IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

-V-

ROBERT ALEXANDER SKELTON

And

DALE MOONEY

Hutton LCJ, Kelly LJ and Sheil J
HUTTON LCJ

These are applications for leave to appeal against sentence by Robert Alexander Skelton and Dale Mooney. At Craigavon Crown Court in October 1990 they were both charged with the offences of attempted robbery and assault occasioning actual bodily harm. The particulars of the first count were as follows:

"DALE MOONEY AND ROBERT ALEXANDER SKELTON, on the 3rd day of December 1989, in the County Crown Court Division of Craigavon, assaulted Alfred Augustus McCammond."

The particulars of the second count were as follows:

"DALE AND MOONEY AND ROBERT ALEXANDER SKELTON, on the 3rd day of December1989, in the County Court Division of Craigavon, assaulted Alfred Augustus McCammond thereby occasioning grievous bodily harm."

As the trial was about to commence Skelton pleaded guilty. Mooney maintained his plea of not guilty and was cCopyright© 2009 Contoso Corporation - All Rights Reservedonvicted by the jury.

On 25 October 1990 on the first count Skelton was sentenced by his Honour Judge Hart QC, to 12 years' imprisonment and Mooney was sentenced to 14 years' imprisonment. On the second count Skelton was sentenced to 4years' imprisonment and Mooney was sentenced to 5 years' imprisonment.

The offences were committed in the early hours of the morning of 3 December 1989 when the appellants entered the semi – detached house of an elderly and disabled man, Mr Alfred Augustus McCammond, who lived at 35 Church Avenue, Dunmurry, on the outskirts of Belfast, and attempted to rob him with appalling brutality.

In his statement to the police Mr McCammond described the ordeal to which he was subjected when the 2 appellants came into his house as follows:

"I have suffered illness for many years and most recently have been confined to my home with chronic arthritis. A home help me dress and wash and prepare meals. At about 2.00am this morning I was lying in my first floor rear bedroom. I am in constant pain and find it very difficult to get to sleep. I had just turned my light off my bedside light and short time later I saw a male standing searching the dressing table and opening drawers. I shouted at the man to get out. He came over and stood over the bed. He told me to shut up or he would burn me. He called downstairs and knew someone else was downstairs. They both started to shout abuse at me. They asked me my name several times and I told them. One of them sat on top of my hip, which was painful. One of them talked about a picture of Paisley, which hangs in my hall and asked me if I was a Paisleyite and did I know about the murder of the Catholic in the Battery Bar at Coagh. One of them continued to bounce up and down on my hips. I found this very painful but he continued to do it shouting verbal abuse about me being a Paisleyite Bigot. Both of them asked repeatedly to hand over the money, that they wanted notes only and kept asking me where my money was hidden. I told them I had no notes but to take the coppers in the vase on the dressing table. They told me they did not want coppers and they both started to punch my face and jaw and beat me about the body. I keep a thermos flask beside my bed filled with water. One of them lifted it and beat me about the head and body with it. One of them lifted a Delphi Irish Terrier, which sits on the table and told me to hand over the money or he would break it. I told them constantly that I had no money and he broke the ornament on the floor. At this point one of them lifted and electric bar heater and turned it on. He told me he was going to burn me if I didn't hand over the money. I was in fear of my life and cried for them to leave. They both grabbed me then and one held me while the other held the fire to my groin and face. I struggled as best I could but I was too weak to break free. The pain was unbearable and I was screaming very loudly. One of them in particular hit me much more than the other and was much more brutal. He had black hair and was wearing a black leather jacket. He appeared to be the ringleader and was constantly abusive and hit me about the face. I think this torture went on for a few hours it certainly seemed so and I was very exhausted. Suddenly I heard a voice call it's the police. One of them jumped out of my bedroom window and the other chap remonstrated with the police. I would describe the two chaps as follows, the taller of the two, who jumped out the window, had brown hair, he had a different jacket from the other one but can't really describe his clothes. I would say his late 20's early thirties. The other one was slightly older, black hair thinning with a black moustache. He wore a black leather jacket casual

type. I didn't hear them call each other by name; they spoke with a Belfast accent. I have suffered the most horrific metal torture, my body is covered in bruises and burns and my face and head is bruised and cut. I 'm not aware at present the full damage to my property or what exactly is missing. I would know the fella with the black hair and moustache with the black leather jacket again. I don't think I would know the other one again."

