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*(subject to editorial corrections)**

IN THE CROWN COURT IN NORTHERN IRELAND

BELFAST CROWN COURT

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THE QUEEN

-v-

SEAN TATE

Judge Loughran

Introduction

1. Mr Tate I am sentencing you for a number of offences to each of which you pleaded guilty at arraignment and I give you credit for those pleas of guilty but it will not be the maximum credit to which you would have been entitled if you had admitted your involvement in these offences when being interviewed by police.

The offences

2. Your offences are reflected in two Bills of Indictment.

Bill number 11/054607 includes 9 offences all of which were committed on 2 July 2010.

The first offence is that of aggravated burglary when you and a youth, armed with knives, broke into a student house in the Stranmillis area at 1.30 a.m. The student and her partner were asleep, you demanded a car. You took the female student upstairs to get the car keys from the owner while the youth held the large hunting-type knife over her partner saying he was from the UDA.

Having taken the car, you drove it dangerously along Kennedy Way, went the wrong way round the roundabout, drove on the wrong side of the road and failed to stop for police. You were an uninsured driver, you refused to provide a specimen to

facilitate analysis of the level of alcohol in your body and you resisted police when eventually you stopped the vehicle. On arrest you were found to be in possession of 8 bags of herbal cannabis.

3. **Bill number 11/055202** comprises 22 offences. I begin with the catalogue of robberies in each of which you possessed an offensive weapon.

On 28 January 2010 you robbed Tucker's Vivo store in the early evening where a young woman was working alone. You claimed to be from Oglaigh na hEireann and stole £200 and 2000 cigarettes.

On 20 March 2010 you robbed Nook newsagents in the evening where again the staff were female.

On 30 March 2010 you robbed the Wine Company premises at Ormeau Road taking banknotes.

On 5 April 2010 you and another person robbed the Spar Cliftonville Road armed with a screwdriver.

On 25 April 2010 you and another person entered Winemark premises on the Ormeau Road and you pointed a handgun at staff.

On 5 May 2010 you entered Winemark premises at Upper Malone with a knife and joined another person saying "this is a robbery".

On the same day you and another man entered Wineflair on the Antrim Rd in the early evening; two female staff were on duty.

On the same day you and two others entered Wineflair on the Upper Lisburn Road and you had a gun.

On 22 May 2010 at 7.55 am you entered Guys Shop on the Antrim Road armed with a 10 inch kitchen knife. You claimed to be from the IRA and left. You were using a jeep belonging to a Mrs Quinn who together with her husband had been the victim of your criminal behaviour earlier that morning.

At 5.30 a.m. you entered their home; they were asleep and you woke them up and told them that you were from Continuity IRA and hiding from police. You kidnapped Mrs Quinn whose husband was terminally ill and required her to drive you around west Belfast for almost an hour. You committed an assault on her by punching her on the face.

4. In summary, Mr Tate, according to the second bill of indictment during the period from the end of January until the beginning of July 2010:

- you robbed 9 premises and in each robbery you possessed an offensive weapon; your victims were in the main female staff and many of the robberies were committed during the hours of darkness;

- you entered as a trespasser two family homes during the night when the occupants were asleep. The victims in the first house were a lady and her terminally ill husband and you kidnapped the lady requiring her to drive you around west Belfast in the early hours of the morning and assaulting her and breaking her glasses at the end of that cruel episode. The victims in the second house were students and you took from that home a car which you drove dangerously around west Belfast before crashing the car and resisting police.

5. The behaviour for which I am sentencing you today is an appalling catalogue of criminal behaviour perpetrated against a significant number of victims in north, south and west Belfast. Your victims included men and women, people providing a service to the public in local shops, people in bed in their own homes, people who were vulnerable in particular a gentleman who was terminally ill and his wife, Mrs Quinn, who was caring for him.

6. There is a Report on only one of your victims – Mrs Quinn who is still reliving regularly the horrible experience to which you subjected her. She wakens to the slightest sound and in order not to be reminded of the trauma she absents herself from her home returning there to sleep.

