



THE COURT OF APPEAL

Record No: 252/20

**The President
Edwards J.
Ní Raifeartaigh J.**

Between/

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

APPLICANT

V

ALBERT REDMOND

APPELLANT

JUDGMENT of the Court delivered on the 24th day of January, 2022 by Mr Justice Edwards.

Introduction

1. The appellant in this case appeared before Judge Sheahan in the Dublin Circuit Criminal Court for sentence on the 12th of November 2020 following pleas of guilty on Counts 1-20 of burglary contrary to s.12(1)(b) and (3) of the Criminal Justice (Theft and Fraud Offences) Act 2001, Counts 21 and 22 of criminal damage contrary to s. 2(1) of the Criminal Damage Act, 1991 and Counts 23 -30 of theft contrary to s.18 and s.6 of the Criminal Justice (Theft and Fraud Offences) Act 2001.
2. The offences were committed over separate periods of time and were contained in two bills of indictment before the court, Bill 324/20 relating to 1 count of burglary and criminal damage committed on the 27th of October 2019 and Bill 504/20 relating to 30 counts involving burglary, criminal damage and theft committed between the 27th of October 2019 and the 2nd of March 2020. The majority of the offences charged on Bill 504/20 were committed whilst the appellant was on bail for the offence contained in Bill 324/20.
3. The sentences imposed are set out as found in the appellant's submissions:
 - Bill 324/20: 4 years' imprisonment.
 - Bill 504/20:

- o Count 1: 4 years' imprisonment to run consecutively to sentence imposed for bill 324/20.
- o Count 10: 4 years' imprisonment to run consecutively to sentence imposed for bill 324/20.
- o Count 16: 4 ½ years' imprisonment to run consecutively to counts 1 and 10, suspended in full for 4 ½ years.
- o Count 21: 2 years and 8 months to run concurrently to count 1.

The remaining counts were taken into consideration and the sentence was backdated to the 19th of December 2019 in consideration for time spent on in custody while on remand.

4. The appellant now appeals the severity of the sentence imposed.

Factual Background

Bill No 324/2020

5. On the 27th of October 2019 the appellant who was wearing a red jacket is captured on CCTV breaking the glass front door of Coffee 2 Go at 79 Mespil Road, Ballsbridge and entering the premises. During the burglary he is seen breaking a lock on an internal door and ransacking the office and kitchen areas. The total amount of cash taken during the burglary amounted to approximately €2,500. While breaking the front door the appellant injured himself and blood stains were found throughout the premises.
6. The appellant was identified from the CCTV footage and following the obtaining of a search warrant a red jacket and a blood stained check shirt were recovered from his premises. The following day the appellant was located in the Christ Church area of Dublin in a heavily intoxicated state. He was arrested and found to be in possession of €1,225. During interviews with the Gardaí he initially maintained that this money was earned while he was in Mountjoy jail however, on viewing the CCTV footage he subsequently admitted to the burglary at Coffee 2 Go.
7. On the 28th of October 2019 the appellant was remanded in custody until the 7th of January 2020 when the matter was struck out as the Book of Evidence was not ready. The appellant was recharged on the 8th of February 2020, shortly following which he obtained bail.

Bill No 504/2020

8. On the 27th of October 2019 the appellant was captured on CCTV entering the premises of Mount Pleasant Tennis Club after forcing an emergency door and breaking a window to the value of €200. The appellant dressed in a red jacket is seen on the CCTV ransacking the office area. Nothing of substantial value was taken during the burglary. This offence relates to criminal damage to a window and is the subject of Count 21 on Bill 504/20.
9. On the 6th of February 2020 the appellant committed a burglary at the Yamamori Sushi restaurant where CCTV shows him entering the staff room and rummaging through coats

belonging to staff. The appellant admitted that a wallet taken by him was subsequently thrown in the river Liffey.

