IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

-v-

IVAN FREDERICK HOUSTON

HUTTON LCJ

This is an appeal against sentence by Ivan Frederick Houston, now aged 42, who pleaded guilty to a count of robbery before His Honour Judge Gibson QC at Belfast Crown Court on 27 June 1991 and on that count he was sentenced to 7 years' imprisonment. The Court desires to make it clear that the offence which he committed was a very serious one, because it was the robbery of a bank, the Trustee Savings Bank, 254 Ormeau Road, Belfast, when a sum in excess of £900.00 was taken and in committing that robbery the appellant menaced 2 cashiers with what appeared to them, no doubt, to be a real firearm and he was also masked and he also warned them, when he was shouting at them, to give him the money and not to press the alarm and one of the cashiers also says that he threatened her and shouted "Don't touch the alarms or I'll blow your heads off".

It has been said on behalf of the appellant that this was an imitation firearm and that is correct, but as this Court has often observed, it is of very little consolation to cashiers in banks and other persons who are robbed and who think that they are being menaced with a real gun, with all the fear and terror that that gives rise to, to be told at a later stage that, in fact, the gun was only an imitation firearm.

This Court has laid down on many occasions, and emphasises again today, that the robbery of a bank or of some similar financial institution with what appears to be a real firearm is a very serious offence which, save in very exceptional circumstances, calls for a severe sentence. As stated by this Court in the case of R v O'Neill the range of sentence which a court should consider for a well-organised and determined armed robbery of a bank is in the range of 10 years and upwards. And as this Court also emphasised in the case of R v Colhoun even the robbery of a small shop with an imitation firearm calls for a severe sentence.

On behalf of the appellant, Mr Finnegan QC put forward 2 main strands of argument. First, he submitted that looking at the offence itself there were mitigating circumstances which related to it. These included the points that the gun was an

imitation plastic gun, that the robbery was not carefully planned in advance, that there was full restitution and that, when first interviewed by the police or certainly at an early stage thereafter, the appellant admitted his part, and on those grounds Mr Finnegan submitted that the sentence of 7 years' imprisonment was excessive. We do not accept that submission. We consider that had it not been for the exceptional personal circumstances relating to this appellant, there could be no criticism whatever of the sentence of 7 years' imprisonment for the robbery of this bank and we consider that that sentence, having regard to the nature of the offence itself, cannot be criticised.

Mr Finnegan also referred to the point, to which we shall refer later in more detail, that this appellant had been an officer in the police force and he suggested that the Learned Trial Judge had, in fact, imposed an additional punishment upon him because he had been a police officer. We consider that that point is not a valid one and we think that the judgment is not subject to criticism on that point. But, whilst we consider that, looking at the nature of the offence itself, the 7 years' imprisonment was a proper sentence, there is also another principle which we consider comes into play in this case. That principle is that in certain circumstances, which will often be exceptional circumstances, it is open to a court to reduce what would otherwise be a proper sentence because of the special circumstances which relate to the background of the appellant, and which indicate clearly to the Court the reason or reasons why the appellant has turned aside from an upright and respectable life and has committed a series of crimes or the particular crime with which he is charged. That principle is set out in Thomas on Sentencing (2nd Ed) at p.206 where there is the following paragraph:-

"The commission of an offence is frequently not the result of a considered decision but an uncharacteristic reaction to a situation of stress of one kind or another. A violent crime is often the result of provocation or domestic tension, and an offence of dishonesty may be committed in desperation in a financial crisis. Drink is a significant positive element in the commission of many offences. The extent to which these factors, which may well occur simultaneously, mitigate sentence can be illustrated by reference to a number of decisions."

A case which illustrates that principle is then stated at p.208 of Thomas as follows:-

"In Owens a former coal miner was convicted of robbery at a sub post office involving a callous and brutal attack on an elderly couple. The Court was told that the appellant, while employed as a miner, bought a house on a large mortgage and undertook other commitments which became too heavy when he was forced to change his work following an injury to his leg and found employment as a commission only sales representative. Accepting that the appellant was in a desperate situation financially at the time of the offence and had fallen into a state of depression the Court stated that his sentence of 6 years' imprisonment was not wrong in principle for a grave offence but the various mitigating circumstances

distinguished the appellant from the more usual professional criminal who carried out a robbery of this kind after considerable planning and justified a reduction to 4 years."