Dangerousness

7. The first question which I have had to address, in the light of the fact that some of your offences attract the so-called "dangerousness" provisions of the Criminal Justice (Northern Ireland) Order 2008, is whether you present a significant risk of serious harm to the public occasioned by the commission by you of further specified offences. In carrying out that assessment the court, by the provisions of Article 15(2):

a) Shall take into account all such information as available to it about the nature and circumstances of the offences;
b) May take into account any information which is before it that any pattern of behaviour of which the offence forms part; and
c) May take into account any information about the offender which is before it.

In making that assessment I have the benefit of:

- A report from the Probation Service;
- A report from Dr East from whom I heard oral evidence on 4 May;

- A supplementary report from Dr East at my request.

The views of the Probation Service

8. The Probation Service held a Risk Management meeting on 13 January 2012 and concluded that you represent a significant risk of serious harm to others based on consideration of the following:

- Your capacity for physical violence when confronted or challenged as highlighted by the fact that you have a conviction for AOABH and a previous conviction for wounding;

- Your capacity and potential for causing serious psychological harm and trauma through your offending behaviour;

- Your willingness to possess a weapon in the course of your offending to threaten, intimidate and to cause fear. You have admitted to being under the influence of alcohol and drugs when you possessed these items. The view of the Probation Service is that your behaviour posed a clear risk of harm to others had you been physically confronted or challenged;

- Your limited capacity to recognise the harm and injury you have caused by your offending;

- The offences to which you have pleaded guilty represent a continuation and escalation in your offending behaviour;

- You reoffended within 6 days of release from custody; you have failed to comply with post custody supervision;

- There is an absence of any identifiable protective, stabilising factors in your life;

- You have displayed an inability to recognise and self-manage the risks you pose to the community.

9. In oral evidence Mr Winnington, the author of the pre-sentence report, confirmed that the Probation assessment, which was a group decision, focussed on two principal pillars:

- Your previous offences; and

- The present offences.

He also referred to:

- Your home environment;
- Your failure to comply with supervision;
- The absence of any self-management or self-control;
- Your involvement with other offenders;
- Your commission of crimes while under the influence of alcohol or other substances

as other relevant factors in the assessment.

10. Mr Winnington told the court that your willingness to use weapons to threaten or intimidate could lead to serious harm and he therefore disagreed with Dr East's conclusions on this issue. The possession of a weapon by you indicates an intention to cause fear or intimidation and, if challenged or something goes wrong, a willingness to use violence. In the present offences, the purpose was to stop people preventing you from committing criminal acts and it was the behaviour of the victims which prevented things getting out of hand.

11. Mr Winnington accepted that an imitation gun could not cause physical injury but stated that psychological injury could follow from being threatened by such an item. He referred to the statements of victims of some of the present offences who said, for example, "I feared for my own safety" "I was so scared he was going to stab". He emphasised that a victim's response is very subjective and that psychological harm varies from person to person. The fact that the victims have not been referred to Dr East does not mean that they have not suffered serious harm.

12. Mr Winnington acknowledged that the Probation Service does not have evidence of anyone ever having been injured by you but stated that the absence of such evidence does not mean that you have not caused to your victims serious psychological harm.

13. Mr Winnington told the court that he could not comment on the psychological literature alluded to by Dr East but insisted that your behaviour shows a pattern of willingness to put other people at risk with the potential to cause serious physical or psychological harm

The views of Dr East on serious psychological harm

14. In his written report Dr East defined serious harm as "life threatening or injury from which recovery would be difficult or impossible, whether physical or psychological". In his view:

- You present a likelihood "that is more than mere possibility" of committing specified offences in the future; but
- You cannot be described as presenting a significant risk of serious harm to others.

