



**THE COURT OF APPEAL**

**Record Number: 148/2021**

**Edwards J.  
Kennedy J.  
Ní Raifeartaigh J.**

**BETWEEN/**

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

**RESPONDENT**

**AND**

**LEE GOODCHILD**

**APPELLANT**

**JUDGMENT of the Court delivered (*ex tempore*) on the 10th day of October 2022 by Ms. Justice Kennedy.**

1. This is an appeal against severity of sentence. On the 16th April 2021, the appellant pleaded guilty to an offence of arson contrary to s. 2(1) and (4) of the Criminal Damage Act 1991. On the 15th July 2021, at Mullingar Circuit Court, the appellant was sentenced to a period of seven and a half years' imprisonment with the final eighteen months suspended for a period of ten years.

**Background**

2. At approximately 2:15am on the 26th August 2019, the resident of a house in Mullingar, County Westmeath rang Mullingar Garda Station to alert the Gardaí that the front door of her house had been set on fire. It transpired that petrol had been used as an accelerant and a rag set on fire and pushed through the letter box of the door. The injured party, the resident of the house, was able to escape the house through the sitting room window but is said to have re-entered the house a number of times while waiting for the arrival of the fire brigade in an effort to extinguish the fire with kettles of water.

3. CCTV footage from a neighbouring house established that the appellant had travelled in a black Toyota Yaris to the injured party's house, alighted from the passenger side of the vehicle and travelled on foot to the property. The appellant is shown approaching the house and then returning to the car after a flash occurs. Further CCTV footage from a petrol station established that at approximately 2:07am the appellant filled a container with petrol. A receipt from the petrol station was also obtained by Gardaí.
4. The house was owned by Westmeath County Council and the estimated cost of the damage to the house was €1,500 to include the replacement of a letter box, cost of labour and repainting the door. Adding this to the cost of the call to the fire brigade the injured party's losses are estimated at €3,000.
5. A victim impact statement was read out in the sentencing court. It details that the injured party is undergoing cognitive behavioural therapy and that she suffers from a panic disorder, agoraphobia and PTSD since the commission of the offence.

#### **Personal circumstances of the appellant**

6. At the time of sentencing the appellant was 29 years of age. He is a man who has suffered from an alcohol and drug addiction which he is addressing within the prison setting.
7. The appellant has 53 previous convictions, most of which have been dealt with in the District Court. Relevant previous convictions include two convictions for criminal damage.
8. The appellant enjoys enhanced prisoner status in Castlerea Prison.

#### **The sentence imposed**

9. The sentencing judge identified a pre-mitigation headline sentence of ten years' imprisonment. This was reduced to a sentence of seven and a half years' in light of the mitigating factors. The final eighteen months of the sentence was suspended on conditions in order to encourage the appellant's rehabilitation.
10. The judge identified the aggravating factors as being; the degree of planning and premeditation involved in the commission of the offence, the knowledge that people were present in the house at the time of the offending and the timing of the offence at a time when people would normally be expected to be asleep, the impact of the offence on the injured party, the failure to recompense and The Probation Report placing the appellant at a high risk of reoffending.
11. In terms of mitigation, the judge took into account the appellant's early guilty plea, his voluntary attendance at the Garda Station, his cooperation and assistance of Gardaí and his efforts towards rehabilitation. A handwritten letter of apology was also taken into account.

#### **Grounds of appeal**

12. The appellant appeals his sentence on the basis that:

“The learned trial judge failed to attach appropriate weight to the mitigating factors, in the case; and applied excess weight to certain aggravating factors. In particular;

1. The headline sentence of 10 years was excessive in all the circumstances.
2. Excessive weight was placed on the fact that the appellant did not pay compensation for the damage.”

However, the appellant focuses on the argument that the judge nominated a headline sentence which was excessive in all the circumstances.

#### **Submissions of the appellant**

13. The appellant submits that this Court must assess the sentence imposed in line with the approach adopted in *The People (DPP) v Loving* [2006] IECCA 28 wherein the Court of Criminal Appeal did not excise the suspended sentence from its consideration of the appropriateness of the sentence imposed.
14. It is submitted that the sentencing judge was incorrect in his identification of a headline sentence of ten years’ imprisonment as in so doing the judge placed the offending at the upper end of the upper scale for offences of this nature. Prof. O’Malley’s *Sentencing Law in Ireland, 3rd edition*, (2016) at page 452 is referenced in this regard. Prof. O’Malley notes that the upper end of the spectrum of gravity includes offending where the offender deliberately sets fire to a residence as an act of revenge, knowing that it is likely that the residence is occupied and knowing that the fire may cause serious injury to the persons concerned.
15. While the appellant acknowledges that the features as identified by Prof. O’Malley appear present in the case herein, it is submitted that the sentencing court failed to take into account all of the mitigating factors including that the appellant had previously resided in the property and had knowledge that there was a fire proof door behind the front door and, further, that he had circled back to the property to ensure that the fire had been extinguished. It is said that these factors serve to reduce the appellant’s culpability.
16. The appellant distinguishes the instant case from the case of *The People (DPP) v Murphy* [2015] IECA 143 in which the Court of Appeal found a sentence imposed for similar offending to be unduly lenient and increased the sentence to one of nine years’ imprisonment with three years suspended. It is submitted that the appellant in *Murphy* was before the court on three separate charges arising on three separate occasions involving different injured parties and unlike the appellant herein, the appellant in *Murphy* was not aware of the layout of the property nor had he circled back to ensure that the fire had been extinguished.
17. The case of *DPP v Rae* (Court of Appeal 2018/1910) is relied on which concerned an appellant who set fire to a family car with a plastic petrol bottle resulting in damage to the front of the family home. The sentencing judge identified a headline sentence of seven years’ imprisonment and reduced this to five years with the final year suspended taking into account mitigation.

