



**THE COURT OF APPEAL**

**243/2019**

**Birmingham P.  
McCarthy J.  
Ní Raifeartaigh J.**

**BETWEEN**

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

**APPLICANT**

**AND**

**STEPHEN CONNOR**

**RESPONDENT**

**JUDGMENT of the Court delivered on the 28th day of September, 2020 by Ms. Justice Ní Raifeartaigh**  
**Introduction**

1. This is an application by the DPP pursuant to s. 2 of the Criminal Justice Act 1993, seeking to review a sentence of two and a half years imprisonment, suspended in its entirety, on the grounds of undue leniency.
2. The respondent pleaded guilty in July 2019 to the following offences: (i) assault causing harm contrary to s. 3 of the Non-Fatal Offences Against the Person Act 1997 (“NFOAPA 1997”); (ii) false imprisonment contrary to s. 15 of the same Act; and (iii) production of a knife in the course of a dispute contrary to s. 11 of the Firearms and Offensive Weapons Act 1997. The pleas were entered on a “full facts” basis and a further count of threat to kill or cause serious harm contrary to s. 5 of the NFOAPA 1997 was taken into consideration.

**Factual Background**

3. On 5th May, 2018, Garda Cahalin attended at a house at Letterkenny, Co. Donegal where he met the injured party, Bríd Pierce. When he arrived at the scene, she was dishevelled and visibly injured with blood pouring down her face, and her house was a mess. There were knives on the floor and she had some blonde hair in a zip-locked bag which she said had been ripped from her head by the respondent. The respondent had been living in her house up until that morning. As Garda Cahalin started to take notes, a call came through from Letterkenny Garda Station that a person had appeared there saying that they had been involved in an assault. He went to the station and met the respondent who was then arrested and detained. He then returned to the home of the injured party and took a detailed statement from her.
4. The injured party explained that she first met the respondent in November 2017 and they were in a romantic relationship until March 2018. From January 2018, the parties lived together; after the relationship ended, they continued to live together in a platonic

landlord/tenant situation. On the morning of 5th May, 2019, the injured party asked the respondent to leave the house and return his key as there had been a disagreement over non-payment of rent and food bills. That evening, at 5.20pm the respondent returned to the house but was told by her that he did not live there anymore. The respondent then forced open the door, pushed her back and came into the kitchen. She had been peeling vegetables and the respondent picked up the knife, said "this is not a knife" and threw it into the sink. He then picked up a serrated bread knife and said "this is a knife". He knocked the knife block on to the floor and began throwing things around the kitchen. The respondent then knocked the mobile phone out of the injured party's hand and pushed her up against the cooker. She reached for the phone but he continued to act in a threatening manner, holding her against the cooker and making stabbing actions to her face and head. The respondent then held her in a corner and began banging her head against a press, holding her head for grip. The injured party said that he cut her face and blood was pouring down her face. She tried to go towards the open door he caught up with her. He then started to punch her in her face with a closed fist until she fell to the ground. The assault came to an end only after the he punched her so hard that he lost his balance and fell over. She managed to get up again and tried to go towards the gate. At that stage, the respondent walked out the driveway past her. The injured party noted that the respondent was very drunk.

5. Gardaí took photographs of the scene and the injured party was taken to hospital where she received stitching to her head.

#### *The investigation*

6. The respondent was interviewed and accepted a lot of the allegations made against him but said that he could not remember a lot of it. He explained that there had been an altercation between himself and the injured party earlier in the day and that he had gone drinking afterwards. He accepted that "as [the injured party] was trying to make her way through the door, I stopped her and I punched her". He also told Gardaí that he had assaulted the injured party by punching her two or three times to the head.
7. In cross-examination of the Garda officer, it was confirmed that the respondent went to the Garda Station within twenty minutes of the attack and that he had not come to the attention of Gardaí since then. It was also confirmed that he was extremely drunk when he arrived at the Garda Station which was one of the reasons why he was not interviewed until the following day. The Garda in question agreed that the respondent had an attitude of cooperation and politeness while in custody and when he was on bail. It was also confirmed that he was keeping in touch regularly to make sure that he was fully in compliance with the conditions of his bail and that he had written a letter in which he set out his remorse and his concern for the injured party.
8. The respondent pleaded guilty to the offences at an early opportunity.

