

IN THE CROWN COURT IN NORTHERN IRELAND

BELFAST CROWN COURT

THE QUEEN

v

**PATRICK MARTIN SMYTH, MARK FRANCIS O'NEILL
AND JOHN SEAN HUGHES**

STEPHENS J

[1] Patrick Martin Smyth, on 8 June 2009 you pleaded guilty to:-

- (a) kidnapping Nicola Canavan on 12 February 2007; and
- (b) robbing Claire Canavan of cash to the value of £39,734.14 and a foreign currency equivalent of £7,121.25 (a total of £46,855.39).

You had been arraigned in relation to these offences on 5 December 2008 at which stage you pleaded not guilty. Your trial started on 9 March 2009. You contested the charges. On Thursday 18 March 2009, the seventh day of your trial, I had to discharge the jury as there had been a failure to disclose CCTV recordings. The recordings had been seized but not made available to the prosecution and therefore had not been made available to you. Your trial was due to recommence on Monday 8 June 2009. In the intervening period the prosecution had served a notice of additional evidence, including CCTV images. You asked to be re-arraigned and it was at that stage that you then belatedly pleaded guilty. You were subsequently interviewed for the purposes of a pre sentence report and put forward a factual description of your involvement in these offences which was inconsistent with your plea. This led to your counsel and solicitor being unable to continue to act for you. Further delay occurred whilst new legal representation was arranged. This delay impacted adversely in a number of ways including on your victims and on the

co accused who have been waiting to be sentenced for a considerable period of time.

[2] In respect of you Patrick Martin Smyth I should also record that during the trial, which commenced on 6 March 2009, both Nicola and Claire Canavan endured the ordeal of giving evidence and reliving their horrific experiences though there was no attack on their honesty nor was there any suggestion made to them that they were acting maliciously. I have no doubt that this ordeal caused additional harm to both of them. In fairness to you your then counsel wished to save them that ordeal by agreeing their evidence. This was not possible for what I accept were obvious, valid and proper reasons. For instance you denied that Nicola Canavan had been held in your flat and accordingly her description of what she saw and the jury's assessment of her and her reliability were crucial. Your persistence in your plea of not guilty, even after that first trial and the service of additional evidence, meant that Nicola and Claire Canavan had to further endure the worry and anxiety of anticipating giving evidence on a second occasion.

[3] Mark Francis O'Neill and John Sean Hughes on Friday 6 March 2009, the working day before your trial was due to commence on Monday 9 March 2009, both of you requested an advance indication of the maximum sentence that I would impose on you if you then pleaded guilty. The request for an advance indication of maximum sentence was in accordance with the practice set out by the Court of Appeal in *Attorney General's Reference No 1/2005 (R v. Rooney)* [2005] NICA 44. Mr Murphy QC, who appeared on behalf of the prosecution with Mr David Russell, made available a 16 page summary of the facts. There was no dispute as to those facts. He also made available a summary of the relevant sentencing authorities and a description of aggravating and mitigating factors. I agreed to and did give an advance indication of the maximum sentence that I would impose if either of you pleaded guilty at that stage. Both of you then pleaded guilty to:-

- (a) Kidnapping Nicola Canavan on 12 February 2007.
- (b) Robbing Claire Canavan of cash to the value of £39,734.14 and a foreign currency equivalent of £7,121.25 (a total of £46,855.39).

Both of you had also been arraigned in relation to these offences on 5 December 2008 at which stage you had pleaded not guilty.

Factual Background

[4] The factual background has been outlined to the court by Mr Murphy on behalf of the prosecution on 6 March 2009 and in opening the case against you, Patrick Martin Smyth, on 9 March 2009. In addition I heard a considerable

volume of evidence during the course of the trial in March 2009. I emphasise that in relation to you Mark Francis O'Neill and you John Sean Hughes I sentence purely on the basis of the facts as contained in the 16 page summary of facts provided to me for the purposes of the hearing leading to the advanced indication of sentence.

