



**THE COURT OF APPEAL**

**Court of Appeal Record No: 215CJA-218CJA/20 & 221CJA/20**

**McCarthy J  
Kennedy J  
Ní Raifeartaigh J**

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

**BETWEEN/**

**THE DIRECTOR OF PUBLIC PROSECUTIONS**

**PROSECUTOR/APPLICANT**

**-AND-**

**MICHAEL MCGAULEY**

**ACCUSED/RESPONDENT**

**JUDGMENT of the Court delivered by Mr Justice McCarthy on the 7th day of February 2022**

**Introduction.**

1. This is an application pursuant to section 2 of the Criminal Justice Act 1993 for a review on grounds of undue leniency of sentences imposed on five Bills of Indictment (Nos: MNDP0017/2018, MNDP0030/2018, MNDP0029/2019, MNDP0030/2019, MNDP0039/2019) which were dealt together by the Monaghan Circuit Criminal Court on the 14th of October 2020. All were charges of theft contrary to section 4 of the Criminal Justice (Theft and Fraud Offences) Act 2001 which carries a maximum sentence of ten years and of deception contrary to section 6 of the same Act which carries a maximum sentence of five years. The respondent was sentenced to a period of three years and nine months imprisonment in respect of 16 deception offences on Bill Nos: MNDP0017/2018, MNDP0030/2018, MNDP0030/2019, with nine months suspended; three years imprisonment in respect of five theft offences on Bill No: MNDP0029/2019; and 18 months imprisonment in respect of two theft offences on Bill No: MNDP0039/2019. All sentences were to run concurrently. The trial court was expressly told that the respondent was in custody prior to the grant of bail on these charges, and these alone, for a period of five weeks on remand between December

2018 and January 2019 in relation to Bill No: MNDP0030/2019. All sentences were to run from the 21st of January 2020.

**Bill No: MNDP0017/2018**

2. The counts to which the respondent pleaded guilty (enumerated in accordance with the indictment and setting out the penalty) are as follows: -
  - (1) Michael McGauley did on the 23rd day of March 2017 in the State dishonestly by deception induce another, one Gabriel Hand, to do an act, to wit hand over cash in the amount of €1,200 (one thousand two hundred Euro) with the intention of making a gain for himself or another. **[Sentence of 3 years And 9 months, with the final 9 months suspended – backdated to the 21st of January 2020]**
  - (2) Michael McGauley did on a date unknown between the 1st day of December 2016 and the 8th day of April 2017, both dates inclusive, on diverse dates by deception induce another, one Gabriel Hand, to do an act, to wit hand over cash in varying amount totaling €16,000 (sixteen thousand Euro) with the intention of making a gain for himself or another. **[Sentence of 3 years And 9 months, with the final 9 months suspended – backdated to the 21st of January 2020]**
  - (4) Michael McGauley did on the 9th day of March 2017 in the County of Monaghan dishonestly by deception induce another, one Gabriel Hand, to do an act, to wit hand over cash in the amount of €2,500 (two thousand five hundred Euro) with the intention of making a gain for himself or another. **[Sentence of 3 years And 9 months, with the final 9 months suspended – backdated to the 21st of January 2020]**
3. As appears from the foregoing the offences were committed between the 1st of December 2016 and the 8th of April 2017. There was one victim in this case, one Gabriel Hand, a gardener and factory worker, to whom the respondent made a number of representations concerning the provision of gardening equipment (including a ride-on lawnmower) and other tools. The respondent falsely represented that these goods were part of a liquidation stock consignment and that he would have to buy the entire consignment in order to obtain the lawnmower. Over the period of the respondent's deceptions, he extracted more and more money from Mr Hand, and whenever he was questioned, he continued to provide a tapestry of lies; at one point he threatened Mr Hand when he made a complaint to the guards, telling him that he should not bother with the law and would never see his money if he did not withdraw his complaint. In total this scheme cost Mr Hand €16,000 and involved emptying his bank accounts, selling his van, downsizing his car, taking out several loans and obtaining money from family and friends. Mr Hand was described as a man who worked extremely hard, who lived a modest lifestyle and being of simple tastes.
4. Count 2 referred to the total obtained of €16,000. This was made up of the sums particularised in the other counts which pertained to individual transactions.

**Bill No: MNDP0030/2018**

5. The respondent was charged with nineteen counts of making a gain or causing a loss by deception contrary to section 6 of the Criminal Justice (Theft and Fraud Offences) Act 2001, and pleaded guilty to counts 2, 4, 8, 13 and 17 on a so-called full facts' basis; that is on the basis that all elements of the respondent's conduct could be given in evidence regardless of whether or not a plea had been entered to the relevant offence. The five counts to which the respondent pleaded guilty (enumerated in accordance with the indictment and setting out the penalty) are as follows: -

