



THE COURT OF APPEAL

Court of Appeal Record No:124/2019

Clarke CJ.
Edwards J.
Donnelly J.

BETWEEN/

**THE PEOPLE (AT THE SUIT OF THE
DIRECTOR OF PUBLIC PROSECUTIONS)**

RESPONDENT

-AND-

JONATHAN DUGGAN

APPELLANT

**Judgment of the Court (*ex tempore*) delivered on the 3rd December, 2019 by Ms.
Justice Donnelly**

Introduction

1. The appellant pleaded guilty at Cork Circuit Court to six offences. One offence (of theft) occurred on the 27th September, 2018. Five offences were committed a month later on the same day, namely the 22nd October, 2018; there were three offences of theft, an offence of burglary and the most serious offence of all, a robbery offence.
2. The appellant pleaded guilty to the six offences at the first available opportunity before Cork Circuit Court, having been in custody since the 24th October, 2018.
3. On the 30th May, 2019, evidence was heard and the appellant was sentenced to a total term of imprisonment of 14 years comprising two sentences made consecutive to each other. The appellant now seeks leave to appeal the severity of the said sentence.
4. The first offence in time was one of theft on the 27th September, 2018 where the appellant stole a handbag from behind the counter of a shop. None of that property was recovered. The appellant received a sentence of four years.
5. On the 22nd October, 2018 at 14.30pm, the appellant stole a wallet from an unoccupied car and the wallet was recovered with the contents removed. The appellant received a sentence of three years.
6. The next offence in time on the 22nd October, 2018, was one of burglary at a nearby premises; Northside Glass, Old Mallow Road where the appellant took two angle grinders, valued at €200 each from the premises and the property was recovered. The appellant received a sentence of four years.
7. A very short time later at 14.40pm on the 22nd October, 2018 the appellant approached a vehicle. He entered the passenger side door of a car where a woman was waiting to collect her child from school. He made a comment to her and stole her handbag from the

passenger seat. No property was recovered. The appellant received a sentence of three years.

8. The next offence on the 22nd October, 2018 was also one of theft. The appellant approached a vehicle again with a woman in it, opened the passenger door and made conversation with the victim. He stole her handbag from the passenger seat. This contained an amount of cash to the value of €795 in total as the victim had just left the Credit Union. There is no suggestion that the appellant knew this. No property was recovered. The appellant received a sentence of three years' imprisonment.
9. The final matter before Cork Circuit Court was the most serious charge. This occurred on the 22nd October, 2018 at Spriggs Road, Gurrabraher, Cork. This was an offence of robbery of a 79 year old woman. She had been dropped at the front gate of her house by her taxi-driving brother having just returned from visiting another terminally ill brother. She opened her gate and walked up to her pathway of her home. The appellant came up behind her and grabbed her handbag from her right arm and pushed her to the ground. There were a number of valuable items in her handbag that were never recovered. The appellant was recognised by the victim's brother.
10. The unfortunate victim was removed by ambulance to Cork University Hospital where she remained for two months. She suffered serious injuries such as multiple rib fractures and a fracture of her pubic bone. Her voice was lost as a result of her injuries. There was a victim impact report prepared where it was outlined that her injuries were life changing. She also stated that she missed the funeral of the brother she had been visiting.
11. The appellant received a sentence of 16 years reduced to 13 years on that robbery charge.
12. The appellant admitted these offences upon his arrest. The appellant is 29 years old. He admitted to being a drug addict and a heroin addict. The appellant apologised a number of times throughout the interviews. The judge accepted that he was remorseful about the injuries imposed on the victim of the robbery.
13. The appellant's past convictions added up to 95 and included three previous Circuit Court convictions in 2009, 2011 and 2017. These were for robbery, for burglary and for attempted burglary. It was accepted that most of his past criminal convictions were to feed his habit. It is of note that he had been under a suspended sentence when he committed the six offences, but no action appears to have been taken to seek to have him serve that sentence.

