

1892

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

-v-

GARY JOHN O'KEEFE
-----MacDERMOTT LJ
SHEIL J

The Appellant, Gary John O'Keefe, is a young man of 20 and he came before the Court on a bill containing 7 counts of theft, burglary and attempted burglary. What led to his apprehension was an incident that occurred at the home of a Mrs Jones on 17 March 1997 when he entered and was identified by her. When he came before the Judge he asked for over 50 other cases to be taken into consideration. In his judgment the Judge sets out the details of this saga of offending and the amount involved in the substantive offences was £1,858 and in the offences which were taken into consideration was £8,235. Of course it is very properly drawn to our attention that many of these incidents would never have been cleared had he not been helpful and cooperative with the police. He was driven round the area by the police and pointed out the places that he had stolen from. What is unfortunate is that this was not a sudden outbreak of thieving - his record shows that since 1993 he had been back and forth to the courts and had received custodial sentences before. That does not seem to have got the message home to him that this offending simply had to stop. In December 1993 he was required to attend an attendance centre for 18 hours, fined and placed on probation, for theft, shoplifting and obtaining property by deception. December 1994 - theft, shoplifting, again October 1995. On that occasion understandably the patience of the court ran out and he got 6 months in a Young Offenders Centre but even then justice was tempered with mercy and this was suspended for 2 years. In March 1996 he appeared before 3 different courts on a variety of charges and 17 cases were taken into consideration - he was sentenced to a Young Offenders Centre for a total period of 24 months' detention.

So that is the background. Now there are a number of aspects of the case that ought to be aired in his favour. He pleaded guilty on his first opportunity and having regard to the provision of the recent statute that it very much a factor to be borne in his favour and he is entitled to a discount. No matter what may be said in other cases there is no tariff for discount, there has to be a suitable and fair discount and the time which the plea is entered is of course of significance. Then one has to have regard as in all sentencing not only to the circumstances of the offences but to what one knows of the offender. This young man is clearly no fool. He passed the 11+ examination, got 8 GCSE passes and is hoping to complete his A levels to go on to University. Unfortunately he seems to have got into a cycle of offending and re-offending and when one inquires as to why this is so the suggestion is that it is to fund his drinking. Just looking at the value of the property he took he certainly was taking a lot of property and even allowing for the fact that they were stolen goods he must have had a very steady, one might almost say, income. So that is the kind of person the

Judge was dealing with and he sets out in his detailed remarks when passing sentence that he considered that imprisonment was called for and that a factor in that conclusion was there is far too much stealing from dwelling-houses. He points out that his offending had reached almost epidemic proportions and one has to bear in mind just what the effect of such behaviour is on the household.

Quite recently the Lord Chief Justice in England Lord Bingham of Cornhill had a case where he saw fit to detail what burglary in a domestic context really means. In the case of R v Brewster [1998] 1 Cr.App.R.(s) 181 at 185 he said:

"Domestic burglary is, and always has been, regarded as a very serious offence. It may involve considerable loss to the victim. Even when it does not the victim may lose possessions of particular value to him or her. To those who are insured the receipt of financial compensation does not replace what is lost. But many victims are uninsured: because they may have fewer possessions, they are more seriously injured by the loss of those they do have.

The loss of material possessions is, however, only part (and often a minor part) of the reason why domestic burglary is a serious offence. Most people, perfectly legitimately, attach importance to the privacy and security of their own homes. That an intruder should break in or enter, for his own dishonest purposes leaves the victim with a sense of violation and insecurity. Even where the victim is unaware at the time that the burglar is in the house, it can be a frightening experience to learn that a burglary has taken place; and is all the more frightening if the victim confronts or hears the burglar. Generally speaking, it is more frightening if the victim is in the house when the burglary takes place, and if the intrusion takes place at night; but that does not mean that the offence is not serious if the victim returns to an empty house during the daytime to find that he has been burgled."

I might interpose that this was very much in the Judge's mind in relation to the case of Mrs Jones. To continue:

"The seriousness of the offence can vary almost instantly from case to case. It may involve an impulsive act involving an object of little value (reaching through a window to take a bottle of milk, or stealing a can of petrol from an outhouse). At the other end of the spectrum it may involve professional, planned organisation, directed at objects of high value. Or the offence may be deliberately directed at the elderly, the disabled or the sick; and it may involve burglaries of the same premises. It may sometimes be accompanied by acts of wanton vandalism."

We readily accept that this is not an organised crime in the sense that the Chief Justice is referring to but it was persistent offending by this young person. He went on:

"The record of the offender is of more significance in the case of domestic burglary than in a case of some other crimes. There are some professional burglars whose records show that

from an early age they have behaved as predators preying on their fellow citizens, returning to their trade almost as soon as each prison sentence has been served. Such defendants must continue to receive substantial terms of imprisonment. There are, however, other domestic burglars whose activities are of a different character, and whose careers may lack any element of persistence or deliberation. They are entitled to more lenient treatment."

Where does one put this applicant in the general scale of offending? He was not stealing articles that were high in value such as antiques but he was very much a persistent offender and it does not take evidence to satisfy us that he must have been a predator preying on his fellow citizens to use Lord Bingham's phrase.

Now what is being said here is that 4 years in a Young Offenders Centre is too much. It is the longest period of time that can be served in a Young Offenders Centre. But that does not mean that when a person pleads guilty those who are sent to a Young Offenders Centre must receive less than 4 years. Here the Judge obviously considered that prison was very much a matter to be contemplated but he concluded that he would not do that: instead he would send him to a Young Offenders Centre. As I said in the course of the submissions one of the great advantages of the Young Offenders Centre is that it can help a person to rehabilitate himself and the training programme is first class and of great benefit to a detainee who is prepared to co-operate and take full advantage of those facilities. So it was a very humane and wise decision of the Judge to send the appellant to detention and though he was getting towards the upper age limit for taking that course the Judge in our view was fully entitled to take that course.

We come back to the question: having regard to all his offending and in the context of what we know about the offender - is 4 years in a Young Offenders Centre manifestly excessive? In our view it is not and therefore we dismiss this appeal.

Delivered: 6 February 1998

Transcribed: 11 February 1998