- (2) Michael McGauley did on the 9th day of June 2017 at Swords in the County of Dublin dishonestly by deception induce another, one Aileen O'Donovan, to do an act, to wit hand over cash in the amount of €950 (nine hundred and fifty Euro) with the intention of making a gain for himself and causing a loss to another, one Aileen O'Donovan. **[Sentence of 3 years And 9 months, with the final 9 months suspended – backdated to the 21st of January 2020]**
- (4) Michael McGauley did on the 12th day of May 2017, on an occasion other than that specified in Count No. 3 above, at Balbriggan in the County of Dublin dishonestly by deception induce another, one Aileen O'Donovan, to do an act, to wit hand over cash in the amount of €750 (seven hundred and fifty Euro) with the intention of making a gain for himself and causing a loss to another, one Aileen O'Donovan. **[Sentence of 3 years And 9 months, with the final 9 months suspended – backdated to the 21st of January 2020]**
- (8) Michael McGauley did on the 3rd day of June 2017 at Swords in the County of Dublin dishonestly by deception induce another, one Aileen O'Donovan, to do an act, to wit lodge €30 (thirty Euro) to a Boyles Sports Account with the intention of making a gain for himself and causing a loss to another, one Aileen O'Donovan. **[Sentence of 3 years And 9 months, with the final 9 months suspended – backdated to the 21st of January 2020]**
- (13) Michael McGauley did on the 11th day of June 2017 at Swords in the County of Dublin dishonestly by deception induce another, one Aileen O'Donovan, to do an act, to wit lodge €100 (one hundred Euro) to a Boyles Sports Account with the intention of making a gain for himself and causing a loss to another, one Aileen O'Donovan. **[Sentence of 3 years And 9 months, with the final 9 months suspended – backdated to the 21st of January 2020]**
- (17) Michael McGauley did on the 20th day of June 2017 at Swords in the County of Dublin dishonestly by deception induce another, one Aileen O'Donovan, to do an act, to wit lodge €190 (one hundred and ninety Euro) to a Paddy Powers Sports Account with the intention of making a gain for himself and causing a loss to another, one Aileen O'Donovan. **[Sentence of 3 years and 9 months, with the final 9 months suspended – backdated to the 21st of January 2020]**

6. The second of these bills related to events that took place between May and July of 2017. There was one victim herein, one Aileen O'Donovan. The respondent and Ms O'Donovan met by chance on a night out in Swords, County Dublin, in a pub. They communicated on Facebook thereafter, and later by telephone, in the course of which the respondent made claims of working in a firm in Northern Ireland which specialised in solar power and he had access to a number of Apple products in the course of his work, for sale at cheaper rates than normal. He proposed to Ms O'Donovan that he would make such products available to her – but only if she bought in bulk. From this point, the respondent managed to procure a number of in person payments from the injured party as well as inducing her to make a number of lodgements into his betting accounts with Paddy Power and Boylesports. In total Ms O'Donovan suffered a loss of €9,800. The financial circumstances in which she found herself gave rise to an incapacity to pay her mortgage for six months and the necessity to sell her car; she had also borrowed from family and friends. Ms O'Donovan outlined in her victim impact statement how all this had otherwise taken its toll including a six-month period of temporary hair loss and having to take voluntary redundancy with her employer to help repay her debts.

**Bill No: MNDP0029/2019**

7. The respondent was charged with eight counts of theft contrary to section 4 of the Criminal Justice (Theft and Fraud Offences) Act 2001, to which the respondent pleaded guilty to counts 1, 2, 4, 7, and 8, on a full facts' basis. The five counts to which the respondent pleaded guilty (enumerated in accordance with the indictment and setting out the penalty) are as follows: -
- (1) Michael McGauley did on the 28th day of September 2018 in the County of Monaghan steal property, to wit €2,000 (two thousand Euro), the property of another, one Mark Duffy. **[Sentence of 3 years imprisonment – backdated to 21st January 2020]**
  - (2) Michael McGauley did on the 31st day of October 2018 in the County of Laois steal property, to wit €1,500 (one thousand five hundred Euro), the property of another, one Elaine Burke. **[Sentence of 3 years imprisonment – backdated to 21st January 2020]**
  - (4) Michael McGauley did on the 10th day of October 2018 at Tallaght in the City of Dublin steal property, to wit €1,000 (one thousand Euro), the property of another, Erin Murvey. **[Sentence of 3 years imprisonment – backdated to 21st January 2020]**
  - (7) Michael McGauley did on the 3rd day of October 2018 at Dunboyne in the County of Meath steal property, to wit €500 (five hundred Euro), the property of another, one Elaine Carolan. **[Sentence of 3 years imprisonment – backdated to 21st January 2020]**
  - (8) Michael McGauley did on the 5th day of October 2018 at Dundalk in the County of Louth steal property, to wit €900 (nine hundred Euro), the property of another, one

Valerie McFadden. **[Sentence of 3 years imprisonment – backdated to 21st January 2020]**

