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BELFAST CROWN COURT

R –v- WILLIAM DESMOND GALLAGHER

BILL NO 161/03

9 OCTOBER 2003

HIS HONOUR JUDGE HART QC
RECORDER OF BELFAST

[1] The defendant is before the court to be sentenced on his pleas of guilty to two offences committed on 5 October 2002, count 1 being a count of robbery of Alison Withers of £240 or thereabouts and count 2 being possession of a controlled drug of Class B, namely cannabis. The defendant pleaded guilty to these charges when he was arraigned on 11 June 2003 and the case was then put back for the preparation of reports. Having indicated that in view of the accused's record I intended to consider whether a life sentence should be imposed the matter was in due course listed for hearing on that issue and I had the benefit of the submissions from Mr James Mallon of counsel on behalf of the defendant.

[2] The circumstances giving rise to these charges are that on Saturday 5 October 2002 at approximately 9.40 p.m. the defendant entered a Kentucky Fried Chicken outlet in the Connswater Retail Park in East Belfast. He was approached by Joyce Moffett, one of the staff, who asked him what he wanted, to which he replied "I own the place". She told another member of staff to fetch Alison Withers who is the manager. Alison Withers came out of the staff room to find that the accused was now behind the counter and in the kitchen area. He smelt strongly of glue and was unsteady on his feet. Her description in her statement of what then happened was as follows.

"When I saw him he was walking towards the staff room and right up to me. He told me to "Open the fucking till, or you'll get a bullet in the head." His speech was slurred and he grabbed my shirt and I felt something hard pushed

into my back. He forced me to open a till. I was very frightened that he would harm me if I did not do as I was told. I opened one of the tills and he helped himself to the contents. He then walked out of the "Staff Only" door and out of the shop."

[3] Whilst this was happening Joyce Moffett was watching and she described the events in the following terms.

"On Alison coming out he walked towards her and placed his hand on her back. I had the impression that he had something in his hand, a gun or something. He appeared to be talking into Alison's ear, I had no idea what he said. Alison opened the till and the next thing I can remember is the man had money in his hand. I believe that this male might have had a gun and was going to hurt one of us. They stood and watched as this male walked out of the shop with the money via the front door."

[4] The staff alerted the police who were quickly on the scene and found the accused nearby. They chased and arrested him and immediately noticed a strong smell of solvents. A tin of Evo-stik glue was found inside the left sleeve of his jacket. He was then taken to Strandtown Police Station and as he was being taken from the police vehicle to the custody suite he was seen to drop what was found to be some £240 in cash which was the takings from the robbery. When questioned he said that he couldn't remember anything about the incident.

[5] The defendant is 34 and has a formidable record for offences of violence, but first of all I should refer to a report prepared on behalf of the defendant by Dr Bownes, dated 27 August 2003. It is clear from Dr Bownes' report that the defendant has a continuing and severe history of alcohol and drug abuse. In his report Dr Bownes says:

"Mr Gallagher's first contact with mental health professionals outside prison appears to have been when he was admitted to Knockbracken Healthcare Park on 13 June 2002. Mr Gallagher's complaints included a four-month history of low mood, irritability, insomnia, feelings of hopelessness and suicidal thoughts. Mr Gallagher's "extensive drug and alcohol use" was also noted. Mr Gallagher apparently admitted to ongoing daily abuse of glue and benzodiazepines, to drinking twelve cans of beer and smoking cannabis every day, to using amphetamines, cocaine and LSD and up to twelve ecstasy tablets at the weekends. Correspondence to his General Practitioner indicated that no objective evidence was found of active mental illness on in-patient observation and assessment of Mr Gallagher's mood and functioning, and it was noted that "there was no evidence whatsoever of depressed mood." It was also noted that Mr Gallagher reported that he felt "that he had never been able to cope outside institutions" and that he "appeared keen for help in dealing with past trauma and present drug issues [".] Mr Gallagher was advised on strategies for addressing his pattern of psychoactive substance abuse, offered counselling aimed at helping him to come to terms with adverse life experiences and commenced on detoxification treatment aimed at helping him to withdraw from long-term benzodiazepine abuse. However correspondence to his

General Practitioner indicated that Mr Gallagher had absconded from the ward on 29 June 2002 and that Mr Gallagher had been discharged from the Outpatient list on 18 July 2002 due to his persistent failure to attend for follow-up appointments."