15. Before considering Dr East's assessment of you, Mr Tate, I want to consider an important aspect of his evidence. While acknowledging that the offences of robbery and possession of a firearm have "the possibility to cause both physical or psychological harm" Dr East's view is that "the likelihood that this harm would meet the requirements to be seen as 'serious' is not of more than mere possibility". He stated that, while he has seen many patients who have suffered from serious harm as a result of being a victim of offending, he has never seen a patient suffer serious harm as a result of the offences of armed robbery or kidnapping. He further stated that the evidence from the psychological literature is that victims of such offences suffer from short-lived and self-limiting psychological symptoms.

16. I asked Dr East about the psychological research on which, in addition to his own experience, he relied in support of his conclusion that offences such as armed robbery would not cause serious psychological harm and he referred to work done in Paris which had been peer reviewed. Dr East undertook to provide copies of the findings from that and other relevant research.

17. In his supplementary report Dr East stated that he "could only locate the paper in the French original and the excerpts published in the British Medical Journal did not adequately explain (his) case". I requested the solicitor for Mr Tate to obtain from Dr East the French version of the report on the Paris research and the solicitor advised me that he repeated his request to Dr East for this document many times over a 3 week period but to no avail. According to Dr East the research was by Andre, Lelord, Regnier and Delaltre and was entitled **Controlled study of outcome after 6 months of bus driver victims of aggression**. I undertook an internet search on the research which was published under the title **Controlled study of outcome after 6 months <u>to early intervention</u> of bus driver victims of aggression** (underlining added). The following is the abstract about the research on the website PubMed which is that of the US National Library of Medicine:

> "The aftermath of psychological trauma, long since studied in the context of war ("soldier's heart", "shell shock", etc.) can also occur as a result of trauma in civilian life. Bus drivers in large urban area are frequently aggressed. Over a period of 5 months, bus drivers who had been aggressed, employees of the largest French urban transport company (RATP), participated in a study designed to evaluate the effects of cognitive behavior treatment provided

shortly after such aggression. A total of 132 bus drivers were included in the study divided into 2 randomized groups: a control group (67 subjects) received the usual medical-social care offered by the company, and a treatment group (65 subjects) who, in addition, benefited from 1 to 6 sessions of cognitive behavior intervention, including: evocation of the aggression, relaxation, role plays, cognitive restructuring. Subjects were evaluated by self-questionnaires a few days post-aggression and re-evaluated 6 months later. At follow-up, results showed a statistically significant decrease in anxiety levels (measured by the HAD scale) and intrusion of the traumatic memory (as evaluated by the Horowitz scale) in the treatment group. Hence, early and structured intervention appears to lessen the impact of the traumatic event on bus drivers attacked at work".

An almost identical abstract appears on the website of the American Psychological Association.

18. On the basis of this information my conclusion is that the thrust of the Paris research is the effect of intervention on the impact of trauma on bus drivers attacked at work and that nothing further may be inferred from this research to address the question of the seriousness of the psychiatric sequelae on victims of an attack at work.

19. In his supplementary report Dr East referred to data prepared by Foa and Rothbaum in 1990 published as part of the proposed revision of the Diagnostic and Statistical Manual by the American Psychiatric Association "which demonstrated that 64.7% of victims of simple and aggravated assault and robbery exhibit symptoms of post traumatic problems one week after the offence. However at 6 months only 11.5% reported any problems and at 9 months all subjects reported a complete resolution of any psychological issues. Hence the recovery could not be described as difficult or impossible". Dr East contrasted this with the data on rape (for which he provided no source) showing that 94% report symptoms at one week after the event and at 9 months 47.1% still reported symptoms. His comment is "in other words recovery was difficult or impossible".

The clear inference from Dr East's supplementary report, based on the data to which he refers, is that post-traumatic stress disorder which lasts less than nine months could not be described as a condition from which recovery was difficult or impossible.

20. In the **Diagnostic And Statistical Manual Of Mental Disorders, Fourth Edition (DSM)** published by the American Psychiatric Association it is stated that:

"The following may be used to specify onset and duration of the symptoms of Posttraumatic Stress Disorder:

Acute. This specifier should be used when the duration of the symptoms is less than 3 months.