[5] Claire Canavan is the manageress of the post office at Tesco in Yorkgate, Belfast. She lives with her daughter, Nicola Canavan, who was then 19 years of age. Their home on the Oldpark Road, is not far from her mother's address at Rosapenna Drive. Her mother, Elizabeth McVeigh, is disabled and requires considerable assistance which is afforded to her by her son, Patrick Joseph McVeigh and also by Claire Canavan. It was Claire Canavan's routine every day after work to visit her mother's house together with her daughter Nicola. You, John Sean Joseph Hughes, lived just across the road in Rosapenna Drive from Elizabeth McVeigh's house.

[6] On the evening of Monday 12 February 2007 Claire and Nicola Canavan were as usual at the home of Elizabeth McVeigh. Shortly before 7.00 pm Nicola Canavan decided to go round to her own house upon entering which she went straight upstairs. While she was there alone she heard the door open and someone coming up the stairs. She then saw a man with a hooded jacket and a mask over his face. She was petrified. Duct tape was put over her mouth. She was grabbed and brought out through the back of the house where there was another man at the back gate wearing a mask. She was brought to a car and pushed into the car with her head down. There was a third man driving the car.

[7] Nicola Canavan was taken to a flat where she was held until about 11.00 am the next day, Tuesday 13 February 2007. It now transpires that the flat in which she was held was a flat occupied by you, Patrick Martin Smyth, at 63 Carrick Hill, Belfast. When she was taken to the flat she was told that they just wanted to scare her mother and that they knew everything about them and that they had been watching them for 6 months. They said that if she told anyone they would come back and get her mother, her grandmother and her uncle. During the evening, the kidnappers, let her ring her mother, Claire Canavan. On the first occasion Nicola Canavan told her mother that she had been kidnapped and just do everything that she was told. During this call, the phone was snatched from Nicola Canavan by one of the kidnappers who shouted down the phone at her mother. Later Nicola Canavan was allowed to ring her mother again and she passed on to her mother the message that she was to do everything that she was told to do. The next morning she thinks it was at about 8.00 am, one of the men came in and said they were going to contact her mother and she should be out in a few hours. Threats continued to be made to Nicola Canavan that she would suffer the consequences. That her kidnappers knew where everyone in her family lived. Nicola Canavan eventually was released at about 11.00 am.

[8] This was an horrific ordeal callously imposed on a vulnerable and impressionable individual. Sordid brutality which has had an enduring effect. Such is the moral poverty involved that I conclude that no consideration was given to the appalling potential consequences for Nicola Canavan but rather one of the kidnapper's revelled in what fortunately was the mistaken belief that "everything was working like magic". Horror for Nicola Canavan was magic for one of the perpetrators. There is no evidence that any of you made this remark but each of you have accepted that you played a central role in these offences and I make it clear to all of you now that you will be imprisoned for a substantial period for the central role that you played in the gross intrusion into the physical and mental safety and security of Nicola Canavan.

[9] I now set out what occurred to Claire Canavan. It is recollected that she was at her mother's house when her daughter Nicola Canavan was kidnapped. She subsequently received a telephone call from her daughter to tell her that she had been kidnapped. After she had spoken to her daughter a man told her that she had better get over to her house. He said he was giving her half an hour to get to her own house. He said, "We've got Nicola and as long as you do what we tell you she will be alright, but if you don't we will kill her". Upon receiving that telephone call Claire Canavan spoke to her brother and told him what had happened. She then went to her own house and when she arrived there she was again contacted by telephone to be informed that she had to carry out orders, that is that she was to do whatever she was told to do and as long as she did so that her daughter would be returned safely to her. She was told to go to the post office as normal in the morning and take everything out of the safe and everything out of the drawers. He said that he knew how much was in there and he told her to get a grip bag. He told her not to phone anybody, not to ring anyone on her mobile and not to make any contacts. He said that he would be touch in the morning.

[10] Claire Canavan stayed in the house thinking people were watching her. Just shortly before midnight she received a telephone call from her daughter who informed her that "as long as you bring them everything they want in the morning, bring it to them whenever they want you to bring it, give them everything they say and I will be alright, but they said do not contact the police".

