IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

-v-

DORAN

HUTTON LCJ

This is an appeal against sentence by Edward George Doran who is aged 31. At Ballymena Crown Court on 14 February 1995 he pleaded guilty to one offence of burglary and one offence of reckless driving. He was sentenced by His Honour Judge Hart QC to a sentence of 4 years' imprisonment on the count of burglary and to 12 months' imprisonment on the count of reckless driving, the sentences to be consecutive, and therefore the learned judge imposed a total sentence of 5 years' imprisonment.

On the night of 25-26 May 1994 a burglary was carried out at the premises of Ace Fixings and a large quantity of tools and equipment, such as saws, drills, hammers and generators were stolen amounting to a total value of £43,177.02.

The burglars made off in the early hours of the morning in 3 vehicles and were seen leaving Ballymena on the Larne Road by a police car which gave chase. The last of the vehicles was blue van which, together with the other 2 vehicles, was pursued by the police car for a distance between 8 and 10 miles. Every time the police car tried to overtake the blue van it swerved violently to the right to prevent being overtaken, and on several occasions the van cut corners and went over the brow of a hill on the wrong side of the road or drove on the wrong side of the road to prevent the police overtaking the 3 vehicles, and the van was therefore driven in an extremely dangerous manner.

It appears that the engine of the van eventually gave up, and on the van stopping the driver escaped across the fields. The van was found to contain a substantial proportion of the items stolen from the premises of Ace Fixings, articles to a total of £15,917.93 being recovered. The police carried out a search of the surrounding area and the appellant was found some time later about a mile and a half from where the van had been abandoned. He said that his car had crashed and that he was trying to find his way back to Belfast. He later claimed that he had been in Ballymena that night and that he was returning home after a row with his girlfriend.

The appellant had a criminal record which included 2 minor offences of dishonesty when he was in his teens, and 2 convictions for theft at the Magistrates' Court in 1993 and 1994 respectively. In respect of the conviction in 1993 he was sentenced to 2 months' imprisonment suspended for 2 years, so that the offences of burglary and reckless driving were committed within a 2 year period during which the sentence was suspended, and he was sentenced to Community Service in respect of the conviction in 1994.

In sentencing the appellant to 4 years' imprisonment for the burglary the learned judge stated:

'The burglary was clearly carefully planned and skilfully executed as is demonstrated by the steps which were taken to render the alarm system inoperable. The scale of the burglary was such that more than one person must have been involved. In particular a number of internal locks had been cut presumably with a bolt cutter and a very large quantity of materials were moved and it is clear that some 3 vehicles in all were involved in this burglary … I have set out these matters in some detail because they demonstrate that this was a serious burglary, one carried out in a professional manner and involving the theft of a large quantity of valuable and readily saleable items. The scale of the operation and number of people in vehicles which were involved also emphasised that it was carefully planned and co-ordinated. The greater part of the property has not been recovered. Despite the very strong case against him the defendant at the time and since has completely refused to help the police in any way whatsoever. The burglary charge is one which clearly demands a substantial custodial sentence'.

In sentencing the appellant to 12 months' imprisonment for the reckless driving and in making it consecutive the learned judge said:

'Here the defendant drove in an extremely dangerous fashion for a distance which I have already stated is estimated between 8 and 10 miles in an effort to shake off police and escape arrest and his driving certainly seems to have made it possible or at least easier for the other vehicles to escape. In those circumstances I consider it appropriate to make the sentence on these counts consecutive and in doing so I have prior to finally fixing the sentence reviewed the totality of the sentences. In favour of the accused it has to be stated that he has pleaded guilty and he is entitled to some credit, although given the strength of the case against him, which I have already outlined, the credit to be given is rather less than otherwise might be the case'.

If it had not been for the considerations relating to the schizophrenia suffered by the appellant and the consequences to which his illness gave rise, we consider that there would have been no grounds on which this court would have reduced the sentence. This was, as the learned judge said, a serious burglary carefully planned and skilfully executed in which property to a very substantial value was taken. A sentence of 4 years' imprisonment after a plea of guilty was a severe sentence, but we

consider that it cannot be said that the sentence was either manifestly excessive or wrong in principle. In giving judgment in R -v- Lendrum [1993] NIJB 78 this court stated (at 86-87):

'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'.

After the burglary the appellant engaged in highly dangerous and reckless driving for lengthy periods in an effort to prevent the police overtaking his van and the other vehicles of his accomplices. The learned judge was fully entitled to impose a sentence of 12 months in respect of the reckless driving and to make it consecutive, and having regard to the gravity of both offences it cannot be said that the total sentence (subject to the points which we discuss below) was manifestly excessive or wrong in principle.

