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Judgment: approved by the Court for handing down | *Delivered:* **18.10.02**
(subject to editorial corrections)

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

v

THOMAS GEORGE DUNBAR

Before: Carswell LCJ and Weatherup J

CARSWELL LCJ

[1] The appellant was convicted on 19 October 2001 in Antrim Crown Court by His Honour Judge McFarland sitting without a jury on an indictment containing a single count of armed robbery. On 11 January 2002 the judge made a custody probation order, consisting of 14 years' custody and one year of supervision by a probation officer. By notice lodged on 7 February 2002 the appellant appealed against sentence and sought an extension of time to appeal against conviction, which was granted by Nicholson LJ. At the hearing he abandoned his appeal against conviction and the matter was heard by us as an appeal against sentence.

[2] On Friday 18 August 2000 the appellant entered Straidarran sub-post office, situated in a rural area in County Londonderry, where the sub-postmistress Mrs Noreen Rosborough, a lady then of 56 years, was alone. He produced a handgun and pointed it at her, and ordered her to come out from behind the counter, shouting at her aggressively. He pushed her face down on the floor, then the appellant's accomplice, who had then entered the premises, tied her hands behind her in a painful fashion with plastic cable ties. She was asked for the keys to the till and told the robbers where they were. The robbers opened the till and took the contents, a sum which Mrs Rosborough calculated at £822.00, then left the premises.

[3] It is clear from the evidence that the appellant and his accomplice had scouted out the location on Tuesday 15 August and Thursday 17 August and that this was a planned and premeditated crime. In interview and at trial the appellant denied that he had been in the premises or carried out the robbery, and Mrs Rosborough was cross-examined about the correctness of her identification. In this court his counsel admitted on his behalf that he had committed the offence and stated that he readily accepted his guilt.

[4] Mrs Rosborough was examined on 21 November 2001 by Dr Elizabeth McGavock for the purpose of making a victim impact report. Dr McGavock's conclusions and prognosis are expressed in the concluding section of her report:

> "CONCLUSIONS & PROGNOSIS
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> This middle-aged post-mistress suffered a terrifying ordeal in August 2000 when she was held at gun-point and then made to lie face down on the floor of her post-office with her hands tied behind her back. She feared for her life and she was indeed in real danger. This immensely threatening traumatic experience induced a severe emotional response in her. She is still clinically showing signs of severe anxiety, is hypervigilant and is persistently re-running the events of that day through in her mind – these intrusive memories are causing her great and on-going distress. She shows loss of interest in all areas of her life. In addition she has marked sleep disturbance, shows irritability and reduced concentration. In my opinion therefore Mrs Rosborough has suffered and continues to suffer serious post-traumatic psychiatric disorder. Her pre-existing physical health problem (ie hypertension) has been exacerbated.
>
> PROGNOSIS
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> Even with early appropriate treatment a significant number of victims fail to make a satisfactory recovery. Although Mrs Rosborough appears to have been resilient enough to recover from previous traumatic experiences I do not think it likely that she will ever recover from this one to any significant degree. Her signs and symptoms of psychiatric disorder brought on by this near-

> death experience have now become chronic and she has been robbed of any enjoyment or peace of mind in her life. She is clinically moderately to severely anxious and depressed and she also fulfils all the diagnostic criteria necessary for the clear diagnosis of post-traumatic stress disorder. Being held at gunpoint and tied up are predictors of a poor outcome as also are Mrs Rosborough's on-going need for intermittent use of tranquillizing medication and the worsening of her hypertensive condition.
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> In my considered opinion this is a good kind hard-working woman whose life has been ruined by the traumatic near-death experience she suffered at the hands of the two intruders in her post-office in August 2000."

[5] The appellant, who is now aged 38 years, has a bad criminal record, which includes a number of burglaries and a robbery conviction in 1991. The probation officer who prepared the pre-sentence report states that the appellant blames such influences as gambling and alcohol and has expressed his motivation to address them.

[6] In his sentencing remarks the judge stated of robberies of sub-post offices:

> "These sub-post offices perform an essential role in the rural community life. Not only are they a valuable resource allowing the people usually elderly and isolated, to collect social security benefits and pay bills and purchase stamps, but they provide a social focus to the community. People like Mrs Rosborough are the life blood of the community and they perform a valuable service to the community and for a modest financial reward. They deserve and will receive the full support and protection of the courts."