[11] The following morning about 7.50 am the phone rang again and a man gave her the location to which she was to bring the money. He said the money had to be there at 9.00 am and he said, "don't blow this up or you will end up with the consequences of Nicola being killed".

[12] Claire Canavan found a sports bag. She went to work. She obtained everything out of the safe. She went to the location given to her by the kidnappers. She left the bag containing all the money. She then went back to

her house and waited. Eventually she got a phone call from her daughter after she had been released.

[13] Fortunately the police had been informed and as a result a police operation was put into place involving a police helicopter observing the scene. As a result of those observations the motor vehicle which had been used by you, Mark Francis O'Neill, and you, John Sean Hughes, was stopped on 15 February 2007. You were both arrested. Some but not all of the money was recovered. Fingerprints of all of you were found on the money that was recovered.

[14] All of three of you were arrested and interviewed by the police. You Patrick Martin Smyth and you John Sean Hughes gave false and misleading accounts to the police. You Mark Francis O'Neill did not respond to any questions that were asked.

Personal circumstances of Patrick Martin Smyth

[15] You, Patrick Martin Smyth, were born on 7 June 1963. You were aged 43 at the time of these offences. You are now aged 46. You were brought up in the New Lodge Road area of North Belfast, where you have lived for most of your life. Though intellectually able you left school at 16 without sitting GCSE examinations and started an apprenticeship as a carpenter. You were unable to continue this apprenticeship for health reasons and your life was unsettled for several years. You undertook some casual work for about 2 years. You have 3 children now aged 20, 18 and 14 though you are no longer in a relationship with your partner. In your late 20's you developed a serious alcohol problem and suffered from depression. You have abstained from alcohol for about nine years although depression continues to be an issue and in that respect I have a report from Dr Bownes, Consultant Forensic Psychiatrist dated 18 September 2009. For the past 4/5 years you have been living alone in a rented flat. You have been pursuing some studies and you intend to use your time constructively in custody preparing for the future.

Personal circumstances of Mark Francis O'Neill

[16] You, Mark Francis O'Neill, were born on 6 May 1976. You were aged 30 at the time of these offences. You are now aged 33. You were born in Belfast and brought up in the New Lodge area. Your parents separated about 30 years ago when your father was imprisoned for an extended period. Your mother took responsibility for your upbringing. She has worked extremely hard and is obviously committed to your welfare. She put up her life savings as surety for your bail. No one else in your family has been in trouble. You attended St Patrick's College, Antrim Road but developed a record of truancy and started drinking alcohol when you were 12 to 13 years old. By the time you were 16 you were a heavy drinker and a drug user as well as gambling heavily. By the

age of 20 you were a poly drug user on a daily basis, alcohol dependent and gambling had become a major problem. You left school without any qualifications. You obtained a City and Guilds qualification in painting and decorating. You obtained work as a painter but lost this job after approximately one year due to your alcohol and drug misuse. In 1997/98 you were beaten sustaining two fractured legs and spent several weeks in hospital. You are married with a daughter. Your wife, mother and family remain supportive. You have no history of violent offending.

Personal circumstances of John Sean Hughes

[17] You, John Sean Hughes, were born on 19 May 1971. You were aged 36 at the time of these offences. You are now aged 38. You are from the New Lodge area of Belfast and have three sisters and two brothers. Your mother died in 2005 and your father still lives in the same area. You attended St Patrick's Secondary School but left at the age of 16 without gaining any academic qualifications. You enrolled on a youth training programme learning a trade in painting and decorating. You have, whilst not in prison, had a ready supply of jobs in the construction industry until 2005. From the time of your mother's illness and death in 2005 you described an aimless existence consuming alcohol to excess for almost 2 years prior to the commission of these offences. You lived alone in private rented accommodation but occasionally stayed with your partner of 10 years and your 5 year old son.

