IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

-v-

GERARD MAJELLA O'NEILL

JUDGMENT of HUTTON LCJ, MacDERMOTT LJ and NICHOLSON J

In December 1990, the appellant was convicted at Belfast Crown Court of possession of a firearm with intent contrary at Article 17 of the Firearms (Northern Ireland) Order 1981. At the time that the offence was comitted the appellant was on licence from prison where he had been serving a sentence of 10 years' imprisonment (the first sentence) following conviction for various terrorist offences in 1986. Following the appellant's conviction in 1990, he was sentenced to 12 years' imprisonment (the second sentence). The appellant was ordered by the court to return to prison to serve the remainder of the first sentence with the second sentence running consecutively. The appellant appealed against the second sentence on the grounds that, the remainder of the first sentence, followed by the second sentence was too long in all the circumstances and that accordingly, the sentence was excessively severe.

Held - It was expressly provided by s 23(4)(c) of the Prevention of Terrorism (Temporary Provisions) Act 1989 that, where a person committed a terrorist offence whilst on licence from prison, the offender should be returned to prison to serve the remaining period of the first sentence. Moreover, the fact that the offender had returned to prison to serve the oustanding part of a previous sentence was to be disregarded in determining the appropriate sentence for his later offence. As such, the court was correct to order that the appellant should return to prison to serve the remaining period of his first sentence and, having disregarded the earlier sentence, to impose a punishment of 12 years' imprisonment, which was entirely appropriate sentence for the offence. The appeal would accordingly be dismissed.

Appeal

The appellant, Gerard Majella O'Neill, was convicted by his Honour Judge Hart QC at the Belfast Crown Court on 21 December 1990 of possession of a rifle, namely an Armalite, with intent, contrary to Article 17 of the Firearms (Northern Ireland) Order 1981 and was sentenced to 12 years' imprisonment. The appellant's appeal against

conviction was dimissed by the Court of Appeal on 4 October 1991. He then appealed against sentence. The facts are set out in the judge of the court.

K J Finnegan QC and JM Cushinan (instructed by A F Derry & Co) for the appellant.

J McDonald and P Magill (instructed by the Director of Public Prosecutions) for the Crown.

12 June 1992. The following judgment of the court was delivered.

HUTTON LCJ

This is an appeal against sentence by Gerard Majella O'Neill. He was convicted by His Honour Judge Hart QC at Belfast Crown Court on 21 December 1990 of possession of a rifle, which was an Armalite, with intent contrary to Article 17 of the Firearms (Northern Ireland)

Order 1981 and sentenced to 12 years' imprisonment. He appealed against conviction, and that appeal was dismissed by this court on 4 October 1991. He now appeals against sentence.

The background to the appeal is as follows. On 2 April 1990 a joint army and police search was carried out of the appellant's flat in the Lower Falls area of Belfast. The search team found an Armalite rifle, broken down into 2 parts, in a canvas holdall type bag in a small boxroom or storeroom in the flat. In addition to the rifle there were found in the holdall 1 green jacket or anorak, 1 combat jacket with a camouflage pattern, 1 pair of green gloves and 2 green balaclava type masks.

The account given by the appellant to the police was that on the night before the rifle was discovered, 3 men came to his flat about 10.30 pm. One of the 3 was known to him by name as "a known paramilitary". The appellant refused to name this man and said that he believed that this man, and his 2 companions as well, were either in the INLA or IPLO. The appellant said that the men asked him to hold some "stuff" for them until the next morning. The trial judge was satisfied that the appellant either knew or believed that the heavy object which the bag contained was either a firearm or some sort of explosive materials. He therefore found that the appellant had possession of the rifle to enable it to be retrieved in due course for the purposes of either the INLA or the IPLO and that in such circumstances the appellant had possession of the rifle with intent by means thereof to enable others to endanger life or cause serious injury to property. The trial judge also held that the appellant was not acting under duress. As we have stated these finding were upheld by this court. The trial judge also accepted that the rifle might only have been in the appellant's flat for 1 night as he stated.

The grounds of the appeal against sentence relate to the fact that when the offence was committed on 21 April 1990 the appellant was on licence from prison and to the consequences which flow from that fact. At Belfast Crown Court on 11 March 1986 on his pleas of guilty the appellant was sentenced for a large number of very serious terrorist offences, including false imprisonment, causing an explosion likely to endanger life or property, possessing explosives with intent to endanger life or property, carrying a firearm with intent to commit an indictable offence, hijacking, conspiracy to rob and membership of a proscribed organisation. He was sentenced to numerous concurrent terms of imprisonment, the longest sentence being 10 years, and therefore he was sentenced to a total of 10 years imprisonment. He had been in custody in respect of these offences from 4 June 1984, and therefore the full term of 10 years' imprisonment would have expired on 4 June 1994. However pursuant to prison rules relating to remission he was released from prison on licence on 2 June 1989.