8. The offences charged on the third bill involved a number of victims who were induced over a period between September and October 2018 to make various payments to Mr McGauley. The victims were five in total namely: Mark Duffy; Elaine Burke; Erin Murvey; Valerie McFadden; and Elaine Carolan. The respondent obtained employment with a company known as Cosy Installation of which one Mr McQuaid was a director. As such employee he entered agreements with the victims for the provision of insulation for their homes and took deposits; hence the charges of theft. His employment was a mere pretext to obtain money from whosoever he was in a position to prey upon. The matter came to Mr McQuaid's attention when customers began to complain to him that they had not received any benefit. He used his position as a pretext for obtaining bogus deposits, money of which he retained for himself without completing the jobs and this amounted to roughly €7,900 in total.
9. A victim impact statement was obtained from one of the victims, Ms Erin Murvey, a fulltime carer to her mother, who described the elaborate lies spun by the respondent to get her to agree to having her house insulated: -

*"He said he had-only one child, like myself and that in tragic car accident on the child's birthday, he was killed crossing the road by a drunk driver. Our hearts broke for him. He said he went on to foster children since, but his wife was never the same. He said his religious beliefs got him through this tragedy."*
10. Ms Murvey described the toll that the loss of €1000 took on her single income home and how the respondent made matters all the worse *"setting up appointments to meet me in carparks; time and time and time again but never showing up to refund our monies. All the time knowing full well I had to hire a carer to go into my mom in my absence"*. She referred to the fact that the stress suffered by her was *"indescribable"*; the respondent repeatedly promised he would refund her what she had paid, and she described herself as having *"pleaded, screamed, cried and begged for him to return the money"*.
11. In respect of the other victims, it was stated that that Ms Carolan *"complained that a €500 deposit was taken from her by Michael McGauley. Michael never paid this money over to the company, but the company has reimbursed Elaine"*. Furthermore, she described having *"contacted the company to say that Michael McGauley had obtained a deposit of €500 from her for works to be carried out by Cosy Insulation. Michael never paid the deposit over or the purchase order until he was approached. Michael then lodged €700 on the 3rd of December 2018 and the company reimbursed Elaine Carolan the €500"*. Mr Duffy was at a loss of €2000 and €400 was paid back directly by Mr McGauley. Mr Duffy remains at a loss of €1600. In the case of Ms Burke who was at a loss of €1,500, the money was again repaid to her by the company. This was also the case in relation to Ms McFadden, who was at a loss of €900. The company acted to mitigate the reputational damage caused by the appellant and were out of pocket themselves as a result.

**Bill No: MNDP0030/2019**

12. The eight counts to which the respondent pleaded guilty (enumerated in accordance with the indictment and setting out the penalty) are as follows: -

- (1) Michael McGauley did on the 10th day of July 2016 in the State dishonestly by deception induce another, one Thomas Gillen, to do an act, to wit lodge €1,000 (one thousand Euro) into Boylesports Account Number 47836M with the intention of making a gain for himself or another. **[Sentence of 3 years and 9 months, with the final 9 months suspended – backdated to the 21st of January 2020]**
- (24) Michael McGauley did on a date unknown between the 27th day of August 2016 and the 30th day of August 2016 in the State dishonestly by deception induce another, one Thomas Gillen, to do an act, to wit pay you the sum of €2500 (Two Thousand Five Hundred Euro) with the intention of making a gain for himself or another. **[Sentence of 3 years and 9 months, with the final 9 months suspended – backdated to the 21st of January 2020]**
- (25) Michael McGauley did on the 10th day of June 2016 in the State dishonestly by deception induce another, one Joseph Kavanagh, to do an act, to wit lodge €500 (Five Hundred Euro) into Boylesports Account Number 47836M with the intention of making a gain for himself or another. **[Sentence of 3 years and 9 months, with the final 9 months suspended – backdated to the 21st of January 2020]**
- (59) Michael McGauley did on a date unknown between the 1st day of November 2016 and the 30th day of November 2016 in the State dishonestly by deception induce another, one Joseph Kavanagh, to do an act, to wit pay you the sum of €1500 (One Thousand Five Hundred Euro) with the intention of making a gain for himself or another. **[Sentence of 3 years and 9 months, with the final 9 months suspended – backdated to the 21st of January 2020]**
- (60) Michael McGauley did on the 26th day of February 2016 in the State dishonestly by deception induce another, one Raymond O'Brien, to do an act, to wit lodge the sum of €340 (Three Hundred and forty Euro) into Boylesports Account Number 37836M with the intention of making a gain for himself or another. **[Sentence of 3 years and 9 months, with the final 9 months suspended – backdated to the 21st of January 2020]**
- (108) Michael McGauley did on a date unknown between the 1st February 2016 and the 30th March 2016 in the State dishonestly by deception induce another, one Raymond O'Brien, to do an act, to wit hand you the sum of €2000 (Two Thousand Euro) with the intention of making a gain for himself or another. **[Sentence of 3 years and 9 months, with the final 9 months suspended – backdated to the 21st of January 2020]**
- (109) Michael McGauley did on a date unknown between the 26th February 2016 and the 31st March 2016 in the State dishonestly by deception induce another, one Michael

McLoughlin, to do an act, to wit pay the sum of €1300 (One Thousand Three Hundred Euro) to Ray O'Brien with the intention of making a gain for himself or another. **[Sentence of 3 years and 9 months, with the final 9 months suspended – backdated to the 21st of January 2020]**

