



THE COURT OF APPEAL

Record Number: 26CJA/23

**The President.
McCarthy J.
Kennedy J.**

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

BETWEEN/

THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS

APPLICANT

- AND -

JASON DOYLE

RESPONDENT

JUDGMENT of the Court delivered (*ex tempore*) on the 4th day of July 2023 by Ms. Justice Isobel Kennedy.

- 1.** This is an application brought by the Director of Public Prosecutions pursuant to the provisions of s. 2 of the Criminal Justice Act, 1993, seeking a review on grounds of undue leniency.
- 2.** The respondent pleaded guilty to one count of assault causing harm contrary to s. 3 of the Non-Fatal Offences Against the Person Act, 1997 on a full facts basis and sentenced to 2 years' imprisonment with the final 15 months suspended for a period of 5 years on conditions.

Background

3. The respondent was in an intimate relationship with the injured party who was pregnant on the date of the offence. On the date in question, the respondent and injured party had a verbal argument, during which the respondent became physically abusive. He struck the injured party across the head with a closed fist. He was wearing a large gold ring which cut her head, causing her to bleed. He slapped her across the right hand side of her jaw, punched her on the left side of her face, near her eye and punched her on the back of her arm and on the back of her head. Four counts of assault causing harm were preferred.

4. The respondent was arrested and interviewed and denied wearing a ring on the night in question. While accepting that he had a relationship with the injured party he did not accept that it was an intimate relationship as she had outlined in her statement. He pleaded guilty after a jury was empanelled. This Court was informed the injured party was not present in court on the morning of the trial, however, we have been told she was due to attend in the afternoon.

Personal Circumstances

5. The respondent is a man with 86 previous convictions; two for assault, one for an offence under the Domestic Violence Act, 2018, which post-dated this matter, four for criminal damage, four for possession of weapons, six for theft, sixty-four for road traffic offences, four for public order offences and one for drugs. He was on bail at the time of this matter.

6. The respondent has a background of alcohol and substance abuse issues. He gave evidence that at the time of the commission of the offending herein he had had a relapse.

The Sentence

7. The trial judge identified the aggravating factors and nominated a headline sentence of 3 years, with which the Director takes no criticism. The issues concern the reduction afforded for mitigation and the length of the suspended portion of the sentence.

8. The respondent pleaded guilty to the offence on the day of trial and so this cannot be considered as anything other than a late plea of guilty, for which the respondent must receive credit, but a court must of course take account of the timing of a plea. He expressed remorse for his offending. The judge had regard to his dependency issues, his personal life and his desire to rehabilitate.

9. Accordingly, the sentence was reduced to one of two years' imprisonment. The final 15 months of this two-year sentence was suspended in order to foster and encourage the continued rehabilitation of the respondent.

Submissions of the Parties

Mitigation

10. The Director contends that excessive credit was given for the limited mitigation, affording a reduction of one third from the headline sentence. Reliance is placed on *People (DPP) v Malone* [2022] IECA 262 where there was no significant mitigation other than a guilty plea.

11. It is noted that the Court in that case varied the sentence so as to give a 20% reduction from the headline sentence in place of the 40% reduction originally applied in the court below. It is submitted that the guilty plea in the present case is of significantly less value than that in the *Malone* case.

12. The respondent contends that the sentencing judge did not place disproportionate weight upon and did not give excessive discount for the mitigating features. In relation to the late plea of guilty, it is submitted that the injured party was not in court on the morning of the trial and therefore the late plea was not proffered by the respondent due to certainty that the trial would run.

The Final Sentence

13. It is argued that the decision to suspend 15 months was wholly excessive and that the objective of fostering and encouraging continued rehabilitation could have been achieved by suspending a significantly shorter portion of the sentence.

14. It is contended that the decision to suspend 15 months of the sentence was proportionate in the circumstances, taking into account all the various mitigating features and in an effort to "*foster and encourage the continued rehabilitation of the accused.*"

Decision

15. We take the view that the ultimate sentence of 2 years with the final 15 months suspended was unduly lenient and we agree with the Director's position that the judge permitted excessive discount for mitigation. This, in and of itself, amounts to an error in principle. We consider that this error was compounded by suspending an excessive portion of the sentence. Consequently, applying the well-known principles concerning review of sentence, we find the sentence imposed was a substantial departure from the norm and will quash the sentence imposed and proceed to re-sentence.

Re-Sentence

16. We re-sentence *de novo* as of today, taking account of the respondent's progress in custody, including his engagement with the anger management programme.

17. Taking account of the aggravating factors and with regard to s. 40 of the Domestic Violence Act, 2018, we will approach the case by nominating a headline sentence of 3 years' imprisonment, although a somewhat higher sentence could well be considered.

18. However, insofar as the credit afforded for mitigation is concerned, here we diverge from the sentencing judge. This was a very late plea for which the respondent must receive credit, but much less so than for a plea entered at the earliest opportunity. We consider that he has limited additional mitigation but give him credit for the factors present.

19. We consider the appropriate reduction to be that of 9 months for all mitigation, thus reducing the headline sentence nominated to a sentence of 2 years and 3 months. We are also cognisant of the fact that he is a man with many previous convictions which leads to a progressive loss of mitigation.

20. In order to incentivise the respondent's rehabilitation, we will suspend the final 9 months of that sentence, leaving a custodial penalty of 18 months' imprisonment. The terms of the suspension are the same as in the court below, but the relevant period is that of 3 years rather than 5 years.