IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

-v-

PHILIP COATES

MacDERMOTT LJ

KERR J

On 20 June 1997 at Downpatrick Crown Court the appellant (Philip Coates) pleaded guilty on arraignment to 2 counts - Robbery - that was of the Ulster Bank on 29 June 1995 when £8,665.30 was taken and of possession of a sawn off shotgun contrary to Article 23 of the Firearms (Northern Ireland) Order 1981. On 23 June 1997 His Honour Judge Foote QC imposed sentences of 10 years on Count 1 and 6 years on Count 2.

The robbery was carried out by a gang of 4 - Magee, Cardy and Porter were also charged with the same offences. Magee received an effective sentence of 6 years' imprisonment and Cardy 7 years. Porter pleaded guilty to assisting offenders and received a sentence of 3 years' imprisonment.

Background

These offences were committed on 29 June 1995 when the Ulster Bank Branch at Comber was robbed of £8,665.30. Between 10 am and 11 am on that day the applicant accompanied Porter to the Ulster Bank where Porter cashed a cheque. It appears that they were staking out the Bank prior to the robbery which occurred at 2.15 pm the same day. At that time 2 masked men, one carrying a shotgun came into the Bank and jumped over the counter. They kept shouting "keep down or I'll blow your fucking heads off". Staff and customers alike were terrified and lay on the ground as directed. The 2 men made their getaway in a Vauxhall Cavalier car which was waiting outside. When Coates was interviewed by Police he denied any involvement. A video camera recorded the men getting into the car and appear to have shown Magee sitting in the car and Cardy and Coates getting into it. The shotgun was later recovered from the Cavalier car and Coates' fingerprints were found on the gun and bag.

The appellant was born on 20 February 1973 and so is now 25. He has a bad, indeed appalling, criminal record. Most relevantly this court on 12 April 1991 saw fit to alter an effective sentence of 8 years' imprisonment to one of 4 years' detention despite the appellant having been involved in 6 robberies and 3 attempted robberies. On 4 June 1993 he received an additional 2½ years' detention in respect of a robbery on 31 July 1992 (when on home leave from the Y.O.C.). His release date was 16 December 1994 and he was subject to Article 6 recall until 5 June 1997. It also appears that in December 1995 he had committed a further armed robbery at wholesale premises for which he was sentenced to a term of 7 years on a plea of guilty on 18 September 1996. In that he knew he was under suspicion for the Comber robbery having been interviewed by the police on 22 September 1995, this was a particularly audacious act on the part of the appellant and reflects his total unwillingness to respond to the leniency displayed by this Court in April in 1991. Thus since 1990 he has been convicted in respect of 8 robberies and 3 attempted robberies.

Mr Cinnamond QC (who appeared with Mr Irvine for the appellant) submitted that a 10 year sentence for a single offence of robbery was manifestly excessive. He suggested that the tariff was 10 years and upwards depending on circumstances and that this offence "fell fairly far down the scale". He further claimed that following a guilty plea the proper range lay between 6 and 9 years. We cannot agree with those propositions. During the last 20 years robberies of banks have been becoming much more frequent Security systems introduced by the banks do not seem to deter effectively and the robbers often armed with firearms (sometimes loaded, sometimes unloaded, sometimes replicas) continue to descend on banks in the hope of securing large sums of money. Unfortunately they frequently succeed and the bank staff and customers are subjected to a terrifying experience.

The proper starting point

Our courts have since at least 1975 displayed a resolute determination to make it clear that such offending will not be tolerated and that lengthy prison sentences will be imposed both as a proper punishment and a deterrence to others who might be minded to do likewise. Thus in R -v- Turner and Others [1975] 61 CAR 67 at 91 Lawton LJ said:

"We have come to the conclusion that the normal sentence for anyone taking part in a bank robbery or in the hold-up of a security or a Post Office van, should be 15 years if firearms were carried and no serious injury done. It follows therefore that the starting point for considering all these cases is a sentence of 15 years. As was pointed out in argument, the fact that a man has not much of a criminal record, if any at all, is not a powerful factor to be taken into consideration when the court is dealing with cases of this gravity. In this case, all those who took part in the bank robberies, in the sense of going into the banks carrying firearms or other weapons, had criminal records. Some had bad criminal records and others not so bad. We

have decided that in dealing with those for whom a sentence of 15 years' imprisonment for one bank robbery is appropriate, the length and type of record is of little assistance."