However it is clear that the appellant has suffered from schizophrenia for a number of years and has been a patient in mental hospitals on a number of occasions. A full medical report by a consultant psychiatrist, Dr G Loughrey, was placed before the learned judge. The relevant parts of the report are as follows:

'He is subject to a variety of psychotic symptoms. He would be subject to hallucinations at times, that is hearing voices, but was reluctant to say too much about this. He would also admit to being quite sensitive and paranoid, and says that he believes that his thoughts are being video-taped, in such a way that they are repeated inside his head, and can be broadcast to other people. He also believes that people can influence his body, but would not be drawn on the subject. He would be subject to ideas of reference from the television and other media, that he would imagine that broadcast items, which to the ordinary person had nothing to do with them, would be interpreted by him as referring to him directly…

THOUGHT CONTENT

He is subject to a variety of paranoid delusions, characteristic of schizophrenia. There is no abnormality of talk, thought form or perception. He would be subject to hallucinations at times, although there was no evidence that he was subject to hallucinations at the precise time of the interview. He is of roughly average intelligence. There is no evidence of any clinically significant impairment of intelligence.

FITNESS TO PLEAD

He is fit to plead …

Mental state examination confirms the diagnosis of schizophrenia, which is relatively well under control, although this man expresses dissatisfaction with the medication that he is taking. As to the offence behaviour, there is no evidence that his psychotic ideas were linked to the offence behaviour, and he makes no attempt to do so. However, schizophrenia features 2 basic types of complaints, one being of symptoms such as delusions and hallucinations, the other a deterioration of personality and drive which leads to impulsivity, and a tendency to be rather weak-willed and lacking in initiative. Although most schizophrenics are not criminals, many of those suffering from a more severe form of the illness, as I believe Mr Doran does, are liable to ill-judged actions because of the illness. Indeed, although I have not seen this man's medical files, I would venture to suggest that most of the actions he has taken through the years have been relatively impulsive and ill-judged. His association with, and facilitation of, criminals is another example of this'.

It appears to be clear that no suggestion was made to the learned judge that a hospital order should be made in respect of the appellant pursuant to art 44 of the Mental Health (Northern Ireland) Order 1986.

The learned judge in passing sentence commented on Dr Loughrey's report as follows:

'Dr Loughrey says that many schizophrenics suffering from a more severe form of the illness, and he believes that Mr Doran suffers from a more severe form of the illness, are liable to ill-judged acts because of the illness. Well, I accept of course that that is correct, but the fact remains that this man appears from the probation report as being under treatment for several years. That has had no success in preventing him from committing offences, particularly offences of dishonesty. It certainly did not prevent him on this occasion from taking part in what was all too evidently a very substantial criminal operation before the police came on the scene, nor did it prevent him having the presence of mind to drive in this dangerous fashion for a long distance in order to try and prevent the police apprehending anyone, nor did it prevent him having the presence of mind to try and bluff it out when he was arrested, nor did it have any effect when it came to his being questioned because he consistently refused to give police any information which could have led them to the goods in question. The entire picture therefore is of someone who no doubt is more prone to committing criminal activity but who was perfectly aware of what he was doing and took part in a very serious burglary indeed and behaved in a very dangerous fashion when he drove this vehicle afterwards, and a person who has chosen not to co-operate with police at any time up to and including today. I consider in all of the circumstances of the case that the appropriate sentence on Count one is 4 years' imprisonment, Count 2 12 months' imprisonment to run consecutively, making a total of 5 years' imprisonment'.

Therefore the question which arises is whether the sentence should be reduced by reason of the schizophrenia from which the appellant suffered.

Mental illness, which, of course, can vary greatly in severity and degree and in effect, is not an automatic reason for reducing the sentence imposed for a criminal offence, but we consider that there can be cases in which it is just for a Court to make a reduction in the sentence which it would otherwise impose to take account of the mental illness by the accused and of its effects on his criminal conduct.

There are a number of authorities in which this approach has been taken. In the Australian case of Joyce -v- Svikart [2 June 1994, unreported] the accused was sentenced to 3 months' imprisonment for assault. He appealed against this sentence to the Supreme Court of the Northern Territory of Australia sitting in Darwin on the ground (inter alia) that:

'The learned Chief Stipendiary Magistrate erred by failing to give sufficient weight to the appellant's mental illness (schizophrenia) when determining questions of general deterrence'.

On the hearing of the appeal the Court reduced the sentence and Thomas J stated:

'19. I accept the principle of law in dealing with persons suffering mental illness is: General deterrence should often be given very little weight in the case of an offender suffering from a mental disorder or abnormality because such an offender is not an appropriate medium for making an example to others. R -v- Anderson [1981] VR 155, 160. See also R -v- Scognamiglio 56 A Crim R 81, R -v- Champion 64 A Crim R 244'.

