IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

-v-

PATRICK MARTIN MURRAY

HUTTON LCJ

This is an appeal against sentence by Patrick Martin Murray. On 25 March 1994 at Belfast Crown Court he was convicted on 18 counts in the indictment by Carswell LJ and was sentenced to a total of 25 years' imprisonment.

The great majority of the counts on which Murray was sentenced related to grave explosive offences. In addition he was convicted of conspiracy to murder a police officer and of some offences of communicating and collecting information likely to be useful to terrorists. The counts on which he was convicted and the sentences which were imposed were as follows.

Count 1 - Conspiracy to cause explosions - 18 years' imprisonment.

Counts 2 and 5 - Possession of explosive substances with intent - 25 years' imprisonment.

Count 7 - Possession of explosive substances with intent - 18 years' imprisonment.

Count 19 - Making property available for terrorist purposes - 7 years' imprisonment.

Counts 30 and 35 - Possession of explosive substances with intent - 20 years' imprisonment.

Count 34 - Making an explosive substance - 20 years' imprisonment.

Counts 37, 38 and 39 - Causing an explosion - 25 years' imprisonment.

Count 44 - Conspiracy to murder - 15 years' imprisonment.

Counts 45 and 46 - Communicating information likely to be useful to terrorists - 7 years' imprisonment.

Count 48 - Collecting information likely to be useful to terrorists - 7 years' imprisonment.

Count 54 - Conspiring to communicate information likely to be useful to terrorists - 7 years' imprisonment.

Count 55 - Possession of explosive substances with intent - 25 years' imprisonment.

Count 57 - Possession of an item for a purpose connected with acts of terrorism - 10 years' imprisonment.

The explosive offences of which the appellant was convicted were very grave, and included the possession of bombs intended for Belfast City Airport, and the preparation of bombs placed at the premises of CSC Electrix on Ormeau Road, Belfast, and at the Drumkeen Hotel, Belfast.

The appellant was charged on the indictment with a co-accused, Ciaran Gerard Morrison, who was also convicted by the learned trial judge of a large number of explosive offences, and in sentencing the appellant and his co-accused the judge said:

"Ciaran Gerard Morrison and Patrick Martin Murray, you have each been found guilty of a large number of terrorist offences connected with explosives, involving their transport, mixing substances to make bomb material, preparation and ferrying of bombs, and planting them. It is patent from the evidence (which you did not dispute in any way) that you were both deeply involved in the preparation and handling of bombs in West Belfast, and the only matter which savours (of) good fortune is that the explosions did not cause more damage; that does not afford you much by way of mitigation, for it was not for want of trying on your part. The relentless assault on property by terrorist organisations and the strenuous efforts by those organisations to undermine commercial activity and prosperity, and the will of the citizens to resist the repeated destruction caused by bomb attacks are nothing less than a scourge on our society. When miscreants who have involved themselves so deeply and constantly in such enterprises as yourselves are brought to justice, you can expect nothing less than the full weight of the law to descend upon you."

On behalf of the appellant Miss McDermott QC advanced 2 submissions. The first submission was that a sentence of 25 years' imprisonment meant that under the present rules for remission the appellant would serve 16 years and 8 months before he was eligible for release, whereas under the present practice followed by the Secretary of State for Northern Ireland in respect of the release of prisoners serving life sentences for murder a person convicted of a terrorist murder and sentenced to

life imprisonment might serve less than 16 years before release pursuant to section 23 of the Prison Act (Northern Ireland) 1953. Therefore Miss McDermott submitted that it was wrong in principle that a prisoner convicted of offences less serious than murder should have to serve a longer period in prison.

This argument was recently considered and rejected by this court in R v Glennon (March 1995, unreported). In delivering the judgment of the court MacDermott LJ stated:

"Counsel for the appellants directed their submissions to the sentence of 25 years' imprisonment imposed on count 1 - conspiracy to murder Dr Kennedy. This in the circumstances was a perfectly understandable course to adopt but we would take this opportunity to state that we consider that a sentence of 10 years' imprisonment for the false imprisonment of the occupants of the house was entirely appropriate.

There were 2 main aspects of the submissions that 25 years were manifestly excessive. Firstly, a sentence of 25 years allowing for remission at current levels (1/3) means a period in custody of 16 2/3 years. This, it was argued, was manifestly excessive because most mandatory life prisoners (having been convicted of murder) are in practice released after serving 12-16 years.

It has long been an axiomatic principle of sentencing policy that the court should decide the appropriate sentence in each case without reference to questions of remission or parole.

The release of life prisoners is a matter of executive discretion and is related to the particular circumstances of each particular case and the overall policy developed over a period of time in relation to the release of life sentence prisoners. If it is incorrect to consider the remission possibilities in such a case it is quite irrational to consider the consequences of remission in other cases. In all cases it is the duty of the sentencing court to impose the sentence which it considers to be appropriate or which it is required to impose by statute."

Therefore we reject Miss McDermott's submission for the reasons stated in R v Glennon.

