

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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THE QUEEN

-v-

SEAN JOSEPH CARLIN

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CARSWELL LCJ (giving the judgment of the Court)

KERR J

This appeal against sentence came before the court and was dismissed on 20 June 1997, when we stated that we would give our reasons at a later date.

On 27 January 1997 the appellant pleaded guilty to a count of causing grievous bodily harm with intent to Stephen Jonathan Dillon, contrary to Section 18 of the Offences Against the Person Act 1861. On 14 March 1997, at Londonderry Crown Court sitting at Belfast, His Honour Judge Burgess ordered that the appellant and his 2 co-accused, Desmond Morrison and Mark Wallace, should each be detained in a Young Offenders' Centre for a period of 4 years less one day. Leave to appeal was given by Girvan J. Neither of the appellant's co-accused has sought leave to appeal against sentence.

The events giving rise to the offence in this case commenced after 1.00 am on Saturday 6 July 1996 in Waterloo Street in Londonderry. Stephen Dillon and his girlfriend Siobhan Clarke had left a local pub and were sitting waiting for some friends to join them, when the appellant, his co-accused and other youths came towards them. One of the group said something to Dillon and then started to kick him. Dillon stood up to protest or defend himself and it appears that a fight developed during which Dillon was kicked and punched. This confrontation was broken up and Dillon recalls being helped to his feet, whereupon his girlfriend and he set off towards William Street. In William Street Dillon was attacked by the appellant and his 2 co-accused who punched and kicked him. A man standing nearby came to assist and pulled one of the 3 off Dillon who was lying on the ground. The appellant and his co-accused then ran off and Dillon and his girlfriend continued on their journey. Unfortunately, this was not the end of the matter and a short time later the 3 again attacked Dillon, knocking him to the ground where they kicked him and stamped on his head. The 3 were subsequently chased off and an

ambulance was called for Dillon, who was by this stage lying motionless on the road.

Dillon suffered serious injuries as a result of the attacks by the appellant and his co-accused. When he arrived at Altnagelvin Casualty Department around 2.00 am he was unconscious and examination revealed extensive bruising and swelling to the left side of his head. Dillon was then transferred to Intensive Care and was ventilated for 3 days when he was admitted to the ward for a further 6 days for observation. An initial brain scan indicated an injury to the brain. Since his discharge from hospital Dillon has had difficulties with his balance and his self confidence. He suffers from psychological difficulties, including matters affecting reading and memory, and significant personality changes.

While Dillon has responded to therapy he continues to have considerable psychological difficulties following the assault and he has exhibited features of post traumatic stress disorder with flash backs regarding the assault and greatly heightened levels of anxiety. It would appear that additional therapy will be required. As the trial judge pointed out, it is most unfortunate that Dillon's injuries occurred prior to his starting a course at Aberdeen University.

At the time of the offence the appellant was 15½ years of age and he had no previous convictions. In sentencing the appellant and his co-accused the trial judge said that from an early stage they had admitted their responsibility and had done so in terms which would allow the court to consider that they had shown remorse for their actions. It appears that they had some difficulty in coming to terms with their actions and had wondered why they had behaved in this manner. The trial judge also had regard to the attitude of the appellant and his co-accused in Lisnevin, stating that each appeared to have taken a constructive approach to his life.

The trial judge made no distinction when it came to sentencing the appellant and his co-accused, whom he regarded as guilty of a concerted attack as a joint venture. He rightly accepted that there must be severe punishment, and that this offence must carry a fairly substantial period of imprisonment or detention. The learned trial judge appreciated that because he had power under the legislation to pass a sentence of imprisonment for 4 years or more, he could send the offenders to prison. He took the view that if he sent the offenders to prison it would have been for a period of 4 years or upwards on a plea of guilty, but he decided against that and opted in favour of detention in the Young Offenders' Centre.

In ordering that the appellant and his co-accused should be detained in the Young Offenders' Centre the trial judge carefully considered the legislative framework which applied by reason of the ages of the offenders, noting that the maximum period of detention available under the legislation was 4 years. The trial judge rejected the suggestion that the court should not impose the maximum period of detention under the legislation, although it had been argued before him that

because the appellant pleaded guilty he should receive a discount upon the figure of 4 years. He relied upon the principles in R v Reynolds [1985] 7 Cr.App.R(S) 335 and R v Godber [1986] 8 Cr.App.R(S) 460 which, although in those cases were stated in relation to youth custody and detention, he considered to apply equally in relation to detention and imprisonment. We consider that it was quite proper and open to the judge to take that view and, where he thought that imprisonment should be for a period of 4 years or upwards on a plea of guilty, to reflect that in the period of detention, even though it brought it up to the maximum period for which a defendant may be committed to the Young Offenders' Centre.

We consider that the learned trial judge was quite right in this approach. As this court has said before, citizens should be free to walk the public streets in safety, free from molestation or attack, the more so where they are perfectly peaceable and law abiding and have not done anything which could be construed as provocation to the attackers. This was a vicious and repeated attack, altogether without provocation. It was compounded by the fact that the appellant and his co-accused repeated the attack, not once but twice, and this brings in an element of deliberation and premeditation which was absent in some of the reported cases concerning fights or brawls.

It is particularly disturbing that the appellant and his companions kicked the victim as he lay on the ground. Sadly, recent events have shown what calamitous results can come from such an assault. If anything, stamping on the head of the victim was even worse, and it is this part of the assault which has resulted in what may be permanent impairment to a promising young man's life. The element of deterrence required to stop such behaviour must be large and must override the factors which would otherwise tend to keep such sentences down, such as the good character and the youth of the offender.

We do not consider that the learned judge was in error in principle in any respect in his approach to the sentencing of this appellant. Nor do we consider that the sentence can be said to be manifestly excessive. The appeal is therefore dismissed.