The judge referred to the decisions of this court in *R v Coates* (1997, *JSB Sentencing Guideline Cases,* 5.1.28) and *R v McKeown and others* (1997, *ibid,* 5.1.34). He considered that in the circumstances of this case the correct starting point should be 12 years. He set out the aggravating factors, the pre-planning, the threats and violence used, the effect on Mrs Rosborough and the appellant's criminal record. In his favour he took into account his physical impairment and his difficult upbringing and referred to his alcohol abuse

problem. He considered that a sentence of 15 years' imprisonment was warranted, but decided to make a custody probation order, in order to allow the problems identified by the probation officer to be addressed.

[7] The grounds of appeal against sentence put forward by the appellant were the following:

> "The sentence imposed on the appellant was manifestly excessive and wrong in principle, having regard to:
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> (a) all the circumstances of the offence;
> (b) the absence of excessive violence;
> (c) the amount stolen;
> (d) the content of the pre-sentence report;
> (e) the failure to make a sufficient and appreciable reduction in the gross sentence in order to accommodate a suitable probation element."

At the hearing before us his counsel Mr John Orr QC expanded on this submission, pointing also to his health record and emphasising his acceptance of his guilt.

[8] The level of sentencing for armed robbery has been the subject of consideration on several occasions in this court and we think it appropriate to review it yet again in this appeal. A suitable starting point for a review of such sentences is the English case of *R v Turner* (1975) 61 Cr App R 67, regularly referred to as a guideline case in later judgments both in England and Northern Ireland. At page 91 Lawton LJ said:

> "We have come to the conclusion that the normal sentence for anyone taking part in a bank robbery or in the hold-up of a security or a Post Office van, should be 15 years if firearms were carried and no serious injury done. It follows therefore that the starting point for considering all these cases is a sentence of 15 years. As was pointed out in argument, the fact that a man has not much of a criminal record, if any at all, is not a powerful factor to be taken into consideration when the court is dealing with cases of this gravity. In this case, all those who took part in the bank robberies, in the sense of going into the banks carrying firearms or other weapons, had criminal records. Some had bad criminal records and others not so

> bad. We have decided that in dealing with those for whom a sentence of 15 years' imprisonment for one bank robbery is appropriate, the length and type of record is of little assistance."

A similar guideline case in this jurisdiction was *R v O'Neill* [1984] NIJB 1, in which Gibson LJ said at page 3:

> "It is now some 9 years since this Court declared in a reserved judgment its view as to the proper range of terms of imprisonment for armed robbery. This was done in 2 cases heard on the same day, namely R v McKellar and R v Newell reported in [1975] 4 NIJB. I was a member of the court though the judgment in each case was delivered by McGonigal LJ. We would wish to emphasise that the trend of criminality in the meantime has done nothing to diminish the opinion which was there expressed that armed robbery, especially of a bank, post office, security van or other premises where the staff and members of the public are put in fear and where considerable sums of money are likely to be stolen if the robbery is successful, is a very serious crime which must be visited with an immediate custodial sentence which in almost every case will be for a considerable number of years regardless of the circumstances or the personal background of the accused. Indeed, such robberies are now more common than they then were and the courts must in sentencing those found guilty bear in mind that there ought to be a considerable element of deterrence in the term which should properly be imposed. This Court, therefore, wishes it to be clearly understood that it affirms the statement made by it in McKellar's case that this is a type of offence which must in present circumstances be met by sentences which in other times might be outside the norm for such offences. In circumstances such as obtain nowadays in Northern Ireland where firearms are frequently used to rob banks and post offices this Court would reaffirm that a sentence of 13 years or upwards should not now be considered outside the norm for a deterrent sentence for this type of offence. Indeed, it would be appropriate for a

> Judge to regard a sentence within the range of 10 to 13 years as a starting point for consideration, which sentences may be increased if there is a high degree of planning and organisation, or if force is actually used, or if the accused has been involved in more than one such crime. Equally it would be appropriate to reduce the sentence if the degree of preparation or the efficiency of performance is low, or if the money and weapons have been recovered, or if the accused has shown contrition and pleaded guilty to the charge, or if there are other special features which ought to be treated as grounds for reduction of the penalty."

