



THE COURT OF APPEAL

Record Number: 208CJA/20

**The President.
Edwards J.
Kennedy J.**

IN THE MATTER OF SECTION 2 OF THE CRIMINAL JUSTICE ACT 1993

BETWEEN/

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

- AND -

**STEPHEN ENNIS
RESPONDENT**

JUDGMENT of the Court delivered (*ex tempore*) on the 24th day of May 2022 by Ms. Justice Isobel Kennedy.

1. This is an application pursuant to section 2 of the Criminal Justice Act, 1993 for a review of the sentence imposed on the respondent herein. On the 30 September 2020 the respondent pleaded guilty to assault of a person providing medical service in a hospital contrary to section 19 (1) (a) of the Criminal Justice (Public Order) Act, 1994, as amended. A sentence of one year imprisonment was imposed and backdated to the 7 March 2020.

Factual background

2. The facts can be summarised as follows. On the 7 March 2020, the respondent was found collapsed outside Pearse Street Garda Station, having suffered a potential seizure due to consumption of heroin and benzodiazepines. He was assisted by passers-by and the Gardaí who called for medical assistance and he was then taken to the Accident and Emergency Department of Saint James's Hospital.

3. The respondent was observed shortly thereafter behaving erratically. When attended to by the injured party, Doctor Lakhani, Mr Ennis grabbed the doctor's medical notes and indicated that it was his belief that people were going to kill him. Security personnel were called to move the respondent to another area where he calmed down and the doctor then proceeded to take bloods from him. In so doing, the doctor placed a butterfly needle into the respondent's wrist, however, as the doctor proceeded to get a bottle to collect the bloods, Mr Ennis removed the butterfly needle from his hand and charged at the doctor whilst holding the needle over his head. The doctor called for help and a struggle ensued until both the injured party and the respondent fell to the ground.
4. Doctor Lakhani was assisted by colleagues, and it was only then that he became aware that he had been pierced by the needle a number of times during the course of the attack; it transpired that he was stabbed a total of three times with three resulting puncture wounds to the back, one in the shoulder area and two on his lower back. He also suffered bruising to the ribs and elbow area and was referred to occupational health for a subsequent follow-up.
5. Gardaí attended at the hospital and arrested the respondent. He was taken to Pearse St, Garda Station where he was found unfit to be interviewed. When he was interviewed, he made a number of admissions to Gardaí regarding the incident where he accepted that the incident had occurred but that he had no memory of it. He seemed to believe that the injured party was a female. The respondent indicated to the Gardaí that he had a heroin addiction and that he only used clean needles so that he did not have any transmittable diseases, but he accepted that the injured party would not have known that. He later agreed to give a sample of his blood so that any potential for transmission of a disease could be eliminated.
6. At the time of sentence, the respondent had 72 previous convictions, including a conviction for violent disorder, three convictions for possession of knives, two convictions for offences of criminal damage, one conviction for attempted theft, four convictions for theft, three convictions contrary to section 15 of the Misuse of Drugs Act, six convictions for possession of drugs, and a number of previous convictions under the Public Order Act.
7. A victim impact statement was furnished to the court and it is clear that this offence has had serious consequences for the victim. In his impact statement he expresses his excitement when he started his position as an Emergency Registrar in Saint James's Hospital in January 2020. Notwithstanding the resilience he developed when working in that department, he found it very hard to concentrate in the aftermath of the offence and was prescribed short term medication to assist him. He was due to sit a very important interview within days of the incident and although he had prepared very well for the interview, he was unable to give it his best. He says the incident was life changing for him and for his family and the fear and anxiety of such a re-occurrence caused him to give up his lifelong dream of pursuing a career in emergency medicine.
8. In mitigation, the court was informed that Mr Ennis has had drug issues since 2013 but that whilst on remand for the within offences, it was said that he was drug-free for a

period of eight months prior to the date of sentence. He also provided a letter expressing his remorse and accepting responsibility for his actions despite failing to have any recollection of the incident. A plea of guilty was entered.