Risk of harm to the public and likelihood of reoffending

[18] In respect of you, Patrick Martin Smyth, Alan Darnbrook, probation officer, having considered a number of sources of information including information that you provided to him has concluded that the likelihood of you re offending is low and that you do not pose a risk of serious harm to others. I do not accept that assessment based as it was on a false description of your involvement in these offences. You have been assessed as suitable for supervision by the probation service post custody and I accept that assessment. Your life has been marked by a lack of purpose, a period of alcohol abuse and by depression. I consider that there will be difficulties in the process of re-settlement, establishing accommodation and training and employment when you are released from custody and that assistance with these from the probation service will reduce the risk of re offending.

[19] In respect of you, Mark Francis O'Neill, Alan Darnbrook, probation officer, has concluded that you do not currently pose a high risk of harm to the public. He also considers that the likelihood of you reoffending has been assessed as medium. The main issues which Mr Darnbrook has identified which you must address to reduce future risk are:-

- (a) Alcohol and drug misuse.

- (b) Gambling addiction.
- (c) Employment/training.
- (d) Risk taking.
- (e) Reasoning/thinking.
- (f) Unstructured lifestyle.

You have expressed to Mr Darnbrook remorse and regret for contributing to the fear and harm experienced by the victims in this case. With a degree of reservation I accept those expressions of remorse and regret as genuine. You have been assessed as suitable for supervision by the probation service post custody and I accept that assessment.

[20] In respect of you, John Sean Hughes, Mary Cumming, probation officer, assesses that you have the potential to pose a serious risk of harm to the public though she qualifies that assessment by the possibility that the risk may not be significant at the present time because of a number of factors including:-

- (a) the thought that you have given to your behaviour and the factors which have influenced it,
- (b) the thought that you have given to the effect upon your victims, and
- (c) your willingness to make efforts to alter your future lifestyle and to address relevant issues.

The probation officer assesses the likelihood of reoffending as medium but this depends upon your ability to change your lifestyle. You have also have expressed remorse and again with a degree of reservation I consider that to be genuine. You have been assessed as suitable for supervision by the probation service post custody and I accept that assessment.

Victim Impact Statements

[21] I have the benefit of a report from Dr John S Ferguson, Chartered Clinical Forensic Psychologist. I am not going to set out all the detail of Dr Ferguson's report because some of the matters are of an acutely personal nature. The overall picture is of a profound impact on your victims. By the actions of each of you, you have made wretched what should have been for Nicola Canavan a period of great happiness. You have caused serious harm to her and to her mother Claire Canavan.

Procedural requirements for a custodial sentence

[22] Pre sentence reports have been made available to me in relation to each of you and I have considered them in accordance with the provisions of Article

21 of the Criminal Justice (Northern Ireland) Order 1996. In addition in determining the sentence to impose on each of you I have borne in mind the provisions of Article 19(2) of the Criminal Justice (Northern Ireland) Order 1996. I consider that the offences before me now in respect of each of you are so serious in their content that only a custodial sentence is justified. I repeat that each of you will be imprisoned for a substantial period for the central roles that each of you played in the gross intrusion into the physical and mental safety and security of Nicola Canavan, the invasion of the home of both Nicola and Claire Canavan and the destructive and controlling fear that you engendered in Claire Canavan to bring about this robbery.

Sentencing guidelines

[23] I consider, and all of your counsel agree, that the criminal activity in this case falls within the guidelines set by the Court of Appeal at paragraph [19] of the judgment in *Attorney General's Reference No 1/2005, Rooney and Others* [2005] NICA 45. That the starting point for sentence after a contest should be 15 years. On a plea of guilty at the earliest opportunity the appropriate starting point is 10 years imprisonment. That is the guideline which I seek to apply in your cases. In arriving at that conclusion I note that in *Attorney General's Reference No 1/2005, Rooney and Others* a firearm was used and this component is absent in your case. However it was recognised by counsel for each of you, and I agree that the component of kidnapping, which was absent in *Attorney General's Reference No 1/2005, Rooney and Others*, but present in your case, is an equivalent component. I am confirmed in that view by the decision of the Court of Appeal in *R v Colin McKeown, Jason Loyal & Robert Glasgow* NICA 1997. In that case MacDermott LJ indicated that for a robbery combined with kidnapping and the use of a firearm a sentence closer to 20 years than 15 years would be appropriate. Your case does not involve the use of a firearm and accordingly this would bring the range of sentence suggested in *R v Colin McKeown & others* down to the guideline in *Attorney General's Reference No 1/2005, Rooney and Others*.

