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Judgment: approved by the court for handing down	*Delivered:*	**20/06/2025**

IN HIS MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE KING

v

EMMANUEL QUINN

Mr M Wilson BL (instructed by RJW Law) for the Applicant
Mr J Johnston BL (instructed by the Public Prosecution) for the Crown

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Before: Keegan LCJ, McCloskey LJ and McLaughlin J

McLAUGHLIN J (*delivering the judgment of the court*)

Introduction

[1] This is a renewed application for leave appeal against sentence imposed by Her Honour Judge Crawford on 19 November 2024. Leave was refused by the single judge, Colton J.

[2] The offences for which the applicant was sentenced were committed on 4 September 2022. The Bill of indictment contained four counts:

(i) Conspiracy to Rob, contrary to section 8(1) of the Theft Act (NI) 1969 and Article 9(1) of the Criminal Attempts and Conspiracy (NI) Order 1983.

(ii) Robbery, contrary to Section 8(1) of the Theft Act (NI) 1969.

(iii) Possession of an offensive weapon with intent to commit an indictable offence, contrary to section 93 of the Justice (NI) Act

(iv) Receiving stolen goods, contrary to section 2(1) of the Theft Act 1969.

Each count arose out of a single course of offending.

[3] On arraignment at Belfast Crown Court on 4 July 2024, the applicant pleaded not guilty to all four charges. His trial was listed for hearing at Belfast Crown Court on 17 September 2024. On 12 September 2024, the applicant was re-arraigned on Counts 1 and 2 and entered guilty pleas to both charges. Counts 3 and 4 were not proceeded with and were left on the books.

[4] There was in effect an agreed basis of plea. In summary (derived from the sentencing decision):

(i) At approximately 7.30pm on 4 September 2022, the applicant and his co-accused approached the Winemark off licence on Rosetta Road, Belfast in an Audi Q car, parking outside at an unusual angle. The rear number plate was missing. The car was observed by a passing dog walker. The applicant and his co-accused were inside the car, the applicant wearing a beanie hat and his co-accused wearing a bright yellow ski mask. Both men got out of the car and were observed on CCTV to be wearing blue surgical gloves, with the co-accused appearing to hold something behind his back. They did not enter the premises and appear to have been deterred by the presence of the passer-by.

(ii) Approximately 30 minutes later at around 8:10pm, both men entered Russell's Cellars off licence and were again captured on CCTV, with the applicant wearing a beanie hat and his hood up. Both men were wearing surgical gloves. Smith was again wearing a yellow ski mask and was carrying a knife with a 5-6" blade.

(iii) They went behind the tills and shouted aggressively at the 19-year-old female till operator to open the till, which they proceeded to empty and bagged cigarettes from behind the counter. The blade of the knife was visible at all times.

(iv) They then shouted that they wanted money from the safe and the till operator led them to the office. She opened the safe, which held only cigarettes. Mr Smith threatened to stab her if she did not find cash. A second safe was then opened and cash taken.

(v) Approximately £2,000 in cash and an unknown amount of cigarettes were stolen. The staff in the shop were seen visibly shaking as they searched for a panic button after the men had left, then crouching or slouching to the floor. Help was required from other members of staff, and they were seen crying.

[5] Both men were sentenced on a joint enterprise basis, in light of their joint participation in the offences. The judge approached sentencing for both offences, by reference to the Totality Principle. She treated the Robbery Count as the lead offence

and the Conspiracy Count (relating to the aborted robbery of the Winemark store) as an aggravating feature. It was not argued that this approach was wrong in principle.

[6] As regards this applicant, the judge expressly identified a series of additional aggravating features, which were in line with those proposed by the Crown in its sentencing submissions and which were not disputed by the applicant. They were:

- The use of a weapon, namely a knife to perpetrate the robbery.

- The degree of pre-meditation and planning, as evidenced by the use of gloves; the use of a stolen Vehicle Registration Number; the use of a car with detachable plates and the use of a second vehicle.

- The applicant's extensive criminal record, which included a total of 167 prior convictions, including substantial number of convictions for dishonesty:

    - 2 x robbery
    - 11 x burglary
    - 3 x assault
    - 4 x drugs
    - 19 x theft

[7] It was not argued that any of these aggravating factors was inappropriate or otherwise wrong in principle.

[8] The judge correctly noted that there was a 10-year gap in the applicant's offending from 2011 onwards. This coincided with a period of stable employment for the applicant which was again expressly acknowledged by the learned judge in her analysis of the pre-sentence probation report. The judge also recognised all of the mitigating factors which had been advanced on behalf of the applicant prior to sentencing, namely:

- The plea of guilty coupled with his applicant's remorse, regret and insight into the impact of his offending.

