22/75

SUPREME COURT OF VICTORIA — FULL COURT

R v CURREY

Young CJ, Lush and Dunn JJ

2, 19 December 1974 — [1975] VicRp 63; [1975] VR 647

SENTENCING – FIXING OF MINIMUM TERM – MINIMUM TERM TO BE FIXED UNLESS NOT APPROPRIATE: *SOCIAL WELFARE ACT* 1973, S190.

HELD: Appeal allowed. Minimum term of imprisonment fixed.

1. The purpose of fixing the minimum term was to determine when the convicted person was to be "eligible" for parole. It was not concerned with suitability for parole. Whether or not a prisoner was released on parole was entirely a matter for the Parole Board. The Court had no part in the decision of that question.

2. Section 190 of the *Social Welfare Act* 1970 was concerned with the lessening of the punitive aspects of the sentence imposed. The direction given by Parliament was therefore seen to be a direction that a minimum term be fixed unless the Court was of the opinion that the nature of the offence and the antecedents of the offender were such that the offender should not be entitled to the benefit of a lessening of the burden of the punishment inflicted upon him. However, it was impossible to refrain from fixing a minimum term simply because a man was of good antecedents.

3. Minimum term of four years' imprisonment fixed.

YOUNG CJ: The applicant pleaded guilty in the Supreme Court at Sale to 12 counts of making false entries as a clerk or servant with intent to defraud, an offence created by s153 of the *Crimes Act* 1958 for which the maximum penalty is seven years' imprisonment. He also pleaded guilty to 11 counts of obtaining cheques by false pretences with intent to defraud, an offence created by s187(1) of the Act in which a maximum penalty of five years is fixed. The applicant was employed by Commercial and General Acceptance Ltd at its Traralgon branch as a business promotions manager at a salary of $8500 a year. Between June 1971 and December 1973 he "engineered" 14 fictitious transactions. Applications for loans were made in fictitious names and approvals were given to loans to fictitious persons. Cheques were duly drawn and in this way the applicant obtained something over $52,000.

In respect of each count of making false entries the applicant was sentenced to two years' imprisonment, the sentences to be served concurrently. In respect of each count of obtaining a cheque the applicant was sentenced to two years and six months, these sentences also to be served concurrently. The sentences on the two groups of counts were ordered to be cumulative with the result that an effective total of four years and six months was imposed. No minimum term was fixed.

The applicant's notice of application for leave to appeal contained one ground only, which read as follows: "As I have no prior convictions, the sentence imposed appears excessive." However, Mr Mattei, who appeared for the applicant, abandoned that ground and obtained the leave of the Court to substitute the following ground: "That the discretion of the trial judge as to the non-fixing of a minimum term of imprisonment miscarried, or alternatively, the trial judge should have fixed a minimum term."

The learned trial judge, having fully reviewed the circumstances relating to the offences and having carefully weighed the facts placed before him in a powerful plea for leniency, concluded his reasons for the sentences thus:—

> "It is painful for me, in these circumstances, to have to sentence a man such as you to gaol, but as I indicated to you on the date that you were last before me, it is inevitable, having regard to the

> magnitude of the losses suffered by your employer, the period over which the offences took place and the calculated and premeditated form in which they were perpetrated that I must sentence you to a not insignificant gaol term. "I am prepared to accept, as your counsel urged me to do, that in the first stages of this course of wrongdoing you were moved to do what you did by the need to supplement your earnings because of the heavy expenses of a medical and like kind, to which you had been put by reason of your wife's illness. But, be that as it may, there is no doubt that in a short time you were moved by no other considerations than avarice and greed, and accordingly set upon a calculated course of deception of your employers, whereby purely for the purpose of living beyond your means, you mulcted your employer of very considerable sums of money."

The sentences already referred to were then imposed, and the learned judge turned his attention to the matter of fixing a minimum term. He decided it was inappropriate to do so, for reasons which he expressed in these terms:

> "In my view, the proviso of s534(1) of the *Crimes Act* is apposite. That provides that the court shall not be required to fix a minimum term before eligibility for probation will arrive, if the court considers that the nature of the offence and the antecedents of the offender render the fixing of a minimum term inappropriate. In my view this course of law-breaking by you is an isolated event in your life. I do not think that, having regard to your antecedents of a domestic, educational and social nature, and having regard to the nature of these particular offences, it is likely that you will offend again. In my view you are not a suitable subject to be placed under probation when you have served whatever is the appropriate time, with remissions, to gain release with respect to the sentence I have passed. It is my opinion that you will not be in breach of the law hereafter. Accordingly I treat the matter as one inappropriate for the fixing of a minimum term."

