



**THE COURT OF APPEAL**

**Record Number: 60/2022**

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

**BETWEEN/**

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

**RESPONDENT**

**- AND -**

**JOHN STOKES**

**APPELLANT**

**JUDGMENT of the Court delivered (*ex tempore*) on the 24<sup>th</sup> day of July 2023 by Ms. Justice Isobel Kennedy.**

- 1.** This is an appeal against severity of sentence. On the 9<sup>th</sup> March 2022, the appellant was sentenced in respect of four separate bill numbers concerning four incidents of criminal damage and three injured parties.
- 2.** The appellant pleaded guilty to four counts of criminal damage contrary to s. 2(1) of the Criminal Damage Act, 1991, on four separate bill numbers: bill number 59/2019, bill number 61/2019, bill number 03/2021 and bill number 60/2019.
- 3.** Bill numbers 59/2019 and 61/2019 and bill numbers 03/2021 and 60/2019 were grouped into two blocks of offending for the purposes of sentencing.

**Background**

**Bill No.s 59/2019 & 61/2019**

- 4.** On the 18<sup>th</sup> August 2018, An Garda Síochána were made aware that four tyres had been punctured together with damage to the wingmirrors of a vehicle, belonging to a Ms O’Keeffe at her place of residence in Kildare Town. This was a gated area. The appellant was arrested following identification on CCTV footage and made full admissions. The damage caused to the two wing mirrors was approximately €250 in value. It appears that the genesis of the offending behaviour was that the injured party was an acquaintance of the appellant, and he became infatuated with her, holding certain unfounded beliefs that he had been in a romantic relationship with her and that she was involved with another of the injured parties.
- 5.** On the 21<sup>st</sup> November 2018, Ms O’Keeffe reported to An Garda Síochána that the glass from her wing mirrors was missing. The appellant was identified from CCTV. Again, he made full admissions. The value of the damage done on this occasion was €105.



6. The injured party made a victim impact statement in which she states that as a result of the offending, she had to leave her family home after 47 years, that she has trouble sleeping and finds it difficult to go into work most days.

**Bill No.s 03/2021 & 60/2019**

7. On the 26<sup>th</sup> April 2018, Gardaí received a report of criminal damage to two vehicles belonging to a Mr Hennessey and his wife at their home just outside of Naas Town. Noises were heard by the injured party at approximately 4:30am and at 6:00am a neighbour called to the house to point out the damage done to the cars. The windows of two cars had been smashed in with a blunt instrument. There was no CCTV at the address at this time, however, Gardaí obtained a blood sample and sent it for analysis by Forensic Science Ireland. It was ultimately discovered that the blood sample was a match to the appellant herein. An amount of €244.03 was paid through their insurance policy for the glass damage.

8. Following the incident in April 2018, the Hennessey's installed CCTV cameras at his home and around 5:50am on the 18<sup>th</sup> November 2018, the injured party and his wife again awoke to noises outside their home. An individual could be seen damaging the windows of the cars using an implement. The damage in respect of one vehicle, a Volkswagen, totalled €4341.53 and the damage in respect of the other vehicle, a Skoda, totalled €809. The CCTV footage was retrieved and the appellant was identified. He again made admissions.

9. Victim impact statements were prepared where they detailed that they lived in their home without incident for over 30 years before these incidents and that their children who were awoken by the second incident asked: "*Has the bad man come back again?*"

**Personal Circumstances**

10. The appellant is a man with 11 previous convictions. Seven of the appellant's previous convictions are for road traffic matters. He has one previous conviction for a s. 2 assault and two previous convictions for s. 2 criminal damage.

**Sentencing Remarks**

11. The sentencing judge listed the aggravating factors common to all four incidents as the level of premeditation and planning involved, including the targeting of people at their home, the appellant's determination to enter into the locus in question, no restitution, the impact of the offences and the appellant's previous convictions, in particular, for criminal damage. She further had regard to the entry onto private property in respect of the first set of offences and the use of an implement in respect of the second set of offences.

12. By way of mitigation, the judge considered *inter alia* that the offending was as a result of a fixation, that full admissions were made, and that when charged, the appellant exhibited genuine remorse, and when confronted with the DNA evidence, he accepted responsibility and he has not come to Garda attention since 2019.

13. The judge accepted that the appellant's early plea saved considerable time and expense during covid and that a plea during covid entitled the appellant to extra mitigation. She considered that the psychiatric report of Dr Moran put before the court provided some insight into the offending and noted that incarceration would be difficult for the appellant on account of his issues and on account of the covid restrictions in place in prisons at that time.



**14.** The judge nominated a headline sentence of five years' imprisonment in each case and considering the mitigating factors, reduced that sentence to a period of three years in respect of each of the offences. The sentences for offences within the first block of offending were imposed concurrent inter se as were the sentences for offences within the second block of offending however, the sentences imposed in respect of each block of offending were imposed consecutively, leading to a period of six years' imprisonment. The final two and a half years of that six-year sentence were suspended for a period of three years to incentivise the appellant's rehabilitation and to ensure that he properly engages with mental health services.

