

## ***Analysis of Sentencing in Robbery***

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## **Comment**

A person who steals is guilty of robbery if, at the time or immediately before the stealing and in order to do so, he uses force or threatens force on any person.<sup>1</sup> The previous statutory provision for the offence of robbery under the Larceny Act 1916 s.23 (as amended by Criminal Law (Jurisdiction) Act 1976 s.5) has been repealed, and any common law offence of robbery is abolished.

Among the obvious aggravating factors in robbery are the possession or use of a firearm (or, for that matter, an imitation firearm in view of the alarm it can cause), the level of injury (physical or psychological) inflicted and the involvement of more than one offender. A robbery can consist from anything from a well planned raid on a bank resulting in the loss of millions of pounds to a street “hold-up” by a drug addict wielding a knife or a syringe. Self-induced addiction seldom counts for much by way of mitigation. There are some instances where the incentive on the offender to get treatment means that there may at a later stage be a suspended sentence.

Robbery most commonly attracts a sentence in the one to five year bracket. A serious case involving the possession of firearms may lead to a sentence of up to 14 years. Of those imprisoned for robbery in 1993 and 1994 (combined), 47% got three years or less, about 30% got three to five years, 21% got five to 10 years and only 0.5% got 10 years or more. Therefore, close on 80% got five years or less.<sup>2</sup>

In the Court of Criminal Appeal the lenient sentence is from a suspended sentence up to two years; the ordinary sentence is more than two years up to five years; and the upper sentence is more than five years up to ten years.

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<sup>1</sup> Criminal Justice (Theft and Fraud Offences) Act 2001 s.14

<sup>2</sup> *Byrne and Binchy* Annual Review of Irish Law 1991 pp. 181-182

The Circuit Court imposes a lenient sentence of a suspended sentence up to two years. The ordinary punishment is between two to four years and the more severe punishments being between five and six years, with the upper punishments at between eight to ten years.

The sentences imposed in the last three years vary from suspended sentence for the most minor offences to up to twelve years for traumatic and serious offences. It is to be noted that the “new” offence of “tiger kidnappings” attract the higher sentences wherein victims are severely traumatised and large amounts of cash stolen.

Factors considered by the courts when sentencing preponderantly include level of violence, personal circumstances of the accused, remorse, impact on victim, guilty plea and recovery of stolen property.

It appears that the sentencing in robbery has been relatively consistent and has taken into account factors relevant to each case. Similar cases tend to have similar sentences and similar aggravating and mitigating factors serve to effect sentence.

## **Part I: General Principles**

### **Legislative Framework**

s.14 Criminal Justice (Theft and Fraud Offences) Act 2001 states:

14.—(1) A person is guilty of robbery if he or she steals, and immediately before or at the time of doing so, and in order to do so, uses force on any person or puts or seeks to put any person in fear of being then and there subjected to force.

(2) A person guilty of robbery is liable on conviction on indictment to imprisonment for life.

### **Sentencing Aims**

Any court dealing with an offender ought to have regard to the following aims of sentencing:

- the punishment of offenders
- the reduction of crime (including its reduction by deterrence)
- the reform and rehabilitation of offenders
- the protection of the public
- the making of reparation by offenders to persons affected by their offences

## **PART II**

### **Guidance from the Court of Criminal Appeal**

#### **Lenient Punishment – Suspended Sentence to 2 years**

1. In *The People (D.P.P.) v. S.K.* (Unreported, Court of Criminal Appeal, 28<sup>th</sup> April, 2003) [**suspended sentence**] the accused had committed a robbery while armed with a hammer. The trial judge took the view that the accused should be given one last chance and imposed a lenient sentence. On behalf of the Director of Public Prosecutions (hereafter D.P.P.) an application was taken seeking to challenge the sentence on the grounds of undue leniency.

The Court of Criminal Appeal (hereafter C.C.A.) dismissed the application and held that the trial judge had extended a lenient sentence to the accused on the grounds of his youth and the prospect of reformation. The D.P.P. had failed to discharge the burden required in order for the court to interfere with the sentence imposed.

2. In *The People (D.P.P.) v. J. K. and P.W.* (Unreported, Court of Criminal Appeal, 27<sup>th</sup> February, 2001) [**6 months**] the D.P.P. brought an application pursuant to section 2 of the Criminal Justice Act, 1993 to review the sentences passed upon each of the defendants. The defendants had broken into the house of an elderly man and robbed a sum of money. The defendants had each received a five year sentence which was then suspended upon payment of compensation. The C.C.A. held that the sentences were inappropriate and unduly lenient. The original sentences would be quashed. Five year sentences would be imposed with the final four and a half years suspended.

3. In *The People (D.P.P.) v. T.J.* (Unreported, Court of Criminal Appeal, 15<sup>th</sup> February, 1999) [**18 months**] the applicant pleaded guilty to robbery. The trial

judge in imposing sentence of two and a half years was anxious to hold out some hope for him and held over 18 months in lieu. The applicant had reached threshold in his criminal career and could go either way. The court was keen to give him every possible chance and reduced his sentence to 18 months.

