

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

-v-

PETER ENGLAND

HUTTON LCJ
HIGGINS J

This is an application for leave to appeal against sentence by Peter England who appeared before His Honour Judge Hart QC at Londonderry Crown Court on 1 September 1989 when he pleaded guilty to 8 counts of burglary, one count of theft, one count of conspiracy to steal and one count of handling stolen goods.

The background to the case is this. The applicant is now aged 25. He has a very bad record, with many convictions for burglary and theft commencing in 1983 and he had a previous record and conviction before that, when his first conviction was for assault on a female in 1980. In October 1986 he came before the Court of Appeal after having been sentenced to 4 years' imprisonment for robbery, in addition to a number of other smaller sentences for burglary and theft and, in fact, he received a total sentence of 5 years' imprisonment, principally for robbery. He was then released on licence in respect of those sentences on 6 October 1988. He almost immediately began, with a number of other persons, to commit a series of burglaries in Londonderry and the surrounding area. It is not in dispute that at the commencement of November 1988 he walked into a police station and gave himself up and it is said on his behalf that that was because he could no longer simply live with the sort of existence that he was going through at that time and there is no doubt from the statements of the police officers who interviewed him that he gave them a very full and detailed account of the whole series of burglaries which he had committed.

When he appeared before His Honour Judge Hart, the learned judge ordered, under Article 3 of the Treatment of Offenders (Northern Ireland) Order 1976, that he should return to prison to serve the remainder of the total sentences of 5 years which previously had been imposed upon him and that means that he would return to prison for a period of in or about 2 years, although it seems clear that the expiry of that period would, in fact, be the date on which the total sentence of 5 years would have ended, calculated from the time when the sentence was imposed and the expiry

of that sentence would not, in fact, be beyond that date by reason of the fact that he had been at liberty for a period of about one month.

It also appears to be clear, as stated by the Court in R v Ferguson [1988] 7NIJB at p83 that, in fact, the applicant would be able to gain remission for that further period. So that was the position as regards the earlier sentences imposed upon him, his licence was revoked and he went back to prison for the remainder of that term, but, very understandably, Judge Hart also imposed sentences of 2 years' imprisonment and 18 months' imprisonment on the applicant in respect of the burglaries and other offences of dishonesty which he had committed during the months that he was at liberty in and about Londonderry and those sentences of 2 years and 18 months were all made to run concurrently but they were ordered to run, as a total, consecutively to the remainder of the 5 year term, so, therefore, that total sentence of 2 years imposed by Judge Hart was added onto the remaining period of about 2 years which he had to go back to prison to serve and, therefore, in effect he was sent back to prison for about 4 years.

Having regard to the applicant's very bad record and to the number of burglaries which he committed in the Londonderry area in or about October 1988, there can be no criticism whatever of the total sentence of 2 years imposed upon him by Judge Hart and also, having regard to the principles laid down by Lord Lowry in this court in R v Ferguson in 1988 to which I have already referred and to the practice direction of the English Court of Appeal relating to the revocation of licence laid down in a practice direction and set out in [1976] 62 Cr. AR at p130, there can be no criticism made of the decision of Judge Hart to revoke the licence and to order that the applicant should serve for the remainder of the 5 year sentence.

But the question which arises for this court relates to the point that His Honour Judge Hart made the subsequent sentences consecutive to the remainder of the 5 year term.

It appears to this court that, having regard to what has already been set out by the court, namely the very bad record of this applicant and the fact that he returned to commit crimes of burglary almost as soon as he was released from prison, there can be no criticism of the decision of the learned judge to make the sentences imposed by him consecutive and in virtually every case where one had circumstances such as this one would regard that as almost being inevitable. But, although there are cases where no criticism whatever can be made of the sentencing judge where it cannot be said that he erred in principle or that his sentences were manifestly excessive, nonetheless there are some very exceptional cases where the Court of Appeal in reviewing a case decides that it is appropriate for it to give a recidivist, as this applicant certainly is a last opportunity to rehabilitate himself and cases of that nature are referred to in Thomas, Principles of Sentencing, 2nd Ed at p20 where various citations are given where the Court of Appeal in England has said that there

can be no possible criticism of the trial judge, but nonetheless that court has decided to give a man one last chance.

