

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

-v-

SAMUEL WALKER AND

GERARD THOMAS McCOLGAN

LORD LOWRY, LCJ

I will give the judgment of the court in both of these cases. It appears to us that the applicant Gerard Thomas McColgan has made a business out of selling these certificates for quite considerable sums of money. He appears to have received about £10,000. We are acting on the assumption that he was asked to sell them and did not engage in the business to the extent of offering his wares but there is no doubt that he, with his eyes open, deliberately committed a series of very serious fraudulent offences. His only point, which Mr Rodgers does make quite well, is that other and possibly more serious offenders have hitherto been fortunate enough to escape with non-custodial sentences. That is a factor to take into account but, where 12 months is so clearly a moderate sentence for a deliberate series of frauds, we cannot overlook that and we refuse leave to appeal.

The case of Samuel Walker is slightly different. He engaged in one action, again according to himself, and we have no reason to disbelieve it, instigated by someone else with the motive of making substantial profit. Samuel Walker himself received £3,000, which he has squandered and of which there is no trace left. £3,000 is quite a lot of money. It is really impossible to say that the 6 months' sentence is manifestly excessive and very difficult indeed, if one approaches the matter quite coldly, to say that it is in any way wrong in principle. We do, however, take two things into account. This man, while he has by no means a clean record, has not anything more than a minimal record for dishonesty a very long time ago. He succumbed at a time when pressures of all kinds were closing in upon him; he indulged in only one transaction and, again, we cannot entirely overlook the fact that other and more serious offenders have been much more leniently treated. "We take the opportunity, therefore, to say, and wish to make it quite clear, that the imposition of lenient non-custodial sentences upon people who are in quite a big way of business is entirely the wrong way in which to deal with this very serious fraud upon the public, because that's what it is. It is to be hoped that even at this late hour some more

efficient method can be found of making it difficult for this very prevalent and long-known offence to be committed, but one of the weapons available to society is severe custodial sentencing and, whatever has happened up to now, from now on that will be the only sensible way of dealing with such offences. It would also be quite a false hope for offenders to believe that they will only be sentenced severely for offences committed after today; the sentencing policy pursued by some Judges has obviously been over-lenient and that policy ought to be changed immediately." In view of the complications, we grant legal aid despite refusing leave to McColgan. We grant leave to appeal to Walker, treat this hearing as the appeal and grant legal aid for the purpose. I forgot to say what we propose to do instead. We propose to suspend this sentence for a period of 2 years from the date when the sentence was imposed. (Effect of suspended sentence explained).