4. In *The People (D.P.P.) v. B.D.* (Unreported, Court of Criminal Appeal, 2<sup>nd</sup> February, 2007) [2 years] the D.P.P. sought to review sentences pursuant to s. 2 of the Criminal Justice Act 1993 in respect of two sentences for assault and robbery of two years to run concurrently and to be suspended for two years on bond, with compensations of €5000, as being unduly lenient having regard to the previous convictions of the accused. The accused had assaulted and robbed a young man taking his phone and money.

The C.C.A. held that the trial judge failed to take into account the previous convictions of the accused and the vicious and unprovoked nature of the assault and robbery. The suspension of the sentence for two years was unduly lenient. The sentences would be quashed and the sentence of two years on each count would run concurrently.

5. In *The People (D.P.P.) v. F.D.* (Unreported, Court of Criminal Appeal, 4<sup>th</sup> February, 2008) [2 years] the respondent was sentenced to one and a half years imprisonment following a plea of guilty to a charge of attempted robbery. The respondent received a one year suspended sentence on a second count of burglary, which was committed while he was on bail. The first offence involved the use of a knife and resulted in minor injury to the injured party. The respondent was disturbed by the occupants of the premises when committing the burglary charge and a knife was found in the premises. The applicant had twelve previous convictions. He had a serious drug habit. The D.P.P. applied for a review of the sentences imposed on the basis that they



were unduly lenient.

It was held by the C.C.A. in allowing the application that the learned trial judge gave no real indication as to the circumstances which he took into account in imposing sentence. The sentences imposed by the trial judge failed adequately or at all to reflect the seriousness of the two offences. The offences were within the medium range for the purposes of sentencing and a custodial sentence was appropriate. The appropriate sentence in relation to the first count was two years imprisonment and in relation to the second count was a sentence of three years imprisonment to run consecutively. The last six months of the three year sentence were suspended in order to remedy any confusion regarding the period of time the respondent spent in custody while awaiting trial.

## Ordinary Punishment – More than 2 and up to 5 years

6. In *The People (D.P.P.) v. M.O'C.* (Unreported, Court of Criminal Appeal, 14<sup>th</sup> March, 2008) [**3 1/2 years**] the applicant appealed against a sentence imposed in relation to a whole series of offences relating to robbery and assault. In relation to the first set of offences terms of two and three years imprisonment were imposed to run concurrently. The applicant received a two year sentence in respect of the second set of offences, which were committed whilst on bail and was to run consecutively to the first mentioned sentences. The applicant was sentenced to four years imprisonment in relation to the third offence to run consecutively also. The learned trial judge suspended the final five and a half years of the sentences.

It was held by the C.C.A., (ex tempore) in dismissing the appeal that the applicant, who had 24 previous convictions was extremely lucky that the learned trial judge structured the sentence as he did. The learned trial judge in structuring the sentence as he did built in ample provision for considerations of rehabilitation and the provision of an opportunity for the applicant to engage meaningfully with the different problems she had.

7. In *The People (D.P.P.) v. G.B.* (Unreported, Court of Criminal Appeal, 23<sup>rd</sup> July, 2002) [**4 years**] the applicant was convicted of four offences and sentenced to a total of ten years imprisonment comprising individual sentences running consecutively. The offences encompassed a robbery of a bank of over €2,800; a further conspiracy to rob, possession of controlled substances and a robbery while on bail of a post office of €4,600. The applicant appealed against the severity of the sentence.

The C.C.A. in allowing the appeal and substituting for the sentences of the trial judge a sentence of four years in total held that the trial judge erred in his

application of the statutory provisions relating to the mandatory imposition of consecutive sentences. It was not open to him to treat each sentence consecutive to the other.

8. *The People (D.P.P.) v. N.deP. and V.Z.* (Unreported, Court of Criminal Appeal, 19<sup>th</sup> December, 2008) **[5 years]** concerned an application by the D.P.P. pursuant to s. 2 of the Criminal Justice Act 1993 for a review of sentence on the basis of undue leniency.

The respondent pleaded guilty to two counts of robbery under s. 14(1) of the Criminal Justice (Theft and Fraud Offences) Act 2001 and one count of false imprisonment contrary to s.15 (1) of the Non-Fatal Offences against the Person Act 1997. He had been sentenced to five years imprisonment. The applicant appealed this on the basis that it was unduly lenient.

The respondent was one of a number who broke into a family home and held family members hostage, eventually stealing various items from the house and using bank cards to steal money.

The court noted that the prosecution had accepted the respondent's plea of not guilty in respect of other aspects of the common enterprise. The court also noted that the main Garda witness had endorsed the contents of the probation report relating to the respondent which included the assessment that the respondent had a lesser level of involvement than the others and was "doing their bidding" and that he expressed genuine remorse. Other aspects of the probation report were also referred to by the court including the fact that he joined the enterprise at the last minute. He also co-operated with the Gardaí. The court noted that the respondent was going to drugs counselling.

The court found that taking all of this into account, as well as the fact that he was young and had no previous convictions that the sentence imposed was not unduly lenient.