[24] I was also referred to *R v. Gibbons and Others Attorney General's Reference* [2008] NICA 41, *R v. Dunbar* [2002] NICA 44, *R v. Turner and Others* [1975] 61 Cr. App. R67, *R v. Adams and Harding* [2000] 2 Cr. App. R(S)274 and *Attorney General's Reference Nos 56, 57, 58 of 2008* [2009] 235 EWCA Crim.

Consecutive or concurrent. Totality

[25] In considering the question as to whether the sentences that I impose on each of you should be consecutive or concurrent I have sought to apply the guidance of the Court of Appeal in *R v Samuel Robinson*. In that case Carswell LCJ quoted with approval a passage from the judgment of Hutton LCJ in *Attorney-General's Reference (No. 1 of 1991)* [1991] NI 218. Hutton LCJ summarised the matter in this way at page 224G-225A:

“We are of opinion that it would be undesirable in this jurisdiction to limit the discretion of the trial judge as to whether he should impose concurrent or consecutive sentences. The overriding concern must be that the total global sentence, whether made up of concurrent or consecutive sentences, must be appropriate. In some cases a judge may achieve this result more satisfactorily by imposing consecutive sentences. In other cases he may achieve it more satisfactorily by imposing concurrent sentences”.

[26] In respect of each of you I have concluded that it is appropriate to impose concurrent sentences. In arriving at that conclusion I have borne in mind that separate punishment for your offences must be by the imposition of concurrent sentences of sufficient length as to ensure that you do not escape punishment entirely by subsuming the sentence for one offence into the penalty imposed for the other. In addition I have considered the totality of your offending behaviour in arriving at the total global sentence so that when I am sentencing you for both offences and in fixing the total sentence that I will impose on you I will bear in mind the totality principle to ensure that the total sentence is proportionate to the offending behaviour and properly balanced.

Aggravating features in relation to the offences

[27] The following aggravating features in relation to the offences in which each of you played a central role are present:-

- (a) The offences were planned.
- (b) The victims were observed so that there was knowledge of their movements, occupation and family structure before committing these offences.
- (c) There were two victims, one then aged 19 and her mother then aged 45.
- (d) There was a threat of violence that if the demands were not met that one of the victims would be killed and accordingly a very high degree of force was threatened.
- (e) The nature of the offences while not involving direct violence were horrifying and frightening in the extreme to both victims and engendered a very considerable degree of fear in the victims
- (f) Both victims have endured and continue to endure considerable suffering as a result of these offences
- (g) You acted in concert as a group of offenders
- (h) You disguised your identities

- (i) The duration of these offences, which duration is to be particularly seen in the context of the youth of one of the victims.
- (j) A significant proportion of the money has not been recovered.

[28] In considering the aggravating factors I recognise that there is a degree of overlap between some of the aggravating features but nevertheless I consider that the aggravating features cumulatively make this a most serious case. I also consider that there is a clear need for deterrence so that it is absolutely clear that condign punishment will ensue for conduct such as yours.

[29] There is no evidence that any of you were ringleaders. For the avoidance of doubt I do not consider that there is any evidence that any of you were ringleaders in these offences.

Mitigating features in relation to the offences

[30] The prosecution have accepted, as do I, that Nicola Canavan was held in reasonable conditions and was given some re-assurance whilst being held captive.