Chronic. This specifier should be used when the symptoms last three months or longer"

21. The court finds disappointing the following aspects of the evidence of Dr East. In support of the quite significant thesis that victims of offences such as armed robbery do not suffer from serious psychological effects he relied on his own clinical practice and on two reports. The first report was a French report, a copy of which he undertook to make available to the court. He failed to provide that copy despite several requests to do so. The summary of the report which the court has been able to access does not support the thesis of Dr East. The second report was a report of research published as part of the revision by the American Psychiatric Association of the DSM. Dr East, while appearing to rely on the benchmark of 9 months for post-traumatic stress disorder from which recovery is difficult, failed even to refer to the period of 3 months identified in the actual DSM as the specifier for chronic post-traumatic stress disorder. The court would have expected Dr East to explain how his choice of 9 months relates to the 3 month specifier in the DSM.

22. The thesis of Dr East is that a perpetrator of "less violent" offences such as armed robbery and kidnapping could not be categorised as dangerous unless there is a significant risk that s/he will inflict serious <u>physical</u> harm in the future because such offences cannot inflict serious psychological harm. Dr East has failed, for the reasons I have outlined, to persuade the court of the empirical foundations of this quite far-reaching thesis.

23. The conclusion of the court is that the evidence of Dr East has been of no assistance whatsoever in addressing the question whether there is a significant risk that the commission by you in the future, of specified offences, will cause serious psychological harm to members of the public.

<u>The views of Dr East on the defendant</u>

24. I now turn to Dr East's assessment of you as an individual.

He drew attention to a number of matters:

- You have an extensive history of criminality;

- The index offences took place while you were subject to licence conditions and you have not complied with conditions imposed by the courts;
- Your offending behaviour is associated with intoxication on alcohol;
- There is no evidence that you have "distorted thoughts relating to violence";
- There is no evidence on your part of a "demonstrated capacity for the more serious violent offences";
- You had a disruptive early life having lost your father at an early age and having been hit by your mother who has been described as an alcoholic.

25. Dr East stated that you have "demonstrated the capacity for physical violence" but this violence cannot be seen as "causing death or life threatening injury" and "as such it does not meet the criteria to be described as serious harm".

26. Dr East further stated that neither the criminological nor the psychiatric literature supports the view that the presence of a weapon is an indication of a risk of serious harm to others. Where a weapon is used to threaten, intimidate and to cause fear it is "in fact extremely unusual for the weapon to be used to cause physical harm" and you have not used a weapon to cause physical harm when confronted or challenged. His conclusion was that it was "speculation" to suggest that there was a likelihood of a weapon being used by you to cause serious harm in the absence of a demonstrated capacity by you to do so.

27. Dr East further referred to the stability achieved in your life as a result of the birth of your daughter. Other evidence of an improvement in your lifestyle is that you have, for the first time, been awarded enhanced status in prison and have engaged with drug and alcohol abuse services.

Assessment of significant risk

28. In **R v Lang and others** [2005] EWCA Crim 2864, which was approved by our Court of Appeal in **R v Leon Owens** [2011] NICA 48, the Court of Appeal gave the following guidance about the assessment of significant risk:

- the risk identified must be significant; this is a higher threshold than mere possibility of occurrence and can be taken to mean "noteworthy, of considerable amount or importance";
- the sentencer should take account of the nature and circumstances of the current offence, the offender's history of offending including not just the kind of offence but its circumstances and the sentence passed, whether the offending demonstrates any pattern, social and economic factors in relation to

the offender including accommodation, employability, education, associates, relationships and drug or alcohol abuse, the offender's thinking, attitude towards offending and supervision and emotional state;

- sentencers should guard against assuming that there is a significant risk of serious harm merely because the foreseen specified offence is serious;
- if the foreseen specified offence is not serious there will be comparatively few cases in which a risk of serious harm will properly be regarded as significant.

