

IN THE CROWN COURT SITTING IN NORTHERN IRELAND

THE QUEEN

-v-

ARTHUR MICHAEL FEARON (No. 2)

STEPHENS J

[1] Arthur Michael Fearon, I passed sentence on 25 October 2013 in your absence given that you had absconded. For the reasons set out in my sentencing remarks ([2013] NICC 16) I imposed a sentence of two years imprisonment and I fixed the custodial period at one half of the term of two years.

[2] It transpires that since you absconded in September 2012 you have been living in Dundalk. You surrendered to custody on 7 November 2013. On the same day your counsel invited the court to revisit the sentence that I had imposed by varying it under Section 49(2) of the Judicature (Northern Ireland) Act 1978. At the time that I had imposed sentence, and because you had absconded, there was no pre-sentence report. Given your age at the time of the offence, 17 years 10½ months, and the absence of a pre-sentence report, I adjourned the application to vary or rescind the sentence in order to obtain a pre-sentence report and to enable your counsel to bring any other matters to my attention.

[3] I now have a pre-sentence report. In so far as it deals with the role that you played in this offence and your attitude to the offence it states that you "... knew the cigarette operation outside Meigh, County Armagh, was illegal ..." and that you were "aware of the illegal nature of the criminal enterprise" you were party to and that you did not dispute your culpability for your role in the offending. You stated that you had been involved in loading cartons of cigarettes from one vehicle to another for distribution. You did not dispute to the probation officer that "even if it were to be accepted that (your) activities were comparatively modest in scale, they still contributed to the functioning of a large scale criminal conspiracy". Those admissions to the probation officer confirm what I had found was the role that you had played in the cigarette smuggling operation. In that respect it does not alter the basis upon which I imposed sentence on you.

[4] The admissions to the probation officer are in contrast to your earlier responses at interview when you attempted to frustrate the criminal investigation. These admissions could be a reflection of increasing maturity giving rise to increasing insight and remorse. I note that you expressed remorse to the probation officer. They could also be seen as a belated change of approach given your conviction by a unanimous jury verdict.

[5] In my sentencing remarks I accepted as a mitigating factor that you were naïve and impulsive. At the stage that I sentenced you I had been informed that you intended to obtain employment in the construction industry and had a period of employment on a fishing trawler. The pre-sentence report reveals a somewhat different employment picture and it is now clear that you had been involved in working market stalls in Jonesborough, in Balbriggan, County Dublin, and in Newry “mostly selling clothes.” In addition various scraps of paper had been found in your house after your arrest. Those documents were made available in evidence during the course of the criminal trial. They suggested, and I find, that they were rough records kept by you of cigarette sales and that you were involved in distributing and selling smuggled cigarettes. The assessment that you were naïve should be seen in the context of a somewhat different employment history and against the background of the evidence that you were involved in selling and distributing smuggled cigarettes. I make it clear that I only take your activity in selling and distributing smuggled cigarettes into account in relation to my assessment of your personality which is relevant to the suggestion in mitigation that you are naïve and impulsive. It is not an aggravating feature. It is only relevant to the assessment of mitigation. I accept that you were and I consider that you remain impulsive.

[6] I also now have the benefit of a report dated 6 November 2013 from Dr Pilkington, a Consultant Clinical Psychologist. When I sentenced you I took into account the description that had been given to me that you suffered from migraine headaches and depression. The report provides detail as to your mental condition and expert evidence in support of that detail though I note that there was no corroborative information available to Dr Pilkington regarding your personal circumstances except the testing that she carried out. The report from Dr Pilkington referred to a letter dated 4 November 2013 from Mr Plummer, counsellor. That letter shows that you received counselling for anger management rather than any therapy for depression.

[7] I have considered all the factors that are now available to me in addition to all the material that was previously before me. I have taken into account the nature of your bail conditions and your age when you were subject to those conditions. In assessing that feature I also take into account what you could have done which was that you could have adopted the simple expedient of co-operating with rather than attempting to frustrate the criminal investigation. I also take into account the passage of time during which you have committed no offences. I have taken two different approaches. First I have considered afresh the appropriate sentence to impose. Under that approach I leave out of account the sentence that I had

previously imposed. The second is to take into account the sentence that I had previously imposed and consider whether it needs to be varied. The outcome is the same under both approaches. I am of the view and remain of the view that a sentence of imprisonment should be imposed for the reasons that I previously expressed. I have taken into account the additional material and insofar as it provides additional mitigation I consider that it is either balanced by a somewhat different assessment of your naivety or of insufficient degree to require any adjustment of the sentence that I previously imposed. I am of the view and remain of the view that the appropriate custodial period is one half of the term of 2 years for the same reason as I previously expressed.

[8] I refuse the application to vary or rescind the sentence that I imposed on 25 October 2013.