9. In *The People (D.P.P.) v. N.D.* (Unreported, Court of Criminal Appeal, 21<sup>st</sup> June 2010) [5 years] the D.P.P. brought an application to review the sentences imposed on the respondent. The respondent had pleaded guilty to the possession of a controlled drug and also pleaded guilty to counts of robbery contrary to s.14 of the Criminal Justice (Theft and Fraud Offences) Act 2001. The sentence was 2 years imprisonment in respect of each offence. On behalf of the D.P.P. it was contended that the sentences were unduly lenient having regard to the nature, circumstances and gravity of the said offences. A knife had been used in respect of the robbery offences and the staff of two supermarkets had been terrified and threatened. It was also argued that the trial judge had failed to have sufficient regard to the value of the drugs discovered and the fact that the respondent had previous convictions including drugs offences.

It was held by the C.C.A. in granting the application that the respondent was caught red handed with the drugs and thus his plea of guilty had lesser weight. In relation to robbery, the staff members of the supermarkets were traumatised and the respondent had carried a nine inch blade. The trial judge fell into error in not considering each offence and determining where each lay on the spectrum and then applying mitigating factors. In respect of all the offences the appropriate sentence should be one of five years. The court quashed the sentences of the trial judge and in their place imposed sentences of five years, concurrently, for each of the three offences.

## Upper Punishments – More than 5 and up to 10 years

**10.** In *The People (D.P.P.) v. H.F.* (Unreported, Court of Criminal Appeal, 28<sup>th</sup> July 1999) **[7 years]** the applicant had been sentenced to seven years imprisonment for a robbery offence. In addition the applicant received further sentences, some of which were consecutive, in respect of burglary offences. The applicant sought leave to appeal against the sentences imposed. In delivering judgment the court held that the offences committed were outrageous. The application would be refused.

**11.** In *The People (D.P.P.) v. R.P.* (Unreported, Court of Criminal Appeal, 10<sup>th</sup> May, 2010) **[7 years]** the applicant sought leave to appeal against severity of a seven year sentence in respect of a charge of robbery contrary to s.14 of the Criminal Justice (Theft and Fraud Offences) Act, 2001. It was contended that the learned sentencing judge erred in not adjourning the sentence for the purposes of securing a probation report in respect of the applicant and secondly that having regard to all the circumstances of the case the seven year sentence imposed was unduly severe. Arguments were also made regarding the failure to deport the applicant being willing to be deported.

It was held by the C.C.A. in refusing the application that the court was satisfied that the application was unmeritorious. The sentencing court was, in fact, initially dealing with a person who had given a false name and was not put in possession of any information concerning the real identity of the applicant. The sentencing judge was correct not to adjourn proceedings for the purposes of securing a probation report having regard to the background information available. The sentence imposed was not unduly harsh and was wholly warranted. The refusal by the trial judge to deport the applicant was a matter that obviously was considered and was a discretionary issue.

**12.** In *The People (D.P.P.) v. S.O'B.* (Unreported, Court of Criminal Appeal, 18<sup>th</sup> December, 2009) **[7 years]** the court had previously been asked to delay its final decision pending the production of a probation report and submissions in relation to the sentence. The applicant was convicted on two counts of robbery, both of which were committed either with knives or threats of knives and the second robbery was committed while the respondent was on bail. The learned sentencing judge imposed a sentence of three years on the first count and four years on the second to run consecutively, but with the final two years and three months suspended.

It was held by the C.C.A. in substituting a different sentence that it was previously deciding that the sentence imposed by the learned sentencing judge was unduly lenient and that the appropriate sentence was four years imprisonment for the first offence and five years for the second with the final two years suspended. However, there was some improvement by the respondent and so the sentence was varied slightly. A four year sentence was imposed in relation to the first offence and a five year sentence was imposed on the second offence but the final three years of the sentence were suspended on the same terms as the Circuit Court Judge imposed.

**13.** In *The People (D.P.P.) v. M.W.* (Unreported, Court of Criminal Appeal, 2<sup>nd</sup> February, 2007) **[9 years]** the applicant sought to appeal against the severity of a nine year sentence of imprisonment for robbery, where the sentencing judge had imposed two consecutive sentences of six years, with the final three years suspended. The offences consisted of numerous raids on a cash and carry resulting in the taking of almost €55,000 worth of goods and a robbery of a caravan park of goods with the value of €20,000 and almost €7,000 in cheques.

The C.C.A. held that in the totality of the circumstances that there had been no error made by the trial judge that the court would intervene to correct.

14. In *The People (D.P.P.) v. L.K.* (Unreported, Court of Criminal Appeal, 17<sup>th</sup> February 2010) [10 years] the applicant was sentenced to six years imprisonment for a serious robbery offence and to four years each on two separate robbery and attempted robbery offences. The applicant submitted that he was a drug addict in need of rehabilitation and that the learned sentencing judge erred in refusing to adjourn the sentencing hearing to explore further the possibility of the applicant being accepted for treatment for his drug problems. The judge did not feel he could allow the applicant to remain at liberty pending those enquiries as the first offence herein was committed during the period of a suspended sentence imposed on the applicant by the learned judge and also because the later offence herein was committed whilst the applicant was on bail for the earlier offence. The final point made was that the final four year sentence was made consecutive on the initial six year sentence and not on the second sentence imposed.