Remarks of the sentencing judge

9. The judge imposed a sentence of one year imprisonment backdated to the date of the commission of the offence. In so sentencing he said as follows: –

“On the particular date, it seems this man had taken some drugs, caused him to seize and he had a seizure. It seems he was lying on the ground outside Pearse Street Garda Station and contacted an ambulance and he was brought to hospital. He turned up in James's Hospital and the staff, nurses and doctors, attempted to treat him. It seems he was somewhat obstreperous. Eventually the doctor convinced him to have some blood taken to test, and it seems when the needle was in his hand, it seems he became violent. He attacked a doctor, grappled with the doctor, knocked the doctor to the ground and stuck the needle in his back on three occasions.

Now, thankfully apart from apprehension, it seems the doctor has made a good recovery. Now, where's the culpability here? The culpability, I do accept that this defendant has no memory of what occurred. It seems he had taken drugs which caused him to be in the condition that he was, and it seems he behaved violently. He is responsible for his own behaviour on the basis that if he hadn't rendered himself insensible, he wouldn't have attacked the doctor.

Now, obviously there's some degree I must take into account that he probably didn't intend to do it, he has no memory of doing it. It seems he does regret his actions, and he's apologised. He has pleaded guilty at a very early stage. I think he did co-operate with the Garda investigation and it seems he made admissions of what occurred that night.”

Grounds of review

10. Whilst the applicant sets forth nine grounds, the primary ground being pursued by the Director is that insufficient weight was given to the aggravating factors, in particular, that the offence was perpetrated on an individual providing medical services and had a severe impact on the victim. Moreover, it is said that the sentence does not properly reflect the principles of deterrence and retribution and that the judge attached undue weight to the mitigating factors.

Submissions of the applicant

11. It is said that the sentence imposed did not properly reflect the serious factual background to the offence. In particular, it is argued that the gravity of the offence is informed by the fact that this was a doctor who was assaulted in the course of providing a public service in the Accident and Emergency Department of a hospital, the level of violence and injuries inflicted, that the respondent pulled the needle from his arm and chased after the injured party with the needle over his head and that the impact on the injured party was severe.

12. Reliance is placed on O'Malley on *Sentencing Law and Practice* (3rd ed.) at p. 215 as follows: –

“Assaults committed against members of the police, prison staff, firefighters, medical staff in accident and emergency units and others providing essential public services are usually treated very seriously. As well as inflicting personal injury, assault of this nature may render victims incapable of performing their duties and coming to the aid of people who urgently need their services. They may also have the effect of dissuading others from embarking on careers as front-line service providers”

13. Moreover, it is said that the judge assigned undue weight to the proposition that the respondent “probably did not intend” to commit the within act and had no memory thereof.
14. The applicant refers to the decision of this Court in *The People (DPP) v Corbett* [2015] IECA 174, where a sentence of three years’ imprisonment was imposed with the final year suspended following a plea of guilty to assault causing harm, where the assault occurred in an A&E department in respect of a nurse who was assisting the appellant and where the assault caused spinal and neck injury which impacted on her domestic and working life. In delivering the judgment of the Court, Edwards J found that “the case would have attracted a headline sentence of four years on the scale of seriousness before application of mitigating factors”. It must be borne in mind that this was an offence contrary to section 3 of the Non-Fatal Offences Against the Person Act 1997 where the maximum sentence is one of five years’ imprisonment.

