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

Ref: CARF3710
Delivered: 11/06/2002

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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THE QUEEN

V

ANTHONY ANDREW MEGARRY

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CARSWELL LCJ

The applicant pleaded guilty on arraignment at Downpatrick Crown Court to a series of fourteen offences contained in three indictments, consisting of burglaries, thefts, handling stolen goods and assault on the police. On 15 February 2002 he was sentenced by His Honour Judge Gibson QC to imprisonment for various periods, the effective sentence being a custody probation order consisting of four years' custody, to be followed by twelve months' probation. He sought leave to appeal on the ground that the sentences were manifestly excessive. Leave was refused by the single judge and the applicant renewed his application to this court. At the conclusion of the argument we refused leave, but stated that we would give our reasons at a later date. This judgment now contains our reasons.

The common factor in most of the offences is sneak thieving. The applicant looks for places and situations where he can make off with

handbags, purses or wallets, frequently entering sheltered dwellings and resorting to ruses in order to distract the occupants while he steals their valuables. The offences may be summarised as follows:

Bill No. 98/01

Bill No. 98/01 contains nine counts which concern a series of offences committed by the applicant between the middle of January and middle of February 2001.

On the evening of Saturday 20 January 2001 the applicant called with Margaret Simpson at her room in Bramblewood Nursing Home, Bangor. The applicant had no previous connection with Mrs Simpson but had appeared at her door on Christmas Eve 2000 bearing gifts from a charity shop. After the applicant left Mrs Simpson went to the bathroom leaving the door of her room unlocked. The next day she found that £110 was missing from her purse. (Count 7). The matter was reported to the police. On the evening of 4 February 2001 Mrs Simpson again saw the applicant roaming around the home. He saw her but did not speak although he shook a set of keys in her direction (Count 3). Nothing was reported stolen as a result of the applicant's visit. Mrs Simpson later identified the applicant at an identity parade.

On Thursday 25 January 2001 Mabel Funston and Jill Andrews were working at the Save the Children charity shop at 8a High Street, Bangor, when, at approximately 12.15 pm the applicant entered the shop saying that he had a shirt held over for collection. Mrs Funston attended to the applicant who asked to look at trousers which were situated beside the staff lockers in

the stockroom. Later it emerged that purses belonging to Mrs Andrews and Mrs Funston were missing from their handbags which had been placed in the lockers. Mrs Funston's purse contained around £7 (count 4) and Mrs Andrews purse contained around £5.50 (count 5).

On Sunday 28 January 2001 Brian Gardner, a member of Ballyholme Methodist Church, was tidying the church at the end of the morning service when he heard a toilet being flushed at the back of the vestry. The applicant exited the toilet and briefly made conversation with Mr Gardner before leaving the church and driving off in the direction of Groomsport. It later emerged that a wallet belonging to the minister of the church, Thomas Deacon, had been taken from a jacket which had been hanging in the vestry. The wallet was later recovered behind a roll of carpet situated beside the toilet in the vestry (count 2).

On the morning of 1 February 2001 the applicant called at the office of St Colmbanus Church, Groomsport Road, Bangor and asked the parish administrator, Susan Bleakley, for a piece of paper before leaving, saying that he would ask in the church itself. He then left and went into the car park. Mrs Bleakley was suspicious and went into the church to tell the Sexton, Ann Brown, of what had happened. As Mrs Bleakley returned to the office she noticed Mrs Brown's handbag sitting outside the main door of the church. The bag had been taken from the office and a purse containing around £18.50 had been taken from it (count 8). Mrs Bleakley later identified the applicant at an identity parade.

At around 8.20 am on Monday 5 February 2001 the applicant was stopped as he walked around the El Shannai residential home at 2 North Circular Road, Lisburn. A member of staff, Marion Davis, questioned the applicant. He said that he wanted to see his mother, who he said had been admitted the previous night. The applicant's answers made Mrs Davis suspicious and, having given him directions, she went to check his story. Seeing the applicant drive away from the home, Mrs Davis ran to the car and asked him whether he had seen his mother, to which he said that he had. She took a note of the registration number of the car and rang the police (count 6). Nothing was reported stolen from the nursing home.

At around 10.30 pm on Tuesday 13 February 2001 police became suspicious of a silver VW Polo car parked in High Street, Bangor. On making enquiries it was discovered that the car bore a false registration number. The applicant was apprehended as he drove off in the Polo and was arrested (count 1). As he was led to the police car the applicant pushed the arresting officer and ran off into a car park and then over a wall and into some gardens, before being apprehended (count 9).