(111) Michael McGauley did on a date unknown between the 1st March 2016 and the 30th July 2016 in the State dishonestly by deception induce another, one Sean Murphy, to do an act, to wit pay the sum of €13,000 (Thirteen Thousand Euro) to Ray O'Brien with the intention of making a gain for himself or another. **[Sentence of 3 years and 9 months, with the final 9 months suspended – backdated to the 21st of January 2020]**

13. The fourth bill involved a number of victims who were deceived over a period between February and November 2016. They were Thomas Gillen, Joseph Kavanagh, Raymond O'Brien, Michael McLoughlin and Sean Murphy. There was another victim, one Gavin Duffy relating to a sum of €800; however as this was not one of the counts to which the respondent pleaded guilty, it was referred to on a "full facts" basis and taken into consideration. The total sum the subject of charges amounted to €116,000. Some evidence existed tending to suggest that greater sums may have been involved.
14. The respondent crafted a story of wanting to purchase a pallet of liquidation electrical stock in Northern Ireland which included phones. Initially, he used the fact of his mother's funeral and the cost thereof to obtain financial assistance from Mr O'Brien who agreed to get involved in the scheme. He was promised there was a great deal of money to be made and that he would receive three to four times his investment in return. Over time the respondent requested more money and essentially recruited Mr O'Brien not only to provide his own money but to solicit others to invest. Mr O'Brien was entirely innocent in the matter. He believed that he handed over approximately €45,000 to Mr McGauley of which €15,000 was his own and the rest he received from other victims. Mr O'Brien had not received any return on his investment despite numerous requests and false promises that the money would be returned. Mr O'Brien became suspicious and reported this to Gardaí. Mr O'Brien was also instructed by the respondent to place money into Boylesports accounts, which he did at various times.
15. Mr Kavanagh provided what he approximates to €43,300 though some of this came from people he thereafter innocently recruited. The number of victims increased through direct and indirect contact with the respondent. In their victim impact statements there is much detail of the gravity of the consequences of the respondent's deceit. Mr Murphy met with Mr McGauley and he not only took money from his own savings, but he also obtained money from his son, who had a credit union account, and from his wife. Mr Murphy was tricked by Mr McGauley finding him to be to be a "a very believable man". As for Mr Kavanagh, he describes particularly the grievous impact it had on him where he ended up losing his home and marriage: -

*"My wife lost all trust in me and put me out of her home with no money as all my life savings were gone, and with my mental state so damaged I was unable to earn. I*

*found myself homeless and alone. I took shelter in a tool shed with no heating or insulation and this is where I survived for 18 months, with only a cold-water tap and an old sofa to sleep on. I wanted to end my life to stop the pain I was suffering, but I could not go through with it as I've three grown-up children whose lives I would destroy. They live in Australia and I could not even afford to ring them, and I lost all regular contact with them and I was too ashamed to tell them what had happened to me. I was a failure and an embarrassment".*

Further to this, Mr Gillen describes almost losing his business as a result of the matter in his victim impact statement, the material portion thereof which we set out: -

*"... The pressure of trying to get money quickly **[as demanded by the respondent]** was intensely stressful. He also claimed that nobody had more invested in this investment than he had. My financial investment increased to the point that I had no more savings left. He put great pressure on me to come up with more funds or told me I'd end up losing everything I had invested. I urged him to be extremely careful with my investment as I had just built a new house in 2010 with a large mortgage and this was money, I had set aside to finish off work at the house. At the same time, I had set up my own business in 2011 where I work as a sole trader using a large overdraft. I also advised him I had two small children and a wife whom I was financially responsible for and I couldn't afford to lose this money. When my disposable funds started running very low, I was constantly pleading with Mr McGauley to close this deal and let me out of the investment. All I wanted at this stage was to get my investment back and I was not concerned about any interest gained on the investment. When I had depleted my cash stock, my mortgage account and handed over a raised overdraft that I was pressurised into applying for on my business, it was at this time that my health took a turn for the worst. I was experiencing episodes of profound stressful attacks. My heart would be pounding rapidly, and I was not sleeping well. I used to find myself waking up in a pool of sweat in my bed as my body and mind had been stretched to breaking point. It is my opinion that because of these stressful episodes I eventually came to the point of suffering panic attacks and high blood pressure. I went through a period of months where I suffered severe and chronic panic attacks to the point I could not sleep at night, was not able to be indoors for fear of smothering like a form of claustrophobia. ... I have always been the sole provider for my family, but the extreme pressure put on me to constantly come up with more and more funds led me to asking my family and friends to lend me money, something I'd never done before .... In the midst of all this uncontrollable stress I was lucky enough to have a moment of clarity. One day, after looking at my wife and children, my home and my business, I felt that if I didn't get out of this dire situation sooner rather than later, I could risk losing everything.... in the hope of restoring my health and getting help overcoming my panic attacks and uncontrollable stressful responses that was destroying my life. I worked long hard hours in the months that followed to pay back the family and friends I had borrowed from. I have still not cleared off the debt to date. I never want myself*



