

IN HER MAJESTY'S APPEAL COURT OF NORTHERN IRELAND

THE QUEEN

-v-

ADRIAN MARTIN McGRATH

HUTTON LCJ (Delivering the Judgment of the Court)

This is an appeal by Adrian Martin McGrath aged 19½ years who pleaded guilty before His Honour Judge Babington QC at Belfast Crown Court on 13 November 1988 to the offence of robbery. He was sentenced to 3 years' detention in a Young Offenders' Centre and 2 suspended sentences which had been imposed on him on 6 March 1987 for a period of one year in the Young Offenders' Centre and also for 6 months in the Young Offenders' Centre, the suspensions being for 2 years were then put into operation by Judge Babington. He was sent to the Young Offenders' Centre for a total period of 4 years.

The robbery to which the appellant pleaded guilty was a bad one. He committed the robbery armed with a large knife with which he threatened the taxi driver. The offence was committed in the early hours of the morning of 4 March 1989 and the appellant took about £100 from the taxi driver and it is clear that the victim of this robbery, Mr Hughes, was very badly frightened and that is quite understandable because in his statement to the police he says this about the appellant "at this time he was really screaming at me and was really violent, he was screaming at me to get back into the car but I didn't, I was really scared because there was no doubt about it had he got hold of me he would have used the knife on me". He then goes on to describe how the money was taken from the car and indeed the appellant actually used the radio in the taxi to ring up the taxi base and to say that this was a robbery, threatening in effect that the driver would be hurt if the money wasn't handed over to him. Later Mr Hughes says in a statement "he jumped up and put the knife up to my face and he started searching me". This was a robbery in which there was a very severe threat of violence and as I have stated the taxi driver was obviously put in considerable fear.

This appellant has got quite a bad record. He has got convictions for burglary. There was a conviction for robbery, although that was a number of years ago in December 1985, but that was succeeded by further convictions for burglary, attempted theft and taking a motor vehicle without the owner's consent. As the

Court has stated, he was given suspended sentences in March of 1987 and he knew he was subject to a suspended sentence. After that at Dungannon Court in April of 1987 he was made subject to a probation order for 2 years in respect of criminal damage. So, unfortunately, for a relatively young man he has got a bad criminal record.

Mr Fee lays stress on his unsettled family background and on the fact that he had been drinking and drinking to excess when he committed this offence. But the gravity of the offence is such that his unsettled family background and the fact that he had taken drink cannot constitute any excuse or act of mitigation for what occurred. These type of robberies in this province are far too frequent. Taxi drivers and other people working on their own at night are subjected to threats of violence. They are people who are very vulnerable, they are people who serve the community and it is right that when people commit robbery against them that those persons when caught should receive stiff sentences which are intended to be a deterrent, not only to them, but to other persons as well.

Therefore this Court considers that the sentence of 3 years imposed on this appellant cannot in any way be subjected to criticism and that it was a sentence which was entirely correct and that there is no ground for reducing it.

The only point which the Court considers really does arise is this. As the Court has stated, this appellant was subject to 2 suspended sentences on 6 March 1987 and he committed this offence on 4 March 1989 and therefore he was within really 2 days of the termination of the period of those suspended sentences. This point is dealt with in Archbold at para 5/222 where it is stated with regard to a suspended sentence and a later offence the fact that the offence was committed towards the end of the operational period is not in itself a ground for not activating the sentence but it may justify some recognition such as the activation of the sentence with the term reduced or even concurrently with a sentence passed for the later offence. In *Rafferty* the offence was committed after 22 months of the operational period of the sentence had elapsed. The offender was given a discount of 6 months of the sentence of 18 months. In *Carr* where the offences were also committed 22 months after the sentence was suspended, the sentence was allowed to run concurrently with the new sentence.

In this case having regard to the fact that the period of the suspended sentence had almost run, I think it appropriate that some account should be taken of that. What we propose to do is to reduce the period of the original sentence passed on 6 March 1987, which was 12 months, to reduce that to 4 months and the other suspended sentence of 6 months we propose to reduce to 3 months. That means that there will, in fact, be a further 4 months in total to be served by this appellant, which of course will be consecutive to the sentence of 3 years. Therefore, the effect is to reduce the total period of 4 years by 8 months to 3 years 4 months.