In a later statement to the police Mr McCammond said in relation to the appellants: "They were both equally terrible."

The appellants had been together drinking steadily together since the early afternoon of 2 December 1989, and it appears that after closing time they decided to steal from motor cars and houses and as they walked along Church Avenue they decided to enter Mr McCammond's house and try to steal from it.

It appears that the appellants entered Mr McCammond's house about 2:00 am and the appellants were not disturbed in the house by the police until 5:10 am, so the ordeal to which Mr McCammond was subjected by the appellants lasted for a period of 3 hours. The appellants were captured when Mr McCammond's neighbours in the adjoining semi- detached house heard his distressed voice through the dividing wall and alerted the police. The police arrived at the house shortly after 5:00 am and as they entered the house and went upstairs Skelton jumped through the window of Mr McCammond's bedroom and was captured by the police in the rear garden of the adjoining house. Mooney was captured by the police in Mr McCammond's bedroom.

Mooney was therefore caught red-handed by the police, but despite this, he denied at the trial that he was one of the men who had attempted to rob Mr McCammond. This defence was rightly rejected by the jury. In his notice of application for leave to appeal Mooney sought leave to appeal against conviction. At the hearing of the appeal this application was sensibly abandoned, as it had no basis whatsoever.

In sentencing the appellants the learned trial judge stated:

"Your behaviour on this occasion can be best described in words in similar types of cases by the Lord Chief Justice of England, 'savage, sadistic, cruel and greedy.' Those 4 words sum up how you behaved towards the old man, a pathetic man in the sense that he was physically and greatly incapacitated, constantly in pain, and it is not too strong a word to say that you have tortured him. I have absolutely no doubt on the basis of the evidence that I have heard and the evidence before the jury that both of you played a full part in what went on in that room, and each of you sought to shift the blame on to the other. The evidence of Mr and Mrs McTaggart that there were two voices in the room and that the escalation of the noise and the distress in Mr McCammond's voice leaves one in no doubt about that. The courts have made it clear again that this type of behaviour must be dealt with by

extremely severe sentences. And in Northern Ireland recently our Court of Appeal has said that the starting point in cases in robbery of householders where violence is used should be 10 years and in appropriate cases sentence of 15 years would not be excessive. Well in this case this was an attempted robbery. No thanks to you, you did not get any money and therefore the fact that it is an attempted robbery in my view makes no difference. Each of you has a record for violence in the past. So far as you are concerned, Skelton, you have various assaults on the police, common assault, and the possession of firearms – a bad record but one has seen worse. You, Mooney, have not served a sentence of imprisonment, unlike Skelton, but you also have convictions of assault and grievous bodily harm, assault occasioning actual bodily harm, wounding with intent. You are both violent, vicious men and your personal circumstances therefore can play no real part in deciding what is appropriate in this case. The only feature in your favour, Skelton, is that you did what was in your power to save this old man the considerable physical ordeal of sitting in this courtroom in a state of great pain and discomfort as I am sure was evident to everybody in going through his account of what happened. You did what you could to stop that and you will get credit for it, and that is all that in my view you deserve credit for. So far as you are concerned, Mooney, you contested the case and you have inevitably been convicted. Therefore you have no credit whatsoever in my view due to you and you must attract a sentence virtually at the top of the range prescribed for this type of offence.

…

I sentence you, Mooney, on 1 count to 14 Years imprisonment. I sentence you, Skelton, to 12 years' imprisonment. On count 2 of actual bodily harm, I sentence you, Mooney, to 5 years' imprisonment and you, Skelton, to 4 years imprisonment. So far as you are concerned, Mooney, those sentences will be concurrent. In you r case, Skelton, I sentence you to 1 moths' imprisonment on count4 and one months' imprisonment on count 5. All of your sentence will also be concurrent. You therefore respectively serve 14 years and 12 years imprisonment."