The reference to s534(1) of the *Crimes Act* is now to be read as a reference to s190 of the *Social Welfare Act*, as enacted by Act No. 8493 of 1973. There is no difference in language. No doubt the references to probation were intended to refer to parole.

It thus appears that the learned judge did not fix a minimum term because he thought that the applicant was not likely to offend again after serving the sentences imposed upon him. That is to say, his Honour appears to have regarded a period of parole as unnecessary. It was for that reason that his Honour regarded the fixing of a minimum term as "inappropriate". Presumably if the learned judge had been less confident that the applicant was not likely to offend again or that the applicant might benefit from a period of parole he would have fixed a minimum term.

Accordingly, the problem presented by this application is whether under the proviso to s190(1) of the *Social Welfare Act* 1970 a judge passing sentence may refrain from fixing a minimum term where he considers for any reason that the convicted person is not a suitable subject for parole.

Before considering this question it will be as well to set out s190(1). It reads:

> "190. (1) Where any person is convicted by the Supreme Court or the County Court or a Magistrates' Court of any offence and sentenced to be imprisoned then, if the term imposed is not less than two years the court shall, and if the term imposed is less than two years but not less than twelve months the court may, as part of the sentence fix a lesser term (hereinafter called 'the minimum term') that is at least six months less than the term of the sentence during which the offender shall not be eligible to be released on parole:
>
> "Provided that the court shall not be required to fix a minimum term as aforesaid if the court considers that the nature of the offence and the antecedents of the offender render the fixing of a minimum term inappropriate."

This section was first introduced as s26 of the *Penal Reform Act* 1956. That Act, as its short title suggests, made a number of changes in the penal system. Pt I dealt with Probation and Pt II (in which s26 was found) with Sentences and Parole. The Indeterminate Sentences Board was abolished and the Parole Board established. The latter Board was given by s30 a discretion where a prisoner who is undergoing a sentence of a term of imprisonment in respect of which a minimum term is fixed has served the minimum term to direct that he be released from gaol on parole. Any person so released was required by s30(2) to be under the supervision of a parole officer until "the expiration of his term of imprisonment" (scil. the term of imprisonment to which he was sentenced). The person so released is to comply with such requirements "as are specified in the parole order in accordance with the regulations". No conditions were prescribed in the Act

itself. Section 28 of the *Penal Reform Act* provided that the provisions of any rules or regulations under the *Gaols Act* 1928 relating to the remission of sentences of imprisonment as an incentive to or reward for good conduct or industry should not apply to or with respect to any sentence of a term of imprisonment in respect of which a minimum term was fixed. But a specific power was given to make regulations for the reduction of minimum terms as an incentive to or reward for good conduct or industry.

It cannot, in my opinion, be doubted that the introduction in 1956 of these "penal reforms" was intended to lessen the burden of punishment upon prisoners and to provide for their earlier release from gaol in those cases which merit it and to provide for the rehabilitation under supervision of the prisoners so released. To this end the Court is directed that it shall (where the term of imprisonment imposed is not less than two years) fix a minimum term, subject of course to the proviso. This seems to convey the belief of the legislature that in a majority of cases, at any rate, the fixing of a minimum term will be appropriate.

But the proviso is expressed in language which standing on its own would be apt to confer upon the Court an unfettered discretion to refrain from fixing a minimum term whenever the Court felt for whatever reason that such a course was inappropriate. If that is the effect of the proviso, we should not be deterred from giving it that effect merely because it might in some cases have unexpected results. However, after some hesitation I have come to the conclusion that the proviso should not be given such a wide operation. I have come to this conclusion because the purpose of fixing the minimum term is to determine when the convicted person is to be "eligible" for parole. It is not concerned with suitability for parole. Whether or not a prisoner is released on parole is entirely a matter for the Parole Board. The Court has no part in the decision of that question. Prior to the expiration of the minimum term the Parole Board is powerless (subject to the operation of regulations relating to remissions) to release a convicted person who is serving a term of imprisonment.