10. On the 12th of February 2020 the appellant is seen on CCTV entering three offices at 54 Dawson Street (i.e., those of the Dublin Solicitors Bar Association, those of Unique Japan Tours and those of Paulson Management Limited) where he smashed glass panels in order to gain entry to each of the offices. In the office of the Dublin Solicitors Bar Association, medals made by Weir and Son were stolen, as was a small sum of cash (amount unspecified) from the offices of Unique Japan Tours. Nothing was taken from the office of Paulson Management Limited.
11. On the 15th of February 2020 CCTV footage was recovered from the premises of Sunglasses.ie where the appellant took €200 from the cash register.
12. On the 25th of February 2020 CCTV was obtained from the premises of Crowe Street Restaurant where the appellant entered and following his rummaging through staff members belongings he took bank cards and €200 in cash.
13. On the 27th of February 2020 CCTV captures the appellant entering the Terenure Enterprise Centre and after initially speaking with an employee who subsequently leaves the area he is then seen entering her office and taking her credit card. This offence relates to burglary and is the subject of Count 10 on Bill 504/20.
14. The appellant committed another burglary on this day at the residential property at 3 Bloom Court, 47A Clanbrassil Street where, while the occupant was at home he stole a bicycle and €150 in foreign currency. The occupant was not disturbed during the burglary and only noticed the items were missing later. CCTV was recovered. This offence relates to burglary of a residential property and is the subject of Count 16 on Bill 504/20.
15. On the 29th of February the appellant burgled a top floor office at the premises at 42 Dawson Street, however nothing was taken. The appellant also burgled the next door premises of Best Seller Café and took €250 in cash. CCTV was recovered from both of these burglaries.
16. That same day the appellant stole €300 and an AIB debit card from an unattended handbag in Mother Reilly's Pub, Rathmines and proceeded to tap the card when making payments in Eddie Rockets for the sum of €26.30, in Centra for the sum of €29.20 and in Paddy Powers for a combined sum of €30.50.
17. On the 2nd of March 2020 a number of burglaries were committed in Terenure by the appellant at different premises. At Terenure Office Supplies he was disrupted by a member of staff and nothing was taken. In Keep Rite Physio the appellant took envelopes containing receipts. At the Centra Food Store, CCTV footage shows the appellant entering a private office but again nothing of value is taken. At the Lovely Food Company the appellant left after being challenged by a member of staff when she found him in a

private area of the premises. At the CYM sports club a door to the bar area was forced open and an attempt was made to open the cash register.

18. At a residential unit at 7 Terenure Road North the appellant was located in a communal area of the building where he had no permission to be. A resident heard a knocking noise on her door and when she answered it the appellant handed her a letter which he had found in the hallway of the building. Nothing was taken during this burglary. The appellant burgled the Blackbird Bar but was disturbed by staff and so he fled.
19. The appellant also committed a burglary at Peggy Kelly's public house in Harold's Cross and although nothing was taken a window to the value of €300 was smashed as he gained entry.
20. On the same day the appellant committed a burglary at the Five Points Café in Harold's Cross. In this incident he was confronted and detained by an employee of the café who said that the appellant had stolen a wallet. A patrolling garda who was passing stopped when he saw the confrontation and following retrieval of the stolen wallet and a Revolut card he arrested the appellant. This offence relates to burglary and is the subject of Count 1 on Bill 504/20.
21. The appellant was charged and remanded in custody on the 4th of March 2020 in relation to Bill 504/20 and made full admissions to the offences contained therein. He was sent forward on signed pleas which were signed and affirmed in the Circuit Court on the 19th of June 2020.
22. On the 23rd of March 2020 the appellant pleaded guilty to the sole count on Bill 324/20 relating to the burglary at Coffee 2 Go.

Impact on victims

23. The court received the victim impact statement of Graham McDonnell who is the proprietor of the coffee shop Coffee 2 Go, the location of the offences contained in Bill 324/20. He stated that there was a total financial loss of approximately €2,600 when the value of damaged stock, which was taken out of the freezer during the burglary, the unrecovered sum of €1,300 and the €770 cost for repairs for the criminal damage were taken into account.
24. He continued to outline the psychological/psychiatric effect the offence had had on him stating that he no longer felt comfortable when alone on the premises. He found it difficult to work out of hours and at weekends, especially after viewing CCTV showing the appellant taking knives and a large soup blender from the kitchen.
25. In additional information he expressed his disappointment at not being able to continue a practice adopted by him in previous years, that of providing free hot chocolate and coffee to participants of the Dublin Marathon which was to take place the next day.

26. A victim impact statement was also handed into court by a Ms Brennan who is an employee of the Terenure Enterprise Centre and whose credit card was used by the appellant when placing two bets in a Paddy Power shop.