Turner has been considered in many cases since 1975 and is undoubtedly a significant guideline case. In this jurisdiction there have been a number of authoritative pronouncements in relation to sentencing for armed robberies in banks. Thus Gibson LJ stated in R -v- O'Neill [1984] 14 NIJB 1 at 3:

"It is now some 9 years since this Court declared in a reserved judgment its view as to the proper range of terms of imprisonment for armed robbery. This was done in 2 cases heard on the same day, namely R -v- McKellar and R -v- Newell reported in [1975] 4 NIJB. I was a member of the court though the judgment in each case was delivered by McGonigal LJ. We would wish to emphasise that the trend of criminality in the meantime has done nothing to diminish the opinion which was there expressed that armed robbery, especially of a bank, post office, security van or other premises where the staff and members of the public are put in fear and where considerable sums of money are likely to be stolen if the robbery is successful, is a very serious crime which must be visited with an immediate custodial sentence which in almost every case will be for a considerable number of years regardless of the circumstances or the personal background of the accused. Indeed, such robberies are now more common than they then were and the courts must in sentencing those found guilty bear in mind that there ought to be a considerable element of deterrence in the term which should properly be imposed. This Court, therefore, wishes it to be clearly understood that it affirms the statement made by it in McKellar's case that this is a type of offence which must in present circumstances be met by sentences which in other times might be outside the norm for such offences. In circumstances such as obtain nowadays in Northern Ireland where firearms are frequently used to rob banks and post offices this Court would reaffirm that a sentence of 13 years or upwards should not now be considered outside the norm for a deterrent sentence for this type of offence. Indeed, it would be appropriate for a Judge to regard a sentence within the range of 10 to 13 years as a starting point for consideration, which sentences may be increased if there is a high degree of planning and organisation, or if force is actually used, or if the accused has been involved in more than one such crime. Equally it would be appropriate to reduce the sentence if the degree of preparation or the efficiency of performance is low, or if the money and weapons have been recovered, or if the accused has shown contrition and pleaded guilty to the charge, or if there are other special features which ought to be treated as grounds for reduction of the penalty."

And in R -v- Colhoun [1988] 12 NIJB 16 Hutton LCJ concluded his judgment by saying:

"Since the judgment of this court in R -v- O'Neill there has been no diminution in the number of armed robberies. They are very serious crimes which

put innocent members of the public in fear and this court desires to emphasise again that armed robbery is an offence which must be met by severe sentences which contain an element of deterrence. Accordingly the sentence of 10 years' imprisonment passed on the appellant in this case was an entirely proper sentence and the court dismisses the appeal against sentence."

As we pointed out earlier in this judgment armed robbery at banks is a growing form of criminal activity and the efforts of the courts to deter do not appear to be achieving appreciable success. Accordingly we are satisfied that the present situation requires us to repeat the guidance of Lawton LJ and to affirm that 15 years is the correct starting point when seeking to sentence a prisoner convicted of armed robbery. Indeed the gloss put on the observations of Lawton LJ by Simon Brown J (as he then was) in R -v- Fenlon & Jarpur [1985] 7 Cr.App.R(S) 175 at 177 bears repetition:

"If one looks at Turner, one notices not that 15 years is to be regarded as the tariff sentence for armed robberies, but rather that the usual bracket is of the order of 15 to 18 years (particularly where more than one robbery is committed as here)."

That figure will, of course, be varied to reflect relevant aggravating and mitigating factors. We would also draw attention to the fact that recent judicial observations suggest that bank robberies are in a sense `sui generis' and require longer sentences than where the armed robbery occurs elsewhere. We do not accept that view and much prefer the observation of Evans LJ in R -v- Woodruff and Hickson (unreported 24 October 1997) when he said:

"It is important to note from Fenlon and Jarpur, that the Court there applied the principles in Turner to robberies at sub-post offices or post offices. In our judgment, no distinction is to be drawn from the fact that a robbery takes place at a bank, a security van, a post office van, which were expressly referred to in Turner, or a post office or a sub-post office, as in Fenlon and Jarpur. Post offices are often soft targets, staffed by defenceless men and women."