*or any other individual to go through this experience, the psychological or financial stress/abuse every again."*

Mr McLoughlin's victim impact statement addressed the consequences in the following terms: -

*"I was approached by a friend called Ray O'Brien about a business proposition to invest money.... As I am self-employed and pay my tax at the end of the year the money, I handed over was to pay my tax bill at the end of the year. As it turned out we were conned out of the money. As a result, when my tax bill came in, I had no money to pay it. As a result of this I was threatened with court proceedings. As a result of that I could have lost my job. I also incurred interest charges and penalties for tax unpaid. This left me under severe pressure with tax... and my wife and family. It left me feeling very stupid for trusting somebody. As to the threat of court action kept coming from Revenue, I was starting to get depressed and more often rows in the house got worse as a result of this. I had in the end to borrow money from the credit union to pay Revenue, which left me financially under severe pressure every week to pay the loan. The whole episode has left me that I get very hard to trust anybody including very close family, friends. I will always refuse to lend them money and I always think that people will do the same to me again. The doctor prescribed me antidepressants, but I tried hard not to take them all the time. As time goes on, I still get it very hard to trust people and get very angry with them if they approach me and ask if I can help them out. When they ask for money, the money I had to borrow from the credit union still leaves me very much under pressure every week as when I am paying it"*

Mr O'Brien also provided a short victim impact statement which we quote accordingly: -

*"When all this started there was a lot of money handed over. I was sick. I couldn't sleep. He was selling phones, laptops et cetera, conning all the people. I got all the money from other people, because he cleaned me out. He wanted more promise, a lot of people, five times the money. I had to tell the wife what had happened. I nearly lost my family because of it. Some people I got money off them, he threatened me on one, tried to take the car off me another. Tried to cut me up if I didn't give him money back. I thought he was genuine. I had a lot of stress. We had no holiday since. It's not just me. My friends who put in this should get their money back."*

**Bill No: MNDP0039/2019**

16. The respondent pleaded guilty to counts 2 and 3 on a full facts' basis (enumerated in accordance with the indictment and setting out the penalty) which we set out as follows: -

- (2) Michael McGauley did on the 18th day of February 2018 at AIB Carrickmacross in the County of Monaghan, steal property, to wit €130 (one hundred and thirty Euro), the property of Derek Glynn. **[18 months imprisonment – backdated to 21st January 2020]**

(3) Michael McGauley did on the 29th day of August 2018 at AIB Carrickmacross in the County of Monaghan, steal property, to wit €550 (five hundred and fifty Euro), the property of Fionnuala Trench. **[18 months imprisonment – backdated to 21st January 2020]**

17. The fifth and final bill involved two victims, Derek Glynn, and Fionnuala Trench, who were deceived over a period between the 18th February and 29th of August 2018 involving an approximate sum of €720 of which €170 was acquired from Derek Glynn and €550 from Fionnuala Trench, respectively. These relate to bogus online ticket sales. Mr Glynn was tricked into purchasing tickets online for a Manchester United match and Ms Trench paid him money for tickets to what she believed would be an Electric Picnic festival; both these frauds were perpetrated on Facebook. Ms Trench describes the effect on her in her victim impact statement as follows: -

*"Apart from the financial loss, I find it so shocking how any person could like to the extent Mr McGauley did, especially in the way he so easily and casually pieced together a false story about a suicide in the family as being his reason for selling the tickets."*

#### **Sentencing.**

##### **Mitigating Factors taken into consideration by the judge.**

18. The personal circumstances of the respondent are set out in a probation report (at paragraph 4 on page 6) on the basis of which the judge made the following observations:-

*"He identified gambling as an issue commencing at an early age. The file notes suggest that family were involved in greyhound racing and that the children were permitted to place bets on the Tote. He himself identified a link between his father's problem gambling and his own behaviours. He recalls early memories of placing bets for his father and advised the Probation Service in the past that he, as a 10-year-old, viewed gambling as an easy way to make money. Mr McGauley stated that his father's gambling did not cause any upset in his family home. He identified an escalation in his gambling following the death of his mother in 2016."*

19. Aside from gambling problems, the respondent claimed he had similar drug and alcohol issues which he overcame. Furthermore, he claimed that after he married, he stopped gambling for a period in excess of about eight months. This hiatus abruptly ended however after his wife suffered an ectopic pregnancy and he said she could not thereafter have children. Despite this, it might be noted that they are in *loco parentis* to their niece, who is now aged 15 years and she has been with them for most of her life on a voluntary care arrangement. The respondent's wife lost her job and now works part time. The respondent appeared to be engaging with Gamblers Anonymous from early 2020 – on the evidence though the date is difficult to reconcile with the date of entry into custody.