Bill No. D99/01

Bill No. D99/01 refers to three burglaries carried out by the applicant at flats in Fleming House, (a sheltered housing scheme) on Palmerston Road, Belfast on 17 October 2000. Count 1 refers to the burglary of Flat 8, the home of Sara Barr. At around 3.15 pm on the day in question Mrs Barr's door opened and she saw the applicant standing in the doorway. He walked

uninvited into the hall and asked for a pen and paper, leaving after he had received them. While in the flat he entered the bedroom which was occupied by Mr Barr. Count 2 refers to a burglary of Flat 4, the home of Margaret Sunerton. Mrs Sunerton was about to enter her flat when the applicant came up behind her and asked whether she would write him a note for his grandmother. He followed her uninvited into the hall. Mrs Sunerton asked him what he was doing, to which she replied that he wanted a drink of water. Mrs Sunerton ordered him out of the flat and he ran off. Mrs Sunerton discovered that her purse, containing £28, had been stolen from her handbag. Count 3 refers to the burglary of Flat 2, the home of Jessie Milby. The applicant appeared behind Mrs Milby in the front lobby of the building and asked her for a pen and paper. She invited him into her flat where he wrote a note and put it through a neighbouring letter box. Count 3 occurred at approximately 11.00 am, some four hours before counts 1 and 2.

Bill No. 100/01

Bill No. 100/01 refers to two burglaries in a sheltered housing scheme situated on the Lisburn Road, Belfast. Count 1 relates to the burglary of Flat 10, The Belgravia, on 5 January 2001 during which the applicant stole a wallet containing £350. On the morning in question the applicant knocked upon the window of the ground floor flat occupied by Margaret Hudson. Mrs Hudson opened the window and asked the applicant what he wanted. He told her that he had lost a dog and asked her to open the front door of the complex and let him in to look for it. Mrs Hudson refused, but said that she would go

to the co-ordinator to get her permission. Mrs Hudson left the flat with the window open. Later she discovered that a wallet containing £350 had been stolen from her handbag, together with a photograph of sentimental value. A footprint on the window sill indicated that the applicant had gained entry to the flat through the open window.

Count 2 refers to a burglary at Flat 3, The Belgravia, at around midday on Sunday 20 August 2000. Evelyn Rea answered her door bell to find the applicant in the corridor. He told her that he had forgotten his keys and Mrs Rea told him to speak to the warden. The applicant said that he had been to the warden's office but that she was out. He then asked for a drink and followed Mrs Rea into her flat. While there the applicant asked for a glass of water and then a glass of orange juice, but did not consume either. He then left the flat at some speed. Later that same evening Mrs Rea found that her purse, which had contained around £40, was missing from her handbag. Mrs Rea reported the incident to the warden who retrieved a security video showing the applicant in the premises. The video was passed to the police and the applicant was identified as the suspect."

The applicant was interviewed at length by the police and eventually admitted all the offences with which he has been charged.

The applicant is now aged 23 years and is single. He has already amassed a very long record, consisting mainly of 17 burglaries and 14 thefts, but also including eight offences of criminal damage, motoring offences and a robbery committed in 1994. He has been the subject of training school orders

and probation orders and has had several spells of detention in the Young Offenders' Centre, all apparently without remedial effect.

The pre-sentence report, which is full and helpful, describes the applicant as a young man of limited intellectual ability, functioning in the learning disability range of intelligence, who comes from an unstable and inadequate family background. He was taken into care at an early age and taught in a special school due to his learning difficulties. He gave a great deal of trouble in the children's homes in which he lived and was sent to the training school on a care and protection order, where he engaged in persistent petty criminal activity. Since then he followed what the probation officer calls a rootless, directionless existence in various temporary addresses. He describes the applicant in the following terms:

> "In interview Anthony Megarry presents as being an immature vulnerable individual. He speaks with a noticeable stutter and continues to have significant literacy and numeracy problems. Accepting and taking personal responsibility is I feel an on-going problem for him. His budgeting skills seem to be very limited and as a consequence he says he often finds himself short of money. Much of his past offending in my view has been opportunistic and impulsive almost always committed for financial gain. When he finds himself in need he offends without considering the consequences. Indeed he seems to have difficulty in recognising the distress, anger and loss his actions have caused to those he has targeted."

The probation officer states in relation to the applicant's previous offending:

> "His attitude regarding his past offending very much reflects the attitude he displays towards the current matters. His past offending seems to have been determined by what he says was his need for money.