Personal circumstances of the appellant

27. The appellant was born on the 12th of July 1976 and was 44 years of age at the time of sentencing. He has ongoing support from his mother and sister however, his mother will not allow him in her house when he is abusing drugs. His mother also handed a letter into court stating that the appellant is often in considerable pain due to the insertion of a rod into his back following a diagnosis of scoliosis.
28. The appellant has a long history of gambling and drug addiction, progressing from heroin at the earlier stages of his life to crack cocaine in more recent times. The appellant also gave evidence that he has been on methadone since he was 18 years of age.
29. The court heard of efforts made by the appellant in the past to rehabilitate himself. From 2010 – 2012 he had attended The Bridge Project and the Recovery Through Art programme during which he made a video for the judiciary and featured in a film explaining facts about his own life and the challenges that people in his situation face. He also took part in a film which was shown on Culture Night in September 2011 on TV3.
30. Evidence was given by counsel and the appellant that to achieve rehabilitation post release he required structure in his life and engagement with services. Following release from jail in 2019 he attended the Pathways Programme and worked on projects helping the homeless and painting in the Iveagh Hostel. However, when this programme closed for the month of August counsel gave evidence that the appellant felt vulnerable to relapsing into drug use due to a lack of structure.
31. At this time the appellant became involved in his first romantic relationship with a person who was addicted to crack cocaine. Shortly thereafter he relapsed into abusing this drug, and to feed his addiction he committed the offences the subject of this appeal.
32. The appellant has served multiple custodial sentences in the past, the longest of which was 3 years and which was completed in 2019. Evidence was given in court that the appellant had been on an enhanced regime while in custody and that when that was lost he had regained the standard regime status. A testimonial was also handed into the court from the prison laundry which spoke highly of the appellant in his endeavours in that job. Urinalysis has shown that the appellant has remained drug free save for prescribed methadone which he has been able to reduce to 70mls. Evidence was given by the appellant that his aim is to be completely drug free on release.
33. During evidence the appellant acknowledged that he had come to the realisation that burglaries of commercial premises are not victimless crimes and that following the reading of the victim impact statement he had written a letter to the Gardaí requesting that his remorse for committing the crime be forwarded to the victim.
34. A probation report before the court placed the accused at a high risk of reoffending.

35. The appellant has 341 previous convictions, 62 of which were Circuit Court matters. He had 41 Circuit Court convictions and 98 District Court convictions for s.4 theft. He had 7 Circuit Court convictions and 105 District Court convictions for s.12 burglary. He also had multiple convictions for s.15 possession of house-breaking implements, for s.17 handling of stolen property, for s.2 Criminal Damage, and for miscellaneous other offences such as possession of a controlled drug, failure to answer bail, trespassing under the Criminal Justice (Public Order) Act and for attempting to commit an indictable offence. While it was accepted that some matters recorded as Circuit Court convictions may have involved District Court appeals, it was also the case that a large number of them were the result of prosecutions on indictment. The longest prison term previously imposed on him was a term of 3 years imprisonment imposed by the Dublin Circuit Criminal Court in 2019 for a burglary. The appellant had received numerous shorter sentences, typically of four months or of six months duration, and many offences had been taken into consideration along the way.

Probation Reports

36. A Probation Report dated the 16th of July 2020 assessed the appellant as being at high risk of reoffending. Problem drug use, peer association, lack of a structured prosocial routine were areas to be addressed to reduce this risk. Relationship issues appeared to have been a trigger for recent drug use and related offending. The report noted in its conclusions that the appellant presents with a long history of repeat offending since a very young age. It records that there have been periods of stability in drug use and not offending when in a structured environment. According to the probation officer the appellant appears to have done limited work in identifying triggers for drug use and related offending despite prior engagement with addiction counselling at his local HSE addiction clinic and with the local community drug team. He was open to engaging with the prison counselling psychology service and with addiction counselling when this was suggested to him in a probation interview on the 8th of July 2020. The onus was put on him to pursue this. The importance of engaging openly and honestly was also emphasized to him. It was not possible to see if this had been progressed as the appellant was subsequently quarantined due to Covid 19. His stated goals for the future are to work to remain stable on his prescribed medication and to engage with education in the form of the Pathways program on his return to the community. The report suggested that given his high risk of reoffending and in the knowledge that he would be subject to the Acer programme on return to the community the court might wish to consider attaching a period of supervision to any order made. It was suggested that this would be used to encourage and monitor engagement with counselling, psychology and addiction services, also to encourage a full and honest engagement with those services, to challenge the beliefs underlying the appellant's offending behaviour and to work with the appellant to plan for a structured and safe integration in the community.
37. A further Probation Report dated 23rd of October 2020 was also available to the sentencing judge. However, it merely reiterated the position as stated in the earlier report.

