IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

v

CHARLES WRIGHT AND WILLIAM JAMES HALL

CARSWELL LJ (giving the judgment of the Court)

This is an application for leave to appeal by Charles Wright and William James Hall, who on 8 March 1994 were convicted at Londonderry Crown Court sitting at Coleraine on a count of inflicting grievous bodily harm under Section 20 of the Offences Against the Persons Act 1861, and each sentenced to 15 months' imprisonment.

They had been acquitted by the jury on the first count of causing grievous bodily harm with intent, contrary to Section 18. When one comes to consider sentence, therefore, the jury must be taken to have found that the applicants did not intend to cause grievous bodily harm, although one can say, looking at the facts as we sit here in this Court, that their acts might be said to have created a high probability that grievous bodily harm would result.

The injuries were inflicted on the injured party William Graham on the night of 30-31 July 1993 in Upperlands in County Londonderry. The injured party and the applicants and other persons connected with them had been spending a convivial evening together. They ended up in Wright's mother's house in Upperlands, by which time it is quite apparent from the papers that all concerned, and in particular the applicants and the injured party, had consumed a fair amount of alcohol. Wright and the injured party Graham started to quarrel and then commenced a fight in the house, which was broken up. Wright was put out and hammered on the door to get Graham to come out and fight him. Hall was already outside, having gone out or been put out with his wife. Graham then went out to assist his brother, who was under attack from Hall, and he, Graham, was knocked to the ground. Both Wright and Hall started in to kick him around the head with multiple kicks while he was lying there, either unconscious or semi-conscious, but certainly not in a condition to defend himself effectively against their attack.

In their defence Wright and Hall claimed that Graham had started the fight. It may be that he was far from blameless himself, but that is not really the point in the

present application. It is not in dispute that both applicants kicked Graham severely as he lay on the ground. However the fracas started and whoever was responsible or to blame for starting it, the real serious injury and the risk of even more serious injury and the really blameworthy conduct was when both applicants kicked him in the head as he lay on the ground.

The injured party sustained facial injuries, and in particular a fracture of the ramus of the right mandible, in common terms a broken jaw, which required the insertion of a plate and led to some numbness and double vision. The Judge imposed a sentence of 15 months' imprisonment on each applicant and each has claimed that the sentence was manifestly excessive.

Wright is a man of 31. He was unemployed immediately before his apprehension, but had been in previous employment. He is married and has 2 children. He has one conviction for disorderly behaviour in 1987, when he was fined, and it cannot be said that this should be a serious factor in a sentencer's mind.

Hall is also 31 and was in regular employment. He is married with 3 children. He has several convictions, but they are minor matters, and there is only one in point at all in our judgment, disorderly behaviour as long ago as 1982. So again, his record is not a significant adverse factor in considering sentence.

References were given to the Court concerning the character of each applicant, and I think it is right to say these are men who in the ordinary way should not be regarded as heading for a prison sentence. It is doubly sad that they became involved in this dangerous and violent assault which, as their counsel said, was contrary to their normal type of behaviour.

The gravemen of the offence was that they had passed from a drunken brawl, which was bad enough but not one of the worst of this type of case, into a deliberate and savage kicking about the head. Indeed, as I said in the course of argument, the applicants may be regarded as somewhat fortunate that the jury did not find them guilty on count one, that of grievous bodily harm with intent, in which case they would have been facing a far heavier sentence. It is necessary to satisfy oneself of course that the Judge in passing sentence was not distracted by the fact that they were facing a more serious charge in his approach to the sentence on the charge for which they were convicted. But having looked critically at the papers to satisfy ourselves of that, we have to say that there is nothing which shows any incorrectness of approach or distraction from the correct approach on the part of the Judge.

Even regarding the case, as the Judge properly did, as one under Section 20 and assuming in favour of the applicants, as one must, a lack of intent on their part to do grievous bodily harm, the courts have said that they regard the deliberate kicking of a helpless victim as an offence requiring custodial penalties and one which requires

a clear approach by the courts to deter other people. I refer to the judgment of Simon Brown J in R v Moore 1992 13 Cr. App. R (S) 130,131 where he said:-

"A very serious view must inevitably be taken of a vicious attack of this nature sustained long after any conceivable explanation of its start. Kicks to the head of a man lying helplessly on the ground gravely aggravate any assault".

In that case, which was one under Section 20, a sentence of three years was upheld by the Court as not being manifestly excessive or based on any wrong principle.

It is possible of course to find other cases, both under Section 18 and Section 20, which range on each side of the present sentence. Examples have correctly been drawn to our attention by Mr McNeill, who has said all that may be properly put on behalf of the applicants, and he has pointed to cases under Section 18 where references were brought, which do not go any higher than the present case. All of this seems to reinforce the view in our mind that the range is fairly broad and that the sentence could properly fall within a reasonable span either way. What has to be borne in mind, and this Court wants to emphasise it, is that deterrence is necessary, deterrence of other people. It may well be that these men have learned their lesson, but that is not the last word. The mitigating factor that this may be out of character does not save them from the consequences of their acts when it is necessary in the public interest to mark the gravity of the offence and to deter other people as well as these individual applicants. We have looked at this carefully and considered it with some anxiety, but we cannot say that it was outside the proper range, and therefore we cannot hold that it was manifestly excessive. Accordingly we dismiss the applications for leave to appeal.