It was held by the C.C.A. in refusing the application that each of the offences taken separately and individually well warranted the sentences imposed. Furthermore, in refusing to adjourn the sentencing hearing the learned trial judge exercised his discretion correctly. The sentences were affirmed but the final sentence of four years was made consecutive to the other four year sentence and not to the first six year sentence.

15. In *The People (D.P.P.) v. J.F.* (Unreported, Court of Criminal Appeal, 4<sup>th</sup> December, 2009) [10 years] the applicant was convicted and sentenced to 10 years for a serious offence of armed robbery of a Post Office in which two of his companions were killed by gardai. The applicant carried a sledge hammer which he used to smash protective glass in the Post Office which was located in a convenience store. After being called upon by gardai to surrender, the applicant complied and assisted the gardai and pleaded guilty. Testimonials were submitted to the court on his life and good character. It was suggested

that the trial judge in sentencing was influenced by the deaths of two people.

The C.C.A. stated in declining the appeal there was no error in principle by the trial judge in the manner he approached sentencing.



## **Part III: Sentencing before the Irish Courts since 2011**

### **Lenient Punishment – Suspended Sentence to under 2 years**

**1. D.P.P. v. C.B. Irish Times<sup>3</sup> 5<sup>th</sup> March 2011 [Suspended]**

Garda with chronic alcohol addiction attempted robbery of convenience store with imitation firearm

Personal circumstances – absent without leave from gardai for five months prior to the incident with 15 years service in gardai – separated – house repossessed

**Sentence:** Three year suspended sentence on condition of good behaviour

Reason for suspension: Cooperation, early guilty plea, difficulties as a former garda in prison. Shop keeper expressed view that did not want to see accused jailed

**2. D.P.P. v. G.W. Irish Times 29<sup>th</sup> July 2011 [Suspended]**

Attempted robbery of post office

Use of imitation firearm – lighter shaped like a gun

Seven previous convictions

**Sentence:** Four years suspended sentence

Reason for suspension: Accused addressing his problems – highly intoxicated at time but co-operative – offence was a cry for help

**3. D.P.P. v. A Minor Irish Times 1<sup>st</sup> June 2012 [Suspended]**

Youth at time of offence – now an adult

Robbery of two smart phones – use of knife

46 previous convictions

**Sentence:** Nine month suspended sentence on condition he did not reoffend for one year

Reason for suspension: Favourable probation report – addiction counselling

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<sup>3</sup> Please note that all cases have been listened to on the DAR and verified.

4. *D.P.P. v. P.F.* Irish Times 24<sup>th</sup> November 2011 **[14 months]**

Attempted robbery of pharmacy using screwdriver

39 previous convictions

Previous suspended sentence of four months for theft reactivated

**Sentence:** Fourteen months

5. *D.P.P. v. N.O'H.* Irish Times 24<sup>th</sup> November 2011 **[16 months]**

Robbery of florist with handgun

25 previous offences – six of those for theft

**Sentence:** Three years with 20 months suspended provided he keep the peace and be of good behaviour for two years

6. *D.P.P. v. D.C.* Irish Times 8<sup>th</sup> November 2012 **[18 months]**

Robbery of pizza outlet

Accused had been mugged and committed robbery for money to get home

Drug addict – attending substance abuse clinic

Extreme remorse for actions

17 previous convictions

Use of syringe in attack

**Sentence:** Three years with eighteen months suspended

7. *D.P.P. v A.P., G.Z. and F.R.* Irish Times 17<sup>th</sup> February 2011  
**[Deportation]**

Robbery of €94,000 worth of jewellery from jeweller

Claim acted under duress from “controlling mastermind”

Passports had been taken and families under threat

Used pepper spray

No jewellery ever recovered

**Sentence:** Five years on each of the accused suspended on condition they return to home country and stay out of Ireland for ten years.

## Ordinary Punishment – Between 2 to 4 years

8. *D.P.P. v. H.S.* Irish Times 13<sup>th</sup> October 2013 [**3 years**]

Dragged victim along beside car after snatching handbag

Victim held on to bag – contained valuables – afraid would be injured if let go

Punched victim in face and bit her hand

89 previous convictions

Drug addict – expressed deep shame for involvement in crime

Held: Robbery started innocently and evolved into something more serious

**Sentence:** Three years

9. *D.P.P. v. A.McD. and C.D.* Irish Times 25<sup>th</sup> October 2012 [**3 1/2 years and 2 years**]

Attempt to hold up shop with imitation firearm

Co-operated with gardai

Admitted involvement

**Sentence:** Three and a half years on A.McD. and two years on C.D.

10. *D.P.P. v. P.McD.* Irish Times 20<sup>th</sup> November 2012 [**3 years**]

Robbery of shop

Possession of imitation handgun

Struck shopkeeper in head with gun during attack

74 previous convictions

**Sentence:** Six years with three years suspended

Reason for suspension of term: Young age of accused

11. *D.P.P. v. T.H.* Irish Independent 3<sup>rd</sup> February 2013 [**3 years**]

