

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

<i>Delivered:</i> 11/03/2005

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

v

COLIN JOSEPH SALMON

Before Kerr LCJ, Campbell LJ and Sheil LJ

KERR LCJ

- [1] This is now an appeal, leave to appeal having been granted by Sheil LJ and myself at the time that the appellant applied for bail pending appeal. It is an appeal against a sentence of two years imprisonment imposed by His Honour Judge Gibson QC at Downpatrick Crown Court on 21 February 2005.
- [2] The background to the case is that at approximately 9.40am on 10 February 2003, Jacqueline Walker, driving her Seat Ibiza car accompanied by her husband, joined the Bellsbridge roundabout from Ladas Drive with the intention of entering Cregagh Road in order to travel citywards. As she drove her car around the roundabout, a Ford Escort driven by the appellant, entered the roundabout at speed and collided with Mrs Walker's vehicle from the left. Her car ended up entirely on the centre of the traffic island with its passenger side immediately against the driver's side of the appellant's car. Mr Walker gave an account that when he turned to look at the appellant's car, following the collision, he saw him sitting in the driver's seat laughing and placing a canister (which, it was later established, contained gas) to his face. Another witness observed the appellant shouting and unsuccessfully trying to separate the cars in order, apparently, to drive off.

- [3] Mrs Walker was rendered momentarily unconscious by the collision and a number of passers by came to her aid. She also described how, after she regained consciousness, she saw that the appellant was laughing. Other witnesses saw him shout and wave his arms. He climbed on to the bonnet of Mrs Walker's car and he tried thereafter to make good his escape but was detained by police.
- [4] The appellant was taken to Strandtown Police Station, where, while waiting in the custody office, he remarked to a police officer that he had been sniffing gas that morning. He intimated to the police that the background to the accident, or the collision I should say, was that he was trying to kill himself in the car. These bizarre and horrific circumstances are explained by Dr. Bell, Consultant Psychiatrist, who has been treating the appellant for a number of years. He has given evidence to this court on the application for bail, that the appellant suffers from a grave mental illness, namely bipolar affective disorder. As a result of an attempt to reduce the medication that the appellant had been taking, his mental condition deteriorated to the extent that he became so disturbed that this dreadful incident occurred. Dr Bell has advised this court that the appellant suffers from a very severe psychiatric illness, so much so, that of the over five hundred patients whom Dr Bell treats, he is among the ten most severely ill patients.
- [5] It is unsurprising that by the application of the guiding principles, as outlined by this court in the *Attorney General's reference* cases, the learned trial judge took the view that this was a case which merited a custodial sentence. The guidelines laid down by this court clearly indicate that for an offence such as the appellant was guilty of, imprisonment will be the virtually invariable disposal. However, in that series of cases, (the *Attorney General's reference* cases) and also in the case of *Brodrick Charles Sloan*, this court has stated that there will be a very small category of exceptional cases where custodial disposal is not appropriate. In the latter case, the Lord Chief Justice, Lord Carswell said: -

“Some crimes are such that imprisonment may be required for proper retribution whatever the affect on the offender. We take the view however, that the present case falls within the very small class of exceptional cases where (a) imprisonment would involve not merely loss of liberty but significant and permanent ill effects on the offender's physical or mental health and (b) that it is possible while paying due regard to the public interest in opposing sufficient punishment for a serious crime to resort to an alternative method of disposition.”

- [6] We consider that this case also finds its proper place in that small category of exceptional cases where the proper disposal is not one that involves custody.

We say that for two principal reasons. First because of the lack of culpability on the part of the appellant by reason of his mental illness and secondly because of the unambiguous evidence of Dr Bell that if he was to be sentenced to a period of custody, it is highly probable, to the point of virtual certainty, that this will bring about a significant deterioration in his mental health. The experience of having detained the appellant in the Avoca Ward of Knockbracken after this incident bears unfortunate but eloquent testimony to that prospect. We therefore, while recognising that this was an extremely serious case, one in which Mr and Mrs Walker might have sustained very grievous injuries, nevertheless, for the reasons we have given, consider that a different disposal is appropriate.

- [7] We are satisfied that it lies within our power to make an order under paragraph 4 of Schedule 1 to the Criminal Justice (Northern Ireland) Order 1996. We have considered the observations of the probation officer to the effect that the appellant would not benefit from any of the schemes that are conventionally undertaken by the Probation Board but we are satisfied that this is a case in which the powers available to us under paragraph 4 sub-paragraphs 2 & 3 should be invoked, with the Probation Board playing a role which might loosely be described as one of superintendence. The important provision of the Probation Order that we intend to make is one which will, insofar as this court is able to achieve it, ensure that the appellant undertakes the treatment which he so obviously requires.
- [7] Now, Mr Magee it would be conventional for us to explain to the appellant that we are making a probation order and that we are going to make it a condition of the order that he submits to such treatment as Dr Bell prescribes and recommends so that he should have the option of consenting to such a disposal. Now we can do that if you feel it is necessary or have you sufficiently explained the matter to the appellant?
- [8] Well then, we will allow the appeal and quash the sentence of imprisonment and substitute for it a Probation Order of two years duration. We will have resort to our powers under paragraph 4 of Schedule 1 to the 1996 Order and we shall in pursuance of the powers in sub-paragraph 2 & 3, include in the Probation Order, a requirement that the appellant shall submit during the whole of the probation period to treatment by Dr Bell and we will further specify that he must submit to such treatment as may be prescribed or recommended by Dr Bell throughout the period of the Probation Order.