In the very exceptional, and I emphasise this, the very exceptional circumstances of this case and because of this man's background and history to which the Court is about to refer, we have decided that we should give this man what is in effect one last chance. There is no doubt that this applicant has had a very tragic background and the tragedy principally arises from the fact that he had a stable relationship with a woman with whom he was living and he had 3 children by her and sadly all of those 3 children suffered what are sometimes termed "cot deaths". This court is not familiar with the precise circumstances or the background to those deaths and it makes no specific comment about them, save that the fact remains that, whatever were the precise circumstances, it was clearly a great tragedy for this man and that is borne out by the number of psychiatric reports that are before this Court.

In addition, he suffered a further tragedy in that the father of the woman with whom he had been living suffered a heart attack. When he attempted to resuscitate one of these little children, and these cot deaths it appears happened and the death of the father of this lady occurred when this applicant was in prison I think, in England. It appears from the psychiatric reports that he blames himself very much for being in prison when these deaths occurred and feels that if he had not been in prison they might not have occurred.

During this period he also lost a close friend who was the brother of the woman with whom he was living and it appears from a number of psychiatric reports, including a report from the psychiatric medical officer in the prison, that these deaths have had a very grave effect upon him, that he suffers from depression and at times shows suicidal tendencies and he also suffers from alcoholism. It is said on his behalf that he was drinking very heavily when he committed these burglaries. The Court, of course, makes it clear that alcoholism is no excuse whatever and constitutes no extenuating circumstances for criminal offences but the court refers to it as indicating, in this case, the psychiatric background of this man. He has for a number of years been involved in a life of crime, he suffers from depression arising, no doubt, from his tragic background, he returned to crime almost as soon as he was released on licence and it is entirely clear that unless he takes a very serious grip on his life and permits doctors and others to help him that he will spend a great many years in prison and, therefore, in the circumstances, this Court has decided, as I have already said to really give him a last chance to show that authority is willing to try to help him and what we have decided to do is to direct that the sentences imposed by the learned Recorder of Londonderry will run not consecutively but will run concurrently with the remainder of the total 5 year sentence which he has to serve. So that means that he will go back to prison now for what is in theory 2 years but in practice because of the opportunities for remission will be about 1 year and the court hopes that during that year he will avail himself of the medical assistance that will be given to him and also that when he leaves prison he will avail himself of the help of the probation service and the social services which the Court hopes will be made

available to him and the Court would ask the principal officer from the prison present in court today to convey to the appropriate authorities the hope of the Court that this applicant will continue to receive the medical attention and psychiatric help which is referred to in the reports before the Court and whilst, of course, it is entirely a matter for the prison authorities and this court does not purport to give any direction in relation to the matter, the court expresses the hope that the authorities in deciding in which prison this man should serve the remainder of his sentence will decide that he should serve it in a hospital where he will receive the best medical attention and help and I hope that will be conveyed to the prison authorities.

Stand up England; you have heard what the court has decided and I want to make this quite clear to you. This is the last chance that a court is going to give you and we hope you will take it. We have done this so that you will know that you are only going back to prison for about a year and you can look forward to getting some medical help and help from the social services when you leave prison, you understand that? The Court hopes you will take that, but if you go back to a life of crime, you need not expect any further leniency or mercy from the court; we have, in fact, been merciful to you this morning, to try to give you a chance because of your tragic background, but if you do not take it and if you cause distress and trouble to other people by breaking into their homes, you will be dealt with with the utmost severity and you need not expect any more help from any quarter, do you understand that?