The Sentencing Judge's remarks

38. The sentencing judge commenced by acknowledging receipt by the court of various reports including probation reports, Pathways report, governor's report, victim impact statement, letter from the appellant's mother and from a laundry employee at Mount Joy prison, along with urinalysis reports.
39. Notwithstanding the testimonials from some of the above the trial judge stated that the *"offending carried out by the accused during this period of time is not simply appalling, it's shocking, stretching back, in relation to these matters, a period of time, but given his previous criminal history, stretches back a number of decades."*
40. She continued by stating that while the court is conscious of structuring sentences to include potential rehabilitation, a properly constructed sentence must include protection of home and business owners and deter future behaviour. The judge proposed to sentence globally on the totality of the offending which necessitated consecutive sentencing while giving due consideration to the context of proportionality and totality.
41. The judge noted the victim's distress and upset caused by the acts of the appellant, and continuing, considered the seriousness of the offences, the short time period in which they occurred, the appellant's extensive history of offending and the fact that two of the burglaries occurred at residential properties.
42. In mitigation the court took into consideration the signed pleas notwithstanding the available CCTV footage, the admissions and cooperation of the accused when arrested, the challenges that custody had presented during the pandemic, the efforts of the appellant to rehabilitate himself and the fact that the appellant was motivated by addiction during the offending but still had the ongoing support of his mother and sister. The court acknowledged his desire and the efforts he was making to become drug free. Also of note was his engagement with services in the past and the various testimonials as to his behaviour while in custody. The judge took into consideration the remorse he had expressed and noted his medical condition which was drawn to the court's attention in a letter written by the his mother.
43. In placing the offences within the mid-range when each offence was considered individually the sentencing judge stated that:

"The Court views the behaviour of the accused as having been nothing short of a scourge on the wider community. Given that his age, at 42 years old, one would have expected that he would have learned from previous times in custody and before the Court. The Court notes that the probation services have placed the accused at a high risk of reoffending."
44. The court proceeded to impose both consecutive and concurrent sentences on counts 1, 10, 16 and 21 while taking the other counts into consideration.

Grounds of Appeal

45. The appellant appeals his sentence on the following grounds:

- i. The sentencing judge erred in law in placing the offences at the wrong place on the spectrum;
- ii. The sentencing judge erred in law in setting a headline sentence which did not accurately reflect the severity of the offending;
- iii. The sentencing judge erred in law in failing to take full and proper account of the personal circumstances of the appellant;
- iv. The sentencing judge erred in law in failing to take full and proper account of the mitigation;
- v. The sentencing judge erred in law in failing to take full and proper account of the principles of totality and proportionality;
- vi. The sentencing judge erred in law in imposing a sentence which was unduly severe given the circumstances of the offence and the offender.

Submissions of the appellant

46. It was submitted that the sentencing judge had started at too high a point on the scale. Referring to this court's guideline judgment in *People (DPP) v. Casey & Casey* [2018] 2 IR 337 it was submitted that the headline sentences nominated for the burglary offences were all in the midrange (i.e. that attracting 4 – 9 years) according to the *Casey* jurisprudence. However, counsel for the appellant maintained that the circumstances of none of the offences, or of certainly the great majority of the offences, would have justified their placement in the midrange. According to this court's decision in *Casey* cases falling into the 4 – 9 year range typically exhibited multiple aggravating factors such as significant planning, the participation of persons or more in the commission of the crime, the targeting of residential premises and the appropriation of goods of high financial value or of sentimental value. There had been no significant planning in this case. Nothing of substantial financial value was taken and nothing of sentimental value was taken. Indeed, in quite a number of cases nothing at all was taken. Where goods were taken they were of modest financial value only. Further, there were only two instances of residential burglaries amongst the 30 counts charged.
47. Counsel further contended that the trial judge failed to take full and adequate account of the appellant's personal circumstances and the mitigation in the case, especially in relation to the appellant's past efforts to rehabilitate, as was seen when she stated "*..the accused lacks the—either the ability or the inclination to regulate his own behaviour while in the community.*" It was said that the sentencing judge failed to have regard to the appellant expressions of remorse and to the insight which he had gained concerning the effects of his offending behaviour on his victims. Counsel further argued that full credit was not given to the appellant in relation to full admissions and cooperation as evidenced by his early plea to the offence on Bill No 324/20 and his signed pleas to the numerous offences contained in Bill No 504/20.