Robbery of a shop – armed with a chisel

110 previous convictions

Drug addiction

**Sentence:** Four years with twelve months suspended – acknowledged addiction due to brothers untimely death

**12.     *D.P.P. v. D.C. and V.C.* Irish Times 25<sup>th</sup> July 2012 [ 4 years and 3 years]**

Attempted robbery of bank

Use of imitation firearms

D.C. has 33 previous convictions

V.C. has 55 previous convictions

**Sentence:**

D.C. – consecutive prison terms of six years with two years suspended - also pled guilty to attempted robbery of building society the day after attempt on bank

V.C. – Three years

**13.     *D.P.P. v. W.F.* Irish Times 6<sup>th</sup> December 2011 [3 years]**

Robbery of shop on three occasions

45 previous convictions

**Sentence:** Three years for each offence to run concurrently

**14.     *D.P.P. v. E.M.* Irish Times 27<sup>th</sup> July 2011 [3 years]**

Plea of guilty to three robberies over a four month period

Use of bottle and syringe as weapons

Under the influence of drugs at time of offences and robberies to feed habit

**Sentence:** Three years for first robbery and a consecutive three years on the second offence. Another three years for the third robbery to run concurrently to the consecutive element, but suspended these two sentences for five years post release

Reason for suspension: To allow accused “demonstrate in a practical way his commitment to reform”

**15.     *D.P.P. v L.F.* Irish Times 31<sup>st</sup> May 2011 [2 years]**

Attempted robbery of a woman

62 previous convictions – five for robbery

**Sentence:** Four years with last two suspended

Reason: No injury or gain but very frightening for the woman. Condition of suspension that accused enter a residential treatment centre for drug abuse on release – plea of guilty saved victim trauma of coming to court

**16.     *D.P.P. v. H.B.* 29<sup>th</sup> January 2011 [3 years]**

Robbery of a schoolgirl of mobile phone and iPod

Threat to kill

19 previous convictions

On circuit court bail for aggravated burglary at time of offence

Heroin addict

Held that certain degree of stalking involved and conducted in a frightening and offensive manner

Efforts made to deal with addiction and becoming a father had made accused more aware

**Sentence:** Four years with final year suspended on condition that accused bound to the peace

## More Severe Punishments – Between 5 to 6 years

**17.     *D.P.P. v. F.B.* Irish Times 16<sup>th</sup> February 2012 [5 years]**

Attempted armed robbery of gold storage business

Found guilty by jury of attempted armed robbery, possession of an imitation firearm and two counts of false imprisonment

Accomplices trapped inside premises along with two staff

**Sentence:** Seven years with two years suspended

Reason for suspension: One previous conviction and “not a hardened criminal”

Note: Accomplices sentenced to five years after pleading guilty to same offences

**18.     *D.P.P. v. P.Q.* Irish Examiner 28<sup>th</sup> October 2011 [5 years]**

Robbery of a post office – accomplice held knife to neck of customer - €2,810

Previous ten year sentence for role in bank robbery in 2002 during which a garda had been shot

Accused stated that knew of no life outside prison, was institutionalised

Drug addict – heroin, crack cocaine and crystal meth

**Sentence:** Eight years with three years suspended – reasoning for severity: serious previous convictions

**19.     *D.P.P. v. B.O’C.* Irish Independent 6<sup>th</sup> December 2012 [6 years]**

Robbery of an off licence – armed with knife

Victim closed premises after 20 years trading following the robbery

39 previous convictions

**Sentence:** Six years

**20.     *D.P.P. v. M.B.* Irish Times 29<sup>th</sup> July 2011 [6 years]**

Attempted robbery within 14 hours of release from prison

Convicted rapist

Pleaded guilty to two counts of burglary on same date

**Sentence:** Eight years with two years suspended

**21.** *D.P.P. v. L.F.* Central Criminal Court Irish Times 20<sup>th</sup> May 2011 [6 years]

Murder of shopkeeper while committing robbery

Stabbed victim through heart and left to die

**Sentence:** Mandatory life imprisonment for murder

Six years for robbery

## Upper Punishments – Between 8 to 10 years

**22.** *D.P.P. v. S.McG.* Irish Times 1<sup>st</sup> March 2013 [**9 years**]

Robbery of Bank of almost €250,000

Bank official's husband and children held captive in van

Threat that children would be mutilated and husband shot

**Sentence:** Ten years – final twelve months suspended for five years

Reasons for suspension: Guilty plea – Minor nature of previous convictions – Expression of remorse

**23.** *D.P.P. v. J.F.* RTE News 19<sup>th</sup> April 2010 [**8 years**]

Armed robbery of bank of over €700,000 - accomplice

Had keys to branch and knew security systems

**Sentence:** Twelve years with four years suspended

Reason for suspension: On condition that no approach to any of the witnesses be made by or on behalf of the accused