Thus it seems to me that what the section is concerned with is the lessening of the punitive aspects of the sentence imposed. The direction given by Parliament is therefore seen to be a direction that a minimum term be fixed unless the Court is of the opinion that the nature of the offence and the antecedents of the offender are such that the offender should not be entitled to the benefit of a lessening of the burden of the punishment inflicted upon him.

It may be that the point which now calls for determination has not in the past been so significant in terms of practical results as it has now become. This may well be the reason why it has not fallen for determination earlier. But s190 of the *Social Welfare Act* and its predecessors have been the subject of a number of decisions of this Court.

An early decision after the Act of 1956 was *R v Douglas* [1959] VicRp 28; [1959] VR 182 in which the Court said at p182:

> "We think it is of importance to point out that, under the new legislation, courts imposing sentences should not proceed upon the view that the period by which the sentence exceeds the minimum term is merely a period of supervision."

The Court emphasized that it was eligibility for parole that the Court was concerned with for it interfered with the sentence imposed by the trial judge because his Honour had given no real weight to the point that the applicant there might well have to serve every day of the sentence imposed.

The next case is *R v Marjoribanks* [1962] VicRp 16; [1962] VR 110 where the trial judge failed to fix a minimum term and the Court thought that he was influenced in so doing by the opinion of a probation officer that the applicant was unlikely to benefit appreciably from supervision on parole. But the learned judge appears to have thought that the Parole Board could nevertheless release the offender on parole before the expiration of the term of imprisonment imposed. In this, the Court held that he was wrong. In the event the Court did not interfere with the principal sentence but it fixed a minimum term. Again the Court was concerned with eligibility for parole and not with whether the applicant was a suitable candidate for supervision.

Other decisions of the Court show that the approach to the task of sentencing is to impose a sentence appropriate to the offence in all the circumstances and then, but only then, to fix a minimum term in the light of the duration of the sentence imposed: *R v Governor of Her Majesty's Gaol at Pentridge; Ex parte Cusmano* [1966] VicRp 78; [1966] VR 583 at p587. But in fixing the term the Court is not to take into account the policy of the Parole Board as to granting or refusing parole: *R v Bruce* [1971] VicRp 80; [1971] VR 656.

There may be thought to be some want of logic in requiring the Court to fix a sentence which in all the circumstances is appropriate to the offence and then to fix a lesser term having regard perhaps to some only of the circumstances which were taken into account in fixing the principal term. But if, as I think, the purpose of fixing a minimum term before which the offender is not to be eligible for parole is to lessen the burden of the punitive element of the sentence, it seems to me to be impossible to refrain from fixing a minimum term simply because a man of good antecedents (which is a wide expression; see *Cobiac v Liddy* [1969] HCA 26; (1969) 119 CLR 257 at pp275-277; [1969] ALR 637; (1969) 43 ALJR 257 per Windeyer, J; *R v Poulton* [1974] VicRp 85; [1974] VR 716 at p720) is not thought likely to benefit from the supervision of parole officers.

It is true that in *R v Bruce* [1971] VicRp 80; [1971] VR 656, Smith J speaking for the Court said (at p657): "The antecedents of the offender may, as the statute implies, be such as to persuade the court that the prisoner is not a suitable person to be dealt with under the parole system", but I do not think that his Honour was saying more than that the antecedents of the offender may be such as to persuade the Court that the prisoner should not be entitled to the benefit of the lessening of the burden of the punitive element in the sentence which the parole system was intended to provide. The observation was made in a case in which a prisoner had been sentenced in respect of two counts of housebreaking and stealing. On each count he was given three years' imprisonment, making a total of six years and a minimum term of three years was fixed. The Court thought that the sentence was unusually high but that the history of the offender disclosed a reason why the sentence was proper in the circumstances and the observation I have quoted was made in the context of the Judge's Report to the Full Court in which he raised the question whether judges passing sentence ought to take into account the policy of the Parole Board as to granting or refusing parole to people who had been paroled on previous occasions. The Court held that they should not.

I have been troubled by one decision of this Court. It is *R v Flanagan*, (unreported), in which the judgment of this Court was given on 1 October 1971. In that case the judge passing sentence declined to fix a minimum term because the prisoner was a mature man without criminal history and was considered therefore not likely to benefit from supervision. The sentence was upheld by the Full Court. However, the reasons for judgment do not suggest that the manner in which the learned judge interpreted the proviso was challenged or considered by the Court and accordingly I do not think that the Court should now treat it as decisive of the present application.