48. Such failures were said to have resulted in individual and cumulative sentences that were unduly severe.
49. It was also complained that there had been a failure to properly adjust for proportionality, and that adequate regard had not been had to the totality principle. In that regard we were referred to *The People (DPP) v. Yusuf* [2008] 4 IR 204 and *People (DPP) v. Cole* unreported, Court of Criminal Appeal, July 31, 2003 in support of a submission that recourse to consecutive sentencing should be sparing, and that it was not appropriate for the sentencing judge to have resorted to consecutive sentences to the extent that she did. It was submitted that where there was a degree of relatedness between the offences concurrent penalties should have been imposed rather than consecutive penalties. It was accepted that some recourse to consecutivity was required because of the fact that offences were committed while on bail, but it was said that the sentencing judge did not need to go as far as she did. It was submitted that the sentencing judge in imposing a combination of consecutive and concurrent sentences amounting in aggregate to a headline sentence of 12 ½ years did not appear to have at all, alternatively fully and adequately, considered proportionality and totality. This had resulted in a sentence which was significantly disproportionate.

Submissions on behalf of the respondent

50. The respondent does not agree that the sentencing judge set headline sentences that were too high. The headline sentence for the burglary offences of business premises was indicated to be 6 years, that for the burglary of residential premises was 7 years and that for the criminal damage offence was 4 years. While the actual nature of some of the offences might not initially appear to be as serious as other offences of a similar nature there were in this case significant aggravating factors including:-
- the large number of incidents (at least 20) the majority of which were committed within a very short period of time (i.e. between 12 February, 2020, and 2nd of March 2020) thereby comprising "a spree".
 - The ransacking of some of the premises and the damage caused;
 - The relevant previous convictions of the offender.
51. In the *Casey* decision this court specifically guided, at paragraph 12 of its judgment, that:
- "Where a court is sentencing for multiple offences committed in spree, the fact that they were committed in spree should be regarded as an aggravating factor. That it was part of the spree renders the gravity of each individual offence more serious than any individual offence considered in isolation."*
52. The respondent rejects the suggestion that insufficient weight was given to the mitigating factors in this case. On the contrary, it was submitted that the sentencing judge appropriately discounted the headline sentences for the mitigation available and acknowledged the significance of same. It was submitted that she also took into account

and recognized appropriately the appellant's personal circumstances and desire to rehabilitate by suspending the final 4 ½ years of the sentence.

53. As regards the issues of totality and proportionality, the respondent emphasises that the sentencing judge was under an obligation to impose consecutive sentences as between the two bills, in circumstances where the appellant was on bail for the offence charged on Bill No 342/2020 when he committed the vast majority of the offences charged on Bill No 504/2020. It was submitted that the sentencing judge constructed a sentencing package that reflected the overall gravity of the totality of the 31 offences, arising out of 20 separate incidents, for which the appellant faced sentencing. It was submitted that the sentences imposed were structured to ensure a just and proportionate overall sentence. We were referred to paragraph 35 of our judgment in the *The People (DPP) v. Delaney* [2020] IECA 15 where what was suggested to be an analogous approach was endorsed.