[9] In *R v Colhoun* [1988] NIJB 16 Hutton LCJ noted that there had been no diminution in the number of armed robberies since the judgment of the court in *R v O'Neill*, and in *R v Frazer* [1995] NIJB 66 at 68 he issued a reminder that severe sentences must be passed on robbers and that those sentences should contain a substantial deterrent element. The court returned to the subject in two cases decided in 1997, *R v Coates* (*JSB Sentencing Guideline Cases,* 5.1.28) and *R v McKeown and others* (*ibid* 5.1.34). In *R v Coates* at page 31 MacDermott LJ, who gave the judgment of the court, accepted the view that no distinction is to be drawn from the fact that a robbery takes place at a bank, a security van, a post office van or a post office or a sub-post office, and that post offices are often soft targets, staffed by defenceless men and women. In *R v McKeown* MacDermott LJ "wholeheartedly endorsed" the statement of Lord Lane CJ in *Attorney General's Reference (No 9 of 1989) (Lacey)* (1990) 12 Cr App R (S) 7 at 9:

> "Businesses such as small post offices coupled with sweetie-shops – that is exactly what these premises were – are particularly susceptible to attack. They are easy targets for people who wish to enrich themselves at other people's expense. That means that in so far as is possible the courts must provide such protection as they can for those who carry out the public service of operating those post offices and sweetie-shops, which fulfil a very important public function in the suburbs of our large cities. The only way in which the Court can do that is to make it clear that if people do commit this sort of offence, then, if they are discovered and brought to justice, inevitably a severe sentence containing a deterrent element will be imposed upon them in order so far as possible to persuade other like-minded robbers, greedy persons, that it is not worth the candle."

The court also endorsed the later statement of Lord Bingham of Cornhill CJ in *Attorney General's References (Nos 23 and 24 of 1996)* [1997] 1 Cr App R (S) 174 at 176-7.

> "At the outset it has to be acknowledged – and counsel representing both offenders have realistically acknowledged – that these are very serious offences. It is common knowledge that branch post offices, betting offices, off-licences, garages and very many other premises are served by single, often female, assistants, in possession of cash, who are vulnerable to an extreme in the lawless manner demonstrated by the 2 offenders. It has been said that in this field the public interest to protect such people is paramount and must override any personal considerations which might otherwise weigh in favour of a defendant. This Court would wish to give its emphatic endorsement to that principle. It is fundamental that the courts must be seen to protect the public."

After quoting these observations MacDermott LJ stated that if the present level of sentencing is not deterring those minded to commit this type of offence sentencing levels will have to continue to rise, for the public deserves no lesser response

[10] Mr Orr sought to distinguish *R v Coates* and *R v McKeown,* on the ground that each contained more serious elements, and submitted that the judge placed too much reliance on them in sentencing the applicant. In *R v Coates* the appellant was one of a gang who robbed a bank of some £8665.30. He and another man, both masked and one carrying a shotgun, entered the bank premises, threatened staff and customers and made them lie on the floor, then made off with the money. Coates had a criminal record described as appalling, including a number of armed robberies. The judge's sentence on a plea of guilty of ten years was upheld as being in no way excessive. In *R v McKeown* four men burst into the home of a postmistress, brandishing a firearm and an iron bar. They seized the postmistress and her daughter, taped their mouths and ordered the postmistress to go to the post office and bring back a large sum of money, while they held her daughter hostage. They were caught when the alarm was raised and in due course pleaded guilty. In upholding the sentence of 12 years on each defendant the court stated that a successful robbery in the circumstances of the case would have attracted a sentence closer to 20 than 15 years. We do not consider from our examination of these cases that they can be as readily distinguished as Mr Orr suggested, and the principles discussed in them are of general and relevant application.

[11] In reviewing the aggravating features identified by the judge, Mr Orr submitted that the pre-planning was not distinctive to this case, but must necessarily be part of every robbery. He also submitted that the extent of the appellant's record was over-stated, since apart from the robbery in 1991 it consisted of relatively minor offences. We have taken this submission into account, but its weight is in our view relatively limited. This was clearly a well planned and prepared crime, carefully scouted out on a couple of occasions and very far from being an impulsively committed offence. We agree that many offenders charged with robbery have worse records, but it is right to advert to the fact that the appellant was treated leniently by this court in 1991 because of the emotional disturbance from which he then suffered (not now present, as the judge noted), but did not profit from that leniency. In his favour the judge adverted correctly to the mitigating features to which we have referred, but none of these can weigh very heavily in sentencing for a crime of this gravity.

[12] We cannot regard this as anything other than a serious case, and consider that the judge was right to take a stern line with the appellant. Not only does he himself require deterrence, but the frequency of such crimes against vulnerable people who require the protection of the courts means that those who commit them must be treated sternly. The sentence was stiff, but the appellant's merits were few and of little enough account in such a case. We could not regard the commensurate sentence of 15 years as manifestly excessive, nor can the custody probation order made by the judge be so regarded. We have stated before that sentencers should be somewhat slow to make a custody probation order where the custody element is substantial and release will be a long time off, but we do not propose to interfere with the judge's decision. Accordingly we dismiss the appeal.