20. The respondent cooperated with the Gardaí, showed remorse (or at least said he was remorseful) – a course he appears to have adopted in respect of all offences, though such remorse did not inhibit him from committing further offences and instructed counsel that

he intends to attempt to compensate all his victims when he is again working – although there is little reality in this. Minimal amounts were paid to two of the victims (including amounts discharged by a Mr McQuaid) but they are of no real consequence in the greater scheme of things. The respondent had the support of a former employer, a Mr Pat Walsh, who was very sympathetic towards him and will make work available to him on his release, subject to his committing again to have money deducted from his wages for payment of compensation as he did in that employment; Mr Walsh had set up a victims' fund amounting at its height to approximately €3,300 – this was used in compensation of victims of the crimes for which he was incarcerated at the time of sentencing viz. two indictments before Dublin Circuit Court dealt with by Judge Nolan, and to which we will return below. At the point of sentencing for these matters, this fund had dwindled to a few hundred euro. The judge also found that the entry of guilty pleas on all five indictments was "*valuable insofar as it avoided five trials, some of which might have been quite lengthy and complex having regard to the very numerous counts involved and the nature of the offences*".

21. It further appears that the sentencing judge had regard to the prison governor's report and the respondent's enhanced status working as a cleaner in prison and the fact that he is studying and making use of his time in prison without any disruption.

***Aggravating Factors taken into consideration by the judge.***

22. A major aggravating factor was the previous offending of the respondent in respect of like offences. These were outlined in evidence as follows: -

*"On the 24th of September 2004 at Drogheda District Court, drunken driving contrary to section 49(4) of the Road Traffic Act, fined €350, disqualified for one year and an endorsed licence for three years. At Carrickmacross District Court on the 22nd of September 2010, fraudulent use of a tax disc, fine €700, 120 days in default. Carrickmacross District Court on the same date, no road tax, fine €250, 120 days in default. At Drogheda District Court on the 14th of October 2010, driving without a licence, fined €100, 120 days in default. On the same date failure to produce insurance, fined €100, 120 days in default. At Galway Circuit Court No. 2 on the 7th of December 2011, deception contrary to section 6 of the Criminal Justice (Theft and Fraud Offences) Act, imprisonment suspended three months on condition the defendant be of good behaviour for 12 months. On the 19th of June 2015, driving without a licence, fined €100, 180 days in default. On the 19th of June 2015, use vehicle without NCT, fined €100, 180 days in default. 23rd of September 2015, Drogheda District Court, driving without a driving licence, fined €100, 180 days in default. 23/9/15 Carrickmacross District Court, failure to produce driving licence, taken into consideration; driving without a driving licence, taken into consideration; use of vehicle without an NCT, fine €150, 180 days in default; no road tax, fined €500, 180 days in default; failing to display current vehicle licence was taken into consideration. On the 27th of April 2016 at Carrickmacross District Court, learner driver failing to display L plates, fined €100, 120 days in default. On the 17th of June 2016 at Monaghan Circuit Court there was three convictions recorded, each for deception contrary to section 6 of the Criminal Justice (Theft and Fraud Offences) Act*

*2001, and on that date, Judge, he received a sentence of three years imprisonment suspended for three years from the 24th of June 2016. On the 22nd of November 2017 at Carrickmacross District Court, exceed build-up area speed limit, €150 fine, 120 days in default. 14th of March 2018, parking on double-yellow lines, €150 fine, 120 days in default; use vehicle without an NCT, taken into consideration; failure to produce driving licence, taken into consideration; failure to produce insurance, taken into consideration; driving without a licence, taken into consideration; failing to display current vehicle licence, taken into consideration; failure to produce NCT cert, taken into consideration. Same date sorry, failure to produce a driving licence, taken into consideration; non-display of insurance disc, taken into consideration and no insurance, fined €250, 180 days in default, disqualified for two years. On the 6th of February 2019 at Carrickmacross District Court, failure to produce insurance, taken into consideration; no insurance, fined €250, 120 days in default. 3rd of April 2019 Dundalk District Court, non-display of insurance disc, taken into consideration; use vehicle without an NCT cert, taken into consideration; no insurance, fine €75, 180 days in default; failure to produce insurance, taken into consideration. 12th of April 2019 at Dundalk Circuit Court, disqualification for two years, fined €50, 90 days in default. 11th of December 2019, fined €105, 120 days in default for learner driver failing to display L plates. And on the 25th November 2019 at Dublin Circuit Court, Theft and Fraud Offences, three years imprisonment, 22 months, suspended”.*

23. We might say at this stage that whilst the large number of offences under the Road Traffic Acts do not aggravate the present offences, they in truth, have elements importing of a degree of dishonesty and undermine any view which might be taken as to his good character. A further aggravating factor is the fact that the present offences were committed in breach of a bond to keep the peace and be of good behaviour for a period of three years on foot of a suspended sentence imposed by Monaghan Circuit Court on the 17th of June 2016 in respect of similar offences; a benign view was also taken by Dublin Circuit Court when a sentence of three years was imposed, again for similar offences, 22 months of which was suspended which was to be served from the 24th of November 2019 (which, as aforesaid expired on the day of sentence) – the appellant might be considered very fortunate that such an approach was taken. He was given an unambiguous opportunity for rehabilitation by Judge O’Hagan and, subject to a relatively short period in custody, a further such opportunity by Judge Nolan. At the time of sentence there were pending before the Dundalk Circuit Court (dealt with ultimately at a sitting in Naas) two bills of indictment in respect of a number of similar offences of theft. Subsequently that court sentenced the respondent to consecutive terms of imprisonment on the offences on each bill respectively and we here set out the charges on those indictments by reference to the internal enumeration in them with the sentences imposed thereon as follows: -

**Bill No: LHDP0066/2019**

- (1) Michael McGauley did on the 20th April 2017, at Muckians Service Station, Carrickmacross Road, Dundalk in the County of Louth, dishonestly appropriate property to wit €800 or thereabouts., the property of Ferghal Sheekey without the

consent of the owner thereof and with the intention of depriving the owner thereof.

