

Neutral Citation No: [2022] NICC 25

Ref: [2022] NICC 25

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

ICOS No: 22/011121

Delivered: 17/08/2022

R

V

ANDREW HOLDEN

His Honour Geoffrey Miller QC

Sentencing remarks

1. On 7th April 2022 the Defendant was arraigned and pleaded to Count 2 (robbery). He pleaded 'Not Guilty' to the remaining counts and his trial was fixed for 09 May.
2. At a review on 10th May 2022 a sixth count was added. He pleaded guilty to that sixth count. He also applied to be re-arraigned in respect of Counts 3 to 5. Count 1 was left on the books in the usual terms.
3. He therefore falls to be sentenced for:

Count 2: Robbery **max life**

Counts 3-5: Fraud by false representation **max 10 years**

Count 6: S. 20 GBH **max 7 years**

Facts

4. The charges relate to the events of 21st September 2020. The injured party is Craig Morrow; he was aged 48 at the relevant time.
5. At approximately 21.30 hours on the date in question, police received reports of an assault on Southwell Road, Bangor

6. When officers arrived the injured party was being treated by paramedics. He appeared to be intoxicated. He said that his wallet was missing and that it contained cash, bank cards and cheques.
7. He was taken to hospital where he was treated for a fractured eye socket. He also complained of swelling to his jaw and knees and of sore hands.
8. The following day he told police that he had been socialising at a Club in Bangor and was walking home. He felt a blow to the left side of his face and this caused him to lose consciousness. He did not recall anything further about the assault. His last memory was of someone rummaging through his back pocket. When he came to, he realised that his wallet was missing.
9. There was a follow up investigation. A passer-by saw the Defendant with another male. They appeared to be intoxicated. He observed them punching the injured party to the head. The injured party fell to the ground and was further kicked and punched. This witness then saw the assailants hurry from the scene (*statement of Robert McGrath at p4 refers*)
10. CCTV footage was obtained and it shows two assailants one of whom was wearing a medical support boot and using a crutch (now known to be Mr Holden). The injured party can be seen falling. He is assaulted on the ground before the second male takes his wallet. The defendant then uses what appears to be the crutch to strike him and it is this act that most likely causes the facial injury.
11. Mr Morrow sustained a number of injuries: numbness to the upper lip; some double vision which resolved after about 6 days; ongoing blurred vision in the mornings; breaks of the floor and wall of the right orbit; undisplaced cracks of his nose. Although no surgical intervention was required, he was advised his appearance could be altered or double vision could ensue. He was in hospital from 28th September to 5th October 2020 (*statement of Lynn Treanor Dental Surgeon (p6)*).
12. Photographs of the injuries appear at pp 44-45; 48-50 of the documentary exhibits.
13. During a follow up search, a crutch was located in an alleyway in Central Avenue. This was the direction of travel of the two assailants. Cheques and receipts from the wallet were found in a bin at Southwell Lane.
14. The crutch was examined and a DNA profile matching that of the Defendant was obtained from it. A local hospital confirmed that he had been issued with a support boot on 18 September after he broke his foot.

15. Mr Morrow also reported 6 pending transactions in his account which he did not recognise. Each of these related to card activity on 21 September: Just Eat £21.98; EBay £129.99; Pay Pal £3.88; £19.99; £14.49 and £50.42.
16. Enquiries revealed that a new Paypal account was created at 22 25 hours on the date in question under the username AWHOLDEN65 and a similar email address. A number of orders were placed, to be delivered to an address to which the Defendant has links.
17. The Defendant was arrested. He gave a mainly 'no comment' interview on 28th April 2021. He denied having a bank account. A check on police systems confirmed that 2 mobile numbers linked to the Ebay purchases had been previously linked to the Defendant.

The Defendant is aged 24 (DOB 29.01.98). He has 7 convictions on his record (all offending post- dates this event). There are 2 cautions (administered 27 October 2020 and 28 January 2021 respectively)

19. Aggravating Features

- Joint attack
- injured party vulnerable due to intoxication
- Commission under influence of alcohol
- Defendant has a criminal record

The defendant's background and personal circumstances

20. The Court is in receipt of the PSR dated 5th July 2022, prepared by Lauren Arnott (PBNI). The Defendant is a 24-year-old man (22 at the time of the offence). He was born in Bangor and lived with his mother, two older sisters and a younger brother until he was 17 years old. He recalled a settled and happy childhood however once he got to his teenage years his behaviour deteriorated and required trust intervention. He was tested for Attentional Control in June 2011 by Dr Ciara Downes, Clinical Psychologist. In brief it is noted that the Defendant struggled with concentration, impulsivity and his behaviour. There was no formal diagnosis.

21. He was expelled from secondary school and completed his education with Redburn Alternative Education Project. He left with several GCSEs' and essential skills and worked as a chef in a local restaurant for approximately two and a half years.

22. He moved to his own accommodation and received support from Bangor Alternatives to maintain his tenancy and secure education opportunities.

23. He was required to move 3 years ago to East Belfast following the issuing of a death threat. He was again required to move to South Belfast 2 years ago following issues with local community representatives.

24. He reports to having settled in South Belfast and lives with his girlfriend who he reports he has been in a relationship for 8 months after meeting at Springboard Opportunities. He is a father for the first-time to a child born to his ex-girlfriend. The current circumstances regarding his involvement with his child is unclear particularly as the defendant is currently facing charges of assault upon his ex-girlfriend. This sits at odds with his claim of being on amicable terms with her. He continues to get support from his mother.

