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Judgment: approved by the Court for handing down | *Delivered:* **05/12/2003**
(subject to editorial corrections)

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

V

ROBERT BLACK

Before: Carswell LCJ and Kerr J

CARSWELL LCJ

[1] This is an appeal against a sentence of six years' imprisonment imposed by the Recorder of Belfast, His Honour Judge Hart QC, at Belfast Crown Court on 29 August 2003, when the appellant pleaded guilty to count 2 on the indictment, a charge of attempted burglary. The judge also put into operation a suspended sentence of three months imposed on 7 February 2001 at North Down Magistrates' Court and ordered that it run consecutively to the six-year sentence.

[2] The appellant was originally charged with attempted robbery, to which he pleaded not guilty on arraignment, having thitherto denied any connection with the offence. He then filed an amended defence statement admitting attempted burglary. On the morning of trial the prosecution added a count of attempted burglary to the indictment, to which the appellant then pleaded guilty. The Crown offered no evidence on the count of attempted robbery, of which he was found not guilty. The judge proceeded thereupon to sentence him for attempted burglary. He was given leave to appeal by the single judge.

[3] On 18 December 2001 at about 8.20 am police surprised three males in the rear yard of Knock Post Office in the act of removing bricks from a bricked-up window, with the obvious intention of breaking in and stealing the money which was in the premises. They were pursued and the appellant was chased into nearby gardens. He evaded the police at that stage, but was

soon apprehended and linked with the offence, although on interview he denied any connection with it. A wooden shaft, a sledgehammer, a torch, a knife, a wheel-brace and a set of aluminium ladders were found in the yard of the post office.

[4] The appellant has a long criminal record dating back to 1986, which includes robberies, repeated burglaries and thefts and drugs offences, as well as assault, public order and road traffic offences. He refused to see the probation officer who was asked by the court to prepare a pre-sentence report, and his counsel informed the judge that he did not seek to have one. The judge accordingly proceeded without one, observing that it would be unnecessary given his record and propensity to re-offend.

[5] In his sentencing remarks the judge referred to the fact that the appellant had pleaded not guilty on arraignment and maintained that plea until the morning of trial. He stated that whilst he was entitled to some credit for his plea of guilty, it was at a very late stage. He also observed that –

> "his absconding whilst on bail considerably reduces the credit that he would otherwise receive for his plea of guilty."

He regarded any form of attack on a post office as a very serious matter which must attract a very substantial sentence. He therefore imposed the sentences to which we have referred.

[6] In his grounds of appeal the appellant relied on three main grounds, upon which Mr Lavery QC elaborated at the hearing before us:

(a) The judge failed to give him sufficient credit for his plea of guilty, which he entered as soon as the offence was reduced to attempted burglary.

(b) The judge was in error in reducing the credit given for his plea of guilty because of his absconding when on bail.

(c) The level of sentencing at six years on a plea of guilty was manifestly excessive.

[7] We have to agree that there is some substance in each point. The appellant understandably was unwilling to plead guilty to attempted robbery, a charge for which the factual basis was insufficient. He offered, according to his counsel, to plead guilty to attempted burglary at quite an early stage, but the Crown declined to reduce the charge. When the amended defence statement was filed it was eventually agreed that the charge should be reduced, and the appellant duly pleaded guilty when the charge of

attempted burglary was put to him. In these circumstances he is in our view entitled to be given a degree of credit for his plea comparable with that which he would have received if he had been originally charged with the lesser charge and pleaded guilty to it on arraignment. It is to be observed that he was caught virtually red-handed, and on that account the credit may be to some extent moderated.

[8] If the judge reduced that amount of credit on account of the appellant's absconding for some ten months after being given compassionate bail in February 2002, as appears from his sentencing remarks, then we consider that he was not correct in doing so. The appellant could have faced separate charges under section 26 of the Prison Act (Northern Ireland) 1953 for failing to answer to his bail, and we do not consider that it is a ground for reducing the credit which he is entitled to receive under Article 33 of the Criminal Justice (Northern Ireland) Order 1996 for a plea of guilty. At most it might be taken into account as tending to negative a claim that the offender was remorseful and ready to admit his complicity in the offence at an early stage. If the judge so intended, then it could be regarded as a relevant consideration, though we do not think that it should weigh very heavily against the appellant.

[9] We agree with the judge that burglaries of post offices must attract deterrent sentences. We also agree with him that the appellant's long record demonstrates that he is a habitual criminal committing regular offences for gain and that a substantial sentence was warranted. Having considered the range of sentences imposed in comparable reported cases, we are of the view that six years was outside that range. In our opinion the offence should have attracted a sentence of four to five years on a contest and three years on a plea of guilty. We agree with the judge that a custody probation order would not be appropriate and consider that he was justified in forming the opinion that a pre-sentence report would add little or nothing and was not necessary.

[10] We accordingly shall allow the appeal and reduce the sentence on count 2 in the indictment to three years. The consecutive three-month sentence imposed in respect of the suspended sentence will stand. The effective total sentence is therefore three years and three months.