IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

-v-

STUART JAMES GOULDIE

HUTTON LCJ

This is an appeal by Stuart James Gouldie against an order made by His Honour Judge Hart QC at Belfast Crown Court on 26 September of this year, whereby the learned judge activated in its entirety a 2 year sentence which had been suspended for 3 years and which was imposed on 29 April 1988. That 2 year sentence, suspended for 3 years, had been imposed on the appellant for the offence of hijacking a lorry containing a considerable load of alcoholic drink and also for robbery.

The circumstances which caused the matter to be brought before Judge Hart for him to consider whether the suspended sentence should be activated were these. The appellant appeared at North Down Magistrates' Court on 1 February of this year where he faced a number of summonses. One summons was for taking and driving away a motor vehicle without the consent of the owner. He pleaded guilty to that offence and he was sentenced to 6 months' imprisonment suspended for 3 years. There were a number of allied charges, such as driving without proper insurance and driving without an appropriate driving licence and failing to give particulars after an accident, in respect of which relatively small monetary fines were imposed. In addition, at the same Magistrates' Court he was charged with the offence of disorderly behaviour in Holywood on 20 June 1990 and he pleaded guilty to that offence and he was sentenced to 6 months' imprisonment suspended for 3 years. So, therefore, he was guilty of 2 offences for which he was made subject to imprisonment, namely, the offence of taking and driving away the motor car and the offence of disorderly behaviour and that, as I have stated, gave rise to the question whether the sentence imposed on 28 April 1988 should be activated. As I have also stated, the learned judge did activate that sentence for its entirety.

Before this Court this morning Mr Treacy has advanced a number of points. The first point he makes is that the offence of taking and driving away the motor vehicle on 3 May 1990, whilst it appears to be a similar type of offence of the offence of hijacking the lorry, is not in fact comparable and is less serious than it appears and

Mr Treacy submits that that was, in fact, accepted by the learned judge because the explanation put forward for that offence by the appellant was that the vehicle which he took and drove away on 3 May 1990 was, in fact, a vehicle belonging to a good friend of his, whom he thought would, in fact, have given him his consent. But the reason that he pleaded guilty was to prevent his friend, the owner of that vehicle, being charged with permitting someone, or rather aiding and abetting someone, namely, himself, the appellant, to drive without proper insurance. That explanation was put before the Learned Trial Judge and it appears that that explanation was not dissented from by the Crown and the learned judge dealt with the matter in this way. He said:

"I have been told that the position was that contrary to his plea of guilty to the charge before the Magistrate that the accused did have Mr Ramsey's permission to drive but that he did not admit this because that would have got Mr Ramsey into more difficulties because then Mr Ramsey would have been aiding and abetting the accused driving without insurance for example".

While that at first sight seems to be a somewhat fanciful explanation given the criminality of the present accused and Mr Ramsey's previous appearance in 1988, one has, I think, to regard that explanation as having more credibility than otherwise would be the case, particularly since the police are not inclined to dissent from it, although they expressed no definite view either way, as I understand the situation. That, Mr Treacy says, puts a rather different complexion on the matter. That is true up to a certain point, because that relates to the offence of taking and driving away. So, therefore, Mr Treacy submits that the learned judge accepted that the offence of taking and driving away was much less serious than it appears and Mr Treacy goes on from that point to submit that, therefore, because an argument can at least be advanced that the offence of taking and driving away was a relatively trivial offence in the circumstances and certainly differed from the hijacking of the lorry, that it was not appropriate for the learned judge in the light of the authorities which have been cited to activate the suspended sentence.

Mr Treacy's next point then is that in his judgment the learned judge went on to say this:

"But as against that the accused also appeared before the Court in relation to the disorderly behaviour which was committed in June of 1990 and that also attracted a suspended sentence".

