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Judgment: approved by the Court for handing down | *Delivered:* **08/02/2013**
*(subject to editorial corrections)**

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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BETWEEN

THE QUEEN

v

KAREN McKECHNIE

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MORGAN LCJ (giving the judgment of the court)

Application

[1] The appellant pleaded guilty to a number of offences including a count of robbery and in relation to that count on the 19th of October 2012 Her Honour Judge Loughran sentenced her to a determinate prison sentence of 7 years of which she specified 3 years as the custodial period and 4 years as the licence period. There were a number of other offences for which concurrent sentences were given.

[2] The offender has a lengthy history of drug misuse, alcoholism and mental health issues. She has been treated on a methadone programme for some considerable period of time and she remains on that programme. She is addicted to diazepam. Approximately two weeks before the commission of these offences she received psychiatric inpatient treatment following a serious attempt to end her life by taking an overdose. She and her co-defendant met in early 2011 when they were both inpatients in the same psychiatric hospital and had a relationship. There had been difficulties in the relationship and this appears to have been the key to the overdose attempt. The appellant was discharged from hospital on the Friday preceding the commission of these offences on the 29th and 30th of August 2011. It appears that her partner collected her and that they engaged in what Mr Lyttle QC has described as a weekend binge on alcohol and drugs. The appellant believed that her diazepam had been cut down and that although she was attempting to supplement that with diazepam purchased over the internet this was insufficient. By the 30th of August 2011 as a result of her addiction she was at the end of her rope.

[3] On the morning of the 30th of August 2011 she had decided to steal a couple of packets of diazepam while in the branch of Gordon's Chemist at which she took her daily methadone dose and indeed admitted her intention to do so before going into the shop when interviewed by police. She went into the shop at 9 am on the 30th of August with her co-accused. She was supervised while taking her dose of methadone. While she was being escorted onto the shop floor from a more private area she attempted to steal boxes of diazepam but a vigilant member of staff managed to prise the boxes from her and she was ejected from the premises. She would of course have been well known to those on the premises because she was a regular attender there. After this she made her way to another branch of the same chemist where her co-accused threatened members of staff threatening to club them while having his hand at the back of his trousers giving the impression that he had a weapon whereas in fact he did not. During this period the appellant herself stole boxes of diazepam but apologised to those from whom she was stealing at the relevant time indicating that she was desperate. She was shortly thereafter detained in relation to these matters and when interviewed by police made full admissions in relation to her involvement in the matter.

[4] Mr Lyttle points out that there was an issue in relation to the question of the robbery charge. She had pleaded guilty to theft, the issue was a legal one, we accept his submission in relation to that and therefore that she is entitled to full discount for her plea. Robbery of small shopkeepers has been a source extreme concern to this court for a number of years and the leading case in relation to the approach that should be taken to it is Attorney General's Reference No. 1 of 2004 Zoe Lynn Pearson where it was stated:

> "that generally for those who are directly involved in such robberies the starting point is a sentence of between 7 and 9 years and for those who perform an ancillary but lesser role in relation to the robbery on a plea of guilty a sentence of 5-7 years is appropriate.

[5] We have considered that that starting point and that approach is correct. We endorse it again in this case as the approach that should be taken. It is clear however from authorities such as Flynn and Holmes that each case has to be viewed very much on its facts and the court retains the flexibility in an appropriate case to approach both the circumstances of the offending in terms of the culpability of the offender and also the circumstances of the offender herself. In relation to the offending in this case there was no weapon used, there was no violence inflicted on anyone, there was a full admission made in relation to it and there was a full plea in relation to it. There was no financial gain involved in the offence, although it is clearly of some concern that somebody in the predicament of this lady decided to use this methodology in order to secure her fix. There appears to have been very little premeditation and very little planning indeed. In relation to her personal circumstances it is clear that she was at the relevant time leading a chaotic life and that she was significantly affected by her underlying condition of addiction and that

the degree of control that she had over what she was doing was to some extent affected by that.

[6] All of those factors seem to us to be factors which need to be taken into account in determining what is the appropriate outcome in relation to this particular case. In taking that approach we in no way depart from the approach that the Court of Appeal has taken in the Pearson case. So putting all of that into the mix we consider that the appropriate custodial sentence in this case was one of 4 years of which 2 years will be in custody and 2 on licence. To that extent we allow the appeal.