[6] At page 7 of his report Dr Bownes related the accused's account of his criminal record and stated that he had not seen that record. At page 9 he commented

"Should Mr Gallagher resume his former pattern of psychoactive substance abuse on his return to the community, the risk of deterioration in his mental well being and a further episode of recklessness and antisocial behaviour would be significantly increased."

[7] At page 10 of his report Dr Bownes commented that he thought that the defendant could benefit "from guidance and supervision regarding establishing and maintaining relevant attitudinal and lifestyle changes on his discharge to the community". However, he concluded that "Mr Gallagher's apparent failure to engage in a meaningful way with treatment and support he had previously been offered in this regard indicates the prognosis should currently be considered poor in this case".

[8] In a comprehensive and realistic Pre-Sentence Report the failures of the defendant to address his long standing alcohol, illegal drugs and solvent abuse is traced. In particular, it is clear that whilst he was under probation

supervision from October 2001 until late September 2002 he was viewed by the Probation Service as engaging "at a very superficial and limited level. He failed to keep or cancelled several appointments." Under the heading Offence Analysis the writer concludes "he acts without regard to possible consequences. He is prepared to threaten and use violence. He acts solely in terms of his own needs."

[9] Under the heading Risk of Harm to the Public and Likelihood of Re-offending the report states.

"Desmond Gallagher is viewed by the Probation Board as continuing to pose a significant danger to members of the public. This is based on the following:

- His past convictions for offences of violence (armed robbery, malicious wounding and AOABH).
- His past convictions for serious sexual offences against females (rape, aiding and abetting rape, unlawful carnal knowledge).
- His failure to adhere to supervision requirements when in the community (his most recent Custody Probation Order).
- His lack of motivation to change his lifestyle and behaviour.
- The unstable lifestyle he leads when in the community involving solvent/alcohol/illegal drug use.
- His associations with antisocial, pro criminal peer elements when in the community.

Likelihood of further offending is assessed as being very high based on the factors already highlighted in this report."

[10] I now turn to consider the defendant's criminal record, which can be regarded as falling into a number of sections. The first section covers a period of almost eight years between the first offence of criminal damage in August 1982 and rape and various other offences committed on 21 April 1989, when the defendant was 18. During this first period the defendant appeared before the courts on many occasions for throwing a petrol bomb, various offences of dishonesty such as theft, taking a motor vehicle without the owner's consent, burglary, unlawful carnal knowledge of a girl under the age of 17 years, unlawful carnal knowledge of a girl under the age of 14 years and other less serious offences. These were variously dealt with by way of training school orders, suspended sentences and periods of detention in the Young Offenders Centre. Two of the appearances were at the Crown Court, and it is of some significance, given his later history, that the offences of unlawful carnal knowledge of a girl under the age of 14 years which were dealt with at the Crown Court on 24 May 1989 related to offences committed on 22 July 1988, during the currency of the suspended sentences imposed on 13 January 1988.

[11] The second section of his criminal record relates to the offences committed on 21 April 1989 which resulted in his receiving total sentences of 12 years imprisonment at Belfast Crown Court on 15 December 1989. The circumstances of those offences can be found in the report of the dismissal of his appeal to the Court of Appeal contained in the Northern Ireland Sentencing

Guideline Cases, Volume 1 at 2.28 and following. He was sentenced for rape, aiding and abetting rape, three counts of robbery, hijacking property, two charges of assault occasioning actual bodily harm and two charges of burglary and theft. These offences were described by Sir Brian Hutton LCJ as "offences of the utmost gravity". It would appear from the report of the appeal proceedings that the accused was the eldest of the three involved and had a worse record than the others.

[12] The third portion of the accused's criminal record relates to the numerous offences he has committed since then. On 3 January 1995 he appeared at Belfast Magistrates' Court and was sentenced to a total of nine months imprisonment for assault occasioning actual bodily harm and common assault. Both these offences were committed on 3 December 1993. As the accused should have been serving the sentence imposed for the offences of the 21 April 1989 I enquired from Crown counsel how the accused came to be at liberty on 3 December 1993. I was told that he was granted compassionate leave on 1 December to go to his grandmother's funeral and that he remained unlawfully at large until 6 December during which time these offences were committed. His next court appearance was at Ballymena Crown Court on 24 January 1997 and related to offences committed on 26 April 1996, by which time he was presumably on licence. He was sentenced to a total of seven years imprisonment, receiving a sentence of seven years for aggravated burglary and inflicting grievous bodily harm, three years for grievous bodily harm and two sentences of eighteen months imprisonment on counts of common assault on an adult. The next offences in chronological sequence