Discussion and Decision

54. We have said before that sentencing for multiple offences is never easy as it requires the weighing and sifting of multiple considerations with a view to imposing what ultimately must be a just and proportionate sentence. The sentencing scholar Nils Jareborg has famously characterised it as "*the most complicated topic in criminal law, in those countries that care about it at all*"¹. Where there are a large number of offences involved it is very likely that the court will seek to have recourse to a combination of consecutive and concurrent sentences in structuring the global result. The appellant is correct in saying that recourse to consecutive sentencing should be sparing, but it is a legitimate tool in the toolbox of the sentencing judge and the occasion of sentencing for multiple offences is one of those occasions on which its use may be apposite. While consecutive sentencing should be engaged in sparingly, it is not the law that it should only be engaged in exceptionally.
55. In *The People (DPP) v Crowley* [2021] IECA 178 we made the point that where a sentencing judge is faced with sentencing for multiple offences, and particularly a large number of offences, the sentencer may be faced with conflicting desiderata. On the one hand, it is desirable in principle that each offence should receive its own sentence. However, if proportionate individual sentences were to be applied to individual offences and made wholly concurrent *inter se* it might give rise to a perception that the sentencing court was failing to reflect the repetitive nature of the offending, the multiplicity of separate occasions on which there was offending, and the number of individual victims involved. Some might feel that the offender was receiving something of a "free ride" by virtue of the way in which such sentence was structured. On the other hand, if proportionate individual sentences were to be applied to individual offences and they were crudely accumulated by the application of consecutive sentencing, it might equally give rise to a perception that the cumulative or aggregate total was disproportionate, perhaps

¹ Jareborg, N (1998) 'Why Bulk Discounts in Multiple Offence Sentencing?' in Ashworth, A and Wasik, M (eds.) *Fundamentals of Sentencing Theory: Essays in Honour of Andrew von Hirsch*, pp 129-140 at p.130 (Oxford: Oxford University Press).

even to the extent of being “crushing”. The solution is often to be found in the careful structuring of a sentencing regime that deploys a combination of consecutive and concurrent sentencing. This is not the only possible approach, and we have spoken of others in other cases, but it is the solution to which recourse is most commonly had in this jurisdiction, and it is the one resorted to by the sentencing judge in this case.

56. There are some legal principles which will assist a sentencer in that scenario, such as the totality principle, and there are also some informal rules and conventions which have been developed over the years to further guide a sentencer’s approach in these situations. In so far as a theoretical framework exists it consists of dimensions of relatedness, particularly with respect to commonality of victims (or lack of same), commonality of modus operandi (e.g. in case of a spree of offending)/similarity of conduct (or lack of same), causality, and temporal contiguity. These may be relied on as justification for the treating of some offending conduct as being in effect part of a continuum of such conduct; or to put it another way as being part of the same transaction in offending terms (the so-called “one-transaction” principle), leading to concurrent sentencing inter se. Alternatively, the lack of apparent relatedness may be relied on as justification for treating them as separate transactions deserving of discrete and individual punishment, leading to consecutive sentencing inter se. Further, as we have alluded to, the sentencer may be faced with a mix of both related and unrelated offending and feel justified in having recourse to both concurrent and consecutive sentencing with related and unrelated offending being grouped separately to receive different sentencing treatment. That is what happened in this case.
57. The sentencing judge here decided that the offence on Bill 324/20 merited a headline sentence of 6 years. We think she can hardly be criticized for that in the light of the Casey jurisprudence. There were multiple aggravating factors in respect of this offence. The premises were ransacked. There was considerable damage done. While it was a commercial premises and not a private residence there was considerable financial loss caused to the owner of the coffee shop, as well as business disruption. The traumatic effect on the victim was also significant as is clear from his victim impact statement. Moreover, the appellant had numerous relevant previous convictions, both for burglary offences and for theft offences. While it is true to say that the aggravating factors mentioned in the Casey judgment as typically being associated with the type of case that falls into the 4 to 9 year range of headline sentences were mostly not present in this case, a significant feature is that there were multiple coexisting aggravating factors. It was not the intention of this court in the Casey case to suggest that only cases exhibiting the multiple aggravating factors mentioned could fall into the range in question. The point we were trying to make was that the coexistence of multiple aggravating factors is sufficient to place an offence in that category. We find no error of principle on the part of the sentencing judge in assessing the headline or pre-mitigation sentence for the Coffee 2 Go burglary as meriting 6 years imprisonment.
58. We are also satisfied that there was no error of principle committed by the sentencing judge in her assessment of the mitigation to apply to the headline sentences she had

nominated for the offence on Bill No 324/20. The headline sentence of 6 years was reduced by one third. We are satisfied that this represented an appropriate discounting to reflect the available mitigating circumstances. While it would have been open to the sentencing judge to be more generous, the level of discount afforded was within the range of her discretion.