The Practice Statement (Crime: Sentencing) [1992] 1 WLR 948 made by the Lord Chief Justice of England which altered in England "an axiomatic principle of sentencing policy ... that the Court should decide the appropriate sentence in each case without reference to questions of remission or parole" was made because of the radical changes with regard to sentencing made by sections 32 to 40 of the Criminal Justice Act 1991. Those sections did not apply to Northern Ireland and therefore that Practice Statement does not alter the principle applicable in this jurisdiction which remains as stated by this court in R v Glennon.

The second submission advanced by Miss McDermott was that, in deciding upon the total sentence to be imposed, the learned trial judge failed to take into account and to give credit to the appellant for the way in which he had met the case against him, in that the appellant did not require the Crown to call evidence to prove the case.

The manner in which the appellant and his counsel acted at the trial was described as follows by Carswell LJ at the commencement of his judgment:

"The defendants were arraigned on 21 January 1994, and both pleaded not guilty to all charges. Neither changed that plea to any of the charges when the trial opened before me on 16 February 1994. Neither defendant put forward any defence to any of the charges, however, and all of the Crown case was accepted without contest by each defendant. Each defendant through his counsel expressly admitted the facts contained in the statements of evidence in the committal papers and the additional evidence served, pursuant to the provisions of Section 2(2) of the Criminal Justice (Miscellaneous Provisions) Act (Northern Ireland) 1968. Oral evidence was accordingly not given on behalf of the Crown, but I have read and considered carefully all of the statements and analysed them in order to ascertain whether each of the charges was properly made out against each defendant on the facts contained in them. Neither defendant gave evidence, although I called upon each of them pursuant to Article 4 of the Criminal Evidence (Northern Ireland) Order 1988 to do so. No evidence was called on behalf of either defendant, nor did counsel for either advance any submissions to the Court."

It is a clearly established and well recognised principle that an accused who pleads guilty to the charge against him will receive a reduction in sentence. This principle was referred to by MacDermott LJ delivering the judgment of this court in R v Sean Connolly (January 1994, unreported) where there was an appeal against sentence in a case where the appellant had pleaded Not Guilty but had not challenged the evidence called by the Crown. MacDermott LJ stated:

"Mr McDonald argued that a sentence of 20 years was in the circumstances manifestly excessive though he recognised that a lengthy custodial sentence was inevitable. He made several points:

1. Discount should have been allowed for the fact that, although the appellant pleaded Not Guilty, he did not challenge the Crown evidence. The judge was fully aware of this point saying

`... you contested the case but as your counsel rightly says it was a technical contest and to that extent it is virtually the same as a plea'

For our part we would wish to make it clear that we cannot accept this proposition by the judge.it has long been established that where an accused pleads guilty the sentencer should recognise that fact by imposing a lesser sentence than

would otherwise be appropriate to reflect the fact that the plea is an indication of remorse, has led to a saving of time and has convenienced witnesses who would otherwise have had to attend court. This approach is often called `giving a discount'. What is an appropriate discount depends on a variety of factors such as how early the plea was made and all the general circumstances of the case of which the sentencer will be aware. In this case the appellant did not plead guilty and so is not entitled to a discount in the accepted sense. In this as in any other case where an accused has been convicted after pleading not guilty the sentencer will impose a sentence which properly reflects all aspects of the case."

In the present case also the appellant did not plead Guilty and therefore, as MacDermott LJ stated, he is not entitled to a discount in the accepted sense. In passing sentence the learned trial judge did note that the 2 accused had not disputed the evidence in any way. Therefore Crown counsel submitted that the trial judge may well have taken into account in imposing sentence the consideration that the appellant had not challenged the evidence and may have reduced the sentence accordingly. Crown counsel submitted that having regard to the number and gravity of the offences a total sentence of 27 or 28 years would have been an entirely proper sentence, and that the judge may have had a sentence in this range in mind and reduced it to 25 years to give credit for the appellant's acceptance of the Crown evidence. However in his very careful and detailed judgment the judge did not state that he was making any allowance for this factor in assessing the total sentence.

As already stated, the appellant is not entitled to a discount in the accepted sense. In some cases where the accused pleads Not Guilty but does not challenge the Crown evidence, it may not be appropriate to make any reduction in the sentence. But in this case where the counts in the indictment related to a large number of separate offences with different factual backgrounds, the acceptance by the appellant of the Crown evidence meant that there was a very substantial saving of time in relation to the work of the Crown Court and in relation to the numerous witnesses who would otherwise have to be called.

Therefore, whilst we consider that the total sentence of 25 years imposed by the learned trial judge would have been an entirely appropriate 1 (and a somewhat higher sentence could not have been criticised) if the Crown's evidence had not been admitted by the appellant, we also think that a small reduction should be made in the sentence determined by the judge to take account of the attitude of the appellant to the evidence with its resultant benefits. Accordingly we reduce the concurrent sentences of 25 years to concurrent sentences of 23 years.