IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

-v-

DONALD JOSEPH GEORGE RICHARDSON

CARSWELL LCJ

This application is for leave to appeal against the sentence imposed by the Recorder of Belfast on 16 October last at Belfast Crown Court. The applicant Donald Joseph George Richardson, who is now approaching 19 years of age, pleaded guilty at that Court to one count of theft of £20 in cash and a cheque for £70. He was found not guilty by direction on another count of indecent assault, and we leave that entirely out of account in considering the present application. The learned Recorder sentenced the applicant to 12 months' imprisonment, which he directed was to be served consecutively to a current sentence of 5 years' imprisonment imposed upon him on 7 February 1997 by His Honour Judge Gibson QC at Downpatrick Crown Court for aggravated burglary and other cognate offences.

The offence in question was committed on the night of 3/4 June 1996. The applicant on 3 June turned up at a flat in Queen's Elms Halls of Residence somewhere about 6.30 pm, where the occupants Nuala McCoy and her boyfriend Cameron Magill had been studying. The applicant announced that he had taken Ecstasy, he had been kicked out of his house and he had nowhere to go. After an unsuccessful attempt to obtain more drugs Richardson prevailed upon McCoy and Magill to accompany him to a party. McCoy and Magill returned to the flat about midnight and went to bed. At about 2 am Richardson arrived back and knocked at the door and produced a bottle of cider. Some time later Magill was aware of Richardson going out of the flat and running about the corridor outside and when Magill woke up about 7 o'clock, Richardson was sitting on a nearby chair in this flat which is really a bedsitter, a single room. Magill left for work and Richardson stayed on and was in the flat for some time until the early afternoon. At some stage then he left and took with him a cheque for £70 and two £10 notes. He was interviewed by detectives after being apprehended later that afternoon and he did admit that he had taken these items. He never attempted to deny it and the excuse which he presented was an allegation that Magill had taken his drinks.

His record is very bad, and it contains a catalogue of offences of dishonesty over a period since he was 12 years of age. As the Recorder observed in his sentencing remarks, the offences are getting worse and seem to have accelerated in recent years. The present offence was committed while he was on bail awaiting trial for burglary, for which he was sentenced on 12 June 1996, and also attempted theft for which he was sentenced on 14 June 1996. Before this case was heard by the Recorder he was sentenced at Downpatrick Crown Court on 7 February 1997 for a series of offences and received a sentence then for 5 years. His grounds of appeal are that the sentence was manifestly excessive and wrong in principle on the following grounds -

1. the learned trial judge failed to give sufficient credit to the appellant's plea of guilty;

2. the learned trial judge failed to give adequate regard to the age of the appellant being 17 years at the time of the commission of the subject offence;

3. the learned trial judge failed to have proper regard to a psychiatric report submitted to the Court;

4. in imposing a sentence of one years' imprisonment on Count 2 and ordering that it commence at the conclusion of the appellant's present 5 year sentence of imprisonment, imposed at Downpatrick Crown Court on 7 February 1997, the learned trial judge failed to properly consider -

(i) the fact that the present offence involved the theft of £20 and a cheque to the value of £70 and apart from the connecting offence, Count 1 on the indictment, would have proceeded at Petty Sessional hearing;

(ii) the fact that the appellant had admitted the offence during police interview;

(iii) the fact that the appellant had entered a plea of guilty to the offence;

(iv) the fact that the offence of theft on 4 June 1996 was prior to and not committed whilst on bail for the offences in respect of which he had received the sentence of 5 years' imprisonment at Downpatrick Crown Court on 7 February 1997.

The single judge refused leave to appeal on any of these grounds.

Some of them may be dismissed straight away. The learned judge did in our opinion quite clearly take into account the appellant's plea of guilty and he was well aware of his age, although it was argued before him, and before us, that at that age the applicant should have been dealt with more leniently. The learned judge did have the psychiatric reports submitted before him and one can only say that

Mr Mallon, I think rightly, did not attempt to make any headway with them, because if anything they make the case rather worse against the applicant.

What this case turns on is the question of making the sentence consecutive. We do not consider in the light of his record that twelve months was excessive or wrong in principle. Even though he was still young at the time of the commission of this offence the applicant was already a very hardened and habitual criminal and apparently completely unrepentant and obviously resolved to continue in a criminal career. Other expedients had been tried by the Courts and we do not think it at all wrong for the Court to have decided at that stage that he had to receive a material length of custodial sentence. The Judge did consider whether to make the sentence consecutive and he looked at the sentence imposed on 7 February and was well aware of what was involved in the offences for which he was sentenced on that date. He pointed out that there had been some leniency of treatment because the judge then did not make the suspended sentences consecutive. The learned judge stated in the course of his sentencing remarks:

"I consider that you have received all the leniency that you are entitled to and I consider that because you committed these offences of dishonesty, to which I have referred, over a short sequence of time, that you should be sentenced to consecutive sentences. I sentence you to 12 months' imprisonment which will commence at the expiry of the sentence you are currently serving".

It has been established in England in R v Millen [1980] 2 Cr.App.R.(S) 357 and followed in this Court in R v Rowden and Toal (1993, unreported) that one should look at the totality where a prisoner is serving a sentence, and in effect one should ask what the court would have done if it had everything before it when the first sentence was imposed. But I should also say that it has been established quite rightly that it is not the practice to make such a sentence concurrent when the current offence was committed on bail. In R v Young [1973] Lord Widgery CJ stated:

"... it ought in general to be regarded as a proper ground for making the sentence consecutive that the one was the result of an offence committed whilst the applicant was on bail for another".

In so stating he may very well have been thinking of the previous sentence being served, but the same principle seems to apply to us, at least in part: when an offender commits an offence while on bail for any similar offence he cannot expect to have it disregarded. There are therefore several elements here, there is the aggravated burglary which was committed on 19 June 1996 for which he received 5 years, there was a suspended sentence for an offence committed on 16 May 1995 which was not put into effect and, as the learned Recorder pointed out, the applicant got credit for that in the degree of leniency. For those two he received a sentence of 5 years and then the court had to deal with the present matter committed on 4 June 1996 and coming up for sentence on 16 October 1997. I think it is asking too

much of the court to say that that should also be ruled in. We do take notice of the fact that the learned Recorder a couple of weeks later sentenced the applicant for another robbery committed on 16 May 1996, before the present offence and he did exercise that degree of leniency, so he has had them all in mind at one time or another. We cannot fault his approach to the case, and accordingly we consider that he was right in principle, nor was it manifestly excessive or wrong in any way to make the sentences consecutive. We therefore do not give leave to appeal and dismiss the application.