29. In **R –v- Leon Owens** [2011] our Court of Appeal stated

> "[17] Article 3 of the 2008 Order defines serious harm as meaning death or serious personal injury, whether physical or psychological. In ***R –v- Terrell*** [2007] EWCA 3079 Crim Ouseley J stated:
>
> > "The seriousness of the harm required by the Criminal Justice Act is emphasised by the words" death or serious personal injury". The latter phrase is deliberately coloured by the associated word "death", and stands in contrast with the language of the Sexual Offences Act and it is on the serious harm occasioned by that offender's re-offending which the Criminal Justice Act requires attention to be focused".

30. Let me now turn to your personal history as outlined in the pre-sentence report and by Dr East. You are a 35 year old man; your father died as a result of a road traffic accident when you were very young and until the age of 15 you lived with your mother who was an alcoholic and was violent towards you. At age 15 you moved to live with your grandparents and you told Dr East that they could not have been better to you. You left school at the age of 18 with no qualifications and according to a report from Professor Davidson you have an IQ in the range between 70 and 80 which places you in the borderline learning disability range. You have spent your adult life in and out of prison and have never been employed. You have a partner who gave birth to your daughter last year and you told Dr East that the birth of your child has had a major impact on your life. You were drinking a bottle of vodka daily, using £100 worth of cocaine nightly and an ounce of cannabis weekly before being imprisoned. In discussion with Dr East you attributed your offending to peer influences, stupidity and the need for drink and cigarettes. You have been the victim of violence perpetrated against you by paramilitary organisations.

31. Mr McCrudden QC described you as a nuisance to society, as a very unfortunate and very ill-equipped person who in his drunken state accompanies his associates in the search for the wherewithal to feed their addictions. He suggests that all the evidence - from your record, from Dr East and from the literature on which Dr East

relies - points towards you not posing a significant risk of serious harm to the public and to conclude otherwise would be mere speculation. He says that you use a knife encourager les autres; I assume that the others to whom he refers are both your victims and your associates. His submission is that you do not possess weapons to cause serious harm, that you are not a person who is prepared to use violence come what may and that you have never caused serious harm even in your drunken state. He submits that it is wrong to elevate you into a sadistic person or terrorist. His final plea is that the penal statute which I am considering must be construed strictly and that you do not meet the criterion under article 13 (1) (b)

32. I remind myself that the circumstances of the offences which bring you before the court are not determinative of the question of whether you present a significant risk of serious harm; they are but one strand of information at which the court can look. There are, however, features of your offending which are in my view particularly relevant:

- you have committed a multiplicity of serious offences within a period of six months;
- the first of the offences, your robbery of the convenience store on 28 January 2010, occurred just 6 days after your release from prison having served a sentence of 7 years for robbery;
- that you were carrying a weapon is an indication of a degree of planning of the offences;
- at the time of the offences you were on Probation; you had refused to cooperate with Probation and were therefore subject to an arrest warrant issued by Belfast Magistrates' Court on 3 February 2010;
- in committing some of the robbery offences you threatened your victims with a weapon which on occasions you pointed directly at staff;
- during the course of an aggravated burglary by you and an accomplice of a dwelling on 2 July 2010 in the early hours of the morning a knife was placed on the chest of an adult male and a knife was waved aggressively at a female; on 22 May 2010 having unlawfully entered a dwelling at 5.30 a.m. you claimed to be from the Continuity IRA and caused the female occupant to drive you in order to spare her terminally ill husband further stress and possible harm. When she resisted your attempt to steal the car you broke her glasses and punched her on the face.

33. When asked by Mr Winnington about the impact on your victims of your offences your response was "I've never hurt anyone". And it has to be acknowledged that you have not caused serious physical harm to anyone to date. However you have not only carried weapons in order to intimidate but have gone

further, as I have already indicated, because a knife was placed on the chest of an adult male during the robbery on 2 July 2010 in order to ensure compliance. You also used violence on 22 May 2010 on your female victim and, while the violence was not serious, the incident demonstrates your willingness to use violence in order to achieve your objective.