**24.** *D.P.P. v. D.H.* RTE News 3<sup>rd</sup> July 2008 [**10 years**]

Accomplice in above case of armed robbery of bank of over €700,000

Dressed as a woman at time of robbery

Pointed loaded gun at gardai

Had carried out armed robberies for INLA in the past

**Sentence:** Twelve years with two years suspended

**25.** *D.P.P. v. W.B.* Irish Independent 6<sup>th</sup> December 2012 [**8 years**]

Co-accused in above case

Hit victim over the head with a hammer

78 previous convictions

On temporary release from ten year robbery sentence in the UK when took part in the raid

**Sentence:** Eight years (previous July)



**26.     *D.P.P. v. N.M.* Irish Times 28<sup>th</sup> July 2011 **[10 years]****

Robbery at gunpoint with accomplice of €1.2million from jewellers

Judge noted amount taken and fear put into staff

Shop closed shortly after as found it difficult to continue trading

Guilty plea entered on day six of trial

Refused to assist gardai

71 previous convictions

Difficult personal circumstances

Remorse for part in robbery

**Sentence:** Twelve years with two suspended

## **FACTORS CONSIDERED**

| <b>AGGRAVATING</b>  | <b>MITIGATING</b>   |
|---|---|
| Previous convictions – especially where of a similar nature | Lack of or minor nature of previous convictions                                   |
| Lack of remorse   | Remorse   |
| Use of weapon   | Co-operation with Gardai  |
| Injury to victim  | Drug addiction – seeking treatment  |
| Effect on victim  | Spur of the moment  |
| Use of violence   | Youth   |
| On bail for another offence                                 | Agree to refrain from contacting witnesses  |
| Cessation of business following robbery                     | Difficult personal circumstances  |
| Refusal to assist gardai                                    | Favourable probation report   |
| No return of the stolen property                            | Early guilty plea   |
| Wearing a disguise  | Member of an Garda Síochána – acknowledge difficulties of being a Garda in prison |
| Offence committed at night                                  | Duress  |
|   | Return of the stolen property   |

## **PART IV**

### **Tiger Kidnappings**

**1. *D.P.P. v. P.K., B.F. & M.C.* [25 years, 25 years & 12 years]**

Pleaded not guilty to robbing €2.28 million from the victim & Securicor

Pleaded not guilty to falsely imprisoning members of the family

If they had used weapons or been more violent a life sentence would have been imposed

Conviction quashed & retrial ordered

**NOTE:** Related case *D.P.P. v S.B.* – All cases to be re-tried first in for mention  
13<sup>th</sup> March 2013

**2. *D.P.P. v. D.C.*<sup>4</sup> [6 yr sentence]**

Gave information to a criminal gang on his employer

Pleaded guilty to 2 charges of false imprisonment of two persons & attempting to steal €1.25 million.

**3. *D.P.P. v. L.W.*<sup>5</sup> [3 yr sentence]**

Set up a “fake tiger kidnapping”

Wanted to extort €50,000 from his father

His sister was given 2 photos of her brother bound & gagged with a shotgun to his head

Note said he would be killed if €50,000 not handed over

Family asked for leniency

Drug user

Final two years suspended, post release supervision & bond for five years

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<sup>4</sup> *Irish Times*, 6 March 2010.

<sup>5</sup> *Irish Times*, 6 December 2011.

**4. *D.P.P. v. R.R.*<sup>6</sup> [4 yrs]**

A gang kidnapped a bank employee & his wife- he was made to take out €270,000 to ensure his wife's safe release

The accused was asked to hold the cash in return for €4,000

Pleaded guilty to knowingly handling the proceeds of crime under the Criminal Justice Money Laundering & Terrorist Financing Act 2010

No previous convictions, from a hardworking family

**5. *D.P.P. v. M.D.*<sup>7</sup> [3 yr sentence]**

Caught possessing €1.74 million of a €7.66 tiger kidnapping

Pleaded guilty to knowingly or being reckless to possessing the proceeds of criminal conduct

Agreed to hold the cash for €5,000

Had been unaware of the kidnapping

In financial difficulty

Five year sentence with final two years suspended

One previous conviction for a public order offence

Northern Ireland

**7. *D.P.P. v. D.C., L.J. & P.H.*<sup>8</sup> [4 yr sentence, 4 yr sentence, 2 year sentence]**

Charged with kidnapping & false imprisonment

Pleaded guilty to robbery & assisting offenders

Bank manageress told her brother had been kidnapped & had to take cash to secure his release

All but £2,000 of £20,000 & €30,000 was recovered

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<sup>6</sup> *The Herald*, 2 February 2012.

<sup>7</sup> RTE News 15<sup>th</sup> March 2010

<sup>8</sup> *UTV News*, 22 June 2010.

## **PART V**

### **Robbery in the Course of Burglary**

**1. *The People (D.P.P.) v. A.Q. and M.O'R.* [1986] 1 I.R. 495 [12 years]**

The accused were suspected of having been involved in the breaking into the house of two elderly brothers, as a result of which both brothers had been injured, one fatally, and damage had been done to the brothers' property.

On the night in question the deceased's home had been broken into by three men, apparently for the purpose of robbery. Entry was gained to the house by the intruders by bursting or breaking the keeper of a Yale type of lock on the front door and by damaging a bolt on the back door. The house was occupied by the deceased and his brother. Each of the brothers was severely assaulted by the intruders, and the deceased received fatal injuries. In addition to the damage to the doorways of the house the intruders also damaged items of furniture in the course of the struggle with the occupants and ransacked the house in a search for cash and other valuables.

