THE QUEEN

v

ROBIN HENDERSON

LORD JUSTICE CARSWELL (giving the judgment of the court)

This is an application for leave to appeal against a sentence imposed by His Honour Judge Hart QC at Downpatrick Crown Court on 22nd November 1995. The applicant pleaded guilty to a single count of robbery on 25th March 1995 of two night safe bags containing cheques and money to the value of £2,384.98 or thereabouts. The incident to which the charge relates occurred just after 5.20 pm on Saturday 26th March last year.

Paula Huson, Trainee Supervisor with Textile World, Bangor and another employee were bringing the stores takings to the night safe at a Bank when a man came up behind her, grabbed the night safe bags, knocked her to the ground and made off with the bags. Unfortunately for the applicant, a detective constable was nearby in traffic in his car, and he noticed the applicant standing in the hallway of a building giving a signal to another male youth. The applicant hesitated a number of times before leaving the hallway of the building and running across the road to the other youth, who by this time had snatched the bag from Miss Huson.

In the incident, that youth charged into Miss Huson with his shoulder and knocked her down, and as a result she sustained a cut to the finger and bruising to her head and she suffered from severe shock and headaches. In the course of interview the applicant admitted

that he had agreed to act as look-out in the robbery. He stated that he saw Miss Huson coming from Textile World and he made a signal to the other youth, who then ran up behind her and snatched the bags. He said that he understood that about £800 or £900 had been snatched - counsel said that it appeared to be in excess of £1,000 - but that he only received £100 and had obtained credit for a further £200 which he owed the other youth, and which was to be taken by the latter from the proceeds of the robbery. He stated that he did not know that any violence was to be used in the robbery and if he had known he would not have taken part. The learned judge did not find it possible to accept this.

The Probation Report, which was before the judge, referred to the applicant's acceptance of responsibility for the offence, though he was unwilling to name his accomplice, because of the possibility of reprisal. Counsel told us that he was more helpful outside the formal interview. He apparently is genuinely remorseful and committed the spate of offences in 1994 when he was involved heavily in the culture of drug abuse.

The judge rejected his averment that he did not know violence would be used. He referred to his youth, his plea of guilty, his co-operation with the police and his demonstration of remorse. He then imposed a sentence of two years' detention in the Young Offenders' Centre and put into effect the suspended sentences totalling twelve months consecutive with that, making with effect a total of three years'. In doing so he had regard to the totality principle, saying: "I have also adjusted the total so that it reflects these matters [the mitigating factors] and to avoid the total sentence becoming too heavy in view of your age".

These suspended sentences were imposed on a couple of occasions in 1994, when the applicant, who is now 19 years old and was 18 years of age at the time, was before the courts on five previous occasions. On 2nd September 1994 at North Down Magistrates'

Court he was convicted of, inter alia, taking and driving away on 28th November 1993, and a suspended sentence of three months' detention in the Young Offenders' Centre was imposed, suspended for two years'. On 19th October 1994 at the same court, he was convicted of several offences of burglary, theft and handling committed on 19th August 1994 just before the court which previously imposed another suspended sentence. The first was six months' detention, suspended for three years'; the second was for three months' detention consecutive to the first, suspended for three years'; the third was for three months' concurrent, suspended for three years', and the fourth and fifth were the same amounts, so that there was a total of twelve months' suspended sentences hanging over him.

The grounds of appeal were set out in the notice of appeal, that the sentence was manifestly excessive and wrong in principle in all the circumstances. The particulars were:

1. that the learned trial judge did not give the applicant sufficient credit for his appeal of guilty;

2. the learned trial judge did not give the applicant sufficient credit for his co-operation with the police;

3. the learned trial judge did not give regard to the totality of all the sentences imposed on the applicant, bearing in mind that the learned trial judge imposed on the applicant two years' detention in the Young Offenders' Centre for robbery and put into effect suspended sentences for three months' and nine months' duration consecutively to each other and consecutive to the sentence of two years' detention;

4. in passing sentence the learned trial judge did not pay sufficient regard to the role played by the applicant in the events of the robbery, which was one of look-out. The uncontradicted case was also made on behalf of the applicant that he was not the organiser or the prime mover in connection with the offence;

5. it was accepted by the police that the defendant had given a full account of his involvement in the incident, which included the defendant's account to the police in interview, that he did not expect the actual violence which was used in this offence and the injured party recovered totally from her injuries;

6. the learned trial judge in passing sentence did not take into account that he was sentencing the defendant to his first actual term of incarceration in the Young Offenders' Centre;

7. the learned trial judge did not pay sufficient regard to the defendant's domestic circumstances as set out in the Probation Officer's Report which was available to the court. The Probation Officer was of the view and the judge accepted that the defendant did show genuine remorse for his involvement in the offence.

Leave to appeal was refused by the single judge. These fully and carefully set out grounds of appeal were advanced by Mr Cushinan in arguments put before us. The main points which he placed before us were that of totality and that of the applicant's profession that he was unaware of the likelihood of any violence or physical assault being brought into play. It may been seen from the learned judge's sentencing remarks that he did have regard to the plea of guilty, he did have regard to the co-operation by the applicant by the police and he did have regard to the totality principle. He was clearly well aware of the applicant's ancillary role in the offence as look-out and one could readily suppose that the actual snatcher of the money would have been dealt with materially more severely. The applicant's disclaimer of any contemplation that violence might be used in the snatch of the wages would not stand up to any critical examination, and the judge was quite entitled to reject it. Indeed, speaking for myself, I would find it difficult to see how he could sensibly have accepted it at face value.

In our judgment the sentence was in no respect excessive. The offence in which the applicant took part was robbery, in the time-honoured phrase robbery with violence, and no amount of euphemism, such as terming it a snatch or mugging, will make it any less frightening for the victim or any less a social evil which must be visited with deterrent sentences. The actual perpetrators of such offences require the support and aid of associates, and they must bear responsibility if such crimes which are carried out and they are made amenable. The sentence of two years' detention was in itself far from excessive. It was perfectly correct to put the suspended sentences into operation consecutive to the substantive sentence, otherwise they would have no real effect and become a meaningless method of dealing with an offender. The judge properly had regard to the totality principle and the total of three years' detention was in our view entirely appropriate in all the circumstances of the case. Finally, I wish to point out that it would be of no avail to an offender in such cases to put forward by way of mitigation the fact that he committed the offence in order to finance a drug habit, which appears from the Probation Report. We cannot do better than refer to the observations by Mr Justice Simon Brown in R v Lawrence (1988) 10 CAR (S) 463 at page 464 when he said:-

> "We cannot make too plain the principle to be followed. It is no mitigation whatever that a crime is committed to feed an addiction, whether that addiction be drugs, drink, gambling, sex, fast cars or anything else. If anyone hitherto has been labouring under the misapprenshion that it was mitigation, then the sooner and more firmly they are disabused of it the better".

The application will accordingly be dismissed.

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