For these reasons it is my opinion that the discretion of the learned trial judge miscarried and that the application should be granted.

It is therefore a question whether the whole of the sentence should be reviewed or whether this Court should simply fix a minimum term. I see no reason for thinking that the learned trial judge fell into any error in reaching the sentence which he imposed and none was suggested to us. Accordingly I think that all that this Court should now do is to do as was done in *R v Marjoribanks*, *supra*, and fix a minimum term. I would fix a minimum term of four years.

LUSH J: The statutory provision relevant to this case is s190 of the *Social Welfare Act* 1970 (inserted by Act. No. 8493 passed in 1973 and operative since 2 July 1974). This section is not significantly different from the section it replaces, s534 of the *Crimes Act* 1958 (as amended) or the earlier s530 of the *Crimes Act* 1957.

The predecessors of s190 have been the subject of a number of judicial decisions. These decisions establish that a court imposing sentence and fixing a minimum term must approach its task in two stages. First it must fix a term of imprisonment appropriate to the crime, keeping in mind the possibility that the prisoner may serve the whole of that sentence: *R v Douglas* [1959] VicRp 28; [1959] VR 182; *R v Governor of Her Majesty's Gaol at Pentridge; Ex parte Cusmano* [1966]

VicRp 78; [1966] VR 583 at p587. In fixing this term it must not speculate on the possibility of earlier release as a result of the operation of the provisions of the section: *R v Bruce* [1971] VicRp 80; [1971] VR 656; *R v Poulton* [1974] VicRp 85; [1974] VR 716. Then it must proceed, subject to the proviso, to fixing the minimum term. The fixing of the minimum term does no more than make it possible that the prisoner will be released (*Social Welfare Act* 1970 s195(1)). If he is, he will for the balance of the term be under the supervision of a parole officer (s195(3)). Criteria not relevant to the term of imprisonment may be relevant to the fixing of the minimum term: *R v Poulton*, *supra*.

That the parole and minimum term system was intended among other things to lighten the burden of their punishment for the prisoners whom it affected is clear. It is not surprising to find that in most cases where an application of the proviso led to refusal to fix a minimum term it was because the prisoner's "antecedents" were bad and he was regarded as unlikely or unable to derive the benefits ordinarily contemplated from a parole term. Examples are the cases of *R v Bruce*, *supra*, and *R v Kane* [1974] VicRp 90; [1974] VR 759 at p767. There has, however, been a case in which the judge declined to fix a minimum term because the prisoner was a mature man without criminal history and was considered therefore not likely to benefit from supervision. This sentence was upheld by the Full Court, the exercise of the statutory discretion not, apparently, being challenged on appeal (*R v Flanagan*, Full Court 1 October 1971, unreported).

In the present case the argument put is that the proviso should be applied only for reasons which lead to an adverse assessment of the prisoner, and that the section was not intended to operate so that a prisoner of good repute might be more severely treated in the result than a prisoner not enjoying such a reputation, and that interpretation should follow intention.

It may be that the point now taken has not in terms of practical results been so significant in the past as it now is. Until recently, the regulations relating to remissions of sentence by the Director-General of Social Welfare were that when no minimum term was fixed, remissions up to one-quarter, 25 per cent, of the total sentence could be earned, but when a minimum term was fixed only three days for each month served, or slightly less than 10 per cent, could be remitted. (*Social Welfare Regulations* 1962, *Government Gazette* No. 84 of 1962, Division III reg97 and reg98 as amended). The result was that a prisoner sentenced to 12 years without a minimum term could earn his release at the end of 9 years. A prisoner sentenced to 12 years with a minimum term of 10 years would at the end of 9 years merely become eligible for parole. It was a common experience to find that counsel asked for a "straight" sentence if the client doubted his chance of obtaining release on parole or in cases where, regardless of questions of criminal history, a long sentence was possible and the comparative certainty of remission and early release was preferred to the chances of deferment or refusal of parole.

In 1974, however, amendments were made to the regulations which make possible the remission of 15 days for every month actually served, both of a minimum term and of a term imposed without the fixing of a minimum — *Social Welfare Regulations* 1974, SR 97 of 1974, reg97D. A prisoner now sentenced to 12 years' imprisonment may earn his release at the end of eight years. A prisoner sentenced to 12 years with a minimum sentence of ten years may become eligible for parole after six years eight months.