At the time the Garda authorities had no sufficient evidence to justify a charge against either of them for any of the offences committed in the victim's home. The Superintendent in charge of the case stated in evidence that he felt justified in directing an arrest under s. 30 Offences Against the State Act 1939 as amended based upon the suspicion that each accused had committed the scheduled offence of malicious damage on the night in question.

The Supreme Court held that the offences could not be upheld on issues relating to the arrest and admissibility of the admissions. However it was noted that where a victim is murdered in the course of entering a home with the intention to rob it is of the upper level of the offence of burglary.

2. *D.P.P. v. J.F.* Irish Times, 3<sup>rd</sup> February, 2012 **[6 years]**

Robbery of 75 year old man in his home of €9,000 and car

Premeditation of crime

Kicked and beat victim before tying up with phone cable

**Sentence:** Eight years with two suspended

## **PART VI**

### **Approach of the U.K.<sup>9</sup>**

**Offence:** Robbery

**Legislation:** S.8 Theft Act 1968

#### **Aggravating and Mitigating Factors**

| <b>Aggravating</b>                                 | <b>Mitigating</b>                                 |
|--|---|
| More than one offender involved.                   | Unplanned / opportunistic.                        |
| Being the ringleader of a group of offenders       | Peripheral involvement.                           |
| Restraint, detention or additional degradation     | Voluntary return of property taken of the victim. |
| Offence was pre-planned                            | Clear evidence of remorse.                        |
| Wearing a disguise.                                | Ready co-operation with the police.               |
| Offence committed at night.                        |   |
| Vulnerable victim targeted.                        |   |
| Targeting of large sums of money or valuable goods |   |
| Professional hallmarks                             |   |
| More than one offender or gang.                    |   |
| Detailed reconnaissance and planning.              |   |
| Carrying firearm or ammonia.                       |   |
| Firearm real                                       |   |
| Disguise / balaclavas worn.                        |   |
| Substantial gain - intended or                     |   |

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<sup>9</sup> [http://www.cps.gov.uk/legal/s\\_to\\_u/sentencing\\_manual/robbery/](http://www.cps.gov.uk/legal/s_to_u/sentencing_manual/robbery/) Last accessed May 2013

obtained.

Firearm discharged or ammonia used

Injury caused to victim.

### **Relevant Sentencing Council Guidelines**

Guideline applies to offenders convicted after 1st August 2006. It identifies following types of robbery:

1. Street robbery or "mugging";
2. Robberies of small businesses;
3. Less sophisticated commercial robberies;
4. Violent personal robberies in the home;
5. Professionally planned commercial robberies.

The Guideline does not apply to categories 4 and 5. Relevant cases set out below.

Regarding categories 1 to 3, the following guidelines apply:

Sentencing Guidelines Council

Street Robberies / Robberies of small businesses / Less sophisticated commercial robberies.

Type/nature of activity: The offence includes the threat or use of minimal force and removal of property.

**Starting point Adult:** 12 months

**Range Adult:** Up to 3 years

**Starting point Youth:** Community Order

**Range Youth:** Community Order - 12 months DTO



Type/nature of activity: A weapon is produced and used to threaten, and/or force is used which results in injury to the victim.

**Starting point Adult:** 4 years

**Range Adult:** 2 - 7 years

**Starting point Youth:** 3 years detention

**Range Youth:** 1 - 6 years detention

Type/nature of activity: The victim is caused serious physical injury by the use of significant force and/or use of a weapon.

**Starting point Adult:** 8 years

**Range Adult:** 7 - 12 years

**Starting point Youth:** 7 years detention

**Range Youth:** 6 - 10 years detention

**The 'starting points' for youths are based upon a first-time offender aged 17 years old who pleaded not guilty. For younger offenders, sentencers should consider whether a lower starting point is justified in recognition of the offender's age or immaturity.**

*Relevant sentencing guidelines (for category 4 and 5)*

**Armed/Bank Robberies:**

***R v. P.T.* [1975] 61 Cr.App.R. 67**

Armed robberies of Post Office vans are grave crimes but not wholly abnormal. The sentence should be considered in the context of those imposed with those for murder. Starting point for a single armed robbery where no serious injury caused was 15 years and the maximum where more than one robbery 18 years.

*R v. S.D.* [1981] 3 Cr.App.R.(S.) 340

Bank robberies starting point 15 years.

*R v. N.A. and B.H.* [2000] 2 Cr.App.R.(S) 274

Turner guidelines need to be revised upwards. 25 years may be appropriate where convicted of more than one offence and 15 years may be appropriate where convicted of one offence and previous convictions for armed robbery.

*R v. F.E.* [2002] 1 Cr.App.R. 11

The carrying of a firearm should be the subject of a separate count (because of S109 mandatory sentence).

### **Car-jacking**

*R v. V.S.* The Times November 11 2002.

Where high value cars are involved the offence can equate to bank robbery. A defendant convicted of several such offences aggravated by the use of additional violence can expect 10 years.