**[Sentence of 18 months – backdated to the 11th of February 2020]**

**Bill No: LHDP0081/2019**

- (1) Michael McGauley did on a date unknown between the 3rd March 2018, and 19th April 2018, both dates inclusive at Carrickmegaigh, Kells Road, Collon, in the County of Louth, dishonestly appropriate property to wit cash to the value of €1,000 or thereabouts., the property of Patrick Sherlock without the consent of the owner thereof and with the intention of depriving the owner thereof. **[Sentence of 24 months – backdated to the 11th of February 2020]**
  - (2) Michael McGauley did on the 19th day of April 2018, at an unknown location within the County of Louth, did dishonestly by deception induce Patrick Sherlock to do an act to wit hand over to you the sum of €5000 with the intention of making a gain to yourself or a loss to another. **[Taken into consideration]**
  - (3) Michael McGauley did on the 24th day of April 2018, at an unknown location within, the County of Louth, did dishonestly by deception induce Patrick Sherlock to do an act to wit hand over to you the sum of €5000 with the intention of making a gain to yourself or a loss to another. **[Taken into consideration]**
  - (4) Michael McGauley did on a date unknown between the 24th day of April 2018, and 2nd day of May 2018, both dates inclusive at an unknown location within the County of Louth, did dishonestly by deception induce Patrick Sherlock to do an act to wit hand over to you the sum of €3000 with the intention of making a gain to yourself or a loss to another. **[Sentence of 24 months – backdated to the 11th of February 2020]**
  - (6) Michael McGauley did on the 4th day of May 2018, at Collon in the County of Louth, did dishonestly by deception induce Patrick Sherlock to do an act to wit hand over to you the sum of €5000 with the intention of making a gain to yourself or a loss to another. **[Sentence of 24 months – backdated to the 11th of February 2020]**
24. In sentencing for the present matter, the judge acknowledged that the maximum sentence available for the section 6 deception offences is one of only five years' imprisonment and while the section 4 theft offences carry a maximum sentence of 10 years' imprisonment, he took the view that the more serious offences on the evidence were those of causing a loss or making a gain of large sums of money by deception of multiple victims.
25. The judge identified the headline sentence for such offending in the most serious cases of deception on Bill No: MNDP0030/2019 to be five years. In regard to the theft offences, the judge imposed a headline sentence of 4 years in respect of Bill No: MNDP0029/2019 and 2 years in respect of Bill No: MNDP0039/2019, prior to considering mitigating circumstances.
26. Ultimately, the respondent was sentenced to a period of three years and nine months in respect of each of the deception offences on Bill Nos: MNDP0017/2018, MNDP0030/2018,

MNDP0030/2019, nine months whereof was suspended. He was further sentenced in regards to the theft offences to one of three years' imprisonment on Bill No. MNDP0029/2019 and to 18 months' imprisonment on Bill No. MNDP0039/2019

27. The judge further held that all the sentences would run concurrently, backdated to the 21st of January 2020 when he went into custody, having commenced the sentence on the matters before Dublin Circuit Court on 25th of November 2019, about two months earlier. The decision to make the sentences concurrent was largely based on what the sentencing judge considered as the global nature of the offences which he elucidated as follows: -

*"It seems to me that having regard to the fact that all of the offending was of a similar nature and took place over the same period of time, that they would have been appropriately dealt with together were it not for the fact that they spanned the three different jurisdictions, and the offending could be viewed globally as offences committed over a finite period of time, which I've already identified, albeit that they have to be viewed in the context of all having been committed, as I've already adverted to, in breach of a bond entered into to keep the peace and to be of good behaviour when Judge O'Hagan suspended a three-year sentence in I think 2016."*

28. The sentences imposed at Monaghan Circuit Court by Judge Aylmer (again to put the matter shortly) amounted, in time to be served, to 3 years imprisonment from the 21st of January 2020. The sentence imposed by Judge Aylmer consequently commenced during the time when the respondent was serving the other custodial sentences. The respondent was serving a sentence (to put the matter shortly) of 3 years with 22 months suspended, effectively a 14-month sentence from the 25th of November 2019 imposed at Dublin Circuit Court by Judge Nolan. Furthermore, the sentences imposed at Dundalk Circuit Court, sitting in Naas, by Judge Baxter (also to put the matter shortly) amounted, in time to be served, to 3 years and 6 months in total – a sentence of 18 months on Bill No: LHDP0066/2019 and sentence of 24 months on Bill No: LHDP0081/2019, those sentences were to be served consecutively from the 11th of February 2020. The sentences imposed at Naas will expire in August 2023 and those imposed at Monaghan will expire in January 2023 respectively. This means that there is an overlap between them such that no period has been, or will be, served in prison in respect only of the sentences before us now save the short period in custody on remand.