Having been convicted of the offence committed on 21 April 1990 contrary to Article 17 of the Firearms (Northern Ireland) Order 1981, which was a scheduled offence within the meaning of the Northern Ireland (Emergency Provisions) Act 1978 he became subject to the provisions of section 23 of the Prevention of Terrorism (Temporary Provisions) Act 1989 which provide:

'(1) This section applies where a person who has been sentenced to imprisonment or a term of detention in a young offenders centre for a period exceeding 1 year -

(a) is discharged from prison or the centre in pursuance of prison rules; and

(b) before that sentence or term of detention would (but for that discharge) have expired he commits, and is convicted on indictment of, a scheduled offence within the meaning of the Northern Ireland (Emergency Provisions) Act 1978.

(2) If the court before which he is convicted of the scheduled offence sentences him to imprisonment or a term of detention it shall in addition order him to be returned to prison or, where appropriate, to a young

offenders centre for the period between the date of the order and the date on which the sentence of imprisonment or term of detention mentioned in subsection (1) above would have expired but for his discharge.

(4) The period for which a person is ordered under this section to be returned to prison or a young offenders

centre -

(a) shall be taken to be a sentence of imprisonment or term of detention for the purposes of the Prison Act (Northern Ireland) 1953 and for the purposes of the Treatment of Offenders Act (Northern Ireland) 1968 other than section 26(2) (reduction for time spent in custody);

(b) shall not be subject to any provision of prison rules for discharge before expiry ...'

Therefore, on sentencing the appellant to 12 years' imprisonment for the offence of possession of the Armalite rifle with intent on 21 April 1990 the trial judge, as he was required to do by section 23, ordered that the appellant be returned to prison for the period until the date on which the total sentence of 10 years' imprisonment would have expired but for his release on licence, that is until 4 June 1994, and further ordered that he should serve the sentence of 12 years' imprisonment for possession of the rifle consecutive to the remainder of the 10 year sentence. By virtue of section 23(4)(b) the 12 year sentence will not start to run until 4 June 1994.

The submission advanced on behalf of the appellant by Mr Finnegan QC was this. He did not suggest that the sentence of 12 years' imprisonment for possession of the rifle, viewed in isolation, was excessive or wrong in principle, but he submitted that the trial judge should have applied the totality principle which is applicable where a court imposes consecutive sentences. Mr Finnegan submitted that if the trial judge had done this he should have realised that the totality of the remainder of the term of 10 years, which would not expire until 4 June 1994, followed by 12 years' imprisonment commencing on 4 June 1994 was too long in all the circumstances, and that accordingly the judge should have imposed a lesser sentence than 12 years' imprisonment.

We reject this submission because it is contrary to the express provisions of section 23(4)(c) which state:

'(4) The period for which a person is ordered under this section to be returned to prison or a young offenders centre -

(c) shall be served before, and be followed by, the sentence or term imposed for the scheduled offence and be disregarded in determining the appropriate length of that sentence or term.'

Accordingly the judge who orders the return to prison of a person who commits a scheduled offence whilst on licence is directed that in determining the sentence for the

scheduled offence he shall disregard the period which the accused will have to serve in respect of the earlier sentence before the further sentence begins to run.

Therefore, having decided that 12 years' imprisonment was the appropriate sentence for the offence of possession of the rifle with intent, the trial judge was under a duty to impose that sentence and would have been acting in breach of section 23(4)(c) if he had decided to reduce the sentence of 12 years because the accused would have to serve the remainder of the 10 years sentence until 4 June 1994 before the 12 year sentence commenced to run.

This court has frequently stressed that those who store or transfer firearms or explosives for terrorist organisations with intent to enable members of those organisations to cause death or injury to other innocent persons must be severely punished. Accordingly the sentence of 12 years' imprisonment for storing a deadly weapon like an Armalite rifle was an entirely proper sentence.

Moreover it should be appreciated by persons who are released from prison on licence that if, during the period of the licence, they commit a terrorist type offence and are convicted for that offence before a court, Parliament has enacted that they will be returned to prison for the full term of the previous sentence, that the sentence for the new offence will not commence until the termination of the full term of the previous sentence, and that the new sentence will not be reduced in any way because they must first serve the remainder of the previous sentence.

Accordingly the appeal against sentence is dismissed for the reasons stated.