Above case applied in *R-v- L.G. and M.O.* [2007] 2 Cr.App.R (S) 89, CA and *R v J.K. and M.K.* [2007] 2 Cr. App.R.(S.) 95 CA.

### **Robbery in the course of burglary:**

*R v. P.O'D.* (1986) 8 Cr.App.R.(S.) 121

"where thugs, ... select as their victims old folk and attack them in their own homes and then torture them ... in order to try to make them hand over their valuables in this savage fashion, then this sort of sentence [15 years], will be the sort of sentence that they can expect."

*AG's References Nos. 32 and 33 of 1995* [1996] 2 Cr.App.R.(S.) 346

"Where an elderly victim, living alone, is violently attacked by intruders within the home and is injured the likely sentence will be in double figures."

*AG Ref Nos 38, 39 & 40 OF 2007* [2007] EWCA Crim 1692

The defendants pleaded guilty to robbery, a third offender pleaded guilty to manslaughter. Four men, armed with an iron bar and a rolling pin, were let in to the house of a 67 year old man and his male partner. The victims were threatened and robbed. The victim was punched by the third offender and died. Held the SAC guidelines on street robbery do not apply to robberies in the home. Had the robbery taken place in the street a sentence of five and a half years would have been appropriate and an additional two years, or possibly a little more, would be appropriate for a robbery of this kind to reflect the fact that it was committed in someone's home, entry having been gained, as it was in this case, by subterfuge as opposed to force. 2 and a half years increased to 5 years.

See also *AG Ref (no 124 of 2008)* [2009] 2 Cr. App. R. (S.) 29, the CA declined to adopt this arithmetical approach, but confirmed that the guideline did not intend robberies in the home to be treated in the same way as street robberies, since invasion of person's home significant factor. Appropriate level for robbery in home targeting elderly householders without weapons or significant violence in general range of 5-6 years after a trial.

### *Relevant Sentencing Case Law (pre SCG)*

#### **Street Robberies:**

*R v. F.O'B.* (1984) 6 Cr.App.R.(S) 274

*Mugging of elderly persons in streets.*

Young men who committed this sort of offence against elderly women going about their business in the streets of any city should expect to receive a custodial sentence of around 5 years.

*R v. H.E. and J.L.* The Times, 3 February 1987

Courts should impose long custodial sentences on young muggers of women at night in urban areas, even where no serious injury was caused.

*AG's Ref 4 and 7 of 2002* [2002] 2 Cr.App.R.(S) 77

The Court consolidated the principles established by reported decisions for robbery involving theft of mobile phones and small amounts of money, which frequently involved elderly or young victims. Custodial sentences would be the only option available to courts unless there are exceptional circumstances, irrespective of the age of the offender and of whether the offender had previous convictions, though both factors are relevant to the length of sentence.

An aggravating factor would be if a team of offenders was involved.

### **Guidelines**

The following ranges of sentences were established from existing authorities.

- Where a weapon was involved, a sentence of 18 months' to 5 years' imprisonment is appropriate.
- Where no weapon was involved, a sentence of 18 months' to 3 years' imprisonment is appropriate.

The upper sentencing limits may not be appropriate if:

- the offender had a number of previous convictions
- there was a substantial degree of violence
- a particularly large number of offences were committed

## **Steaming Robberies**

*R v. M.A.* [2005] EWCA Crim 667

AG's ref. No.s 4 and 7 of 2002 [2002] (3 years maximum for street robberies); [2003] (steaming on Underground 18m - 5y with 3y max where no weapon involved) are not to be taken as a yardstick for group robberies such as these, "steaming" cases, involving an intimidating gang of young people and involving victims who are vulnerable by reason of being trapped within a train or other public transport or similar confined spaces. Convicted after a retrial of 3 steaming robberies on a train - five years reduced to 4years.

### **Small Shops:**

*AG's Ref No.2 of 1989* (1989) 11 Cr.App.R. (S) 481

In cases where the robbery occurs in smaller shops (such as a betting shop) which don't have the sophisticated protection that banks and building societies may have, the court must offer its protection and impose a deterrent custodial sentence. The appropriate starting point is 7 years' imprisonment

*AG's Ref. No.7 of 1992* (1993) 14 Cr.App.R. (S) 122

Small shops are often staffed by only one person who may be unable to defend him/herself. It is also unlikely there will be any sophisticated security, and it is a prime target for someone who wants to enrich himself quickly and successfully.

It is therefore appropriate to pass deterrent sentences in cases of robbery of small shops, small corner/grocer shops and to sub-Post Offices. Original sentence of 3 years quashed and replaced with 7 years' imprisonment, on a plea of guilty.

## **Mobile phones**

*AG's References Nos. 4 and 7 of 2002* [2002] 2 Cr.App.R. (S.) 77.

Deterrent sentences required for robberies of mobile phones; save in exceptional circumstances a custodial sentence should be imposed irrespective of age or previous character. 18 months to 3 years where no weapon is involved or 5 years where a weapon is involved [predates SAC guidelines].

### **Ancillary Orders:**

- Restitution
- Compensation

Consider Also:

- POCA
- ASBO