This Court and also the Court of Appeal in England have stated the approach which should be taken in sentencing when citizens, and especially elderly citizens, have been robbed with violence in their own homes, and the same principle applies to attempted robbery. In R –v- Ferguson, in delivering the judgement of this court, O'Donnell LJ stated:

"At one time in this community elderly people living alone could leave their doors unlatched in the secure knowledge that no one but a neighbour would venture across the door. Sadly this is no longer the case. The elderly, the lonely, the infirm appear to have become targets of violent and cruel criminals who seem intent not merely on theft, but on causing fear and injury to the householders. The effect of such robberies on the victims can readily be imagined. It is unlikely that they will ever again have a night completely free of apprehension. Such robberies also have a

destabilising effect on other people in similar circumstances living in the same community. The impression of members of the court that such crimes are on the increase borne out by figures by the office of the Director of Public Prosecutions.

It would appear therefore that the courts must review the sentencing policy in regard to such offences. It must be brought home to offenders who violate the privacy and security of old people in their homes and expose then to violence that immediate and heavy sentences of imprisonment will follow the detection and conviction.

We would endorse the sentiments of Lord Lane in R –v- O'Driscoll [1986] 8 CAR (S)121. In that case in England the appellant and accomplice had entered the home of an elderly man, assaulted him. They held a lighted gas poker to his face, tied him up with wire and gagged him. He had been sentenced to 15 years' imprisonment and appealed. In dismissing the appeal Lord Lane said at p. 122:

"… In the experience of this Court there is an increasing tendency for burglars to select as victims elderly or old people living on their own. It is plain why. First of all they are not likely to offer very much resistance and the chances are they have got not inconsiderable sums of money concealed in the house.

Consequently it seems to us that in cases such as this nowadays, where thugs, because that is all they are, select as their victims old folk and attack them in their own homes and then torture them – happened here – in order to try to make hand over their valuables in this savage fashion, then this sort of sentence whatever might have happened in the past, will be the sort of sentence that they can expect. One hopes that in so far as lies in the power of this court, may have some effect in protecting these old folk from this sort of savage, sadistic, cruel and greedy attacks."

In his court in December 1988 the Lord Chief Justice in dismissing an appeal from a sentence of 12 years imprisonment for armed robbery in which a couple were robbed at gunpoint and tied up and in which the husband had said he thought he might be shot, said:

"It is the duty of the courts to seek to protect people who live in isolated places and I make it clear to those who commit such offences that if they are caught and convicted they will receive heavy punishment.'

IN his judgement Kelly LJ stated with reference to the robbery of householders:

…the Starting point in England is 10 years. The Court of Appeal in Northern Ireland has not,

so far as I am aware, laid down any guidelines for that second category of robbery, but in my view, subject to correction by the Court of Appeal, the normal bracket for this kind of robbery, might well range from 6 to 12 years.

We consider, with respect, that because of the gravity of this type of crime and its increase in this jurisdiction and the need to ensure that people can live in safety in their own homes, the suggested starting point was 6 years is too low and that the starting point for sentencing in the case of robbery of householders where violence is used, should is used 10 years. This will increase depending on the age or ages of the occupiers, any previous history for offences of violence, and in the appropriate case a sentence of 15 years would not be excessive."

In sentencing the appellants the learned judge used words employed by Lord Lane in R –v- O'Driscoll [1986] 8 Cr.App.R(S) 121 and described the attack made on Mr McCammond as "Savage, sadistic, cruel and greedy" and said that the appellants had tortured him. Having regard to how the appellants ill-treated him, in order to find out where he kept his money, they sat on his arthritic hips and bounced up and down on them, how they punched him and beat him, and how one held him while the other held an electric fire to his groin and face so that the pain was unbearable and he screamed loudly, we consider that their conduct fully deserves to be described in the terms used by the trial judge.

Having regard to the conduct so described and to the fact that both appellants had criminal records including offences of violence, it is clear that the learned trial judge in imposing sentence must have been mindful of the guidance given by his court in R –v- Ferguson where it was stated that the starting point for sentences should be 10 years and that:

"This will increase depending on the degree of violence used, the age or ages of the occupiers, any previous history offences of violence, and in the appropriate case a sentence of 15 years would not be excessive."