were committed on 27 January 1999, although he was not sentenced for these offences until 22 March 2000. I was informed by Crown counsel that the offences of 27 January 1999 were committed whilst he was on home leave from the prison between 27 and 29 January. Less than a month later he was again released from prison on home leave on 19 February 1999. Whilst on leave he committed the offences of attempted robbery, wounding and assault occasioning actual bodily harm for which I sentenced him to a total of four years imprisonment at Belfast Crown Court on 12 November 1999. On 22 March 2000 he was then sentenced for the offences committed on 27 January 1999 and was sentenced to three years imprisonment to be followed by twelve months probation. He was released from custody on 30 October 2001 and therefore was on probation at the time he committed the offences for which he is to be sentenced today.

[13] From this survey of the defendant's record it is apparent that he is an extremely violent individual who has committed many offences of a violent and sexual nature including rape, aiding and abetting rape, as well as several robberies and serious assaults. His offending has continued relentlessly to the present day, and many of these offences have been committed while he was under a suspended sentence, whilst he was on probation, whilst he was on licence or when he was on short term release from prison. As Dr Bownes' report reveals, he has also absconded from Knockbracken Healthcare Park.

[14] In his succinct and well marshalled submissions on behalf of the defendant, Mr Mallon essentially advanced two submissions. The first was that the

robbery in this case was one where the gravity of the offence was close to the bottom end of the scale. He submitted that there was a lack of aggravating features in that there was no pre-planning, no conspiracy with others, that the accused did not conceal his identity, that there was nothing to suggest that the accused immediately threatened injury, the victim suffered no pain, there was no great amount of injury caused, there was no sexual element to the assault and there was nothing to show that the victim had suffered from any long term consequences.

[15] It will be apparent from the description of the robbery I gave earlier that there was a significant threat of violence when the accused said to Alison Withers "open the fucking till, or you get a bullet in the head". She described how she was very frightened that she would be harmed if she did not do what she was told and she felt something hard pressed into her back. Joyce Moffett formed the impression that the accused had something in his hand which she thought was a gun or something. Whilst there is no evidence to show that the defendant did have a gun, or that either lady has suffered any long term consequences as a result of these events, it is nevertheless clear that it was a very frightening experience for them both.

[16] Offences of this type have been endemic in the Greater Belfast area for many years. A great many of the offences which are dealt with at Belfast Crown Court involve attacks by individuals, often drunk or under the influence of illegal substances or both, on corner shops, fast food outlets such as that in the present case, other retail outlets and filling stations, many of which stay open

late at night to provide a service to the public. The staff of these outlets are predominately female, and those who carry out these offences are usually armed with some form of weapon, either a knife, a real or an imitation firearm, or some other object which they use to threaten or inflict injury on the staff or any customer or passer-by who is brave enough to intervene.

[17] In England and Wales in the **Attorney General's Reference numbers 41 and 42 of 1995** (1996) 2 Cr. App. R. (S.) 115 the Lord Chief Justice observed that for attempted robberies in small shops and where the shopkeeper is put in fear, the level of sentencing would normally be between 3½ and 7 years imprisonment. In practice the sentencing range tends to be 4-5 years imprisonment, although sentences on either side of that range can be found. See **Tidiman** (1991) 12 Cr. App. R. (S.) 702 (5 years), **Hollingsworth** (1993) 14 Cr. App. R. (S.) 96 (5 years) and the **Attorney General's Reference number 67 of 1998** (1999) 2 Cr. App. R. (S.) 152 (where the court would have expected the sentence in the court below to be within the bracket of 4-5 years).

[18] Given the frequency of such offences in Northern Ireland it would appear proper to impose comparable sentences to those imposed in England and Wales for offences of a similar type. Therefore, where it not for the aggravating factor of the accused's record, but taking into account his plea of guilty on arraignment I consider the proper sentence would have been one of 5 years' imprisonment. However, in view of the accused's record I consider it appropriate to consider whether a life sentence should be imposed in the

present case. Mr Mallon's second submission was that all the criteria to which the court should have regard when considering a discretionary life sentence start from the point where if the offence is not of the most serious type a life sentence should not be imposed because to do so would be to sentence the accused for the man he is rather than the nature of the offence.