59. Neither do we find any error of principle on the part of the sentencing judge in her assessment of 6 years imprisonment as also being merited as a headline sentence for the non-residential type burglaries committed on Bill No 504/2020. While none of the individual offences, if viewed in isolation, would have merited such a headline sentence it was not appropriate to view them in isolation. There was, in our judgment, a sufficient degree of relatedness between them to justify treating them as a group. There was sufficient temporal contiguity and commonality of modus operandi to justify treating them this way. While it is true that there were different victims and different amounts stolen/damage done/harm caused the differences were not so remarkable as to have justified individual sentences in circumstances where these offences were committed effectively as part of a continuum, i.e. during a spree. However, the sheer number of offences merited a higher headline sentence than would be applied to them individually, in circumstances where the sentences for many similar offences were to be served concurrently *inter se*. In fact, in this case the sentencing judge did not impose individual sentences for each of the burglary offences on Bill No 504/2020 on the basis that they would be served concurrently *inter se*. Rather, what she did, although the ultimate effect was the same, was to nominate a representative headline sentence for just two of these offences, i.e. six years on Counts 1 and 10, respectively, with a view to making the post mitigation sentences on those counts concurrent *inter se*, and in doing so to take the others into consideration.
60. We should say at this point that we again are satisfied that there was no error of principle committed by the sentencing judge in her assessment of the mitigation to apply to the headline sentences she had nominated for Counts 1 and 10 respectively. We are satisfied that there was an appropriate discounting to reflect the available mitigating circumstances. The headline sentences of 6 years were reduced by one third. While again it would have been open to the sentencing judge to be more generous, the level of discount afforded was within the range of her discretion.
61. A further relevant factor in setting the headline sentences for these offences, and ultimately in how the overall sentencing package was structured, was the fact that many of them (including those the subject of Counts 1 and 10, respectively) were committed while the appellant was on bail for the offence the subject matter of Bill No 324/2020 and this was an aggravating circumstance in itself. Moreover, the sentencing judge in so sentencing was required to by statute to have recourse to at least some degree of consecutivity having regard to the fact that offences were committed whilst on bail. Accordingly, whilst the ultimate sentences imposed on Counts 1 and 10, respectively, were to be served concurrently *inter se*, the sentencing judge directed that they were to be consecutive to the sentence imposed on Bill No 324/2020. We therefore find no error

of principle in how the sentencing judge structured the sentences on Counts Nos 1 and 10 on Bill 504/2020.

62. The sentencing judge then went on to consider the residential burglaries committed on Bill No 504/2020. She rightly considered these to be more serious in principle than the burglaries of non-residential premises charged on the same Bill. She again considered that as between the two incidents of this type charged, there was a sufficient degree of relatedness between them to enable her to treat them in the same way. Consistent with what she had done earlier, rather than imposing individual sentences in respect of each incident and making them concurrent *inter se*, her approach was to nominate a representative headline sentence for just one of these offences, i.e. 7 years imprisonment on Count 16, with a view to taking the other offence into consideration with the ultimate post mitigation sentence to be imposed (i.e., one of 4½ years imprisonment, wholly suspended) on Count 16. We have no difficulty in upholding the 7 year headline sentence nominated. In this instance residential premises were targeted. They were offences committed whilst the appellant was on bail. They were committed as part of a spree involving the targeting of a mix of both residential and non-residential premises.
63. We think, however, that while the sentencing judge was correct to also make the sentence for Count 16 consecutive to the sentence on Bill No 324/2020, because the appellant had been on bail when he committed the residential burglaries, she was in error in also making the sentence on Count No 16 consecutive to the sentence on Count No 1 on Bill No 504/2020. In our view, the aggravating feature associated with the targeting of residential premises, was adequately reflected in the nomination of the higher headline sentence of 7 years as opposed to one of 6 years in the case of the burglaries of non-residential premises. It was not necessary, and in our view unjustified, to go further and treat the residential burglaries as a separate group, so unrelated to the non-residential burglaries charged on the same bill, as to require that the sentence to be imposed on Count No 16 should be made consecutive to the sentence imposed on Count No 1. We think the differentiation between the residential and nonresidential burglaries was sufficiently catered for in the nomination of the higher headline sentence for the residential burglaries but that there was not sufficient differentiation in terms of the other circumstances to have justified treating them as a separate group.
64. In saying this, we do recognise that the sentencing judge went on to wholly suspend the 4 ½ year sentence on Count No 16, and in that way sought to satisfy the totality principle and avoid a crushing sentence. Whilst we fully recognise the humanity of that approach, and that the sentencing judge was endeavouring to achieve a just and humane outcome, we are concerned that the structure adopted may not have been appropriate in the particular circumstances of this case. This accused has a huge number of previous convictions. He has been given many many chances. He has tried to achieve desistance and to go straight on a number of occasions, but due to his addictions and other adversities in his life he has been unsuccessful in doing so. While there was certainly evidence before the sentencing judge of a renewed resolve on the part of this offender to try again to move away from a life of crime we feel that a realistic approach needed to be

