Neutral Citation No. (2002) NICA 12

Judgment: approved by the Court for handing down
(subject to editorial corrections)

Ref: MCLF3605
Delivered: 01/03/2002

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

-v-

MARC ALEXANDER RINGLAND

McLAUGHLIN J

The applicant pleaded guilty to a single count of burglary before His Honour Judge Hart QC, at Belfast Crown Court on 30 November 2001. He was sentenced to 3½ years detention in a Young Offenders Centre and this sentence was ordered to run consecutively to a period of 2 years detention which had been imposed at the same court on 30 May 2001.

At approximately 3.20 am on 8 February 2001 the police were called to Isoline Street, Belfast, to investigate a report of suspicious persons, possibly carrying crowbars, who were observed sitting in a car. On their arrival the police officers found the car to be empty but heard banging noises coming from the direction of the Castlereagh Road, which was approximately 80 yards away. As a result of their follow up investigations the officers detected movement inside a dental surgery at 114 Castlereagh Road. It appeared that entry had been gained via a window which was broken. The officers shouted for the persons inside to show themselves and after a short

interval the applicant and his co-defendant appeared at the first floor window. The co-defendant climbed down on request, however he then resisted arrest and attempted to escape but was detained. The applicant remained at the window for some 10-15 minutes before climbing down to the ground, whereupon he was arrested. The dental surgeon who owned the practice visited the surgery soon afterwards and found the general office had been ransacked and the main surgery desk rifled. He confirmed that entry had been gained by smashing a first floor window of the main surgery and forcing the window lock open. There was damage also to the back door metal shutter and the metal gate at the rear of the yard. There did not appear to be anything missing. He found a small torch and a crowbar in the main surgery.

In the course of interview by the police the applicant admitted the offence and accepted that the crowbar and torch were his. He stated that he had gone with the co-defendant to the premises by taxi from a house in the Braniel area where he had been drinking. He claimed that the crowbar used in the burglary had been hidden near the premises at an earlier stage.

Mr Taylor Campbell, who appeared for the appellant, argued that the sentence was manifestly excessive and that it was wrong in principle, having regard to the principle of totality, to make the sentence imposed in respect of this offence consecutive to the sentence which he was already serving. He referred to the fact that the applicant was just 20 years old whereas his co-defendant was 27 and that they had both pleaded guilty at the time of arraignment. He said there was also a marked distinction between their cases

in that the appellant was convicted of a single offence of burglary whereas Stitt pleaded guilty to five counts of burglary, one of resisting arrest and had 15 further offences of dishonesty, including numerous burglaries, taken into consideration. They each received the same sentence in respect of this offence. Mr Campbell recognised that the plea of guilty entitled them to limited discount having regard to the fact that they were both caught red-handed. He referred also to the pre-sentence report which, whilst it recognised the serious pattern of offending, also pointed to some possible signs of a change of attitude on the part of the appellant to his behaviour.

The above factors together with the consideration of the impact of the present sentence, and the fact that it was made consecutive to an earlier sentence which he was still serving, cannot be assessed without reference to the criminal record of the appellant. Mr Campbell admitted very frankly that both men had "unattractive records". There is however a marked distinction between these in that whilst both show patterns of offending in connection with offences of dishonesty, that of the appellant is a particularly bad record, more so given his age. He appeared in the Crown Court on no fewer than four occasions between June 2000 and May 2001, and on two of those occasions he was convicted of a total of three robberies. This pattern of offending meant also that he was in breach of a custody-probation order imposed on the 22 September 2000 and one of the robbery offences occurred whilst he was on probation. His three convictions for robbery relate to offences committed on 31 October 1999, 19 January 2000 (both dealt with at

the Crown Court on 22 September 2000) and 18 November 2000 (dealt with on 30 May 2001). It is abundantly clear from even a superficial examination of his record that this young man has engaged in increasingly reckless criminal conduct over the two years or so prior to the imposition of the sentence under appeal. It is hardly surprising therefore that the learned trial judge considered it proper that the sentence which he imposed should be made consecutive to the sentence which he was already serving.

