IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

-v-

SIMON JOSEPH GIBSON

MacDERMOTT LJ

CAMPBELL J

The appellant entered the home of a Mrs Dunlop then aged 85, at 372 Carnhill Road, Rasharkin. It seems to have been about 6.15 in the morning. She lived alone in her home, a single dwelling in the country. Somewhere in the papers it appears to have been rather derelict but nevertheless her home. She heard someone in the house. With great presence of mind, she contacted a neighbour and then came face to face with the intruder - the appellant. By this time it is quite clear that the appellant was aware that someone was in the house and had picked up a small poker about one foot long and when she saw this large figure she was understandably terrified.

When the car arrived the appellant had the good sense to leave. Prior to that he demanded money from her but nothing in fact had been taken. When he was interviewed a few days later he readily accepted his guilt. He is a man who has been in Court on many occasions before and the police view is that he is inclined to drink far too much and then to enter houses that he thinks are unoccupied or derelict in order to either sleep off his stupor or to steal in order to buy more drink.

Now everybody knows that one of the worst forms of offending is to break into a house or home of elderly people and then steal from them. In the case of Ferguson this Court expressed the view that such conduct is entirely unacceptable. Ferguson is a guideline case setting out guidelines and not rigid rules set in concrete. In every case one must look not only at the circumstances but at the nature of the offence and of the defendant. Here it seems to us there are marked grounds for distinguishing the guideline situation described in Ferguson. We emphasise especially, firstly, the fact that there is nothing to suggest that the appellant selected this house in order to carry out a robbery or burglary because there was an elderly person in it - in fact it is doubtful that he selected the house for a thieving purpose at all, it is much more likely that he was seeking sanctuary rather than the opportunity of theft. Secondly, there was no actual violence to this elderly lady. We are in no doubt that she was

terrified and it seems clear from the papers that her family were anxious that she should be re-housed. In the end of the day she has moved but it would be quite wrong to say that she left because of her experience on this occasion.

We feel that in this case when first looked at it had all the hall marks of a bad incident falling within the guidelines. We should have mentioned however that in fact no robbery occurred - it was an attempted robbery, but at the time of the incident that would have not been clear to Mrs Dunlop. We also bear in mind that this experienced County Court Judge will have been all too familiar with the prevalence of this type of offence in his area.

As far as the defendant is concerned, we have the details of his record before us and his probation report. Our view is that we understand that a trial Judge would feel constrained to act straight down the line suggested by the Ferguson case. However, having reviewed all the facts we are satisfied that this was a case which can be distinguished from the guideline situation. We emphasise especially the fact that there was a plea of guilty at the earliest opportunity, an early indication of genuine remorse and the fact that there was no violence. With the assistance of Counsel we have been taken over the factual background which we have outlined and in our view this is a case in which we can adopt a considerably more lenient course than that achieved by a simple application of the Ferguson guideline. There is no doubt there must be an immediate custodial sentence. That would have been inevitable even if the appellant did not have a substantial record.

It is our view that 7 years is excessive, and we set it aside and substitute therefore the sentence of 4 years' imprisonment.