Mr Mattei submitted that the question was one of interpretation of the words "the nature of the offence and the antecedents of the offender" and that correctly interpreted these words refer only to factors reflecting adversely on the personality of the prisoner.

There is difficulty in justifying this argument as a simple matter of the meaning of words. The relevant definition of "antecedents" in the *Shorter Oxford Dictionary* is "the events in a person's past history". The word does not appear to connote good or bad events.

I agree with the Chief Justice in finding the key to the interpretation of the section in firstly, the concept that parole is intended to ameliorate the Act of a prisoner, and secondly in the word "eligible". If the words designated by the expression "minimum term" are brought down into the proviso, it then reads: "If the court considers that the nature of the offence and the antecedents of the offender render the fixing of a lesser term during which the offender shall not be eligible to be released on parole inappropriate."

It would I think be unrealistic to interpret this to produce the meaning that an offender's good qualities may deny him eligibility for amelioration of his sentence. If they are such as to render supervision unnecessary, then supervision could be minimized. I concur in the variation of sentence proposed by the Chief Justice.

DUNN J: I concur in the result that each of my learned brethren has reached, but as I have arrived at the same result by a somewhat different course of reasoning, and as I am differing from the learned trial judge, I desire to express my own reasons but not to be taken as being in disagreement with those which have already been expressed.

The applicant, William Robert John Currey (hereinafter referred to as "the applicant"), has applied for leave to appeal against sentence because no minimum term before being eligible to be released on parole was fixed by the learned trial judge. The learned Chief Justice has fully stated the relevant facts and the reasons of the learned trial judge for the course that he took. The essence of the reasons for not fixing a minimum term is that the applicant, in the learned judge's opinion, was not likely to offend again after serving the sentences imposed upon him, and therefore parole was inappropriate, presumably because it would be unnecessary. Mr Mattei has urged that this approach is not justified by the terms of the section as it has been construed by this Court. In other words, effect should only be given to the proviso when the nature of the offence and the antecedents of the offender are such as to make it likely that the offender would offend again or the nature of the offence and the antecedents of the offender are such that the offender ought to be required to serve the full sentence imposed.

The statutory provisions relating to a minimum term were first introduced by the *Penal Reform Act* 1956, s26. The same Act made provision for a Parole Board and for parole officers to implement the terms of the Act. By s30(1) of that Act authority was given to the Parole Board, at its discretion, to direct that a prisoner having served a minimum term be released from gaol on parole. Unless the parole is cancelled the prisoner remains on parole and out of gaol for the remainder of the sentence. The general purposes of the provisions of the Act are clear enough. They are to encourage reformation and good behaviour in gaol during the minimum term and to provide guidance and assistance after release from gaol to ensure, as far as possible, the rehabilitation of the prisoner. They are designed to be of benefit and not detriment to a prisoner.

The conditions upon which a court was required, subject to the proviso to the section, or permitted to impose a minimum term have been amended since 1956, but the amendments are immaterial for the purposes of this appeal. The proviso has remained unaltered.

I therefore set out the present provisions of s190(1) of the *Social Welfare Act* 1970 as enacted by the *Social Welfare Act* 1973:—

> "190.(1) Where any person is convicted by the Supreme Court or the County Court or a Magistrates' Court of any offence and sentenced to be imprisoned then, if the term imposed is not less than two years the court shall, and if the term imposed is less than two years but not less than twelve months the court may, as part of the sentence fix a lesser term (hereinafter called 'the minimum term') that is at least six months less than the term of the sentence during which the offender shall not be eligible to be released on parole:
>
> "Provided that the court shall not be required to fix a minimum term as aforesaid if the court considers that the nature of the offence and the antecedents of the offender render the fixing of a minimum term inappropriate."

This Court gave consideration to the predecessor of this section in *R v Governor of Her Majesty's Gaol at Pentridge; Ex parte Cusmano* [1966] VicRp 78; [1966] VR 583. At p587 the Court said:

> "That language requires the court to impose a term of imprisonment appropriate to the offence charged in the same way as if it were imposing a fixed sentence and then, and only then, to proceed to the fixation of a minimum term."

By that language I understand the Court to mean that, first, the appropriate sentence must be determined and, second, consideration then given as to whether or not a minimum term

should be imposed. In other words, the appropriate sentence should be the same whether or not a minimum term is fixed.