- The positive efforts made by the applicant while on bail to address his addiction issues and to reform his lifestyle. These were set out in a detailed analysis of the applicant's pre-sentence report, which included an assessment by the probation officer that he did not pose a significant risk of harm to the public.

- The applicant's family responsibilities.

The latter factor is the one which was the focus of Ground 2 of the appeal. We assess this as follows.

[9] The judge did not simply recognise the applicant's family responsibilities as a mitigating factor. Rather, her sentencing decision contains a comprehensive and thorough analysis both of those circumstances and the impact which his imprisonment was likely to have upon his family. In particular, the judge noted that the applicant was the father of seven children, including a baby daughter to his current wife who was conceived and born during the period of his bail and who sadly suffers from a brain injury. While the child was initially in a care placement, the positive efforts made by the applicant and his wife to implement the recommendations of the Trust had resulted in the Trust planning for the child's rehabilitation to parental care, with the support of a family network. The judge also noted that one of the applicant's other children was likely to be particularly affected by his imprisonment, as she was dependent upon him for emotional support.

[10] As was accepted by the applicant both at sentencing and before this court, the custody threshold was clearly surpassed in this case. On this basis, after taking account of all of the circumstances of the applicant's offending, including the aggravating and mitigating factors and in particular applicant's family responsibilities, the judge decided that, if he had been convicted following contest, she would have sentenced him to eight years' imprisonment for the lead offence. Giving effect to a reduction for his plea of guilty, the judge imposed a sentence of five years and nine months on Count 2 of robbery, to run concurrently with a sentence of four years and four months on Count 1, with both sentences divided equally between custody and licence. On the lead offence, this represented a reduction of just over 28% for the guilty plea.

Grounds of appeal

[11] There were two grounds of appeal which contain a substantial degree of overlap. They were:

(i) The starting point of eight years was too high in the circumstances of the case.

(ii) The learned judge failed to give sufficient weight to the applicant's domestic circumstances.

Ground 1 – Excessive starting point

[12] There was no dispute either at sentencing or before this court as to the applicable sentencing guidelines. They were set out by this court in its decisions in *AG's Reference (No.1 of 2004)(Pearson)* [2004] NICA 6 and more recently in *R v McDaid & Gault* [2017] NICA 37. In *McDaid & Gault*, the facts were not unlike those in this case. The defendants pleaded guilty to the robbery of a Spar shop, while armed with a knife, while wearing face coverings and threatening members of staff before demanding money. The court made clear that for those principally involved in such

a robbery of commercial premises, the appropriate range of sentence, upon conviction after contest, was 8–12 years, if no firearm was involved. This court in *McDaid and Gault* also explained that in its previous decision in *Pearson*, the guideline sentence of 5–7 years on a plea related to a secondary offender, which meant that the starting point following a contest for an offender who had not played a central role was 7–9 years.

[13] In the present case, the applicant unquestionably played a central role in the robbery along with this co-accused and both were charged on a joint enterprise basis. The applicant should therefore be treated as primary participant for the purposes sentencing. The lead offence was also aggravated by the conspiracy count. Two separate offences therefore fell to be considered by the sentencing judge.

[14] It is clearly incontestable that the applicant's culpability in the offences was significant. He was an active participant in this pre-planned robbery which involved the use of a weapon, the use of terrifying threats to staff members and demonstrated a high degree of prior planning. Similarly, the harm which he caused was significant in the form of the serious and ongoing trauma suffered by the staff members in the Russells Cellars off licence. The judge also recognised that the applicant had not personally been involved in brandishing the knife or issuing the threats. While she recognised that the difference between the two was slight, this factor along with the other mitigating factors applicable to the applicant were reflected in the decision to apply a lower starting point for the applicant (ie eight years), than for the co-accused Smyth (nine years). All of these features of the offending were recognised by the learned judge in her sentencing remarks. Despite the level of applicant's culpability and the harm which he caused, the starting point determined by the judge, after consideration of aggravating and mitigating factors, was at the bottom end of the range which has been approved by this court for a single offence. No challenge has been made by the applicant to those guidelines and the judge's starting point cannot therefore be disturbed on appeal. Ground 1, therefore, has no merit and must be rejected.

Ground 2 – Domestic responsibilities and impact upon family members

[15] Ground 2 relates to the weight which the judge applied to the applicant's domestic circumstances. In particular, the applicant relies upon the effect which a custodial sentence would have upon other members of his family, including his wife, his infant daughter and his older daughter.