[19] It is, however, well established that when deciding what the appropriate punishment is for an offender the court is entitled to have regard to how he has behaved in the past. As MacDermott LJ observed in R –v- Coates Northern Ireland Sentencing Guideline Cases Volume 2 5.1.32.

"Mr Cinnamond submitted that he should not be penalised for having a bad record. This is so in that a man should not be punished twice for the same offence. But in assessing an offender to determine how he has reacted to punishment in the past and how he may behave in the future his record is clearly relevant and here the record is that of a persistent offender who has made no [apparent] effort to reform."

This principle is embodied in Article 37(1) of the Criminal Justice (Northern Ireland) Order 1996 which provides that

"In considering the seriousness of any offence, the court may take into account any previous convictions of the offender or any failure of his to respond to previous sentences."

[20] Previous convictions of a violent or sexual nature are regarded as a serious aggravating feature of any case, particularly where the offences before the court are themselves of a violent or sexual nature. I am satisfied that the circumstances of this case require the court to have particular regard to the nature of this man's offending in the past and the way he has reacted to the sentences which have been imposed in the past. He is a very dangerous and violent man who has repeatedly re-offended whilst under a suspended sentence, whilst on licence, whilst on probation and whilst on temporary release from prison. His re-offending has been constant and lasted for many years until the present day. He is addicted to alcohol, illegal drugs and solvents and this addiction is plainly a major factor in his re-offending. I am satisfied from his unwillingness to confront this effectively that he is, and will remain for the foreseeable future, a serious danger to the public.

[21] Given his repeated re-offending in the circumstances I have described I do not consider that this is a proper case for a custody probation order. Whilst a life sentence is only appropriate in exceptional circumstances, such a sentence will be appropriate where the criteria set out in **Hodgson** 52 (1968) Criminal Appeal Reports 113 are satisfied, that is

"(1) where the offence or offences are in themselves grave enough to require a very long sentence; (2) where it appears from the nature of the offences or from the defendant's history that he is a person of unstable character likely to commit such offences in the future; and (3) where the offences are committed

the consequences to others may be specially injurious, as in the case of sexual offences or crimes of violence."

[22] Whilst I have no doubt that some form of supervision of the accused will be necessary upon his release from prison, whenever that may be; given his repeated re-offending and failure to respond to any of the efforts which have been made in the past to cope with his drug and alcohol addiction I have no doubt that he should not be released from prison until the responsible authorities are satisfied that the very high risk of violence towards others which his record suggests will otherwise continue for the foreseeable future has been satisfactorily addressed.

[23] Having considered all of the circumstances of the present case I am satisfied that the criteria set out in **Hodgson** are satisfied. I consider that the gravity of the offence itself, the aggravating factors to which I have already referred and the risk of further danger to the public because of the accused's propensity to violence are such that the only proper sentence is one of life imprisonment.

[24] Under Article 5(2) of the Life Sentences (NI) Order 2001 (the 2001 Order) the court is required to impose a minimum period of detention which the accused must serve before he can be considered for release. This must be such as is appropriate to satisfy the requirements of retribution and deterrence having regard to the seriousness of the offence.

[25] Once this period has expired, it will be for the Life Sentence Review Commissioners to decide whether the defendant should be released, and by virtue of Article 3(4) of the 2001 Order the Commissioners are required to

"(a) have regard to the need to protect the public from serious harm from life prisoners; and

(b) have regard to the desirability of –

(i) preventing the commission by life prisoners of further offences; and

(ii) securing the rehabilitation of life prisoners"

[26] I consider that the defendant should not be released from custody until there is substantial evidence to suggest that he is successfully addressing his propensity to violence and his alcohol, drug and solvent abuse. In addition, given that his history in the past indicates that there is an extremely high risk that he will fail to comply with any restraints imposed upon his conduct, a stringent level of supervision upon his release will be necessary in the light of all of the information available to the authorities at that time. I am satisfied that it is essential for the protection of the public that a life sentence be imposed in this case. On count 1 I therefore sentence the accused to life imprisonment and I fix the minimum term which the defendant must serve before the release provisions of the 2001 Order can be applied as eight years. I consider that this period is appropriate to satisfy the requirements of retribution and deterrence having regard to the seriousness of the offences. The minimum term will run from the first remand date on these charges. On

count 2 I sentence him to 6 months imprisonment, the sentences to be concurrent,