The sentencing decision

14. In respect of the offence on the 27th September, this was an expensive handbag that was stolen and it contained not just the usual personal items, but also a very expensive and valuable hearing aid and it was not recovered. The sentencing judge noted that there was no personal engagement between the victim and the appellant. He noted the maximum sentence of 10 years and imposed a headline sentence of six years bearing in

mind his 95 previous convictions and the relevant Circuit Court convictions. He gave recognition to his personal circumstances and to his plea of guilty and reduced it to four years.

15. In dealing with the robbery, the sentencing judge relied upon the decision in *DPP v Casey and Casey* [2018] 2 I.R. 337 and *DPP v. Byrne* [2018] IECA 120. In the latter case, it was held that the upper limit in respect of an offence of robbery can, in exceptional cases, exceed the maximum of 15 years. The sentencing judge held, that bearing in mind the appellant's earlier activities that day, that he was just out of prison and the obvious seriousness of the offence and its impact on the victim, he set the headline figure at 16 years. He then reduced this to 13 years bearing in mind the plea of guilty.
16. He considered that the 13-year robbery sentence should run consecutive to the four year sentence on the offence from the earlier date on the 27th September, 2018. The sentencing judge held that as the robbery and the theft offence on the 27th September were the two most distinct offences with different victims that the sentences should run consecutively. Having also imposed the sentences set out above for the other offences committed on the 22nd October, 2018, the sentencing judge decided to make them concurrent with the other sentences. This meant that the consecutive sentence would be one of 17 years.
17. The sentencing judge then went back to look at the issue of totality. In applying the principle of proportionality in respect of the overall offending of the appellant, and having regard to the issue of totality and for the purpose of incentivising rehabilitation, he reduced the sentence to 14 years although he stated that he was not overly convinced that there was a genuine intention to rehabilitate. He did not suspend any portion of the sentence.

Grounds of appeal

18. The appellant appealed on various grounds. At the hearing, counsel on behalf of the appellant netted these down to four main grounds: -
 - a) The headline sentence for the robbery was excessive
 - b) There was not sufficient mitigation for the plea of guilty and other mitigating factors
 - c) The consecutive sentence should not have been imposed
 - d) The totality principle should have included an element of suspension in the sentence

Headline Sentence

19. In respect of the headline sentence, counsel submitted that it was outside the range of sentences. This court is satisfied that in respect of that sentence this was correctly identified as at the higher end of robbery sentences. There were particularly aggravating factors, the primary one being the very serious, life changing injuries inflicted on the victim. It is also clear that she was a vulnerable victim being a woman aged 79 years.

This offence was committed what was effectively the curtilage of her dwelling. Finally, the relevant previous Circuit Court convictions was also an aggravating factor.

Plea of Guilty and other Mitigating Factors

20. In respect of the plea of guilty and other mitigating factors, counsel submitted that a greater deduction should have been made to the 16 year headline sentence. She referred to the early plea and to the fact that the appellant was young at 29 years old. In particular she pointed to his chronic addiction and it being accepted that most of his past criminal convictions were to feed his habit.
21. As has been stated before by this Court, the value of a plea of guilty varies from case to case. In the present case, the appellant was not caught red handed but there was recognition evidence against him. He must be given credit for his admissions and for his early plea, although he did not sign pleas in the District Court. As a 29 year old, he is not in the age category that can truly be said to be youth. Indeed, the late twenties are often the stage at which youthful criminality has been left behind. His chronic addiction explains his offences but on its own is not a mitigating factor. Attempts to rehabilitate can be good mitigation however. His attempts in that way were limited while outside prison, but it appears that he had put his name down for addiction counselling while in custody.
22. The Court has considered the deduction in this case carefully. In respect of all relevant matters, the Court is satisfied that a deduction of 3 years was appropriate. It is not the situation that in every case where there is a plea of guilty that there must receive a deduction of about a third from the headline sentence. That is in general the upper end of the scale of deduction. This was not a case where the plea merited the highest possible deduction.

