IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

-v-

PATRICK JOSEPH O'NEILL

GIBSON LJ

The appellant, having pleaded guilty to a charge of armed robbery, was sentenced to 7 years' imprisonment. It is against that sentence that he has appealed on the ground of its severity. However, on the hearing of the appeal it transpired that the substantial point relied on by the appellant was that there was such a disparity between the sentence which he received and that of a co-accused that his sentence should be reduced.

On 6 January 1983, 4 men, namely the appellant, Stephen Smith, Gerard McCrory and Martin McCann, being masked and armed with a pistol, which after arrest was found to be an air pistol, entered a bank and held up the staff and customers. Smith and the appellant went behind the counter and started to put money to a value of £3,130 into plastic bags while McCrory and McCann stood guard by the door. Unfortunately for them a policeman had seen them entering the bank as a result of which the appellant and Smith were arrested in the bank. McCrory and McCann escaped but were pursued and were eventually captured in a house nearby where they had taken refuge.

All 4 were jointly charged. On the arraignment Smith and the appellant pleaded guilty and McCrory and McCann pleaded not guilty. Smith and the appellant were dealt with immediately and sentenced to 5 and 7 years' imprisonment respectively by His Honour Judge Chambers QC. While on remand McCann was granted compassionate bail in order to marry, but he absconded and has not yet been recaptured. When McCrory was brought to trial he changed his plea to guilty and was sentenced to 4 years' imprisonment by His Honour Judge Curran QC who had been fully apprised of the history of the matter by Crown Counsel. It is this sentence of 4 years' imprisonment imposed on McCrory which has been relied on by the appellant as a ground for claiming that his sentence should be reduced. Having heard the appeal this court dismissed it but stated that the reasons would be given at a later date. The reason why it was decided to state our considered opinion was not only because of the substantial difference in the terms of the 2 sentences but also

because it seemed appropriate to declare what should be the proper range of sentences in the case of armed bank robberies and other comparable offences.

The appellant was born on 4 March 1962 and so was almost 21 years old at the time of the offence. He was no stranger to crime. His criminal record commenced when he was 13 years old and shows a persistent though varied habit of criminality ever since which has resulted in a succession of sentences including a training school order, borstal training and detention in a young offenders centre on 3 separate occasions. McCrory was a few months younger, having been born on 11 August 1962. His criminal record also started at the age of 13 years. Prior to this charge he had been before the court on 10 occasions. Like the appellant his crimes included theft, burglary, malicious damage, disorderly behaviour, assaulting the police and criminal damage. He had been sent to a training school, had served 12 months and 6 months in a young offenders centre and had been imprisoned on one occasion for 12 months for 4 cases of burglary and 4 years' imprisonment had been imposed on him for a firearm offence for which offence he was still on licence when he committed the armed robbery. In sentencing him Judge Curran described this as a "modest record" which seems to have been related to the fact that the number of court appearances and offences was less than those of the appellant, but as against that the comparative gravity of their criminality may also be measured by the fact that the total term of detention and imprisonment which the appellant had previously served was 20 months whereas in McCrory's case the total was 76 months. Another point that seems to have weighed with Judge Curran in fixing the sentence was that McCrory had been instigated and inspired to commit the crime by an older man who had evaded prosecution; but in this regard there is no distinction to be drawn between him and the appellant who had been subject to the same influence. The position with regard to the third man who was sentenced, namely Smith, is that he was considerably the youngest of the group, being only 17 years old. His criminal record was insignificant and he like the others had been subjected to the influence of the older man. It was he who carried the pistol but otherwise there is little to choose between him and the appellant and McCrory as to their participation in the robbery. A differential of 2 years in the sentences of the appellant and Smith seems appropriate and it was not suggested in argument on behalf of the appellant that any fault could be found in those sentences imposed by Judge Chambers.

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 may 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 court 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 sentence 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. So also those who acted only in a secondary role as accessories ought not to receive the same term as principals. But as between the various principals it is not normally relevant to consider the physical part played by each. Such an operation which involves a number of participants also involves the allocation of functions between them and it matters little in deciding upon the sentences to be imposed upon them who drove and waited with the car, or kept a look out outside the bank, or carried the gun, or uttered the threats, or physically took the money.

Therefore, bearing in mind everything that could properly be said in favour of the appellant and looking at his sentence in isolation, one could not do other than regard the sentence of 7 years' imprisonment as being a lenient one.

The main ground upon which the appeal was based was not that the sentence in itself was too heavy but that it ought not to stand when considered in relationship to the term of 5 years imposed in the case of Smith and 4 years in the case of McCrory. Mr Finnegan, counsel for the appellant, frankly admitted that the sentence in the case of McCrory was extraordinary but because it must stand he submitted that the appellant's sentence ought to be reduced because of the gross disparity and the sense of injustice which he must have, bearing in mind their previous criminal background and the common nature of their involvement in the crime itself.

It was at one time considered that disparity of sentences could only be treated as a proper ground of appeal where both sentences were imposed for the same offence at the same time by the same judge. This proposition was restated in R v Stroud 65 CAR 150 as late as 1977, but the stringency of that rule has been relaxed in recent years by the English Court of Appeal, as in R v Wood decided on 7 November 1983, and we consider that the fact that the appellant was sentenced by Judge Chambers

on 5 October 1983 and McCrory by Judge Curran on 6 February 1984, ought not to deter us from considering the matter even though the notice of appeal by the appellant was dated 12 October 1983 and could not therefore have been based on any question of disparity.

The sentence of 5 years imposed on Smith when considered against that of 7 years in the case of the appellant was in every sense a reasonable distinction, bearing in mind the difference in ages and the very marked difference in their criminal records, and, indeed Mr Finnegan did not emphasise this disparity. As regards the sentence of 4 years imposed on McCrory, we have been furnished with the transcript of the hearing before Judge Curran and his remarks when imposing the sentence. Giving every due consideration to the arguments pressed upon him and to his observations we are unable to detect any matter which would have justified the sentence either on its own or when taken together with the sentences previously imposed by Judge Chambers and we consider that the sentences of 4 years was clearly inadequate. The fact that a judge in sentencing a co-defendant has passed a sentence below the range which this Court has laid down or would consider justified is not a valid ground for reducing a sentence which is in no way excessive imposed on another accused. It is probably true that the appellant feels aggrieved having regard to the sentence passed on McCrory. But the fact that an appellant feels aggrieved that a co-defendant has received a substantially smaller sentence is not a proper ground for interfering with his sentence if that is the only ground. We consider, as did the English Court of Appeal in R v Weekes 74 CAR 161, that it is only if the grievance is justified that this Court should interfere. Where, as here, the sentence of 7 years obviously made every allowance for mitigating circumstances and was in itself a lenient one and where the sentence on McCrory is clearly inadequate and must have been known by the appellant to be well below the minimum for the offence of armed robbery, there can be no room for any sense of justified grievance by him. It was for these reasons that we dismissed the appeal on 29 June.