Submissions of the respondent

15. It is submitted on behalf of the respondent that the learned trial judge had due regard to the aggravating factors. It is submitted that there was ample mitigation in the case before the court that permitted the judge to impose a 12-month sentence of imprisonment upon the respondent, and that this sentence of imprisonment was not so light that it should be increased by this Court on review.
16. The respondent points to the guilty plea, the absence of previous convictions for violence, (although, we observe, as did the sentencing judge that he has a previous conviction for violent disorder.) It is said that his absence of memory was a factor that significantly reduced the moral culpability of the offender in this case.
17. It is submitted on behalf of the respondent that the Director has not discharged the onerous burden in the instant case, that the sentence imposed departed substantially from the norm, and that the sentencing judge adequately justified his decision to impose a sentence of 12 months.

Discussion and Decision

18. The jurisprudence relating to undue leniency appeals is well settled. This Court will not intervene in the sentence imposed unless it is satisfied that the sentence constitutes a substantial departure from the appropriate sentence; the question for this Court is whether this sentence constitutes a substantial departure from the norm. Whilst no headline sentence was nominated by the sentencing judge, this Court has often indicated that such will not necessarily be fatal to the impugned sentence.
19. As already indicated, it is the view of this Court that the sentence of one year imprisonment marks a substantial departure from the appropriate sentence. This is, in our view, a serious case with serious consequences for the victim in question. Moreover, assaults committed against frontline providers must be censured, the Oireachtas has legislated for a greater maximum sentence for assaults committed in these kinds of circumstances than for assaults committed in other circumstances. A maximum sentence of seven years may be imposed.
20. This offence has many aggravating factors, including that the respondent charged at the injured party having pulled the butterfly needle from his wrist, held it over his head and, in effect, chased him down the corridor where both the injured party and the respondent were then bundled to the ground. This was a very frightening experience for the doctor who was simply trying to assist a person who needed medical care. Moreover, it is clear that the doctor sustained injuries, those injuries being three puncture wounds to the body. The impact on the victim has already been set out above and it is apparent that the offence in question had a profound impact on him and did in fact render him incapable of pursuing his long sought-after career. There is also a necessity for general deterrence in the context of such offending due to the impact this kind of behaviour can have on others who may also wish to pursue a career as a frontline worker.
21. Insofar as it is said that the fact that he did not recall committing the offence brings the offence into the lower range for this type of offending, we observe that this offence is a crime of basic intent and therefore self-induced intoxication does not provide a defence. It may be said that if he committed the offence whilst not intoxicated and with full and clear knowledge of his actions, such would increase his moral culpability and thus the gravity of the offending. It remains, in our view an intrinsically serious offence.
22. Whilst the judge did not nominate a headline sentence, we are satisfied that the sentence which was ultimately imposed was unduly lenient. We therefore quash the sentence and proceed to resentence the respondent as of today's date.

Re-Sentence

23. Whilst this Court ordered a Probation and Welfare Service report, such was not available as of the incident date. We take into account the plea in mitigation proffered in the court below. The respondent made admissions to the Gardaí following the incident and followed such admissions with a plea of guilty for which he must be given credit. He is a man with a deep-seated drug addiction, although we have been informed as of today's date that he is now addressing his addiction difficulties and has not resumed diamorphine use and has

reduced his methadone intake. At the time of sentence, he was 30 years of age, he is a man with 72 previous convictions, he has two children and he has worked sporadically from time to time. He also furnished a letter expressing his remorse to the court and we have had sight of that. He is anxious to rehabilitate himself.

24. Insofar as his present circumstances are concerned, he has been in custody since the 14 April 2022 in respect of charges which we understand will be addressed before the District Court.

Decision

25. In light of the aggravating factors, we consider the appropriate headline sentence to be one of four years' imprisonment. In light of the mitigating factors, in particular his plea of guilty, we will reduce the headline sentence to one of three years' imprisonment. It must also be noted that the respondent has 72 previous convictions which leads to a progressive loss of mitigation. As the respondent is attempting to address his deep-seated addiction, and in order to incentivise his potential rehabilitation, we suspend the final six months of that sentence for a period of one year on the usual mandatory conditions and on the condition that he follow all directions of The Probation Service. We give credit for time served and backdate the sentence to the 12 May 2022.