Consecutive Sentence

23. The appellant's principle complaint was that the sentences should not have been made consecutive. Counsel relied on the fact that there was no mandatory obligation to impose such a sentence in the present case. Counsel submitted that the cumulative effect of the consecutive sentence was excessively harsh in all the circumstances.
24. Counsel for the DPP referred the Court to the Court of Appeal decision in *DPP v G. McC* [2003] 3 I.R. 609 in which it was stated: -

"it is, of course, true and always has been true that where there have been a number of offences relating to different victims and especially if they are unconnected there is discretion in the sentencing judge as to whether he or she makes the respective sentences concurrent or consecutive."

25. There is discretion on a sentencing judge to impose consecutive sentences. That discretion should not be exercised as a matter of course but should be considered and reasoned.

26. In the present case the sentencing judge considered the fact that there had been multiple offending over the two separate days. There had been a number of victims. He identified that the theft on the entirely different day from the bulk of the offences had involved the loss of expensive property and the significant loss from a personal point of view of the expensive hearing aid.
27. The sentencing judge was not obliged to impose such a consecutive sentence and it would not have been an error in principle if he had not done so. This Court must ask itself if there was an error in principle in so exercising his discretion. In the view of the Court there is no basis to interfere with the exercise of the judge's discretion to impose a consecutive sentence in this case. He made clear his reasons and they were relevant to the consideration of consecutive sentences.

Totality and Suspended Sentence

28. Counsel on behalf of the appellant submits that based on the principle of totality the imposition of a 13 year sentence to run consecutive to a 4 year sentence was disproportionate to the crime and that in reducing it down to a sentence of 14 years that the totality principle was nonetheless violated.
29. Counsel for the appellant also submitted that the sentencing judge failed to take into account the fact that the appellant had addiction problems which he was addressing by completing a methadone programme and attending counselling. The appellant apologised throughout the interviews and said how sorry he was at what he did to the victims. Counsel submitted that the sentence should have been part suspended in light of all these factors.
30. Counsel for the DPP submitted that the sentencing judge assessed the totality principle by the reduction from the total sentence of 17 years to a sentence of 14 years. He pointed out that this sentence was simply one year in excess of the sentence for the robbery offence alone. Counsel also referred to the finding in the Probation Report that the appellant's life cycle to date had been drugs, crime and prison and that he had not engaged in any effort to break this cycle and if he is to reduce his risk of re-offending and harm he needs to do this.
31. In the view of this Court, the trial judge was clearly alive to the totality issue. He looked at it from the point of view that every sentence imposed must be proportionate. He said a reduction was "appropriate on the issue of totality and furthermore that a reduction is necessary for the purpose of incentivising rehabilitation."
32. The sentencing judge questioned whether there was genuine intention to rehabilitate, but to incentivise the appellant, he reduced the sentence from 17 years to 14 years.
33. This Court accepts that the sentencing judge did not err in the reduction of the sentence to 14 years but the Court is of the view that the issue of rehabilitation, including the possible part suspension of the sentence, required further consideration by the trial judge. In this particular case, the Probation Officer had identified the life cycle of the appellant as

being one of drugs, crime and prison. The Probation Officer had explicitly said that he “manages very well in the structured environment of prison but his life disintegrates into chaos on his release due to drugs and criminality”.

34. This Court is of the view that rehabilitation, which of course has the aim of ensuring that a person turns away from crime, plays an important role in the protection of the public. It is because of this, that the Court believes in this case, the appellant having served a long sentence, the true aim of rehabilitation will be best served by a part suspension if there is to be hope that his life cycle of drugs, crime and prison is to be finally broken.
35. The Court will therefore suspend one year of the sentence for a period of 2 years on condition that: -
 - a) He keep the peace and be of good behaviour;
 - b) he will be under the supervision of the Probation Service for a period of 3 years;
 - c) he will obey all their directions including attendance at any course or counselling as advised;
 - d) he will advise them as to any change in his relevant circumstances.