IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

-v-

SEAN PATRICK McGUIGAN

KERR J

PRINGLE J

The applicant was convicted on 20 December 1995 of causing grievous bodily harm with intent contrary to Section 18 of the Offences against the Person Act 1861. He was sentenced to 12 years' imprisonment. His application for leave to appeal against conviction was refused by this Court on 17 December 1996. He now applies for leave to appeal against that sentence.

BACKGROUND

The background circumstances are these. At about 10.30pm on 28 August 1993? Hugh Richard McCartan answered a knock at his front door at 20 Friendly Street, Belfast. As soon as he opened the door he was grabbed by the chest and pulled forward. Immediately he was struck a violent blow on the head and knocked to the ground. Although, understandably, Mr McCartan was unable to give a clear account of it, he was then subjected to a vicious attack by 2 assailants. At least one of these wielded a weapon subsequently discovered to be a solid iron bar some 20 inches long.

The injuries suffered by Mr McCartan were indeed grievous. They included a left parietal skull fracture, a compound, displaced fracture of the right tibia and a compound fracture of the left radius. The severity of these injuries can only be accounted for by the infliction of severe blows with a weapon such as the iron bar. Mr McCartan also had bruising and swelling of the left upper arm, a graze on his right upper arm and bruising and swelling of his left knee. The distribution of his injuries suggests that blows were rained on him in an attack of considerable ferocity.

Within 15 minutes of the attack the applicant and his brother were arrested in Stanfield Street, a short distance from Mr McCartan's home. Both were charged jointly with causing grievous bodily harm. The applicant's brother failed to honour

his bail and the applicant was tried alone. He did not give evidence on his trial. Neither the applicant nor his brother gave an explanation for their presence in Stanfield Street. Neither lived in the vicinity.

Despite the fact that the attack took place on a summer's evening, the applicant and his brother were both wearing leather jackets and gloves. Apart from stating at the beginning of the first interview that, on the advice of his solicitor, he did not wish to add anything to the account which he gave when arrested, the applicant steadfastly refused to speak during several interviews. In fact neither the applicant nor his brother gave any meaningful account when they were arrested in Stanfield Street. They had encountered a joint army/police patrol and had run off before being apprehended. The only explanation they offered was for having run off - they stated that they did so because they were scared. The applicant made no reply when cautioned after arrest under Articles 3, 5 and 6 of the Criminal Evidence (Northern Ireland) Order 1988.

The applicant has a limited criminal record, the result of 3 appearances in Belfast Magistrates' Court for public order offences and one offence of assault on the police.

THE AUTHORITIES

Counsel for the applicant referred us to a number of decisions of the Court of Appeal in England and to an unreported decision of this court.

The first of these was Attorney-General's Reference (No.10 of 1993) [1993] 15 Cr.App.R(S) 487). In that case the defendant had formed a relationship with a woman and from time to time they lived together. He attacked her on several occasions, cutting her on the hand and face, striking her across the knees with a bar, stabbing her in the thigh and finally pressing a hot iron against her face causing scarring. On a reference by the Attorney General the Court of Appeal increased the original sentence of 3 years to 4½ years. In that case the offender had pleaded guilty.

In Attorney General's Reference (No.47 of 1994) [1995] Cr.App.R(S) 865 the offender became involved in a dispute with the victim in a public house. He knocked the injured party to the floor with a punch and then kicked him repeatedly about the head and chest as he lay on the floor. The victim suffered permanent damage to the retina of one eye causing loss of central vision in that eye. The offender had previous convictions for violence, one of which involved kicking a man who had fallen to the ground. The Attorney General referred the sentence of 2½ years to the Court of Appeal. Lord Taylor CJ said that the appropriate sentence "if the matter was being dealt with afresh and at first instance" would have been 5 years. Because of the "double jeopardy" dimension in the case a sentence of 4 years was substituted.

In R v Gibson [1997] 1 Cr.App.R(S) 182 the appellant was convicted of causing grievous bodily harm with intent. His victim suffered fractures of the eye socket and cheekbone which required surgery. He was sentenced to 6 years' imprisonment. The Court of Appeal referred to a pre-sentence report produced for the purpose of the appeal hearing. The report made it clear that the appellant had demonstrated considerable remorse for the injuries to the victim. The appellant also had the support of a steady relationship with his wife whom he had married a short time before the appeal hearing. Largely because of the changes in the appellant's attitude and condition the Court of Appeal reduced the sentence to 4½ years.