34. In **Johnson and others** [2007] 1 Cr.App.R. (S) 112 Sir Ivor Judge said:

> "… Where the facts of the instant offence… are examined, it may emerge that no harm actually occurred. That may be advantageous to the offender… On the other hand the absence of harm may be entirely fortuitous. A victim cowering away from an armed assailant may avoid direct physical injury or serious psychological harm. Faced with such a case, the sentencer considering dangerousness may wish to reflect, for example, on the likely response of the offender if his victim, instead of surrendering, resolutely defended himself. It does not automatically follow from the absence of actual harm caused by the offender to date, that the risk that he will cause serious harm in the future is negligible.
>
> Nothing in the decision in **R v Shaffi** (2006) EWCA 418, which was relied on before us, suggests the contrary. Giving the judgment of the court, at paragraph 11, Sir Richard Curtis summarised the various submissions made on behalf of the appellant. One of them was that the appellant's previous convictions demonstrated that although the appellant was carrying a knife and a screwdriver in two of the cases, no harm was actually occasioned. … **Shaffi** is not authority for the proposition that as a matter of law offences which did not result in harm to the victim should be treated as irrelevant. Indeed if that is what **Shaffi,** decided, it would, in effect, have re-written the statute."

35. In **Dean Pedley, Lee Martin and Zeeyad Hamadi** [2009] EWCA Crim 840 the Court of Appeal reiterated the latter point stating that:

> "the commonly advanced submission that because the defendant has not yet caused serious harm, it *necessarily* follows that there cannot be a significant risk that he will do so in future… is wrong."

36. I have taken account of all relevant information including the following:

- your extensive criminal record;
- the number of offences for which I am sentencing you;

- the fact that you had just been released from prison at the time you committed these offences;

- your failure to comply with supervision;

- the fact that you have not caused serious physical harm in the past;

- the degree of stability in your life achieved by the birth of your daughter and reflected in recent positive developments in prison;

- the fact that you have been prepared in the past to use violence, albeit not serious, when your victims have failed to comply;

- the fact that you have carried weapons on a number of occasions.

37. My conclusion is that the fact that you have not caused serious physical harm by your offending to date is attributable to the compliance of your victims achieved at least to some extent by the threat of violence. The absence of past serious physical harm caused by you is therefore likely to have been fortuitous and does not lead to the conclusion that the risk that you will cause serious physical harm in the future is a mere possibility which could not be seen as noteworthy.

38. Taking account of all relevant considerations I have concluded that you do pose a significant risk of causing serious physical harm to the public by the commission of further specified offences. It is therefore not necessary for me to reach any conclusion as to whether you pose a significant risk of causing serious psychological harm to the public.

39. I therefore declare that for the reasons I have stated that the provisions of Article 13 of the 2008 Order have been satisfied.

Extended custodial sentence or indeterminate sentence

40. In the light of that conclusion the next decision which the court requires to make is whether or not an extended sentence would be adequate to protect the public from the serious harm occasioned by you committing further specified offences. If not, then the choice is between a life sentence and an indeterminate sentence.

41. In the submission of the Prosecution the large number of offences for which you are being sentenced together with the numerous aggravating factors to which I will refer and in the light of your previous offending may justify a life sentence. It is well established that life sentences should be reserved for those offences which are of the utmost gravity, and while many of your offences are serious they do not meet the high threshold for such a sentence. The realistic choice is therefore between an extended custodial sentence and an indeterminate sentence.

42. Both sentences have as their objective the protection of the public in the future. In ***R –v- Johnson & Others*** [2007] 1 CAR(S) 112, the Lord Chief Justice stated that the sentence:

> "… is concerned with the future risks of public protection. Although punitive in its effect, with far reaching consequences for the defendant on whom it is imposed, strictly speaking it does not represent punishment for past offending … when the information before the court is evaluated, for the purposes of this sentence, the decision is directed not to the past, to the future and the future protection of the public."