Mr Treacy submits that certainly a substantial reason why the trial judge activated the suspended sentence was that he had regard to the offence of disorderly behaviour which was committed in June of 1990 and again Mr Treacy submits that that was, as Mr Treacy would put it, a somewhat trivial offence, it was an offence which differed from the original offences in respect of which the suspended sentence was imposed on 29 April 1988 and again it was contrary to principle for the Learned Trial Judge to activate the sentence. Well, we do not accept the full force of Mr Treacy's submission that the disorderly behaviour offence was a trivial one; it seems

to have involved the kicking of a window at a carry-out and behaviour of a disorderly nature towards the police. But be that as it may, Mr Treacy submits that it was a different type of offence from the offences in April 1988 and therefore it was inappropriate for the Learned Trial Judge to activate the suspended sentence.

In deciding whether or not to activate the suspended sentence the relevant part of Section 19(1) of the Treatment of Offenders (Northern Ireland) Act 1968 provides:

"That a court shall make an order under para (a) (that is activating the suspended sentence with the original term unaltered), unless the Court is of opinion that it would be unjust to do so in view of all the circumstances, including the facts of a subsequent offence and where it is of that opinion the Court shall state its reasons".

Therefore, the section makes it clear that, in deciding whether to activate the suspended sentence for its full term, the Court will take account of all the circumstances and that is what the learned trial judge, in fact, did, because the next section of his judgment reads as follows:

"Now none of the offences in my view with which the accused has been before the Court since 1988 can properly be described as trivial. I remind myself again of the words of the section -

'The Court has to have regard to all of the circumstances that have arisen since the suspended order for detention was passed or made'.

I consider that the most compelling evidence before the Court is that of the accused's behaviour and he has shown himself to be someone who totally disregards the many chances which he has been given by the courts and in my view the prima facia rule that the suspended sentence must be put into effect should, in the interests of justice, be put into effect in this case".

The matters to which the judge was referring were these: after the imposition of the suspended 2 year sentence, that is suspended for 3 years, the appellant has appeared in respect of a number of separate offences prior to his appearing before North Down Magistrates' Court in February of this year. He appeared before the Magistrates' Court in July 1988 when he was convicted of making a petrol bomb and of causing criminal damage and he was there made subject to a Community Service Order for 150 hours. The explanation that is given on his behalf is that he was experimenting with a petrol bomb, but it appears that he threw a petrol bomb at a portacabin and we regard the explanation that he was merely experimenting as simply being glib. The next offence was when he appeared before the Magistrates' Court on 17 May 1989 when he was guilty of possessing an article with a blade or point and again he was given a Community Service Order for 150 hours. Then the next appearance was in July 1990 when he was guilty of behaviour likely to cause a breach of the peace and he was given a sentence of imprisonment of 3 months suspended for 2 years. Now those were 3 separate offences, or groups of offences, committed between the imposition of the suspended sentence for the hijacking and robbery and his appearance before the Magistrates' Court in February and we

consider that the trial judge was fully entitled to take those into account and we consider, as did the trial judge, that those offences showed that this appellant, although he had been given many chances, he had been given suspended sentences and had made the subject of Community Service Orders, was really treating the observance of the law with contempt and was failing to recognise that someone who is given a suspended sentence must stay out of trouble and that he cannot expect to go on being given chances by the Court.

Therefore, whilst we consider that Mr Treacy would have had an argument of considerable weight if the only matters after the suspended sentence had been the offences for which he was dealt with in February 1991, we consider that, having regard to the intervening offences taken in conjunction with the offences for which he was dealt with in February 1991, the trial judge was entitled to take the view that, because of those quite frequent acts of criminal conduct, he was entitled to activate the suspended sentence. But the further question then arises as to whether it was just to activate the suspended sentence in its entirety and as I stated that was a sentence of 2 years' imprisonment. Well, that is a matter of "balance", but taking account of what appears to be the position, that the taking and driving away offence was not as serious as it first appeared and that the Crown seem to have accepted the explanation that it was a vehicle taken from a friend who might well have given his consent and to the fact that the disorderly behaviour offence was a different type of offence, we consider that it is not just that the full term of 2 years should be put into operation. We consider that the appropriate term that should operate in respect of that suspended sentence is 8 months.

Therefore, we allow the appeal to the extent of ordering that the suspended sentence will be put into operation, but it will be reduced from the period of 2 years to the period of 8 months, that is from the date of the order made by His Honour Judge Hart on 26 September 1991.