#### *Victim Impact Statement*

9. The injured party completed a victim impact statement in which she described how shocking the attack had been. She wrote about the "euphoria of having escaped" and of

being alive for some time after the attack. The physical injuries healed but her immune system was affected; her weight dropped to under eight stone and she was had to complete numerous courses of antibiotics throughout the year following the attack. She described how the attack had affected her overall trust and how she has been attending counselling. She described having a "terrible fear and state of numb depression" and explained how it feels like her "entire energy is usurped in just existing and preventing her family from worrying should they actually [realise] how deeply this vile attack has affected [her]". She went on to speak about the effects on her family members, including her eldest son who is in the final year of his college degree. She described having an alarm installed at her home and explained how even the most simple household tasks are now a chore, "a cloud of depression and negativity" now being her "constant companion". It is clear from the victim impact report that the attack had a severe and lasting impact upon her.

### **The Respondent's Personal Circumstances**

10. The respondent was born on 17th December, 1976. He is a qualified accountant and had been employed in that area for a number of years but now works in the construction industry as a bricklayer. He is very involved in the care of his elderly father who suffers from dementia. He has an alcohol problem which had become significantly worse around the time of the assault. He has one previous conviction for driving without due consideration for which he was fined on 13th November, 2017.
11. A report by Dr Sarah Culligan, Counselling Psychologist of Forensic Psychological Services, dated 25th October, 2019, provided greater insight into the respondent's background. His family background was very normal until he was ten years old when his younger brother died as a result of a cot death and the family were devastated. He himself became ill with a bowel problem which went undiagnosed for two years and resulted in him being in pain and absent from school. He has one son from a relationship he had in his late teens but has no relationship with the mother or the child. The forensic psychologist noted that he had experienced several significant adverse life events including the death of his baby brother, his health problems as a child, a traumatic incident where he saw his own son almost choke in his home, and his own involvement in a serious road traffic accident which resulted in head injuries and his being in a coma for a number of weeks.
12. The respondent had not previously attended counselling or psychological services. The forensic psychologist's impression was that while the respondent presented as emotionally resilient on the surface he was in fact psychologically vulnerable and prone to emotional collapse at times. The respondent's various relationships and the manner in which alcohol had contributed to problems in those relationships over the years were described. She considered that he has used alcohol as a means of coping with negative emotions and that it was a significant contributing factor in the events. He also reported a sense of shame within his family about the offence and a breakdown in his relationship with one sister who had broken off contact with him as a result of his actions. The respondent informed his current partner of his behaviour and she was shocked and disgusted by it but made a decision to continue the relationship. The forensic psychologist contacted the

respondent's partner and discussed the offending with her and noted that there were no indications of aggression or violence in the relationship.

13. She noted that the respondent did not have a history of outward expression of aggression and anger, but was of the view that he spends a significant amount of energy to suppress angry feelings which are likely to have stemmed from his childhood experiences of bereavement and illness and his adult experiences of relationship breakup, the feeling of a lack of belonging and having low self-esteem. His anger had historically manifested in depression which he coped with through alcohol dependence.
14. The psychologist was of the opinion that he lacked a "comprehensive understanding of the contributing factors to his offending behaviour". She considered that it was imperative that the respondent attend individual therapy, in which the goals would include developing insight into his offending behaviour, developing victim empathy, processing the various adverse experiences he has had in life, developing coping mechanisms and building his self-esteem, and addressing his use of alcohol. It was crucial that he continue to attend AA meetings on a regular basis.
15. The report concluded that if the respondent received a non-custodial sentence it was crucial that he remain in employment, and alternatively that if he received a custodial sentence it would be beneficial for a referral to be made to the Prison Psychology Service or Drugs Counselling in order to provide support for his mental health needs and address his alcohol dependency.

#### *Probation Report*

16. A Probation Service Report was prepared by Ms. Valerie Keogh, dated 17th October, 2019. It noted that the respondent had displayed "some insight into his offending behaviour" and how this may have impacted upon the victim. She said that the respondent acknowledged that he had a problem with alcohol and was willing to engage with an addiction counsellor and attend regular AA meetings. He co-operated during the completion of the community service assessment and the probation officer's view was that he was suitable to undertake a community service order. He was considered to be at low risk of re-offending.