In the Scottish case of Arthur -v- HM Advocate [1994] SCCR 621 the accused pleaded guilty to charges of assault causing serious injury and to an offence in relation to drugs. He was sentenced to terms of imprisonment totalling 8 years and he appealed against that total sentence. The report of the judgement of the Lord Justice-Clerk, Lord Ross, in the High Court of Justiciary is as follows:

'He has appealed against sentence and today on his behalf Mr Bell has accepted that the charges were undoubtedly very serious ones and he has also conceded that the charges were of such a nature that normally substantial periods of imprisonment would be called for. He has however submitted that there were present in this case mitigating factors which were not properly taken into account by the Trial Judge. He has referred us to a number of reports by psychiatrists which were before the Trial Judge. There is no doubt that these reports vary considerably as to the conclusions in which they express but without going into great detail we agree with Mr Bell that they reveal that the appellant was suffering from some form of mental disorder short of insanity which was not directly connected with his taking drugs. The doctors who examined him are not all at one on that. Dr Baird, for example,

expresses the view that it is most likely that his mental state at the time of the alleged offences was a consequence of long-term cannabis abuse and its abrupt cessation, but different views on this are expressed by some of the other psychiatrists, and looking at the medical evidence as a whole we feel that the matter should correctly be approached on the basis which we have just described. The Trial Judge in his report tells us how he approached sentencing in this case. He, as we say, had these medical reports before him and he points out correctly that these reports revealed that the appellant's mental state on reception into prison after the offences was not such as to cause the prison Medical Officer to refer him to a consultant psychiatrist. He then as we understand it goes on to deal with the case of Brennan and he refers to the Court's attitude to self-induced intoxication which was set forth in that case. The Trial Judge appears to regard the case of Brennan -v- Her Majesty's Advocate [1977] JC 38 as applying to this case, but we have come to the conclusion that in that regard he erred because, as we have pointed out, what the reports did establish was that the appellant suffered from a mental disorder short of insanity which was not directly connected to his consumption of controlled drugs. The Trial Judge by concluding that the matter was governed by Brennan then proceeded upon the basis that the appellant was someone who was fully responsible for his actions. That was upon the view that the offences had been caused by his voluntary consumption of cannabis resin which was equivalent to self-induced intoxication. As we say, we feel that the Trial Judge was wrong in that regard. The sentences which the Trial Judge imposed in this case were imposed upon the view that the appellant was fully responsible for his actions. For the reasons which we have given we are of the view that that approach was not correct and that the Trial Judge ought to have proceeded upon the view that this was not an individual who was fully responsible for his actions but was someone who suffered from some degree of mental disorder short of insanity. Since the approach of the Trial Judge is flawed the matter of sentence can properly be regarded as at large for this Court. There is no doubt as Mr Bell appreciated that the 2 assault charges were extremely serious ones. It is plain too that the appellant has a number of previous convictions including a conviction in 1988 for assault and robbery which attracted a sentence of 4 years' imprisonment. Taking into account the nature of the offences, the psychiatric reports and the record of the appellant we have come to the conclusion that the 2 assault charges merit shorter sentences than the Trial Judge imposed. We shall accordingly quash the sentences imposed on charges 4 and 5 and in substitution for these we shall impose in respect of charge 4, a sentence of 6 years' imprisonment and in respect of charge 5, a sentence of 4 years' imprisonment'.

Where the argument is advanced on behalf of an accused person that the sentence which is to be imposed upon him, or which has been imposed upon him, should be reduced because he suffers from a mental illness, the Court, whether the trial Court or the Court of Appeal, must, of course, keep its feet on the ground and exercise common sense, and look at all the circumstances of the offence and the nature of the medical evidence. In this case the medical report makes it clear that the appellant does not suffer from abnormality of talk, thought form of perception, and there is no evidence of any clinically significant impairment of intelligence. Therefore there is

no suggestion that the appellant did not fully understand and appreciate what he was doing. Moreover the report of the Probation Officer states that:

'In discussion the defendant related that he had been approached in a city centre bar and asked to drive the van. He went on to say that he went along with the idea as he could use extra money as he was flying out on holiday the next day'.

Therefore it appears to be clear that the appellant became involved in the burglary for ordinary criminal motives, which were that he wanted to obtain some extra money and was prepared to obtain it by taking part in a crime. This consideration weakens the suggestion implicit in Dr Loughrey's report that the appellant became involved in the crime because he was 'liable to ill-judged actions because of the illness'.

Nevertheless, schizophrenia is a severe mental illness, and we think that the medical report constitutes a valid basis for the view, as the Learned Trial Judge put it, that 'The entire picture therefore is of someone who no doubt is more prone to committing criminal activity'. But we consider that the judge did not then give sufficient weight to this consideration and that, as the cases which we have cited show, this consideration should have led him in the particular circumstances of this case to reduce to some extent the sentence which it was appropriate to impose on a person who did not suffer from schizophrenia, notwithstanding that the appellant was perfectly aware of what he was doing.

Therefore we allow the appeal to the extent that, by reason of the schizophrenia suffered by the appellant, we reduce the sentence for burglary to 3 years' imprisonment, but we affirm the consecutive sentence of 12 months' imprisonment for reckless driving, so that the total sentence is 4 years' imprisonment.

Order accordingly.