Again, in *R v Bruce* [1971] VicRp 80; [1971] VR 656 the Court dealt with the requirements of this provision. At p657 the Court said:

> "The sentencing judge, as has previously been laid down more than once by this Court, is called upon in the first place" — and I emphasize those words — "to determine what is the appropriate term of imprisonment to be imposed .... Having fixed the maximum term, the Court is then, in cases like the present in which the sentence is not less than two years, required by the section to fix a minimum term, except in specified circumstances."

The Court then refers to the terms of the proviso, and observes that the "antecedents of the offender may, as the statute implies, be such as to persuade the court that the prisoner is not a suitable person to be dealt with under the parole system".

The word "antecedents" in this context is one of wide import—see *R v Vallett* [1951] 1 All ER 231 at p232; (1950) 34 Cr App R 251 at p254—so that it includes, clearly enough, matters which are favourable to the prisoner as well as those unfavourable. But a balance has to be finally struck, and if it be one, as is that of the prisoner in the present appeal, in which the judge considers parole unnecessary to ensure the prisoner's rehabilitation, does that make him "not a suitable person to be dealt with under the parole system" in the language of the judgment in *R v Bruce*, *supra*, or make it "inappropriate", the word of the proviso, to fix a minimum term? In my opinion it does not. Otherwise the plain intention of the legislature would be frustrated because the better the prospects of self-rehabilitation the worse off the prisoner would be, if the procedure is followed which this Court has reiterated the language of the section requires. In the context of this proviso, I think the word "inappropriate" must be given the meaning of "improper". (See *New English Dictionary* under the title of "Inappropriate".) In *R v Kane* [1974] VicRp 90; [1974] VR 759, when this Court had to determine the sentence itself it proceeded on the basis it had previously laid down by fixing the sentence and then considering the question of a minimum term. It refused to fix one because of the circumstances of the offence and the unsatisfactory nature of the antecedents of the prisoner.

In *R v Poulton* [1974] VicRp 85; [1974] VR 716 this Court again had to give consideration to this provision. After setting out the terms of s534(1) of the *Crimes Act* (now s190 of the *Social Welfare Act*, *supra*) the Court, at p720, said: "This language shows that in the provision there are two conceptions involved; first, the 'term imposed' when the convicted person has been 'sentenced to be imprisoned', and, secondly, 'a lesser term ... during which the offender shall not be eligible to be released on parole.'" The Court then quoted, with approval, the passage from *R v Governor of Her Majesty's Gaol at Pentridge; Ex parte Cusmano*, *supra*, which is previously set out in these reasons.

Finally, the difficulties which would arise if the proviso were to be applied as was done by the learned trial judge may be illustrated by supposing the case of two prisoners equally guilty of the one offence, neither of whom has any prior convictions and whose antecedents at the date of the offence are such that one would say neither would be likely to offend again. But after the date of the offence one of them commits two further offences. Those offences cannot be taken into account in fixing the term imposed in the first instance—so that each must receive the same sentence, say of three years. But the subsequent offences may be taken into account when deciding whether or not to impose a minimum term, and if there be one, the length of it (see *R v Poulton*, *supra*). So the judge says to the one without subsequent conviction that he will not fix a minimum term for him because he is unlikely to offend again. To the one with subsequent convictions the judge says—"Because of your subsequent convictions you will need the benefit of parole, so I will fix a minimum term in your case of two years." Such an operation of the provision cannot be right.

In my opinion the proviso can only be applied when it is proper because of the nature of the offence and the antecedents of the offender to deny to the offender the benefit of the fixing of a minimum term. For these reasons, I think the discretion of the learned trial judge miscarried and this application should be granted.

It becomes now the duty of this Court to say what sentence, on its own assessment of

all the relevant circumstances, it should now pass: see *R v Butler* [1971] VicRp 109; [1971] VR 892; *R v Kane*, *supra*, at p766. It seems to me that the learned trial judge was of opinion that the applicant should serve the sentence imposed by him before being eligible for parole, because he had this to say: "In my view you are not a suitable subject to be placed under probation when you have served whatever is the appropriate time, with remissions, to gain release with respect to the sentence I have passed." He was in effect fixing a minimum term, and it would therefore be appropriate for this Court to fix a new maximum term of imprisonment. As my learned brethren have taken a contrary view, I concur in the decision to fix a minimum term of four years. Appeal allowed; sentence varied.

Solicitors for the applicant: Ambroses.
Solicitor for the Crown: John Downey, Crown Solicitor.
