IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

-v-

DANIEL JOSEPH McCLEAN

MacDERMOTT LJ

PRINGLE J

This is an appeal, leave having been granted by a single Judge, from an effective sentence of 9 months' imprisonment imposed by His Honour Judge McKee QC at Belfast Crown Court on 26 February 1997.

The appellant had on 10 May 1996 pleaded guilty to 2 charges:-

1. Possession of counterfeit money with intent contrary to Section 16(1) of the Forgery and Counterfeiting Act 1981.

2. Possession of the same notes without lawful excuse.

On Count 1 the Judge imposed a sentence of 9 months' imprisonment and on Count 2 a sentence of 2 months. The sentences were to be served concurrently.

THE BACKGROUND FACTS

On the night of the 23/24 September 1995 a routine police patrol was stopped by a taxi driver who claimed a man and a girl had passed him a dud £20 note. This was in the vicinity of the Wellington Park Hotel. The appellant and a Nicola Halliday were soon stopped nearby. On being searched 13 First Trust Bank £20 notes were found on the appellant and 2 on Halliday. Police then examined the appellant's car which was parked in the MGM centre on the Dublin Road. 26 similar £20 notes were found below the ashtray in the car. All the £20 notes were found to be counterfeit. At interview the appellant first claimed that he had got the money from 2 bank machines and that it was to pay for his car. Then at his second interview when questioned about the counterfeit notes found in his car he said he was holding them for a man called Whelan from whom people bought forged £20 notes and from

whom he had earlier bought £300 worth of £20 notes for £60. He accepted that he had given Halliday the 2 notes found on her. In the course of his remarks when passing sentence the Judge referred to 2 English cases, R v Howard [1985] 7 Cr.App.R(S) 320 and R v Everett [1983] 5 Cr.App.R(S) 207. In the former Lord Lane said at p 322:-

"It is a trite observation made in these cases, but nevertheless correct, that the issue of counterfeit notes undermines the whole economy of the country and is likely to result in great loss being sustained by innocent people who find themselves in possession of these notes only to discover that they are worthless.

It follows therefore that this type of offence is one which inevitably in nearly every case, would require a custodial sentence .... The reason for the custodial sentence is first of all is to punish the wrongdoer. The secondary reasons are to deter the wrongdoer himself from committing the same sort of offence in the future .... but much more important it is to indicate to others who are minded to make cheap and easy profit by the acceptance of counterfeit notes that it simply is not worth the candle. If they do choose to have counterfeit notes and particularly large quantities of them, they are going to get some considerable punishment."

In the case of Everett at p 208, Purchas LJ said:-

"As we observed during argument, this sort of activity strikes at the basis of society. In passing sentence the very experienced Judge said: `This is a very serious matter because when people forge notes such as these, one of the things they have to do is to get them on the market. If people like you buy for £4 a £20 note, there is only one answer, and that is imprisonment. The sooner people realise that danger, then it will be more difficult to get people to buy them on the street.'"

For our part this Court agrees with and readily adopts those observations.

On behalf of the appellant Mr Mallon reminded us of the appellant's clear record. It is a fact, however, that some offences are so serious that an immediate custodial sentence is virtually inevitable whether or not the offender has a previous record. While background circumstances are relevant in any case good character is of little importance in offences of a grave character such as the present.

His second, indeed primary point, was one of disparity. Whelan was acquitted by direction on Count 1 but received on a plea of guilty a 6 month suspended sentence on Count 2. In our view there is no meaningful comparison to be drawn in this case. The Judge could only sentence on the material legally before him. Whelan, it would

appear is more deeply involved in trading with counterfeit notes than McClean but the only evidence against him, in the absence of McClean giving evidence against him, was his finger prints on the piece of paper found with the notes in the car, but not on the actual notes. In these circumstances it is not surprising that the Crown on receiving a plea on the second count elected not to proceed on Count 1. Mr Mallon complained that as Whelan had convictions for tendering counterfeit notes it was wrong that he, the principal villain, should escape with a non-custodial sentence. But Whelan was not in law guilty of the crime of Possession with Intent. He did receive 6 months on Count 2 but for some reason it was suspended. In view of his record he may have been fortunate to receive a suspended sentence on Count 2 but that does not raise any question about the fairness of a 9 months sentence for McClean on Count 1. The relevant law was summarised by Carswell LJ (as he then was) in Delaney (May 1994) and we have applied that test in reaching our conclusion that there is no substance in this appeal. We would refer to some passages in the case of Delaney:-

"In so arguing counsel was invoking the well known line of authority in which it has been held that where one co-accused has been treated with undue leniency another may feel a sense of grievance when he receives a sentence which in isolation is quite justifiable but which is more severe than that imposed upon his associate. Rather than allow such a sense of grievance to persist, the court has on occasion reduced the longer sentence on appeal. It has only done so as a rule where the disparity is very marked and the difference in treatment is so glaring that the court considered that a real sense of grievance was engendered: see R v Brown [1975] Crim LR 177. The principle served by this approach is that where right thinking members of the public looking at the respective sentences would say that something had gone wrong the court should step in: R v Bell 1987] 7 BNIL 94, following R v Towle and Wintle (1986, The Times, 23 January).

It should not be supposed, however, that the court will be prepared to invoke the principle and make a reduction unless there is a really marked disparity, for unless that condition is satisfied it will not regard any sense of grievance felt by an appellant as having sufficient justification.

.....

It is only if a fair-minded and right-thinking person would feel that the disparity involved some unfairness to the appellant, as distinct from a possibly rueful feeling that his associate has been more fortunate in his treatment, that a court should intervene: cf R v Ellis [1986] 10 NIJB 177, per Lord Lowry LCJ."

In relation to this question of disparity the observation of Griffiths LJ (as he then was) in R v Large [1981] 3 Cr.App.R(S) 80 at 83 bears repetition:-

"If there be honour among thieves let him who has been properly and severely sentenced rejoice in the good fortune of his companion who has received a lenient sentence."

We have considered carefully over lunch the arguments advanced by Mr Mallon on behalf of the appellant and we are satisfied that no case of disparity has been made out. In our view this sentence of 9 months is entirely appropriate and the appeal is dismissed.