The judge in passing sentence was also entitled to have regard to the sentence of 15 years' judgement upheld by the Court of Appeal in England in R –v- O'Driscoll, where the appellant had been convicted of robbery, and to the judgement in that case.

Mr McMahon QC for Skelton and Mr Terence Mooney QC for Mooney advanced essentially similar arguments. They accepted that the conduct of the appellants was obnoxiuos and disgraceful, but they submitted that, the conduct did not justify a sentence in the highest bracket. They submitted that s sentence of 14 years (which was, in reality, the sentence imposed on Skelton, through a discount of 2 years for pleading guilty) should be reserved for offences of robbery with violence where there had been a prearranged plan to rob a particular house in an isolated area. Counsel relied on the point that the appellants had decided to enter Mr

McCammond's house on the spur of the moment without realising he was elderly and lived alone. They also sought to distinguish O'Driscoll's case on the basis that the victim in that case was hit on the head and leg with a hammer and sustained a fractured skull and a fractured leg.

We reject these arguments advanced on behalf of the appellants. We consider that the attack made upon Mr McCammond was so savage and vicious and so prolonged that the appellants fully deserved the lengthy sentence imposed upon them, and that it is without substance to suggest that they were manifestly excessive or wrong in principle.

It does not assist the appellants to draw fine distinctions between the facts in O'Driscoll's case and the facts in this case. In both cases an elderly man was tortured to try and force him to reveal where he kept his money. The nature if the violent acts were different. The victim in O'Driscoll's case was hit by a hammer and sustained fractures, the victim in this case had to endure bouncing on his arthritic hips, and it would appear that the duration of period in which he was subjected to violence was greater. The victim in O'Driscoll's case had a lighted poker held to his face, but it appears that he was not actually burn', whereas in the present case the victim was actually burnt on the groin by an electric fire. We see little to choose as regards savagery and viciousness in the acts carried out in the 2 cases. Moreover, in our opinion, where violence is so savage differences in the type of violence used to make little difference in sentencing.

As regards the point that the appellants did not plan in advance to rob the house of the elderly man, we see no real mitigation in that point. The terror and violence inflicted on Mr McCammond were no less because the appellants had no selected him as a prey and planned to rob him in advance. The purpose of the courts in sentencing in cases of this nature must be to make it clear that those who rob citizens in their homes with violence, whether the robbery is pre-planned or carried out without prior planning, will be punished severely, and that if serious violence is used the punishment imposed will be of the up most severity in order to deter others form similar crimes. As Lord Lane stated in R –v- O'Driscoll:

"One hopes that (this sort of sentence), in so far as lies the power of this court may have some effect in protecting these old folk from this sort of savage, sadistic, cruel and greedy attacks."

And as this court stated in R –v- Ferguson:

"It must be brought home to the offenders who violate the privacy and security and of old people in their homes and expose them to violence that immediate and heavy sentences if imprisonment will follow their detection and their conviction."

Counsel for both appellants relied on the point that they had been drinking heavily and that the drinking had lessened their inhibitions. Mr Mooney relied on the additional factor that the appellant was a chronic alcoholic. I t was said that if the appellants had been sober they would not have behaved in such a vicious way. That may be so, but the court desires to make it plain that, save exceptional circumstances, drinking constitutes no reason why the sentence should be less. This court endorses what Lord Lane said in an appeal against sentence in R –v- Bradley [1980] 2 Cr.App.R (S) 12 and 13:

"It is said that he was in drink". So he was, but the day has long passed when somebody can come along and say 'I know I have committed these offences, but I was full of drink.' If the drink is induced by himself, then there is no answer at all."

This is an application of the general principle of the criminal law stated by the learned authors of Smith and Hogan on Criminal Law 6th Ed. p.210:

"Intoxication is not, and never had been, a defence as such. It is no defence for D to say, however convincingly, that, but for the drink, how would weaken the restraints and inhibitions which normally govern our conduct so a man may do things when he is drunk that he would never dream of doing wh9ile sober. But, if he had the means required for the crime, he is guilty even though drink impaired or negatived his ability to judge between right and wrong or to resist provocation, and even though, in his drunken state, he found the impulse to act as he did irresistible.

