

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

-v-

ALAN ALFRED PRICE

CARSWELL LCJ

This is an application for leave to appeal against the activation of a suspended sentence. It is a somewhat unusual case, containing a cautionary tale which reminds us of the discrepancies which can arise when a prisoner has been in custody while on remand and then the court decides to impose a suspended sentence. We do not wish to say it in any censorious manner, but it might be a useful reminder to sentencers of the difficulties which can arise.

The chronology was helpfully put before us by Mr Cushinan on behalf of the applicant. The applicant was involved as an aider and abettor in a serious robbery which took place on 21 January 1993. The applicant was arrested and remained in custody on remand from July 1993 until 12 December 1994, when he was admitted to bail so that he spent a period of some 17 months in prison. If he had been sentenced on his conviction to an immediate custodial sentence he would have received credit for that in determining his release date.

He came before the court on 3 May 1995, and although some of the other actors in the main crime had received substantially heavier sentences from another judge, the learned judge who received the plea and sentenced the applicant along with his co-aider and abettor, Baxter, took a more lenient view. He sentenced Baxter to 3 years immediate custodial sentence, together with a term to reflect the fact that he was out on licence and had to be returned to complete that. In Price's case he also sentenced him to 3 years, but suspended his sentence for 3 years. Subsequently Price got into trouble with counterfeit offences committed on 11 March 1996. He was brought before Banbridge Magistrates' Court and convicted on 4 April 1996, when he received a sentence of one month. His appeal against that conviction and sentence was dismissed on 4 June 1996, and then a summons was issued on 20 November 1996 requiring him to attend the Crown Court to have the court deal with the question of the suspended sentence. He came before Judge McKay on 17 January 1997 and the learned judge then activated the sentence in full.

I should say in ease of both Judge McKee, who imposed the original suspended sentence, and Judge McKay who activated it, that their attention was not drawn to the fact which has quite correctly been put before the court by counsel on behalf of Price, that he would not receive credit for the time which he spent on remand before the suspended sentence was handed down. That was established in the case of R v Williams [1989] 11 Cr.App.R(S) 152, in which the court pointed out that because of this fact it is undesirable that a court should impose a suspended sentence where a substantial period has been spent in custody on remand. It was pointed out in R v Tucker [1991] 13 Cr.App.R(S) 15 that the sentencer should take account when putting into operation or considering putting into operation a suspended sentence the effect of the double counting of the periods. If it had been drawn to the attention of Judge McKee in the first instance, we have no doubt that the learned judge would have reconsidered what was the correct course for him to take. As Mr Cushman entirely correctly points out, if he had imposed the same term as in Baxter's case he would then have served only a very short time, a matter of a few weeks. If it had been pointed out to Judge McKay in January of this year the fact that he would have to serve the full 3 years, less remission, plus the 17 months he had already served, I have no doubt at all that the learned judge would have regarded it as inappropriate to activate the full suspended sentence.

Having said that, I want to make it clear from this court that suspended sentences are meant to have effect. If there had not been the question of the time spent in custody on remand we would have had no hesitation in affirming the decision of the learned judge, for we entirely agree with the view which he expressed that suspended sentences should be generally applied in full, unless there are circumstances which indicate that there should be a reduction. Apart from this issue we do not differ from the learned judge, but we have no doubt that it would be unjust to the applicant to have to serve the full suspended sentence as well as the time spent on remand, and that if this had been present to the judge's mind he would have recognised this and taken a different course.

In the circumstances we think that the proper course is to reduce the amount of the activation of the suspended sentence to allow the applicant to be released from custody with immediate effect (subject to any other matters with which he may be concerned). We shall therefore reduce the activation of the full 3 years to a period of 6 months, as we are informed that that will enable the desired effect to be carried out. The court accordingly gives leave to appeal, proceeds to the hearing of the appeal and allows the appeal, substituting the period of 6 months for 3 years.