**Grounds of Appeal.**

29. The Director's grounds of appeal are as follows: -

- (2) The sentencing judge fell into error when he stated that it appeared to him that all of the offending was of a similar nature and took place over the same period of time and applied concurrent sentences.**
- (3) The learned sentencing judge failed to give appropriate weight to the effect that the crime had had upon the victims in assessing the gravity of the offences when considering imposing consecutive sentences.**

30. We will deal with them together.
31. Judge Aylmer was expressly told that sentencing on the offences before Judge Baxter was adjourned until after he had imposed sentence on the offences before him. The only sentences on appeal before us are those from Monaghan Circuit Court and accordingly even if it might be said that those imposed at Naas, having regard to the date to which they were backdated and the fact they ran concurrently with the sentences imposed in Monaghan, might arguably have been unduly lenient, they are not before us. This poses a difficulty on resentencing. We think the appropriate approach is to look at the Monaghan offences on a freestanding basis and impose an appropriate penalty in respect of those offences and thereafter to apply the totality principle.
32. We think that the judge was wrong in principle to take the view that the sentences which he imposed should run concurrently and, further, that the so-called global approach to sentencing, as he applied it, was inappropriate; effectively this was because he saw the offences dealt with by Judge O'Hagan and Judge Nolan as offences which would have been dealt with together had the offences occurred in the same jurisdiction (of the Circuit Court). The prosecutor contends that the totality principle applies both ways, so to speak, but we do not find it necessary for the purpose of dealing with this appeal to engage with that issue. The consequence of the approach which the judge adopted was not merely to give rise to a situation where the sentences, in substance, were unduly lenient having regard to the multiplicity of separate offences in respect of which there were numerous victims. A judge may impose a higher sentence than that which might otherwise be appropriate on a single freestanding offence in order to take account of a multiplicity of offences. An alternative is to impose consecutive sentences. The limitations on the sentencing jurisdiction (here, five years as a maximum) is one of the reasons why this might occur, and, as here also, because of the fact that the sentences were in part to run concurrently with sentences either on a bill dealt with earlier (in Dublin) or so far as those imposed in the present case were, *inter se*, to be served concurrently.
33. We accordingly quash the sentences imposed at Monaghan Circuit Court and now proceed to re-sentence. The imposition of a higher sentence than otherwise appropriate for a given offence where there are a multiplicity of offences involving separate transactions so that an appropriate global punishment might be imposed cannot be adopted here. It is appropriate, accordingly to structure the sentence differently and in particular to impose consecutive sentences in respect of at least two counts. It seems to us that strong arguments can be advanced that a number of them were themselves unduly lenient even if no question of a multiplicity of offences arose. The imposition of sentences in respect of multiple offences involving different victims does not involve the mechanical process of choosing the appropriate sentence for each offence and making them consecutive; one must ask oneself how one might achieve a cumulative sentence which is appropriate. In cases such as the present the application of the principle of totality arises in a particularly acute form.
34. In all of the circumstances we think that the best approach is to impose a sentence on each count on Bill No: MNDP0017/2018 of two years imprisonment backdated to the 21st of

January 2020 and then on each count on Bill No: MNDP0030/2019 a sentence of three years and nine months; these sentences will run consecutively to each other giving a total sentence of five years and nine months. The last nine months of the sentences of three years and nine months will be suspended; this is to facilitate the re-introduction of the offender into society on completion of the period of imprisonment. This gives rise to a period of five years to be served in custody as opposed to three years as at present. The structure we have adopted is for the purpose of punishing all of the respondent's wrongdoing and applying the principle of totality. For the sake of clarity, we have structured the sentence by ordering that the first of those to which we have referred is to be backdated to what we might call the original date, being the 21st of January 2020, and again for the same purpose we direct that all sentences imposed herein be served concurrently with those imposed at Naas Circuit Court. We emphasise that the structure which we have adopted should not be seen to downgrade any question of an appropriate punishment in respect of each separate transaction involving different victims or to overlook them in some way as we hope is clear from what we have said. Nor indeed does it undermine our reasons for concluding an error of principle arose, in particular by backdating them as aforesaid.

35. Having regard to the sentences imposed as aforementioned, the suspension of part of the sentences imposed on the counts in Bill No: MNDP0030/2018 becomes irrelevant; we impose sentences of three years on each of the counts therein, namely counts 2, 4, 8, 13 and 17. We impose sentences of three years imprisonment on the offences charged in Bill No: MNDP0029/2019, being counts 1, 2, 4, 7 and 8 and on the offences charged in Bill No: MNDP0039/2019 we impose 18 months imprisonment. As appears from what we have said above, all of these sentences will run from the 21st of January 2020 concurrently *inter se*.