Aggravating and mitigating factors

Mr Cinnamond emphasised a number of points:

(1) The guilty plea on arraignment. This has always been recognised as a mitigating factor and we have no doubt that the judge allowed an appropriate discount. Mr Cinnamond also submitted that the appellant was not in a "totally hopeless position" and therefore some additional discount was deserved. This type of assertion is becoming common but is without merit and it would be wrong to attach weight to a speculative assertion of this nature. In pleading guilty an accused is accepting the Crown case on the papers before the court unless a variation has

been agreed between prosecuting and defence counsel or a Newton hearing has been held.

(2) The role of the appellant was not that of the gunman as the judge, we are told, assumed. That was the role of Cardy, according to Mr Cinnamond, and the appellant's role was that of the `bagman' who gathered up the money. Both men were actively involved in the robbery in the bank and no meaningful purpose is achieved by defining their individual roles and we would repeat what Gibson LJ said in O'Neill at page 4:

"But as between the various principals it is not normally relevant to consider the physical part played by each. Such an operation which involves a number of participants also involves the allocation of functions between them and it matters little in deciding upon the sentences to be imposed upon them who drove and waited with the car, or kept a look out outside the bank, or carried the gun, or uttered the threats, or physically took the money."

(3) The appellant's record.

Mr Cinnamond submitted that he should not be penalised for having a bad record. This is so in that a man should not be punished twice for the same offence. But in assessing an offender to determine how he has reacted to punishment in the past and how he may behave in the future his record is clearly relevant and here the record is that of a persistent offender who has made no appellant effort to reform. In 1991 this court made it clear to the appellant that his future lay very much in his own hands. What we said was this:

"Do you understand, Coates, this isn't a soft option, it has been a difficult case. You have the opportunity now of fitting squarely into the scheme of things at Hydebank. They will do everything they can. For you to get the full benefit of it you have got to co-operate and play your part and when you emerge, if you behave yourself, it will be less than 4 years and then you will be equipped to cope with life. But don't get yourself into trouble again because the Courts then will have no hesitation in ensuring that you are imprisoned for a very lengthy time, if it is shown that you can't be relied upon to behave. The past has been difficult. Put that behind you now and take advantage of the situation which you are now at."

How did the appellant respond? When on home leave he committed a robbery in July 1992. He was released on 16 December 1994 and committed the present offence on 29 June 1995 and the robbery at the wholesalers in December of that year. By his actions he has made it clear that he is a danger to the public and that is a relevant factor when a judge is seeking to determine the appropriate sentence.

(4) Mr Cinnamond stressed that in this robbery no one was struck or physically injured, it was not a paramilitary operation and it was "far from the worst" armed

robbery. All that may be so but those are neither mitigating nor aggravating factors -they are simply a part of the so-called "factual matrix" of the case.

In the end Mr Cinnamond was driven to argue that in imposing a sentence of 10 years' imprisonment the judge failed to give any discount. This is simply not so - the appellant was in fact treated in an extremely merciful manner.

Mr Cinnamond's final point was that there was gross disparity between the sentences imposed on the appellant (10 years) and Magee (6 years) and Cardy (7 years). This point is answered by referring to a further passage in the judgment of Gibson LJ in O'Neill.

"But the fact that an appellant feels aggrieved that a co-defendant has received a substantially smaller sentence is not a proper ground for interfering with his sentence if that is the only ground. We consider, as did the English Court of Appeal in R -v- Weekes 74 CAR 161, that it is only if the grievance is justified that this Court should interfere."

Magee and Cardy may well have been dealt with in a lenient fashion but having regard to his record of constant re-offending the appellant can have no genuine sense of grievance. This is a case where the observation of Griffith LJ (as he then was) in R -v- Large [1981] 3 Cr.App.R(S) 80 at 82-83 fully expresses our view:

"But those who prey on the public by attempting to steal with the aid of sawn-off shotguns cannot expect their disappointment about their sentences to weigh heavily in the balance against the duty of the court to protect the public. If there be honour among thieves and armed robbers, let him who has been properly and severely sentenced rejoice in the good fortune of his companion who has received a lenient sentence. Let him not complain that he himself has received a proper sentence."

Conclusion

This sentence of 10 years' imprisonment is in no way excessive, and the appeal is dismissed. We would make one final observation. We are told that the present 10 year sentence is in fact being served concurrently with the earlier 7 year sentence so effectively the applicant is only suffering an additional punishment of 3 years for this serious armed robbery. Sentencers should be mindful of this result and consider directing that the second sentence be consecutive to the sentence presently being served. In taking that course care must be taken not, to offend the "Totality" principle.