taken with respect to the asserted resolve. While we are certain that it was not the intention of the sentencing judge to set the appellant up to fail, it is nevertheless our assessment that given his appalling track record, and the failure of his previous efforts at reform, that there is a significant risk that he will once again be unsuccessful. If that were to happen, he would very likely end up serving the 4½ year portion of the 12 ½ year overall sentence that was suspended at first instance. To the extent that the lengthy suspended period of 4 ½ years was intended to adjust for totality, that adjustment would be set at nought in the event that he was required to serve the suspended portion of the sentence due to the commission of further offences. In the circumstances we think that the way in which the sentence was structured was undesirable in the circumstances of this appellant's case.

65. We again have no difficulty with the level of discount afforded in respect of the offence charged as Count No 16 on Bill No 504/2020. Ignoring consecutivity for a moment, and viewing Count No 16 in isolation, the reduction from a headline sentence of 7 years imprisonment to 4 ½ years imprisonment represented an appropriate discount to reflect the mitigating circumstances in the case. In that respect, the sentencing judge would have had a margin of appreciation and the level of discount afforded might also have been somewhat more or somewhat less while remaining within the appropriate range.
66. However, in circumstances where we have identified an error of principle with respect to the sentencing for Count 16, and in terms of the overall structuring of the sentencing package, we must allow the appeal, quash the sentences imposed at first instance on Bill No 504/2020 and re-sentence the appellant afresh. The sentence on Bill No 324/2020 will remain unaltered.

Re-sentencing

67. As was done by the sentencing judge at first instance, we will nominate headline sentences of 6 years imprisonment in respect of Counts 1 and 10. We will also discount by one third from these to reflect mitigation, leaving post mitigation sentences of 4 years imprisonment.
68. Insofar as Count No 16 is concerned, we will again nominate a headline sentence of 7 years imprisonment. Further, we will discount from this by 2 years to reflect mitigation, leaving a post mitigation sentence of 5 years imprisonment. In doing so we acknowledge that the level of discount afforded on this count is marginally less than that afforded in respect of Counts 1 and 10. However we are satisfied that it is still within the range of our discretion to set it at this level and do so having regard to how we intend to structure the overall package.
69. We are satisfied that once again Counts No's 1, 10 and 16 on Bill No 504/2020 must all be made consecutive to the sentence imposed on Bill No 324/2020. However, the sentences to be served on Counts No's 1, 10 and 16 are to be concurrent inter se.
70. As before, the remainder of the counts on Bill No 504/2020 (i.e., those not receiving discrete sentences) are to be taken into consideration.

71. Finally, we will suspend the final year of the sentence on Count No 16. We do so to acknowledge and reflect the renewed resolve expressed by the appellant to finally move away from a life of crime. While we believe that we must take a realistic approach to this expression of renewed resolve, having regard to his bad track record, we nevertheless wish him well in his efforts at reform and very much hope that on this occasion he will ultimately be successful. The final year is therefore being suspended to incentivise him in his renewed efforts. The conditions attaching to the suspended portion of the sentence are to be the same as heretofore, save in respect of the duration of the period of suspension. The new period of suspension will be 12 months from the date of his release from custody.

Conclusion and Overall sentence

72. The appeal is allowed.

73. The appellant is re-sentenced as stated, the effect of which is that he has received a mix of concurrent and consecutive sentences totalling 9 years imprisonment, with the final year suspended subject to conditions.