[31] Each of you have pleaded guilty but none of you did so at the earliest opportunity. You Mark Francis O'Neill and John Sean Hughes you played no part in compelling your victims to relive the horror of their ordeals by giving evidence in court. The prosecution have accepted, as do I, that your pleas of guilty have also to be seen in the context that the prosecution served relevant additional evidence just prior to the commencement of the trial. You Patrick Martin Smyth showed no such compassion but persisted in your plea of not guilty during the first trial and only changed your plea when your trial was due to recommence. I give discounts to each of you for pleading guilty but not the full element which I would accord to earlier pleas. I allow a lesser discount to you Patrick Martin Smyth.

Aggravating features relating to the offenders

[32] You Patrick Martin Smyth have a criminal record but I do not consider it to be relevant and I do not treat it as an aggravating factor.

[33] You Mark Francis O'Neill have a criminal record which consists mostly of road traffic offences. There are convictions for theft and handling but these occurred some considerable time ago and the penalties imposed lead me to conclude that they were minor offences. I do not consider your record to be relevant and I do not treat it as an aggravating feature in your case.

[34] You John Sean Hughes, by contrast have a significant and relevant criminal record. On 27 June 1989 when you were 18 years of age you

committed the offences of manslaughter and possessing an offensive weapon in a public place. You were sentenced to 4 years detention in a young offenders centre. On 4 October 1993 you committed a number of offences including causing an explosion likely to endanger life or property and false imprisonment. You received a 12 year prison sentence. You have no further criminal convictions since your release on 21 October 1998.

Mitigating features relating to the offenders

[35] I take into account each of your personal circumstances. However in doing so I emphasise that this does not weigh heavily in reduction of penalty where the offences are, as in this case, serious.

[36] I bear in mind the distinction between genuine remorse and concern as to the position in which each of you see yourself, see *R v Ryan Quinn* [2006] NICA 27 and *Attorney General's Reference (No. 6 of 2004) (Conor Gerard Doyle)* [2004] NICA 33 at [38]. I do not accept any genuine remorse on the part of you Patrick Martin Smyth. I accept with reservations the expressions of remorse from you Mark Francis O'Neill and you John Sean Hughes.

Consideration as to custody probation

[37] As you each must receive a substantial period of imprisonment in excess of 12 months I am required by Article 24(1) of the Criminal Justice (Northern Ireland) Order 1996 to consider whether I should impose a custody probation order. A custody probation order should only be made where it is considered that the offender would benefit from probation at the conclusion of a period of custody and that it is deemed necessary to enable him to reintegrate into society or because of the risk that he would otherwise pose. I have already noted the views expressed by the probation service as to whether custody probation is appropriate. I have taken those reports into account and have concluded that each of you would benefit from probation at the conclusion of a period of custody.

Overall sentences in respect of each of you

[38] I have considered whether to make any distinction in relation to the overall length of the sentences that I should impose on each of you but have decided to do so only in respect of you Mark Francis O'Neill. You Patrick Martin Smyth are entitled to a lesser discount for your plea of guilty than the other defendants. You John Sean Hughes have the additional aggravating feature of a significant and relevant criminal record.

Conclusion in respect of you Patrick Martin Smyth

[39] Patrick Martin Smyth if you do not consent to Custody Probation I will sentence you to 8 years' imprisonment in relation to the offence of kidnapping,

and 12 years' imprisonment for the offence of robbery. Both sentences to be concurrent.

[40] If you consent to a Custody Probation Order I will sentence you to 7 years' imprisonment followed by 12 months' probation in relation to the offence of kidnapping and 11 years' imprisonment followed by 12 months' probation for the offence of robbery. Both of those sentences to be concurrent.

[41] I make it clear that in respect of the probation element of the Custody Probation order it will be a requirement that

- (a) You will reside in the petty sessions district set out in the order of this court throughout the whole period of probation.
- (b) You will reside at such accommodation as is specified by your probation officer and at no other address. If there are any rules that apply in relation to that accommodation then you will comply with those rules.
- (c) You will develop an involvement in such constructive and purposeful activity as is directed by your supervising probation officer.
- (d) You examine the consequences of your behaviour both on yourself and in particular on victims as directed by your supervising probation officer and you will attend such course or courses for counselling as directed by your supervising probation officer.
- (e) You will keep all appointments with the probation officer as are notified to you.