Mr Mooney Qc informed the court that a psychiatrist report showed that the appellant was chronic alcoholic, and the counsel relied on a passage in the judgement of Kelly LJ in R –v- Wall and Others {1998] NI 573 (which was the judgement in the Crown Court where the appellant in R –v- Ferguson was convicted) where the learned Lord Justice, after citing the passage from the judgement of Lord Lane R –v- Bradley which we have set out below, went on to stated at 582F:

"But this is not to say that for certain crimes, punishment may be more sympathetic for the defendant who is an alcoholic, as contrasted with one who committed the crime when drunk."

However, in this dictum Kelly LJ had in mind the passage in Thomas on Principles of Sentencing 2nd Ed 210 where it is stated hat if a defendant is an alcoholic, in the court may I some cases show him sympathy by not imposing a custodial sentence so that he may obtain treatment. Thomas states:

"The refusal of the Court to accept drunkenness as a mitigating factor in its own right must be distinguished from a more sympathetic attitude normally displayed to 0ffenders who have become alcoholics. The victim of alcoholism will normally be considered a candidate for individualized treatment, if there are any reasonable

prospects for success. In Halcro a man of 21 had acquired habits of heavy drinking while apprenticed to a boat builder; having left home for London he found the company only in public houses and for about 2 years' was in and out of trouble largely because of his drinking habits'. He was eventually sentenced to a total of 21 months' imprisonment for taking vehicles and related offences, a sentence which the court considered could not be criticised. As 'his criminal behaviour is almost certainly the result of his alcoholism' and there was an excellent chance' that this could be cured, the sentence was varied to probation with appropriate conditions. In Wilkes a man of 27 admitted burglary and other offences and received 3 years imprisonment. The appellant had a series of previous convictions and the Court was advised that 'this man's main problem is drink'. The sentence 'was not excessive … for the offence', but the Court had to consider whether it was entitled to 'take … a Constructive attitude and see if something cannot be done to cure him of this addiction.' As the appellant had indicated his willingness to make an effort, a probation order was substituted for the sentence of imprisonment."

But, save in exceptional circumstances, this sympathetic approach is only possible in certain less serious cases where the court considers that it is appropriate to release the defendant that he can undergo treatment. It is beyond question that the appellant Mooney must go to prison for a lengthy period, and should therefore his alcoholism constitutes no reason why the length of the sentence he should serve should be reduced.

Mr McMahon further submitted that because the appellant Skelton had pleaded guilty he was entitled to a greater discount in his sentence that the 2 years, which the trial judge, gave him. We do not accept that submission because, although Skelton was caught, for practical purposes, red handed, he did not plead guilty until the trial was about to commence and Mr McCammond had entered the courtroom. Therefore, because of the lateness of the plea he was entitled to the relatively small discount. This court is in full agreement with the view of the Court of Appeal in England in R –v- Hollington [1985] 7 Cr.App.R(S) 364 stated by Lawton LJ at 367:

"It should be appreciated by those advising the defendants in criminal cases that their clients put up tactical pleas and then change them to pleas of guilty when they are finally arraigned, they cannot expect to get the same discount for a plea of guilty as they would have done if they had pleaded guilty at the beginning. The idea seems to be getting around that if a defendant ultimately pleads guilty as they he is entitled to a very considerable discounts on his sentence. This Court has long said that discounts on sentences are appropriate but everything depends of each case. But if the man is arrested and at once tells the police that he is guilty and co – operates fully with them in the recovery of property and the identification of others concerned in the offence, he can expect a substantial discount. If a man gets arrested in circumstances in which he cannot hope to put forward a defence of not guilty, he can not expect much by the way of a discount for pleas of guilty in these sort of circumstances, the better it will be for the administration of justice."

These were brutal and outrageous crimes perpetrated against an elderly and defenceless old gentleman in his own house where he should have been safe and secure. The sentences imposed by the trial judge were richly deserved. In upholding these sentences this court again gives the clearest warning that those who rob citizens with violence in their homes will be punished with up most severity.

The applications for leave to appeal are dismissed.