Counsel also referred to the unreported decision of this Court in R v Hawkes and Geddes. In that case the defendants were convicted in January 1992 by His Honour Judge Babington QC of causing grievous bodily harm and both were sentenced to 14 years' imprisonment. The defendants had inflicted a savage beating on the victim. He knew his assailants but refused to identify them because of fear of retaliation. The attack on the injured party was a so-called punishment beating on behalf of a paramilitary organisation. The victim was subjected to a sustained attack. He was then pursued by his attackers and the assault on him was renewed. A girl who had been with him at the time was also brutalised by the defendants. A sledge hammer and a pickaxe handle were used in the attack. The victim sustained fractures of the finger, ulna and medial femoral condyle. He was threatened that he would be shot if he identified his attackers. At the time of the trial he continued to suffer nightmares about his experience and remain fearful of those who had beaten him and the organisation which they claimed to represent. On appeal the sentence of 14 years was reduced in the case of Geddes to 9 years and to 12 years for Hawkes. The latter had a lengthy criminal record which included a number of offences for violence.

Counsel for the Crown referred the Court to the case of R v McCarthy [1986] 8 Cr.App.

R(S) 382. In that case a woman of 22 pleaded guilty to one count of robbery and one of causing grievous bodily harm with intent. She had gone to the home of the victim and asked for a loan. When this was refused the offender attacked the injured party, stabbing her in the hand with a pair of scissors, punching her in the face and striking her on the head several times with a kettle and a vase. The victim suffered extensive bruising, various wounds and a broken bone in her hand. The offender's appeal against a sentence of 12 years' imprisonment was dismissed.

THE CASE FOR THE APPLICANT

Counsel for the applicant submitted that the English cases established a range of sentences for this type of offence. The upper limit of that range had been greatly exceeded by the sentence imposed in the present case, he argued. Counsel acknowledged that the sentence in any case must reflect its individual circumstances but submitted that the guidance provided by the English decisions indicated that a

sentence of 12 years was manifestly excessive. He further argued that this case should not be treated as a paramilitary punishment beating. There was no evidence to support that view, he claimed. It was just as likely that the attack was motivated by personal grudge.

Even if the case was regarded as a punishment beating, the sentence was out of line with those imposed in Hawkes and Geddes, counsel argued. Unlike Hawkes this applicant had no significant previous convictions for offences of violence. Moreover, the attack in that case had been, if anything, more savage and sustained than in the present case. To be consistent with the Court of Appeal in Hawkes and Geddes the sentence in this case must be reduced.

CONCLUSIONS

The first question to be determined is whether this was a punishment beating. In our view it plainly was. It bore all the hallmarks of such an attack. It was obviously well planned. The attackers wore the garb affected by members of paramilitary organisations. They targeted their victim at his own home during the hours of darkness. They carried out the attack beside his home indifferent to the possibility of being identified. We are satisfied that these features distinguish this case clearly as a paramilitary punishment beating and that it was so regarded by the sentencing judge when he said "this type of offending is extremely serious and is on the increase". The learned trial judge in his sentencing remarks also adverted to defending counsel's reference to the criminal record of Mr McCartan. It is a sad truth that in Northern Ireland paramilitary organisations have frequently carried out attacks on those with criminal records for so called "anti-social activity". Finally, the attitude of the applicant on interview is also entirely consistent with this having been a punishment beating.

In our view the English authorities provide little assistance to the sentences in a punishment beating case. Those cases involved attacks in domestic situations or interpersonal disputes which arose suddenly and without premeditation. Punishment beatings fall into an entirely different category. Almost invariably they are well planned and are carried out with calculated savagery. This case is a clear example of the level of viciousness which typifies such attacks. The "enforcers" who perpetrate or direct such assaults do so not only for the purpose of inflicting grievous injury on their victim but also to instil fear in the community where the attacks are carried out. Victims are often terrorised after the attacks and are unwilling to testify. In this case Mr McCartan's statement was admitted under Articles 3 and 6 of the Criminal Justice (Evidence etc) (Northern Ireland) Order 1988, even though he did not purport to identify his assailants.

No one in Northern Ireland can be unaware of the misery that punishment beatings and shootings have caused in recent years. This experience is alone sufficient to warrant the imposition of a more severe penalty than would be appropriate to most

grievous bodily harm cases. But perhaps of even greater importance is the consideration that these attacks are designed to undermine the rule of law, not only in substituting the savage and arbitrary sanction of paramilitary organisations for the operation of the criminal law but also in preventing victims from testifying against their attackers.

Sentences for punishment beatings must therefore carry a substantial deterrent element. Sadly these attacks have not only continued but have increased since this Court gave its decision in Hawkes and Geddes. The need for a substantial deterrent sentence was clearly recognised by the very experienced trial judge in this case. We consider that not only was the sentence which he imposed not excessive but correctly reflected our society's abhorrence of this type of crime. Those who engage in such attacks should be aware that if they are apprehended they will be dealt with severely. The application for leave to appeal against sentence is dismissed.