> Concern for the victims of his offending seems to have played no part in his thinking or rationale.
>
> Past court disposals have not impacted on either his attitude or subsequent behaviour. As outlined already he spent a lengthy period in Training School and has served 3 separate sentences of detention in the Young Offenders Centre. Upon release back into the community however, he seems to have resumed the unsettled, directionless and unstructured lifestyle which was characterised his existence during recent years. He appears to drift around living in various places, associating at times with other pro-criminal elements in the community and engaging in crime when opportunities present themselves. Custody whilst it removes him from the community for periods of time does not seem to deter him in the sense that he was raised within institutions and in such places he finds security and structure and his basic needs provided for."

In the concluding portion of the report the probation officer expresses his opinion as follows:

> "He displays little awareness as to how his offending impacts on the people he steals from. His continued offending suggests that he has been unwilling or unable to learn appropriate lessons from his past behaviour. His offending in my view occurs within the context of the unstable unstructured lifestyle he seems to have led during recent years.
>
> For the risk of Mr Megarry reoffending when he is in the community to be significantly reduced he requires in the view of the Probation Board the following:-
>
> 1. To be linked in with appropriate learning disability services [these are provided under the auspices of Health Service Trusts].
>
> 2. To reside in accommodation where there is support and some degree of supervision.

> 3. To have his literacy and numeracy problems addressed and to be linked in with appropriate employment training.
>
> It is the view of the Probation Board that Mr Megarry's offending behaviour cannot be addressed in isolation from his learning disability needs. The identified issues could be addressed by the relevant learning disability services in conjunction with the Probation Board.
>
> Given the number and nature of the offences facing the defendant a further custodial sentence may well be inevitable. I would however suggest that in such circumstances a Custody Probation Order would be an appropriate way of ensuring that when he returns to the community Mr Megarry is linked in with the kind specific learning disability services he requires. The Probation Board Forensic Psychologist has initiated this process [via his GP and Muckamore Abbey Hospital].
>
> Should the Court be prepared to use a Custody Probation Order in this matter I would ask that an additional condition be added to the order requiring the defendant to reside in Probation Board approved accommodation."

While on bail pending trial the applicant lived in a bail hostel under the aegis of the Probation Service. During that period he obtained employment and behaved acceptably, matters known to the probation officer who prepared the pre-sentence report. He produced to the court certificates dating from this time in connection with work with the Prince's Trust, Loughview Open Learning Centre and the Knights of Malta, relating respectively to volunteering, personal development and first aid.

The learned judge in passing sentence summarised the offences succinctly and referred to the applicant's record and the pre-sentence report, then went on:

> "The three indictments taken in global terms, the offences carried out consists of five burglaries on private dwellings, two burglaries of nursing homes, on handling stolen goods and one offence of assaulting a police officer. The motis operandi in the burglaries was preying on elderly and vulnerable persons and a degree of foresight or forethought and premeditation was used.
>
> The public is becoming increasingly incensed by burglaries of this sort, and a severe sentence is called for, even taking into account the matters put forward in mitigation and the plea of guilty. On each of the burglaries the sentence is one of four years imprisonment, all to run concurrently. On each of the offences with the exception of assaulting a police officer, the sentence shall be two years imprisonment. All run concurrently with each other and on the assault charge, the sentence will be of six months imprisonment.
>
> All the sentences shall run concurrently making a total of four years imprisonment.
>
> Upon his release the accused will be placed on probation for a further period of 12 months subject to four conditions already set out in the report."

He stated that if the applicant had not consented to a custody probation order the sentence would have been one of five years.

The grounds of appeal set out in the applicant's notice of appeal, which were developed at the hearing by Mr Blackburn on his behalf, were the following:

> "1. That the sentences which totalled 4 years imprisonment plus one year's probation imposed on

> the Appellant by the Learned Trial Judge, His Honour Judge Gibson QC at a sitting of Downpatrick Crown Court on Friday 15 February 2002 are manifestly excessive for these reasons:-
>
> (a) the Learned Trial Judge did not give sufficient weight to the pleas of guilty to all matters at the very earliest opportunity.
>
> (b) the Learned Trial Judge did not give sufficient weight to the fact that since being granted bail in September 2001, by Lord Justice McCollum, the Appellant had stayed out of trouble; had found work for himself; had resided in the Probation Hostel and honoured all terms of bail.
>
> (c) that by his plea of guilty at the first opportunity he had saved a considerable amount of Court time and saved a number of elderly people having to give evidence about the offences in question.
>
> (d) that if sentences of five years in total were appropriate there should have been a greater element of probation as part of that five years than the one year which was imposed by the Learned Trial Judge."

