IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

-v-

JOHN FERGUSON

LORD LOWRY LCJ

This was an application for leave to appeal against sentence in which we granted legal aid and leave to appeal and treated the hearing as the appeal. We announced at the time our intention of giving a short statement of our reasons which might be of some general assistance to courts in deciding whether to revoke a licence. It will be recalled that we ordered the release of the offender, and the effect of that order is that he will remain on licence for the earlier offence and that he will still be the subject of the suspended sentence, which will remain suspended for the period laid down by the court which imposed it.

The facts of this case in summary form are as follows:

1. On 30 June 1978 the appellant was sentenced to 12 years' imprisonment for possession of firearms with intent and received a concurrent sentence of 8 years for assisting offenders. The expiry date of these concurrent sentences without remission would be 2 July 1989.
2. On 1 September 1983 the appellant was released from prison.
3. On 24 December 1986 the appellant committed the offence of unlawful wounding, contrary to section 20 of the Offences against the Person Act 1861.
4. On 16 September 1987 at Belfast Magistrates' Court the appellant was sentenced to 6 months' imprisonment; this sentence was suspended for 18 months. The court did not deal with the question of the unexpired residue of the prison term which had been imposed on 30 June 1978.
5. On 4 March 1988 the appellant received a summons to appear at the Crown Court and on 14 April 1988 that court ordered that the appellant be returned to prison to serve the full unexpired residue of the term of imprisonment imposed on 30 June 1978.

Article 3(1) of the Treatment of Offenders (Northern Ireland) Order 1976, so far as relevant, provides -

"3(1) Subject to paragraph (2), where -

(a)   after a person is discharged from prison or a young offenders centre after the commencement of this Part in pursuance of prison rules, but before any sentence of imprisonment or term of detention to which he was subject immediately before his discharge would (but for that discharge) have expired, he commits, and is convicted of, an offence in Northern Ireland; and

(b)   the court has power or would, but for section 1 of the Treatment of Offenders Act (Northern Ireland) 1968, have power to sentence him to imprisonment for that offence,

the court may, without prejudice to its powers to deal with him in respect of the offence, order that he be returned to prison or, where appropriate, to a young offenders centre for such period, not exceeding that referred to in paragraph (3), as it thinks fit and, where it is a magistrates' court, exercise the powers conferred by paragraph (4).

(2)   Paragraph (1) shall not apply to any person unless, immediately before his discharge from prison or a young offenders centre, the sentence of imprisonment or term of detention which he was serving (as pronounced by the court) exceeded one year or such other period as the Secretary of State may prescribe by order.

(3)   The period referred to in paragraph (1) is

        (a)   where the court is a magistrates' court, the lesser of -

                (i)   12 months; or

(ii)   the period between the date of the order referred to in paragraph (1) and the date on which any sentence of imprisonment or term of detention so referred to would have expired in his case but for his discharge in pursuance of prison rules;

(b)   where the court is not a magistrates' court, the period referred to in sub-paragraph (a)(ii).

(10)   For the purposes of the Prison Act (Northern Ireland) 1953 and of the Treatment of Offenders Act (Northern Ireland) 1968, the period for which a person is ordered under this Article to be returned to prison or a young offenders centre shall be taken to be a sentence of imprisonment or term of detention".

This provision is different from that obtaining in England and Wales, where the court's only power is to return the offender to serve out the original term of the sentence. Article 3 applies to a released prisoner notwithstanding section 13(7) of

the Prison Act (Northern Ireland) 1953, under which his sentence expires when he is released pursuant to a grant of remission. This is, therefore, earned by industry and good conduct and the discharge from prison thereby effected is not final but remains subject to the condition subsequent that the offender may be returned to prison if he commits a further offence.

The effect of Article 3(10) is that remission of the period for which the offender is returned to prison may be earned in the same way as if a new sentence of imprisonment had been imposed: see Boyle and Allen, Sentencing Law and Practice in Northern Ireland (1983) p.73 Article 4 of the Order confers a right of appeal against an order returning an offender to prison as if the order were a sentence imposed on conviction.

We consider that the court should approach its power to return an offender to prison in a manner similar to that which is adopted when deciding whether and, if so, to what extent to actuate a suspended sentence. It should look at such matters as -

   a. the nature of the original offence;
   b. the nature and gravity of the subsequent offence;
   c. the length of time of the original sentence which remains unserved; and
   d. the length of time which has elapsed since the offender's release from prison during which he is not shown to have committed a subsequent offence.

The object of conferring on courts the power to return an offender to prison is to provide a deterrent, which ought to discourage the offender from committing further offences after his release, in the same way as a suspended sentence. And the court should not ordinarily consider it appropriate to return the offender to prison if -

   i.   the penalty for the subsequent offence has not taken the form of an immediate custodial sentence; or
   ii. the subsequent offence is of a different nature (and particularly of a less grave character) from that of the original offence.