

NEWS RELEASE

The Scottish Criminal Cases Review Commission ('the Commission') has today referred the case of Andrew Charles Affleck to the High Court of Justiciary.

In accordance with the Commission's statutory obligations, a statement of reasons for its decision has been sent to the High Court, Mr. Affleck and Crown Office. The Commission has no power under its founding statute to make copies of its statements of reasons available to the public. Brief summaries of the background of the case, the evidence led at the trial, the grounds the Commission rejected and the Commission's reasons for referral are given below. These summaries are for information purposes only and the content of this news release should not be treated as forming part of the Commission's statement of reasons.

1.0 Background

1.1 On 28 October 2003, at the High Court at Kilmarnock, Mr. Affleck appeared on an indictment which narrated that on 2 March 2001 he, while acting with others unknown, set fire to the house at 17 Sanderson Avenue, Irvine, occupied by Diane Docherty, Ainsley MacDougall, Alexander Parker, Anna Teraysa Murray, Carrie Marie Murray and Amanda Cooper; that the fire took effect thereon; that Anna Teraysa Murray, Carrie Marie Murray and Amanda Cooper were so severely injured that they died; that Diane Docherty, Ainsley MacDougall and Alexander Parker were injured; and that he did thus murder Anna Teraysa Murray, Carrie Marie Murray and Amanda Cooper, and attempt to murder Diane Docherty, Ainsley MacDougall and Alexander Parker.

1.2 On 13 November 2003, the jury, by a majority verdict, found Mr. Affleck guilty of the murders and attempted murders of the aforementioned persons. He was sentenced to life imprisonment with a punishment part of 27 years' imprisonment. On appeal, however, the High Court reduced the punishment part to one of 23 years' imprisonment.

2.0 Evidence at the Trial

2.1 There were two key witnesses in the case against Mr. Affleck.

2.2 An eyewitness gave evidence that he had seen Mr. Affleck, whom he knew, running away from the locus on the morning of the fire. This eyewitness had given four statements to the police. In his first police statement, he did not mention having seen anyone at the locus before the fire. In his next two police statements, he stated expressly that he had not seen anyone at the locus before the fire. In his

fourth police statement, given on 26 July 2002, he said that he had seen Mr. Affleck running away from the locus on the morning of the fire.

2.3 Another witness gave evidence that in or around March 2002 she asked Mr. Affleck whether he had done it – meaning whether he had set fire to the locus – and he said that he did do it.

3.0 Grounds the Commission Rejected

3.1 Mr. Affleck raised three broad grounds of review in relation to his conviction: he had concerns about the conduct of the police in their treatment of various Crown witnesses; he challenged the admissibility of certain evidence that the Crown led at the trial; and he challenged the reasonableness of the trial court's verdict, based on the legal test set out in section 106(3)(b) of the Criminal Procedure (Scotland) Act 1995. The Commission rejected those grounds of review.

4.0 Reasons for Referral

4.1 The Crown did not disclose to the defence that the eyewitness had been charged with drugs offences on 16 July 2002 and on three further occasions in 2002. It was shortly after the first date that the eyewitness indicated to the police for the first time that Mr. Affleck was involved in the crime.

4.2 The Commission considers that the failure by the Crown to provide the defence with this information, in light of the decision of the Judicial Committee of the Privy Council in *Holland v HMA* 2005 SCCR 417, infringed Mr. Affleck's rights to a fair trial under article 6 of the European Convention of Human Rights and may have led to a miscarriage of justice.

5.0 Notes for Editors

5.1 The Scottish Criminal Cases Review Commission was established as an independent body on 1 April 1999 to review alleged miscarriages of justice in Scottish convictions and/or sentences. Under section 194A–L of the Criminal Procedure (Scotland) Act 1995, as inserted by section 25 of the Crime and Punishment (Scotland) Act 1997, the Commission may refer a case to the High Court if it believes that a miscarriage of justice may have occurred and that it is in the interests of justice that a reference should be made. Once the Commission refers a case to the High Court, the case will proceed as a normal appeal.

5.2 The Commission operates with a Board of seven Members (one of whom is the Chairperson), a Chief Executive, a Director of Corporate Services, two Senior Legal Officers, six Legal Officers and administrative support staff.

5.3 The Commission has reviewed its policy on disclosure and, from 1 April 2008, it has or will disclose the fact that a case has been referred to the High Court, and has or will provide a short summary of the reasons for this. However, as the Commission operates under statutory non-disclosure provisions, it is not considered appropriate for the Commission to disclose any additional information about such cases. The Commission will not release any information about cases in which no referral has been made or in respect of cases under review.

5.4 For any further general information about the Commission, please contact Mr. Chris Reddick, Director of Corporate Services, SCCRC, 5th Floor, Portland House, 17 Renfield Street, Glasgow; telephone: 0141 270 7030; e-mail: creddick@sccrc.org.uk; or visit the Commission's website at www.sccrc.org.uk