

NEWS RELEASE

The Scottish Criminal Cases Review Commission ('the Commission') has today referred the case of Gary Edward Polland 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. Polland 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 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 14 November 2006, at the High Court at Glasgow, Mr. Polland and four co-accused appeared on an indictment which included the following charges: (1) on 30 October 2004, in a street in the East End of Glasgow, he and his co-accused formed part of a disorderly crowd, shouted, swore and assaulted Mr. George Fleming by striking him with a pickaxe handle or similar instrument, all to his severe injury, permanent disfigurement, permanent impairment and to the danger to his life; and (2) on 30 October 2004, he and his co-accused formed part of a disorderly crowd, shouted, swore and assaulted Mr. Edward McDermott by striking him on the head with a pickaxe handle or similar instrument, to his severe injury. Mr. Polland pled not guilty to both charges.

1.2 On 22 November 2006, the members of the jury, by a majority verdict, found Mr. Polland guilty of charge 1 on an art and part basis, and they, by a unanimous verdict, found him guilty of charge 2. He was sentenced to an extended sentence of eight years, comprising six years' imprisonment and an extension period of two years. He was refused leave to appeal against his conviction and sentence.

2.0 Reasons for Referral

2.1 The Commission reviewed a number of grounds in relation to Mr. Polland's case and has decided to refer his case on the following two grounds.

2.2 The Commission considers that the Crown did not disclose to the defence certain information in relation to the identification of Mr. Polland. In light of the decisions of the Judicial Committee of the Privy Council in *Holland v HMA* 2005 SCCR 417 and *Sinclair v HMA* 2005 SCCR 446, and the decisions of the High Court in *Gair v HMA* 2006 SCCR 419 and *Mason & McDougall v HMA*

2008 SLT 656, the Commission considers that the failure by the Crown to provide the defence with the information infringed Mr. Polland'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.

2.3 The Commission considers that counsel failed to prepare adequately Mr. Polland's defence and failed effectively to cross-examine witnesses and that Mr. Polland's defence was not presented in accordance with his instructions. In light of the decisions of the High Court in *Anderson v HMA* 1996 SCCR 114 and *E v HMA* 2002 SCCR 341, the Commission considers that those failures amount to defective representation because they deprived Mr. Polland of a fair trial and may have led to a miscarriage of justice.

3.0 Notes for Editors

3.1 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.

3.2 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.

3.3 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.

3.4 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