43. In addition to the wealth of material about you to which I have already referred I also have:

- a report of 8 June 2011 from Dr Harbinson consultant psychiatrist;
- two reports from Professor Davidson;
- your letter to the court which I read out yesterday.

You have a very unstable personal history, not having known your father, having experienced violence from your mother who suffered from alcoholism and having lived with your grandparents who according to your own account to the probation officer could not control you during your teenage years. Your offending began in your early teens and you have spent most of the last decade in prison. You committed the first of the offences which are before the court within 6 days of being released from custody after having completed a 7 year custodial sentence. Within two weeks of your release you were failing to cooperate with the risk management plan and not keeping probation appointments.

44. Dr Harbinson's conclusion is that your significant criminal record, the age at which you started to offend, your lack of employment, your substance misuse, your impulsivity and your past failure to comply with probation are negative indicators for the future. She sees as positive factors your insight into your behaviour, your relationship with your girlfriend and your baby, and the fact that you have achieved enhanced prisoner status.

45. Professor Davidson acknowledges that you have "some work to do in terms of relapse prevention and gaining a further insight into your offending" but he is

> "guardedly optimistic that there is a possibility, maybe even a probability, of some control over your alcohol consumption mirroring the control which you have already exerted over your cocaine use."

Professor Davidson, whose supplementary report is based on a discussion with you in late January of this year, refers to some inconsistences in your accounts of your drug history which have caused him to temper his predictions of future long-term control.

46. In your letter you have expressed regret about your behaviour and its effect on your victims; you refer to the pain of the loss of your grandfather who was in effect your father, the suicide of your brother, turning to drugs when you were at rock bottom and then to the very positive influence of your girlfriend and the fact that you are a father. One example of that influence was the fact that your girlfriend persuaded you to return to prison after you had been released on compassionate bail for the funeral of your brother.

47. Mr McCrudden has comprehensively and eloquently pleaded on your behalf, both in his written and in his oral submissions. He describes your offences as opportunistic, lacking any meaningful or effective planning and marked by either small or short-lived gain, such as use of a car, stealing of alcohol, cash or cigarettes, was of small measure and/or short lived. He says that you displayed all the attributes and behaviour of someone who seemed to want to be caught and did not care about being detected and apprehended.

48. He refers to:

- your empathetic expression of sympathy for Mrs Quinn;
- the fact that while your robberies were not inconsiderable in number and were frightening they were committed within a contained time frame and did not involve any actual violence;
- your age, background and personal circumstances;
- the objective evidence of an attitudinal change in you in the achievement of enhanced prisoner status and your nearly completed adept programme;
- your relationship with Charlene and your child and the evidence from your letter of the positive influence of Charlene on you

in support of his contention that your offences are at the low end of seriousness; that your dangerousness is at the low end and that therefore the scheme of an extended sentence is particularly appropriate to you.

49. Mrs McKay has drawn attention to the aggravating factors in your offending. In the robberies:

- The involvement of more than one defendant;
- The defendant as ringleader;

- Pre-planning;
- Offence committed during the hours of darkness;
- Victims were vulnerable;
- Possession of a weapon.

Mrs McKay suggests that an additional aggravating factor in the local context is the use of threats by reference to paramilitary organisations.

50. Insofar as the two incidents involving burglary and aggravated burglary, kidnapping and assault, are concerned, aggravating features include;

i) the use or threat of force against the victim;

ii) trauma to Mrs Quinn beyond that normally associated with this type of offence;

iii) the presence of the occupier at the time of the offence;

iv) two or more burglaries;

v) your previous convictions.

51. There are small glimmers of hope:
- in your cooperation on remand with the prison authorities in contrast to your previous behaviour in custody;
- in your participation in the adept programme;
- in your relationship with your partner;
- in your expressions of regret.

52. But those have to be balanced by the negative factors principally:
- your long history of offending;,
- the number and nature of the present offences including the aggravating factors;
- your involvement with unsuitable people;
- the fact that you committed the first of these offences within days of being released from prison after serving a long sentence;
- your failure to cooperate with probation in the period between that release and your arrest;,
- the minimisation of your behaviour which is referred to in the PSR.