#### **The sentence**

17. The sentencing judge noted the facts of the offence and said that the court had taken into account both the probation report and the psychologist's report. He outlined the aggravating factors as being: (i) the extreme level of violence; (ii) the extent of the injuries inflicted on the victim; (iii) the extended period of time of the attack; and (iv) the production of the knife which caused the victim to fear for her life.
18. The sentencing judge noted the following mitigating factors: (i) the earliest possible plea of guilty and admissions by the accused; (ii) his cooperation with Gardaí during the investigation (which included his presenting himself to the station shortly after the offence); and (iii) that his previous conviction related to matters of a different nature (a single driving offence). The judge also had regard to the otherwise good character of the

respondent, his age, the steps taken to rehabilitate himself, that he had been identified as a low risk of reoffending by the Probation Services, and the fact that he displayed genuine remorse and victim insight. The judge laid some emphasis on the efforts made by the respondent to convey his remorse to the victim by letter, albeit the letter was not received by the victim. The judge also stressed how the respondent “displayed appropriate victim empathy and insight into his criminal behaviour” and that the incident “appears to have been completely out of character and the only explanation for it being his highly intoxicated state on the date in question, not that that excuses it of course” in a context in which the respondent was taking the appropriate steps to address his difficulties with alcohol.

19. The sentencing imposed was arrived at in the following manner. First, in respect of the assault causing harm contrary to s.3 of the Non-Fatal Offences Against the Person Act 1997, the sentencing judge identified a headline sentence of 3 years and 6 months and, in view of mitigating factors, reduced it to 2 years and 6 months. Second, in respect of the offence of false imprisonment contrary to s.15 Non-Fatal Offences against the Person Act 1997 the sentencing judge identified a headline sentence of 2 years and 6 months and then reduced it to a headline sentence of 1 years and 6 months. Finally, in respect of the production of a knife contrary to s.11 of the Firearms and Offensive Weapons Act 1990, the sentencing judge identified a headline sentence of 2 years and 6 months and then reduced it to 1 years and 6 months. The above sentences were wholly suspended for a period of 2 years and 6 months on the conditions that the respondent enter into his own bond of €100 to keep the peace and be of good behaviour for 2 years and 6 months, during that he must abstain completely from alcohol and continue to engage in addiction counselling.

### **Submissions on Appeal**

#### *The appellant's submissions*

20. The DPP submits that the overall sentence imposed by the sentencing judge was unduly lenient in all circumstances. While the identification of a headline sentence of three and a half years for the Section 3 assault was within the sentencing judge’s legitimate range of discretion having placed this offence at the “upper end of the mid-range” before mitigation, the ultimate result of a reduced sentence of two and a half years, fully suspended, constituted a significant departure from the norm for such offending behaviour.
21. The DPP submits that the sentencing judge erred in principle in that he gave too much weight to the mitigating factors that were present and failed to attach appropriate weight to the aggravating factors. It is accepted that there were strong mitigating factors in this case (with an early plea, full admissions, co-operation with the Gardaí, only one previous conviction for a road traffic offence, remorse shown and favourable probation and psychological reports), but she submits that these mitigating factors were not of such value and degree as would justify the imposition of a fully suspended sentence. She submits that the classification of this case as an “exceptional case” is inconsistent with the severity of the charges and evidence, and did not reflect the seriousness of the offences

committed, which the judge described as a “protracted and fairly brutal onslaught.” Counsel drew the Court’s attention to the following authorities; *The People (DPP) v Matthew Kelly* [2019] IECA 11, *The People (DPP) v Andrew Crilly* [2019] IECA 143, *DPP v Gregory McAuley* [2017] IECA 325; and *The People (DPP) v Shane Tobin* [2020] IECA 11.

22. The DPP also submits that sentencing judge failed to incorporate any element of general deterrence in imposing sentence in the instant case and therefore failed to reflect society’s abhorrence of such offending and that the failure to address the principle of general deterrence is an error in principle of itself, particularly in a case of an offence involving an unprovoked and sustained attack in a domestic situation.

