

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

Delivered: 11/06/2010

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

-v-

JUSTIN JOHN MARTIN

Before: MORGAN LCJ, GIRVAN LJ AND COGHLIN LJ

MORGAN LCJ (delivering the judgment of the court)

[1] On 1 September 2009, the applicant was arraigned at Belfast Crown Court before His Honour Judge Miller Q.C. and pleaded guilty to one count of burglary and one count of criminal damage. He was sentenced on 30 October 2009 before the same judge to 5 years imprisonment and 1 year's probation on the burglary count and 12 months imprisonment concurrent on the criminal damage count. He renews his application for leave to appeal, leave having been refused by the single judge.

[2] In the early hours of the 3rd September of 2008, a neighbour who was keeping an eye on a dwelling house at 139 Sandown Road, Belfast, became aware of the presence of someone in the property. The owner of the property had died shortly beforehand as a result of which the property was unoccupied. The police were tasked to the scene. They discovered that the kitchen window to the property had been removed. They observed a torch light inside and a male on the stairs. On seeing the police he went further upstairs and jumped out of a rear window onto the roof of the adjoining property. In so doing he caused damage to that property, of a relatively minor nature, being the damage to some ply roof tile. That formed the basis of the criminal damage charge. More significantly, from the applicant's perspective, he also caused injury to his ankle and was subsequently treated for a fractured os calcis. He got off the roof and tried to make good his escape, but was detained by police very soon after. When detained he was found to be in dark clothing and had in his possession a maglite torch, a pair of pliers and gloves. No property had in fact been removed from the premises and the applicant was then taken to hospital for treatment of his injuries. He was

interviewed shortly thereafter and frankly admitted his involvement in the offences.

[3] The applicant is a 38 year old man with a persistent history of alcohol and drug abuse. He indicated that he had committed this offence in order to satisfy his cocaine habit. He has an extensive criminal record including 13 convictions for offences of a similar nature and a significant and persistent record for dishonesty among his 56 convictions in total. It was conceded that he fell to be sentenced as a professional burglar. He was assessed by a psychiatrist as having a personality disorder evidenced by his recidivist criminality and his inability to learn from his mistakes. He has a past history of sexual abuse as a child but it is his addiction to harmful drugs that is most likely to be associated with his offending behaviour. The Pre Sentence Report assessed the applicant as a high risk of re-offending.

[4] At the time of the offences the appellant was living with his parents. He has three children from a former relationship who live with their mother. The report concluded that the applicant's emotional well-being and substance misuse problems remained prevalent and he has had limited success in meaningfully addressing these issues. The report states the applicant demonstrated insight into the impact his offending had on his family, victims and himself but this had no deterrent impact on his offending behaviour. He has not attended professional counselling to address the sexual abuse and ongoing related problems and continued to use substances as a coping strategy. The applicant seemed unable to incorporate alternative coping strategies into his lifestyle.

[5] The report concluded that the applicant continued to commit offences for financial gain and to fund his ongoing substance misuse. The applicant complied with the requirements of his last period of probation but he also re-offended. Both community and custodial sentences to date have had no significant impact on his propensity to offend. The writer of the report was of the view the appellant needed to address each of the presenting issues/risk factors holistically (i.e. substance misuse, unresolved emotional issues from childhood, emotional health and his attitudes to re-offending). The writer of the report had reservations about the applicant's motivation to avail of professional intervention to address these issues in a meaningful way.

[6] Guidance in relation to the approach which a sentencer should take in burglary cases was given by this court in R v Megarry [2002] NIJB 271. Carswell LCJ recognised the public concern about this prevalent offence. He approved the aggravating factors identified by Lord Bingham in R v Brewster [1998] 1 Cr App R (S) 181.

“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.”

That guidance was subsequently followed in R v Cromie [2008] NICA 47.

[7] In this case a number of aggravating factors are clearly present. By far the greatest of these is the applicant’s substantial record for similar offences and other offences of dishonesty. This applicant is a persistent offender. He is a professional burglar. He has committed offences while on probation and committed these offences when on licence. There is a clear pattern of re-offending. There is little hope of rehabilitation. The torch, pliers, gloves and dark clothing indicate that this was a professional and planned offence. All of those matters indicate that the culpability of the offender is very high despite the fact that no property was taken and that no-one was on the premises at the time.

[8] He admitted his guilt and pleaded guilty at the first opportunity. He is entitled to credit for that although the extent of credit must be affected by the fact that he was arrested at the scene and virtually caught red handed (see R v Pollock [2005] NICA 43). The fact that no property was stolen was thanks to the efforts of the police and the householder who alerted them. The applicant suffers from a personality disorder but his motive for this offending was financial and there was no suggestion that he did not fully understand and appreciate what he was doing (see R v Doran [1995] NIJB 75). His drug addiction could not operate as a mitigating factor (see R v Henderson NICA 8/3/96).

[9] Having regard to the applicant’s extensive and persistent record for burglary and other offences of dishonesty the learned trial judge was entitled to take the view that this was an appropriate case for the imposition of a deterrent sentence. It was not seriously contended that such a course was wrong in principle. It followed that the selection of the sentence was likely to be heavily influenced by the culpability of the offender and as we have indicated his culpability was very high. A commensurate sentence of 6 years was undoubtedly a stiff sentence bearing in mind the applicant’s admissions and plea at the first opportunity but in our view it could not be characterised as manifestly excessive. Accordingly we refuse the application for leave.