It is therefore entirely understandable that the Probation Service see you as highly likely to reoffend and state that the difficulties in managing the risk you pose when in the community should not be underestimated.

53. Having considered all the material before the court, I have come to the conclusion that an extended custodial sentence would not be adequate to protect the public and that I should impose an indeterminate custodial sentence.

54. Under Article 13(3) I am required to specify the minimum period to be served to satisfy the requirements of retribution and deterrence having regard to the seriousness of your offences. In order to decide a minimum term I intend to consider what sentence would be imposed if this were a case where a determinate sentence was appropriate.

55. In the submission of Mrs McKay, the applicable guideline from the 2003 Sentence Advisory Panel on the robbery of small businesses, which suggests a range of 7 to 9 years on a guilty plea, would in the context of the number of your offences and the aggravating factors and the fact that you were a principal in many of the offences yield a sentence well into double figures. Mrs McKay refers to **R-v- Dunbar [2003]** NIJB 73 in which a sentence of 15 years imposed after conviction was not interfered with by the Court of Appeal. She cites **Attorney-General's Reference (No. 6 of 2006)** as support for the imposition of consecutive sentences. Mr McCrudden does not dissent from this categorisation of your robberies as "of small businesses" but he emphasises the importance of the totality principle in determining the overall sentence you should serve for all your offences. He referred to the case of **R v Coates** in which the defendant had been sentenced to 8 years for 6 robberies and 3 attempted robberies; that sentence was reduced on appeal to 4 years.

56. Having considered the authorities to which I have been helpfully referred and the aggravating factors and the mitigating factor of your plea of guilty, a sentence of 9 years for each of the 9 robberies, each sentence to be concurrent, would be appropriate.

Sentences of 2 years imprisonment would be appropriate for each offence of possession of an offensive weapon and those sentences would be concurrent with each other and concurrent with the robbery sentences.

57. Let me now consider the burglary offences.

The offence of burglary of a dwelling house is and must be treated as a very serious offence involving as it does the intrusion into the sanctuary in which citizens should be entitled to feel safe and secure by day and especially by night.

58. Mrs McKay refers to the case of **R v Skelton** [1992] 3 NIJB 27 in which a sentence of 14 years was upheld for a conviction of attempted robbery of an elderly man in his house and the court indicated that the starting point for robbery of a householder with violence is 10-15 years suggesting an analogy between the robbery in Skelton and your behaviour at the home of Mr and Mrs Quinn.

59. Your burglaries were undoubtedly very frightening experiences for your victims and I would consider as appropriate the following

- a sentence of 3 years for the burglary at the Quinn home and 5 years for the kidnapping of Mrs Quinn.
- A sentence for the burglary at the student house of 2 years with those 3 sentences being concurrent with each other.

60. The total sentence for the offences of robbery, possession of an offensive weapon, kidnapping and burglary would therefore be 14 years.

61. In the light of the advice from. D.A. Thomas in "Sentencing dangerous offenders under the Criminal Justice (Northern Ireland) Order 2008" that:

> "when offenders are to be sentenced for several offences only some of which are specified, the court which imposes an indeterminate sentence or an extended sentence for the principal offences should generally impose a shorter concurrent sentences for the other offences."

each of your other offences would attract lesser sentences which would be concurrent.

62. I should, in accordance with the approach in **R v McCandless and others** [2004] NI 269, take account, when fixing the minimum term required to satisfy the requirements of retribution and deterrence as required by art. 13(3)(b) of the 2008 Order, of the fact that the minimum term does not attract the period of licence which is a component of a determinate custodial sentence.

63. Taking account of this fact and the totality principle I am fixing the minimum term at 6 years. I therefore impose an indeterminate custodial sentence and order you to serve a minimum term of six years' imprisonment before you can be considered for release by the Parole Commissioners. The minimum term will include the period spent in custody on remand.