



**THE COURT OF APPEAL**

**[256/17]**

**The President  
McCarthy J  
Kennedy J.**

**BETWEEN**

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

**RESPONDENT**

**AND**

**DENIS O'SULLIVAN**

**APPELLANT**

**JUDGMENT (Ex tempore) of the Court delivered on the 22nd July 2019 by Birmingham P.**

1. This is an appeal against severity of sentence. The sentence under appeal is one that was imposed in Cork Circuit Criminal Court on 23rd November 2017. The sentence was one of 11 and a half years imprisonment with the final two years of the sentence suspended that was imposed in respect of an offence of assault causing serious harm, that is to say an offence contrary to s. 4 of the Non-Fatal Offences against the Person Act.
2. The offence that the Court was dealing with occurred at Anderson Quay in Cork City Centre on 24th November 2016. The victim of the assault, a Somali national aged 45 years, who had come to Ireland seeking asylum, and the appellant were both users of Cork's homeless services. The injured party saw the appellant physically fighting with a woman. The injured party sought to intervene, a fight ensued and the appellant produced a knife that he was carrying and stabbed the injured party in the left eye. The sentencing Judge viewed the knife involved and described it as being "like a dagger". As a result of being stabbed, the injured party has lost all sight in the eye. At the time of the sentencing hearing, it remained in situ, but there was a possibility that it might need to be removed in the future. In interview, the appellant said that the injured party had a broken bottle. Gardaí did not accept this was the case, though it is to be noted, and this is a point on which the defence places some reliance, that the appellant had a nick on his chin when taken into custody. When he was first confronted by Gardaí, some half an hour or so after the incident, he commented that the injured party had hit him so he stabbed him in the face. He referred to the injured party in terms that were very unattractive, and indeed are offensive. The appellant says that the Judge was wrong to simply row in behind the Garda assessment that there was no knife, and to say that there was no evidence of a knife, and to say that the assault was, accordingly, an unprovoked one and to identify this as an aggravating factor. It is said that the presence of the nick on the chin indicated that

this was an incident involving some element of heat and that it was not proper to regard it as wholly unprovoked.

3. In terms of the appellant's background and personal circumstances, he was born on 15th February 1990. He has 21 previous convictions recorded. These relate to a number of different types of offences, but all but one of them were dealt with summarily. The one non-summary offence was an offence of attempted robbery which was dealt with in the Circuit Court. It was the attempted robbery of a taxi driver and saw a knife being held to the throat of the taxi driver and the driver suffering a small cut in the incident. For this, the appellant was sentenced to 18 months imprisonment on 27th July 2015, the offence having been committed in March 2015. The Court heard that the appellant had a very difficult upbringing, in the course of his upbringing, he had not been cared for by his parents. At the time that he appeared before the Court, the Judge accepted that he was a heroin addict. The investigating Garda accepted that he had been addicted in the past, but was doubtful as to whether that was the present status, but it is clear that he was experiencing difficulties in that regard and that was evidenced by the fact that he received methadone while in custody following his arrest in relation to this offence. At the time, he was living in hostels.
4. The approach of the trial Judge was to identify the guilty plea as a valuable one. One reason for that was that the witnesses to the assault were drawn mainly from amongst Cork's homeless community and there was a certain reluctance on their part to become involved in a Garda investigation or in a subsequent Court case.
5. In the course of the appeal, the case is made that the headline sentence of 11 and a half years was too severe. The Judge is then criticised for addressing mitigation only by way of suspended sentence. It is said that an actual reduction in sentence would have been more appropriate, and that in any event, the reduction of two years by way of suspension, which was all that was provided for, was not adequate to meet the mitigating factors present.
6. The Court cannot agree that 11 and a half years was an excessive headline sentence for a stabbing to the eye by an individual carrying a knife which resulted in the loss of all sight in the eye. The Judge might, it is true, have identified a somewhat lesser sentence, but for a case this serious, the headline sentence actually identified fell within the available range.
7. So far as the factors available by way of mitigation are concerned, the response could not be described by any means as generous. The Court was properly conscious of the fact that it was dealing with someone with a previous conviction involving a knife produced during the course of an attempted robbery. That was certainly not to the credit of the appellant. However, what was to his credit was the plea and it will be recalled that the Judge identified this as a valuable plea. Also relevant were the difficult personal circumstances of the appellant and his difficult upbringing, but all those matters were met only by a suspension of two years of the sentence. The Court does not regard that as an

adequate response. It is the Court's view that a greater recognition was required and that the absence of such amounts to an error.

8. The Court will, accordingly, quash the sentence imposed in the Circuit Court and proceed to resentence. In the ordinary way, we proceed to resentence as of today's date. It sometimes happens in this Court that persons who are being resented, whether on foot of appeals against severity of sentence or arising from an undue leniency review, are able to put before the Court evidence of a productive period spent in custody, giving rise to some grounds or hope that rehabilitation is underway. The appellant is not in that position. The Governor's report is not positive, indeed aspects of it are quite disconcerting.
9. In the circumstances, we will limit our intervention to increasing the period of the suspended element of the sentence from two years to three years, otherwise the sentence in the Circuit Court will remain in place. The terms of the suspension will be as in the Circuit Court. [The sentence will be backdated to 26th January 2017] (this followed discussion with counsel)