*The respondent’s submissions*

23. The respondent submits that the sentence falls within the legitimate range of a sentencing judge’s discretion and could not be considered a substantial or a gross departure from what would be an appropriate sentence in the circumstances.
24. He submits that the sentencing judge gave adequate weight to the authorities relied upon by the applicant and that they from the instant case. It is submitted that (i) *DPP v McGrath, Dolan and Brazil* [2020] IECA 50 has no relevance to the instant case and to the argument being put forward by the Applicant in circumstances where the inappropriateness of the headline sentence itself was at the heart of at least 2 of the 3 cases covered in that judgment; (ii) *The People (DPP) v Matthew Kelly* is distinguishable as the victim there had invoked the protection of the Court and that the flouting of that order was of the utmost seriousness. (iii) *The People (DPP) v Shane Tobin* is distinguished due to the presence of previous relevant convictions; (iv) In *The People (DPP) v Andrew Crilly*, the Respondent contested the matter and was found guilty after a trial, whereas the Respondent entered a very early guilty plea, made full and early admissions and was co-operative with Gardaí; (v) *DPP v Gary O’Mahony*, the Court found the application of the Probation Act was in and of itself a substantial departure from the appropriate sentence and found the sentence unduly lenient. In the instant case, counsel or the respondent submits, there is a significant sentence of imprisonment hanging over the Respondent should he fail to comply with the conditions of the suspension and (vi) *DPP v Gregory McAuley*, It is submitted that it was the imposition of a community service order that was in and of itself a substantial departure from the appropriate sentence and the reason this sentence was unduly lenient.
25. The respondent submits that the sentencing judge did in fact have regard to the principle of general deterrence as a factor in sentencing, stating that “*general deterrence is pursued in all cases through the setting of an appropriate headline sentence*”, and that although the sentencing judge did not reference deterrence in the imposition of this particular sentence, it was clear from his acknowledgment that the victim was exposed to a “protracted and fairly brutal onslaught” that he was fully alive to the need to encourage deterrence generally.

**The Court’s view**

26. This case of so-called "domestic violence" presents some features similar to those in *DPP v. Farnan*, both appeals having been heard by the Court on the same date and in respect of which we are also giving judgment today. The similarity lies in the fact there was, on the one hand, a very serious vicious assault on a woman in her home (here, being the former partner of the offender), but, on the other, a good deal of mitigation; here this included admissions to the Gardai, an early plea of guilty, no relevant previous convictions (only one previous conviction relating to a driving without due consideration) and the taking of considerable steps to address the personal challenges in his life, as detailed above. Thus, the sentencing dilemma presented to the judge of first instance was of a very similar nature to that in *Farnan*.
27. However, as we said in the judgment in *DPP v. Farnan*, offences of this nature may normally expect to attract a sentence with a custodial component, in order to mark society's strong condemnation of such behaviour and send out a clear message of general deterrence; and it would only be in exceptional cases that the mitigation might be such as to warrant a fully suspended sentence. Was this an exceptional case warranting a wholly suspended sentence? A notable feature of the attack upon the injured party in the present case was that the respondent used a knife to threaten her in the course of the protracted and very brutal assault. It is also the case that he pleaded guilty to three very serious offences; s.3 assault (unlike *DPP v. Farnan* where the plea was to a s.2 assault), false imprisonment and production of a knife. Also, while there is no doubt that the respondent had undergone a number of traumatic events in his life and had taken important steps on the road to dealing with those prior to sentence, the Court does not consider that the level of mitigation provided by his efforts at rehabilitation reached a level of exceptionality that would warrant fully suspending the sentence as it did in *Farnan*. The case appears to the Court to lie closer on the spectrum to *DPP v. Kelly*, where the sentence was custodial, despite the presence of significant mitigation factors. While it is true that the victim in *Kelly* had obtained a court order for her protection and that the offender's commission of the offence was aggravated by his flouting of that order, the present case involved the production of a knife as well as a false imprisonment aspect to the incident.
28. Accordingly, the Court is persuaded that there was an error in principle insofar as the sentencing judge placed too much weight on the mitigating factors leading him to fully suspend the sentence and that the sentence crossed the border from lenient to 'unduly lenient'.
29. The Court will therefore proceed to re-sentence the respondent. In the first instance, it considers that a more appropriate sentence would have been a fully custodial two-and-a-half year sentence and that this would have been the sentence which should have been imposed at first instance. However, it is the Court's practice to exercise extra clemency where a person's sentence is converted from a wholly suspended sentence to a custodial one on appeal, and where he or she must go into prison for the first time following the appeal (in this case, some significant period of time after the original sentence). Accordingly, in all the circumstances, the Court will impose a sentence of two-and-a-half years imprisonment, with the final year suspended.