25. The Court has also received several references from representatives of Springboard Opportunities Ltd, with which Holden has engaged over the past two years, during which time he has completed OCN's in Youth work. This has provided him with a structured support mechanism and it is noted that he is spoken of in positive terms. I also note that he has been working full time in a local butcher and this has been progressing well.

26. As is so frequently the case with those appearing before these courts the defendant has a long history of substance abuse and misuse. It is noted from the report that he abused cocaine, diazepam, and cannabis over the years. He advises that he has come off these substances and that this is "*no longer an issue.*"

27. Ms Arnott records Holden as telling her that he has not engaged with any addiction services, and he has come off these himself. Mr Holden described how previously he would often associate with those who would abuse substances and has attempted to distance himself. He disclosed recreational alcohol usage.

28. It is further noted that he believes himself to suffer from PTSD following an incident where he was stabbed by an unknown male at a house party. There is reference to same in his short form medical notes.

29. As previously noted the defendant has now acquired 7 convictions, all post-dating the index offences, which are undoubtedly the most serious to have come before the Courts. Whilst he is recorded as expressing shame at his behaviour in respect of the index offences, which he put down to several stressors in his life at the time, it is significant that this did not prevent him from further offending in what Ms Arnott describes as prolific manner in the following year.

Sentencing considerations

30. Robbery is a "*serious*" and "*specified violent*" offence for the purpose of the Criminal Justice (NI) Order 2008. GBH is a "*specified violent*" offence. The Court

therefore has to reach a determination as to whether the defendant falls to be sentenced as a '*dangerous offender*' within the meaning of Article 15 of the Order.

31. Ms Arnott concludes that Holden presents a high likelihood of re-offending. This cannot seriously be the subject of dispute given the proliferation of Holden's offending in the past two years set against his volatile background.

32. Notwithstanding the seriousness of the primary charges arising from the index incident and the subsequent convictions and charges, the conclusion of the Risk Management Meeting (RMM) convened on 16th June 2022 was that Holden does not currently cross the threshold of a significant risk of serious harm. This is primarily based upon the absence of a pattern of '*serious, premeditated, instrumental violence*'.

33. I have taken account of these conclusions taken together with Mr Conor Holmes's written submissions, including the character references and have consequently determined that the defendant does not fall to be sentenced as a dangerous offender within the meaning of Article 15. There can, however be no question of the custody threshold not being passed in this case and indeed the seriousness of the incident requires nothing less than a substantial and immediate determinate sentence.

34. The Court has been referred to several authorities in respect of robbery, which I take to be the central charge. I consider that the GBH is effectively subsumed within the facts of the robbery and amounts to the most serious aggravating feature of that charge. This being so the sentences for these offences will run concurrent to each other. Similarly whilst I accept there would be good reason to make the fraud charges consecutive I have decided that these too should run concurrently to the primary charge.

35. This was a brutal and unprovoked attack perpetrated by the defendant who was intoxicated and his unknown accomplice against an older man who was vulnerable on account of his own level of intoxication. The attack happened in the public street at night and a weapon of offence (the defendant's crutch) was used to inflict serious injury whilst the victim lay helpless on the ground. As a result Mr Morrow sustained serious injuries; he was detained for upwards of a week in hospital and there is a suggestion that there will be permanent cosmetic damage. This cannot, however be verified as the Court has not received a VIS. The subsequent fraudulent use of the victim's bank account only serves as an additional aggravating factor

36. In terms of mitigation there is none so far as the offences are concerned. I accept, however that the defendant's more recent efforts to address his addiction issues and the positive strides he has made as evidenced by the character references, are factors the Court should take into consideration in his favour. The guilty plea to the robbery

came at arraignment and efforts were made to resolve the remaining counts, which led to the guilty pleas being entered within a matter of weeks. This has, however to be seen within the context of what was overwhelming evidence linking him to each of the charges. In the circumstances I shall allow him a discount of 25% on the sentence I would have passed had he been convicted of these charges after a contested trial.

37. Taking account of both aggravating and mitigating features with the exception of the guilty pleas I take a starting point of 6 years on Count 2. Applying the aforementioned discount reduces the total sentence to 4 ½ years. Lesser concurrent terms will apply to the remaining charges.

Sentence

Count 2 - Robbery - 4 ½ Years (2 years 3 months custody followed by 2 years 3 months licence)

Counts 3 - 5 - Fraud 2 Years (12 months custody followed by 12 months licence)

Count 6 - GBH - 3 Years (18 months custody followed by 18 months licence)

All sentences shall run concurrent to each other.

Offender Levy - £50.00

38. The terms of the licence shall reflect those set out in the conclusion to Ms Arnott's report.

Ancillary Orders:

Compensation - **£21.98** - (Injured party was not reimbursed for items purchased from Just Eat)

Restraining order - this should reflect the terms set out in draft form and lodged with the Court: -

That the Defendant is prohibited from:

- *contacting, harassing, pestering and molesting Craig Morrow and from instructing anyone else to do so;*
- *using or threatening to use violence against Craig Morrow and from instructing anyone else to do so.*

This shall remain in force for a period of 4 years from today's date.

Geoffrey Miller QC

Judge of the Crown Court in Northern Ireland

17th August 2022