It is the frequent experience of this Court that on an appeal a medical report, perhaps from a psychiatrist, is relied upon which may also have been before the trial judge, and not infrequently that psychiatric report refers to the background in the life of the appellant which suggests that he has been under stress or that some reason in his past history - it may be in his family history - can be isolated, which provides a clue as to why he has committed the offences. There are, no doubt, few cases where a doctor or a psychiatrist is not able, if he or she looks for it, to indicate some sort of factor in the background. But very often that view of the doctor or psychiatrist is of relatively little weight, because it simply emphasises the motive for a crime which may be a need or a desire for money, or a need or a desire to obtain money for drink, or that the offence may itself have been fuelled by drink. It is, of course, the common experience of the courts that often offences are caused and fuelled by some such need, but that, in itself, is very rarely a reason why a court can, or should, reduce a sentence which is otherwise proper and in accordance with the normal guidelines. But there may be exceptional cases, and we consider that the present case is one of them, where it is quite clear, looking at the entire history of the appellant and at clear factual matters which did occur, that some event or events can be seen which, as a matter of common sense, do clearly indicate that it or they were the causative factor in the decline and lapse into crime of the appellant. As we have stated, we consider that this is one of those rare cases, because it is clear that up until the beginning of the 1980s this appellant had led an admirable and praiseworthy life. He had come from a good and respectable family, he had done well at school, he had then joined a motor car company in which he had been successful and had risen to the position of being a manager. He had then left that job because he wished to go into the police, he had had a successful career in the police and he had been promoted to a sergeant. It appears that he was successful at and enjoyed his work in the police, and at the same time he had married in about 1968 and had brought up a family. Then, sadly, all that changed and his life took a very downward course, and it appears from the report of Dr Harbinson that that occurred because in 1984 2 attempts were made on his life by terrorists, and the Court emphasises that there is no dispute or doubt about this. It is accepted by the Crown that on 2 occasions he was fired at - one occasion was when he went from Oldpark Police Station to make a purchase in a nearby shop, he was fired at by an IRA terrorist and it appears to be clear that that shot just missed him, and then a few nights later that he was in a landrover in the middle of a riot when a rioter fired into the landrover with a handgun. It appears to be clear that those incidents had a profoundly disturbing effect on him and that, at that time, as one can appreciate, it was considered inappropriate in the police to admit to being under stress and he felt he had to put a brave face on the matter and to continue with his work. But the stress had a serious effect upon him and he began to drink to excess and after that the whole sad story develops - he drank to excess and that caused the breakdown of his marriage. There were a number of offences of dishonesty that he committed which were dealt with by the Magistrates' Court. He

was reduced from being a sergeant to being a constable and in or about 1988 he was discharged from the police. Therefore, from being a man with a happy family and successful in his work, in a number of years he became a man with no family, with no work and in difficult financial circumstances and he also continued, certainly for some time, to drink to excess. In those circumstances, he formed a friendship with a lady and he lived with her and she seems to have had a beneficial influence upon him, but his circumstances were such that he faced very serious financial problems. He was making repayments in respect of the offences dealt with by the Magistrates' Court, he was making payments which, of course, he was properly obliged to make by way of maintenance to his former wife, and he was trying to keep up financial appearances in front of the lady with whom he was living, and it appears that just before he committed this offence he had undertaken to take this lady on holiday. He realised that he had no money with which to take her on holiday and he then formed the plan to commit this robbery of the bank. Now, we wish to stress that his financial difficulties and his need for money, of course, provide no excuse or mitigating circumstances for what he did, but we have referred to them as an incident in the unhappy train of events which really flow from the stress and its consequent results to which we have referred. If it had not been for the stress which he was subjected to and the risk to his life while serving the community in the police, it appears probable that today, instead of being a convicted robber, he might well still have had a successful career in the police and be living with his wife and his family, but sadly that is not the position in which he finds himself today.

Therefore, for those reasons, we consider that he falls within the principle stated in Thomas and that that justifies the reduction to 4 years' imprisonment of what, as we have emphasised, would otherwise have been an entirely proper sentence. We further emphasise, as we have already done, that we take this view in this case based upon facts, namely the attacks upon his life, which were incontrovertible. We are not basing the reduction on some theory or suggestion put forward by a psychiatrist, we are basing it on facts which are not in dispute and which make this an exceptional case. We are in no way departing from the principle that the robbery of a bank, whether with a real gun or with an imitation firearm, will invariably call for a severe sentence unless, as in this case, there are very exceptional circumstances of the nature to which we have referred.

Accordingly, the appeal is allowed to the extent that the sentence of 7 years' imprisonment is reduced to 4 years' imprisonment.