[16] The applicant has relied upon the recent decision of this court in *R v Devlin* [2023] NICA 71, in which it considered the relevance for sentencing purposes of the impact which a custodial sentence may have upon other members of the defendant's family. In that decision, the court expressly approved the analysis of that issue by the Court of Appeal in England & Wales in *R v Petherick* [2012] EWCA Crim 2214, which enunciated nine principles. Reliance was placed on Principle 8 which makes clear that, in some cases, but not every case, where a custodial sentence is necessary, the

effect of that sentence upon children or other family members can afford grounds for mitigating the length of the sentence. Principle 7 is also of relevance insofar as it makes clear that where a custodial sentence is unavoidable in furtherance of the public interests of punishment and deterrence, the likelihood of the sentence being disproportionate diminishes with the gravity of the offence. There is no doubt that the offences in this case were serious.

[17] What is clear from this line of authorities is that the effects of a custodial sentence upon family life and other members of the defendant's family is simply one of many mitigating factors which may be applicable on the facts of any particular case. It is, therefore, a matter for the sentencing judge to determine whether it arises on the facts of that case and to determine the weight which it should receive in the sentencing exercise. It is not a mitigating factor which enjoys a unique place in the sentencing exercise nor in the hierarchy of sentencing principles. Where the issue has been considered and afforded weight by the judge and the overall sentence is otherwise appropriate, this court is unlikely to intervene on appeal.

[18] In this case, it is very clear from the judge's careful sentencing remarks that she was fully informed about the applicant's domestic circumstances and responsibilities. She had the benefit of and referred to both the detailed pre-sentence report which explained this background and also the letter from the Trust which explained his positive engagement with all work recommended by the Trust to facilitate the rehabilitation of his daughter to parental care. The letter also recorded the Trust's view of the adverse effect upon his infant daughter of a long custodial sentence, in light of the close relationship which she had formed with the applicant.

[19] The judge expressly took all of these matters into account and referred to them in her sentencing remarks. She also correctly observed that the Trust's plan for rehabilitation was not for the return of the child to the sole custody of the applicant, but to joint parental care, along with the support of a family network, with no suggestion that a custodial sentence would preclude the return of the child to her mother's care.

[20] We consider that the weight afforded to this factor by the judge was appropriate in balancing all of the mitigating and aggravating features and determining a starting point of eight years, prior to reduction for the plea of guilty. The appellant does not and could not challenge the extent of reduction applied by the judge for the applicant's plea of guilty, which was towards the generous end of the scale which was available to the judge.

[21] The result is that the overall sentence of five years and nine months, was neither wrong in principle nor manifestly excessive and we consider that Ground 2 also fails. In reaching that conclusion we do not accept the applicant's submission that the judge erred by not expressly articulating the size of the reduction which she applied to the specific mitigating factor of the impact of a custodial sentence upon family members.

On any reasonable assessment it was clearly considered by her. This submission by the applicant reflects an aspiration towards a counsel of perfection which was not required as part of an overall sentencing exercise.

[22] The applicant also relied upon the recent decision of this court in *R v Ruddy* [2025] NICA 13 and contended that the judge should have made a separate and further reduction for domestic circumstances after setting a starting point and after making a reduction for a plea of guilty. We do not accept that the decision in *Ruddy* establishes an obligation to do so. *Ruddy* was a case in which the judge had not identified any starting point, and the comments made at paras [40] and [41] of *Ruddy* were simply an observation on the sentencing methodology which had been applied by the sentencing judge in *Devlin* and which it may have been possible for the judge in *Ruddy* to follow. It was not a general statement of principle, nor did it articulate a mandatory methodology for future sentencing decisions. Where the sentencing judge has already taken account of domestic circumstances as a mitigating factor prior to reaching a starting point which is otherwise appropriate, a further reduction on this ground after a reduction for a plea of guilty is likely to amount to double counting. We are satisfied that the learned judge was not obligated to apply a further reduction for domestic circumstances in this case.

[23] As we have set out above, the learned judge correctly applied the principles set out in *Devlin* by recognising the domestic responsibilities of the applicant as a mitigating factor and by giving it appropriate weight when setting the starting point at eight years.

Conclusion

[24] For all of these reasons, we do not consider there to be any merit in either of the proposed grounds of appeal.

[25] The sentence imposed by the learned judge of five years and months months, divided evenly between custody and licence, was neither wrong in principle nor manifestly excessive. The application for leave to appeal is therefore refused.