There has been a considerable swell of public opinion in recent years, to the effect that repeated burglaries have become increasingly intolerable and that stiffer sentencing is required by way of deterrent. This is graphically illustrated by the introduction in England and Wales of a statutory presumptive minimum sentence of three years' custody for a third conviction of domestic burglary (now provided for by section 111 of the Powers of Criminal courts (Sentencing) Act 2000). The degree of public concern is reflected in the results of the survey carried out on behalf of the Sentencing Advisory Panel, which submitted its findings and recommendations to the English Court of Appeal.

The prevalence of such offences in England and Wales is set out in detail in the judgment of Lord Bingham of Cornhill CJ in *R v Brewster and others* [1998] 1 Cr App R (S) 181, in which the Court of Appeal laid down guidelines for sentencing courts in domestic burglary cases. Lord Bingham affirmed the statement of the court in *R v Cunningham* [1993] 2 All ER 15 that the prevalence of the offence is a legitimate factor in determining the length of the custodial sentence to be passed, since the seriousness of an offence is clearly affected by how many people it harms and to what extent. In discussing the effect upon victims of burglary in *R v Brewster* Lord Bingham said at page 185:

> "Domestic burglary is, and always has been, regarded as a very serious offence. It may involve considerable loss to the victim. Even when it does not, the victim may lose possessions of particular value to him or her. To those who are insured, the receipt of financial compensation does not replace what is lost. But many victims are uninsured; because they may have fewer possessions, they are the more seriously injured by the loss of those they do have. The loss of material possessions is, however, only part (and often a minor part) of the reason why domestic burglary is a serious offence. Most people, perfectly legitimately, attach importance to the privacy and security of their own homes. That an intruder should break in or enter, for his own dishonest purposes, leaves the victim with a sense of violation and insecurity. Even where the victim is unaware at the time, that the burglar is in the house, it can be a frightening experience to learn that a burglary has taken place; and it is all the more frightening if the victim confronts or hears the burglar. Generally speaking, it is more frightening if the victim is in the house when the burglary takes place, and if the intrusion takes place at night; but that does not mean that the offence is not serious if the victim returns to an empty house during the daytime to find that it has been burgled."

At page 186 he detailed a number of factors which may aggravate the seriousness of an offence of this type:

> "Generally speaking, domestic burglaries are the more serious if they are of occupied houses at night; if they are the result of professional planning, organisation or execution; if they are targeted at the elderly, the disabled and the sick; if there are repeated visits to the same premises; if they are committed by persistent offenders; if they are accompanied by vandalism or any wanton injury to the victim; if they are shown to have a seriously traumatic effect on the victim; if the offender operates as one of a group; if goods of high value (whether actual or sentimental) are targeted or taken; if force is used or threatened; if there is a pattern of repeat offending."

The type of offence to which the applicant resorted was described aptly in *R v Woodliffe* [2000] 1 Cr App R (S) 330, where Hooper J said at page 333:

> "This appellant is a professional operator. He chooses vulnerable people. He enters their houses by using subterfuge and, having done so, he then steals. He chooses the easiest people from whom to steal. He chooses people who may find it often difficult to be able to show precisely what they have lost. He chooses people who may be insufficiently well subsequently to give evidence."

It is noteworthy that in that case an appeal against a sentence of seven years' imprisonment was dismissed. Other instances can be found of sentences of four and five years on pleas of guilty in comparable cases. Equally, it is possible by trawling through the sentencing reports to find more lenient sentences for persistent offenders of the applicant's type, but, as we have frequently said, numerical comparisons are of limited assistance. We are not persuaded that a sentence of five years, which the judge would have imposed

if he had not made a custody probation order, was out of line for this series of mean offences, particularly when one bears in mind the vulnerable nature of his victims and the considerable alarm and distress which such people can feel when their homes have been invaded. We accordingly do not regard the level of sentencing as manifestly excessive. The judge had in mind all of the factors relied on by the applicant in his notice of appeal and we consider that he gave proper weight to them.

It was argued that the judge should have made the probation element proportionately longer than one year as against four years' custody. We are unable to agree. A probation period of one year seems to us quite appropriate for the purpose of pursuing the objectives set out by Mr Winnington in his pre-sentence report. The judge made the reduction in the custodial element the same length as the period of probation, which again seems to us entirely proper. As we said in *R v Darragh and Boyd* (2001, unreported), it is generally appropriate that the reduction should equate with the period of probation, though mathematical equivalence is not required and there may in suitable cases be a disparity in either direction: see our judgment in *R v McDonnell* [2000] NI 168 at 172-3. The length of the probation element was in our view correct, as were the conditions imposed by the judge.

For these reasons we refused the application for leave to appeal.

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