18. The case of *DPP v David Keena* (Irish Times, 28th October 2020) is similarly relied on. In this case, the sentencing judge imposed a six and a half year sentence with the final eighteen months suspended on the appellant, who was a minor at the time of the offending, for aiding and abetting an assault and arson attack on the an injured party who was left with life changing injuries.
19. The appellant further submits that the treatment of the appellant's failure to make recompense as an aggravating factor amounts to an error in principle. *The People (DPP) v O'Sullivan* [2020] IECA 331 is referenced as follows "the making of restitution might have provided mitigation and evidence of genuine contrition, but the failure to do so does not aggravate the offence." Further, it is submitted that the court gave no consideration to the circumstances of the appellant in regard to same as the appellant had spent a number of the proceeding months in custody of which the court had knowledge.
20. It is the appellant's position that the damage caused was at the lower end of the scale, that the appellant's previous convictions relate to minor public order offences and that insufficient account was taken of the mitigating factors herein.

#### **Submissions of the respondent**

21. In response to the appellant's contention that the offending herein ought not to have been placed at the upper end of the upper scale for offences of this nature, the respondent submits that the sentencing judge did not fall into error by placing the offending at the upper range and that the determination of the pre-mitigation headline sentence fell within the margin of appreciation and discretion afforded to judges in cases such as these. The case of *The People (DPP) v JMcD* [2021] IECA 1 is relied on in this regard.
22. The respondent accepted that the case of *Murphy* can be distinguished from the instant case but submits in relation to *Keena*, that it is clear that the appellant therein was sentenced for his role in aiding and abetting the co-accused whereas the appellant herein was a principal and was sentenced as such.
23. The respondent further takes no issue with the appellant's reliance on *O'Sullivan supra* but submits that the sentencing judge's identification of the appellant's failure to recompense the injured party as an aggravating factor did not render his determination of the headline sentence of ten years out of kilter with the guidelines offered by this Court.
24. The respondent rejects the appellant's submission that insufficient account was taken of the mitigating factors in terms of the reduction to be applied to the headline sentence. It is pointed out that the judge clearly identified the mitigating factors in his reduction of the headline sentence of ten years by two and a half years to seven and half years and that same equated to a 25% reduction.

#### **Discussion**

25. It cannot be gainsaid that arson is a most serious offence. The Oireachtas has legislated to provide for a range of penalties ranging from a non-custodial option to a maximum penalty of life imprisonment.

26. The within case has many aggravating factors which were properly identified by the sentencing judge. We consider the fact that there was pre-planning on the part of the appellant to be a significantly aggravating factor; this was not an opportunistic offence; it appears that prior to filling the container with petrol, the appellant and another individual had been consuming alcohol and drugs in a public house and hatched the plan in question.
27. This is against the background of some grudge held by the appellant in respect of the injured party. They then proceeded to her house, a rag was soaked in the accelerant and then pushed into the letter box. It cannot be ignored that the incident occurred in the early hours of the morning and concerned a dwelling where it could be expected that the occupant might be sleeping. CCTV footage showed the appellant getting out of a vehicle, walking to the house and shortly thereafter a flash can be seen.
28. The offence has had a considerable and understandable impact on the unfortunate victim who had to jump out the front window when the fire alarm alerted her to the fire. Moreover, the appellant is a man with two relevant convictions for criminal damage simpliciter, although it must be noted that both these matters were dealt with summarily.
29. It is argued by counsel for the appellant that the judge placed the offending at the upper end of the scale for offences of this nature, however, when one considers that the majority of offences where the range is as for this offence, sentence may be imposed on the basis of ranges of 1-5 years, 5-10 years and 10-15 years.
30. In those circumstances, identifying a headline sentence of 10 years imprisonment means that the notional pre mitigation sentence was placed either at the upper end of the mid-range or at the lower end of the upper range. This court is not persuaded that the judge fell into error, when we consider the extent of the aggravating factors and, in particular, that this attack related to a dwelling house together with the other factors identified.
31. A further point made by counsel is that the judge incorrectly identified the failure to pay compensation as an aggravating factor. It is indeed the position that the judge referred to this in his early sentencing remarks but did not refer to the absence of compensation when specifically identifying the aggravating factors. However, while the stage when the remark is made is pointed out by counsel for the Director, we think it is akin somewhat to splitting hairs. The judge clearly said the failure to pay compensation was an aggravating factor, however, it is true to say that if compensation had been forthcoming (and we do not see this as a possibility in the appellant's circumstances), the payment of such would have reduced the harm done to the injured party, but *only* in the sense that her financial loss would have been less. It may well be that the judge was thinking along those lines, but even if he were not, we are of the view that if this comment amounts to an error, it is an error of insufficient moment to justify intervention.
32. As is clear from the foregoing, we are not persuaded that the judge erred in nominating the headline sentence of 10 years, it may be somewhat on the high side, but it is within the judge's margin of appreciation.

33. Insofar as complaint is made that the judge took insufficient account of the mitigating factors, it is apparent that the judge identified the relevant mitigating factors and reduced the headline sentence in consequence to one of 7 ½ years thereof, thus amounting to a 25% reduction from the nominated sentence.
34. In the circumstances, we are satisfied that this was an appropriate reduction and consequently, we dismiss the appeal.