The main thrust of the argument advanced on behalf of the appellant was that by imposing the same sentence upon Ringland as that imposed upon his co-accused the learned trial judge had created injustice by reason of disparity in their treatment. It is hardly necessary to review the many authorities dealing with this issue. The principle is set out clearly in R –v- Delaney [1994] NIJB 31 at p33 when Carswell LJ (as he then was) said:

> "When sentencing Delaney, the judge's attention was drawn to the length of sentence which he had given McFadden, but he went on to impose the same sentence of three years on Delaney.
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> It was submitted on Delaney's behalf that there was a material disparity of treatment between the two persons, in that although McFadden had stolen more property and had admitted more offences, nevertheless Delaney received the same sentence. It was argued on Delaney's behalf that there should have been a clear difference in sentence, to reflect the disparity in the offences, and that therefore Delaney had a justified sense of grievance.
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> In so arguing counsel was invoking the well known line of authority in which it has been held that where one co-accused has been treated with undue leniency another may feel a sense of grievance when he receives a sentence which in isolation is quite

> justifiable but which is more severe than that imposed upon his associate. Rather than allow such a sense of grievance to persist, the court has on occasion reduced the longer sentence on appeal. It has only done so as a rule where the disparity is very marked and the difference in treatment is so glaring that the court considered that a real sense of grievance was engendered: see *R v Brown* [1975] Crim LR 177. The principle served by this approach is that where right thinking members of the public looking at the respective sentences would say that something had gone wrong the court should step in: *R v Bell* [1987] 7 BNIL 94, following *R v Towle and Wintle* (1986) The Times, 23 January.
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> It should not be supposed, however, that the court will be prepared to invoke the principle and make a reduction unless there is a really marked disparity, for unless that condition is satisfied it will not regard any sense of grievance felt by an appellant as having sufficient justification."

In his sentencing remarks the learned trial judge was at pains to point out that he recognised the points of distinction between them that had been drawn to his attention in the course of mitigation. He referred specifically to the appellant's criminal record and based his refusal to make a distinction between the two men on the fact that the appellant's was much more serious in the year or so immediately preceding the hearing. For a man who has nine previous convictions for burglary, 25 for theft, two for handling, two for criminal damage and one for deception, let alone three recent convictions for robbery, a sentence of 3½ years upon a charge of burglary cannot be regarded as excessive, let alone manifestly so, and if he has any sense of grievance at the treatment given to his co-accused it is clearly misplaced.

In the course of his submissions to the court Mr Campbell sought to draw a distinction between a burglary such as this, which involved entering vacant commercial premises in the early hours of the morning, and a case of burglary of domestic premises in similar circumstances. This issue was considered in detail by the Court of Appeal in R –v- Lendrum (1993) 7 NIJB 78 at 86 when Hutton LCJ, as he then was, stated:

> "We have carefully considered whether we should follow the approach taken in England and establish a lower level of sentences for the burglary of commercial and business premises. We have decided that we should not reduce the level of sentences. We consider that the court should seek to protect the occupiers of shops and other commercial premises against burglaries by imposing sentences for such offences which contain a deterrent element, particularly when the offender has previous convictions for burglary."

That observation has been repeated in other cases including R –v- John Joseph McGill Unreported, 3 April 1998, when MacDermott LJ, having referred to the above passage in Lendrum, stated:

> "It can therefore be taken that this court does not recognise any valid distinction between stealing from houses and stealing from business premises."

We agree that we should continue to refuse to make such a distinction.

Lendrum is of particular interest in this case as it involved a plea of guilty to a single charge of burglary where a sentence of 30 months was imposed and a suspended sentence of 6 months was activated and ordered to run consecutively. The court reviewed a long list of sentences in burglary

cases and concluded "that sentences between two and three years for burglary are well within the range applied by this court."

The appellant clearly deserved a substantial sentence having regard to the nature of the offence and his criminal record. He was given credit for his plea and all of the other factors referred to by counsel on his behalf were taken into account. We consider that the sentence imposed was fully merited.

The final argument on behalf of the appellant was that the cumulative effect of making the sentence of three and a half years consecutive to that of the two years being served at the time was excessive. The sentence of two years was imposed on 30 May 2001 and the present sentence of three and a half years was imposed on 30 November 2001 which means that effectively a period of five years detention will result. It was not wrong in principle to make these sentences consecutive and we see no possible complaint about the total having regard to the character and criminal record of the appellant.

The learned trial judge also gave consideration to the imposition of a custody probation order but decided not to do so, principally because the appellant had breached such an order when he had committed one of the three robberies appearing on his record. We agree with that decision. We shall refuse leave to appeal.

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