I am obliged by statute to explain to you that if you fail to comply with any of the requirements of the probation element of the Custody Probation order then the court has power to deal with any such failure by for instance revoking the probation element and imposing a further period of imprisonment or fining you and requiring your future compliance with the probation order or imposing a further community service order upon you and requiring your compliance with that order. I am also obliged by statute to explain to you that the court has power to review the probation element of the Custody Probation order on your application or on the application of your supervising probation officer.

[42] I must now enquire from you as to whether you consent to a Custody Probation Order. Do you consent to a Custody Probation Order being made?

[43] I understand that you consent. Accordingly I sentence you as I have indicated.

Conclusion in respect of you Mark Francis O'Neill

[44] Mark Francis O'Neill if you do not consent to Custody Probation I will sentence you to 7 years' imprisonment in relation to the offence of kidnapping, and 11 years' imprisonment for the offence of robbery. Both sentences to be concurrent.

[45] If you consent to a Custody Probation Order I will sentence you to 6 years' imprisonment followed by 12 months' probation in relation to the offence of kidnapping and 10 years' imprisonment followed by 12 months' probation for the offence of robbery. Both of those sentences to be concurrent.

[46] I make it clear that in respect of the probation element of the Custody Probation order it will be a requirement that

- (a) You will reside in the petty sessions district set out in the order of this court throughout the whole period of probation.
- (b) You will reside at such accommodation as is specified by your probation officer and at no other address. If there are any rules that apply in relation to that accommodation then you will comply with those rules.
- (c) You will develop an involvement in such constructive and purposeful activity as is directed by your supervising probation officer.
- (d) You examine the consequences of your behaviour both on yourself and in particular on victims as directed by your supervising probation officer and you will attend such course or courses for counselling as directed by your supervising probation officer.
- (e) You will keep all appointments with the probation officer as are notified to you.

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[47] I must now enquire from you as to whether you consent to a Custody Probation Order. Do you consent to a Custody Probation Order being made?

[48] I understand that you consent. Accordingly I sentence you as I have indicated.

Conclusion in respect of you John Sean Hughes

[49] John Sean Hughes if you do not consent to Custody Probation I will sentence you to 8 years' imprisonment in relation to the offence of kidnapping, and 12 years' imprisonment for the offence of robbery. Both sentences to be concurrent.

[50] If you consent to a Custody Probation Order I will sentence you to 7 years' imprisonment followed by 12 months' probation in relation to the offence of kidnapping and 11 years' imprisonment followed by 12 months' probation for the offence of robbery. Both of those sentences to be concurrent.

[51] I make it clear that in respect of the probation element of the Custody Probation order it will be a requirement that

- (a) You will reside in the petty sessions district set out in the order of this court throughout the whole period of probation.
- (b) You will reside at such accommodation as is specified by your probation officer and at no other address. If there are any rules that apply in relation to that accommodation then you will comply with those rules.
- (c) You will develop an involvement in such constructive and purposeful activity as is directed by your supervising probation officer.

- (d) You examine the consequences of your behaviour both on yourself and in particular on victims as directed by your supervising probation officer and you will attend such course or courses for counselling as directed by your supervising probation officer.
- (e) You will keep all appointments with the probation officer as are notified to you.

I am obliged by statute to explain to you that if you fail to comply with any of the requirements of the probation element of the Custody Probation order then the court has power to deal with any such failure by for instance revoking the probation element and imposing a further period of imprisonment or fining you and requiring your future compliance with the probation order or imposing a further community service order upon you and requiring your compliance with that order. I am also obliged by statute to explain to you that the court has power to review the probation element of the Custody Probation order on your application or on the application of your supervising probation officer.

[52] I must now enquire from you as to whether you consent to a Custody Probation Order. Do you consent to a Custody Probation Order being made?

[53] I understand that you consent. Accordingly I sentence you as I have indicated.