

**REGINA**  
**v**  
**VON HOOGSTRATEN**

**PARERE PRO VERITATE RE SENTENCE**

1. On the 25th October 2002 before Mr. Justice Newman the Defendant will be sentenced for the offence of manslaughter after a three month trial whereupon he was tried for murder in conjunction with two co-defendants.

2. I associate myself with the skeleton argument of my colleagues from the English Bar submitted to the Court and particularly to para. 19 and 20 of those submissions.

Documents examined for the purposes of these submissions

3. It is conceded that none of those filing submissions on sentence appeared at trial and as such do not have first hand knowledge of the trial.

4. I have reviewed and read 38 x A4 files of papers that formed part of the trial including the jury bundle, opening and closing speeches from Counsel for the Crown and Defence, a number of exhibits, photographs and information disclosed to the Defence that formed part of the Unused Material.

5. The real question for the Trial Judge on deciding sentence is the danger the Defendants would be to the public upon release.

6. The Trial Judge ordered a psychiatric report at the conclusion of the trial to assist with the assessment of the said question regarding 'danger to the public'.

7. The Defence, by the kind and just order of the Trial Judge, were allowed to commission their own report in order that the Trial Judge would have a 'balanced view' from those specialist in the assessment of risk.

8. The Court received from Dr. Ian Cummings resident psychiatrist at HMP Belmarsh on 24th September a helpful report pursuant to the said request from the Trial Judge. The said report is founded upon various factors including a review of papers similar to those reviewed as per para.4 of this parere.

9. The report of Dr. Cummings concludes with an opinion that can be found at the last two pages marked para 1-7. It concludes as follows:

"I would suggest therefore that future offending is best predicted in terms of his past offending and if others pose a financial risk to him he is likely to resolve the risk by whatever means possible."

10. The Defence report has been prepared by Dr. Gwilym Hayes and in accordance with the very proper and correct direction of the Trial Judge was filed with the Court on 17th October 2002. Dr. Hayes's conclusions can be found in para 12 of the said report and particular attention should be paid to para 12.4 which states:

"In summary, it is highly unlikely that Mr Van Hoogstraten poses any risk to the public on the grounds of mental illness and/or drug/alcohol use."

11. The Trial Judge is thus faced with views from two experts who, whilst clearly stating that the risk elements for the purposes of sentence are low are somewhat conditioned to various factors and other than a further detailed assessment as recommended by Dr. Hayes in para 12.3 of his report, the Trial Judge is faced with sentencing the Defendant on the analysis made by the said Trial Judge throughout Trial.

12. It is submitted that such would not be appropriate and as such further evidence of risk must be made available to complete and/or perfect the reports of both experts without any further delay for the purposes of sentence.

13. Dr. Cummings has stated that in preparing his report he reviewed the following:

- (1) Statements and Depositions surrounding the index offence
- (2) A copy of his police interview
- (3) Transcripts of his evidence at trial

14. It is thus clear that Dr. Cummings has not, and there is no criticism on such, reviewed the unused material in the case or the jury bundle.

15. It is submitted that for the purposes of sentence the Trial Judge can take some comfort in the following document attached and found in the unused material marked pages "1272-1274" and marked: " Briefing. Arrest of Nicholas VON-HOOGSTRATEN" and a document prepared by the Metropolitan Police investigating the murder of the victim and the subject matter of the indictment faced by the Defendant.

16. Careful attention should be paid to page 1274 marked: "RISK" which states:

" Mr VON-HOOGSTRATEN has been convicted of violence including the use of a hand grenade, many years ago. He has however been interviewed during the course of this enquiry without incident. There are no significant grounds

to suspect he will exercise force against police or that there is a substantial risk from anyone likely to be in his company."

#### CONCLUSION

It is submitted that it must thus follow that on the evidence of those investigating the Defendant on none other than the most serious of offences and at times-an arrest-whereupon anyone will be at the highest level of stress and turmoil, this Defendant is deemed not to pose any "substantial risk" and as such it is submitted the Trial Judge should impose the appropriate sentence according to such evidence emanating from those that carry the most intelligence into risk factor of this defendant.

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I T A L I A

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