).

Section 74(2) states that a person falls within this subsection if:-

- (a) he receives a discounted sentence in consequence of his having offered in pursuance of a written agreement to give assistance to the prosecutor or investigator of an offence but he **knowingly fails to any extent** to give assistance in accordance with the agreement. (Highlighting mine)

Three observations may be made about section 74(2)(a):-

- i. Whether an offender falls within its scope is to be determined by reference to whether that offender has complied with the terms of the written agreement he has entered into with the prosecution.
- ii. Where an offender fails to comply with such an agreement he must do so 'knowingly' in order to fall within the ambit of section 74. By using the word 'knowingly' Parliament may be presumed to have intended that a person must deliberately fail to provide the assistance promised in the agreement.
- i. Once there has been a deliberate breach there is no materiality threshold: it is sufficient if a person knowingly fails 'to any extent' to assist the prosecution as anticipated.

Where a person falls within the scope of section 74(1) and (2), it is for a 'specified prosecutor' to initiate the process by which a review of the discounted sentence may be carried out by the court. The process is governed by section 74(3). It allows a referral back to the court by which the sentence was passed if two conditions are met. The subsection provides:-

"A specified prosecutor may at any stage refer the case back to the court by which the sentence was passed if –

- (a) the person is still serving his sentence; and
- (b) the specified prosecutor thinks it is in the interests of justice to do so."

Background

Robert John Stewart and David Ian Stewart

1. On 4th August 2008, David Ian and Robert John Stewart went to Antrim PSNI Station of their own accord and admitted their involvement in the murder of Thomas English on 30 October 2000.
2. They were arrested and interviewed separately under caution. Both admitted their respective roles in the murder and named other persons involved. Both were charged with murder and membership of the UVF.
3. Both subsequently expressed a wish to become 'Assisting Offenders' under the 2005 Act. On 15 October 2008 each entered into an agreement with the then specified prosecutor

- under section 73 of the 2005 Act. Having entered into the agreement both of them participated in a de-briefing process conducted by the PSNI and assisted by the provision of detailed evidence and information in relation to the investigation being conducted by the PSNI into the murder of Thomas English. They also provided assistance in respect of other offences connected and unconnected to that incident.
4. David Ian Stewart and Robert John Stewart pleaded guilty on 12 February 2010 at Belfast Crown Court to those offences each had admitted as were determined by the PPS to have met the Test for Prosecution.
 5. On 24 February 2010 both were given life sentences. In determining the minimum period to be spent in custody the sentencing court identified a starting point of 22 years. It then applied a 75% discount for their assistance under SOCPA. The period to be served was further reduced for their guilty pleas and personal circumstance to three years .
 6. In accordance with their agreements David Ian and Robert John Stewart gave evidence for the prosecution at the trial of Mark Haddock & Others for the murder of Thomas English and other offences which commenced at Belfast Crown Court on 6 September 2011
 7. Judgement was handed down on 22 February. All accused with the exception of Neill Pollock were acquitted on all counts. Pollock was convicted on two counts on the basis of evidence other than the evidence of the Stewarts

Neill Hyde

8. In the course of the police investigation into the murder of Martin O'Hagan on 28 September 2001 a suspect, Neil Hyde, indicated that he was willing to enter an agreement under s 73 of the Serious Organised Crime and Police Act 2005 to assist the authorities.
9. As part of that process Neil Hyde was interviewed by police at length about the full extent of his involvement in the murder and his involvement in the commission of offences on other occasions.
10. Applying the test for prosecution the PPS has prosecuted Neil Hyde for a range of offences including an offence of conspiring to carry a firearm with intent to wound committed in connection with the murder of Martin O'Hagan.
11. On 3 February 2012 the sentencing court determined the starting point of 18 years imprisonment. It then applied a 75% discount for his assistance under SOCPA. The sentence was further reduced for his guilty pleas resulting in a sentence of three years imprisonment.

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