#### **Grounds of Appeal**

**15.** The appellant relies on the following nine grounds of appeal in his appeal against sentence:-

***"1. The Learned Trial Judge erred in law and/or in principle in imposing a sentence which was excessive in the particular circumstances of the case.***

*2. The Learned Trial Judge erred in law and/or in principle in imposing a sentence that was disproportionate in all the circumstances and failed to have sufficient and/or due regard to the principles of proportionality and totality.*

*3. The Learned Trial Judge erred in fact and/or in law in failing to give sufficient weight to the mitigating factors in the case.*

*4. The Learned Trial Judge erred in law and/or principle in placing excessive reliance on the principle of deterrence to the exclusion of the other appropriate principles of sentencing.*

*5. The Learned Trial Judge erred in law and/or principle in placing excessive reliance on the victim impact evidence.*

*6. The Learned Trial Judge erred in law and/or principle in failing to have due regard for the rehabilitation of the Appellant.*

*7. The Learned Trial Judge erred in law and/or principle in that the sentence as structured to include the period of suspension is excessive, disproportionate, and unwarranted in all the circumstances.*

*8. The Learned Trial Judge erred in giving excessive weight to the aggravating features.*

*9. In all the circumstances, the Appellant's sentence was excessive."*

#### **Failing to Identify Individual Headline Sentences and Imposing a Headline Sentence Which was Excessive in all the Circumstances**

##### **The Appellant**

**16.** It is submitted that the sentencing judge erred in not dealing with each bill number individually when identifying a headline sentence and that she compounded this error by grouping the offending together. Emphasis is placed on the following portion of the judge's sentencing remarks:-

*"So, to be clear then, in respect of count number 1 that's on 59/'19 and count number 2 that's 69/'19...namely the incidents which occurred on the 18<sup>th</sup> of August '18 and the 21<sup>st</sup> of November '18 regarding the property of Linda O'Keefe, I'm going to direct that these three year sentences in respect of these two bills would run concurrently. Then in respect of bill number 60/'19 and number 03/'21, namely the incidents in November of '18 and April of '18 being the incidents involving the Hennessys, I'm going to direct that each of*



*those counts deserve a sentence of three years, but that each of these, if you like, are to run concurrently. But I am then going to take – bear in mind, if you like, the fact that these were two separate incidents and bear in mind the totality and be proportionate as much as I can, and it seems to me that there has to be a consecutive period of imprisonment of three years and that each block then runs consecutively. So, in total, therefore, the period of imprisonment arising from these incidents which I am imposing is a period of six years’ imprisonment...”*

**17.** Reliance in this regard is placed on the sentencing principles to be applied in cases involving multiple bill numbers as considered by this Court in *People (DPP) v Crowley* [2021] IECA 178.

**18.** It is accepted that each of the four bill numbers involved the same type of offending. It is said that each offence warranted individual consideration. Moreover, it is argued that the headline sentence was, in any event, excessive.

**19.** Reference is made to *People (DPP) v Hogan* [2022] IECA 236 and *People (DPP) v Barry* [2009] IECCA 66.

### **The Respondent**

**20.** The Director contends that the sentencing judge considered each offence separately and placed each offence within the middle range of offending. It is noted that the sentencing judge specifically identified the aggravating factors as being common to all the offences.

**21.** It is submitted that each offence was inherently linked and followed a pattern of sustained criminal behaviour motivated by the appellant’s unfounded jealousy where he believed he had some form of relationship with the first injured party.

**22.** It is said that each offence was premeditated, calculated and deliberate. In this regard, it is submitted that comparators with incidents of similar values of damage are of extremely limited assistance. Indeed, in the case of Ms O’Keeffe, the financial damage was not particularly great however, the psychological effect was far greater.

**23.** Reliance is placed on *People (DPP) v Gavigan* [2022] IECA 94 which involved an appeal of a cumulative sentence of 7 ½ years with 12 months suspended for counts of criminal damage, production of an article and making a threat to kill. A sentence of 3 years was imposed on the criminal damage count and 2 years on the production of an article count. These were imposed concurrently. A 4 ½ year sentence was imposed on the threat to kill count and this was made consecutive to the criminal damage count. This Court took issue with the sentence imposed on the threat to kill count and fixed a headline sentence of 7 years, reducing this to 6 years with the final year suspended, ordering it to run concurrent with the criminal damage count. It is submitted that the aggravating factors in *Gavigan*, namely the relationship and motive are apposite to the facts arising in this case.

**24.** It is further submitted that even if an error is identified regarding the first criminal damage offences against each injured party, the fact that the appellant repeated the same offence again in identical circumstances amounts to a clearly aggravating factor such that it cannot be said that a 3 year headline in respect of the latter offences amounts to an error.

### **Discussion**

**25.** This was very much the focus of the appeal. It is said by Ms Connolly BL, for the appellant, that the judge ought to have identified a separate headline sentence for each offence rather than



simply nominating a “*blanket*” notional sentence of 5 years’ imprisonment. We are of the view that the judge could have proceeded on the basis of nominating a headline sentence on each count, commencing with the first in time with an incremental increase in sentence on each subsequent offence. However, whilst this might have been the optimum approach in many cases, in the present situation, this is not the case.

**26.** The judge clearly considered each of the offences separately and with great care. Before identifying the aggravating factors, she set out the background to each of the four offences, following which, she moved to identifying those factors. At this point, the judge considered that in many ways, the aggravating factors were common to all offences. This seems to us to be justified. This was a continuum of offending, arising from the same misconceived notion of the offender. The facts on each count bore considerable similarities.

**27.** We are not persuaded that the judge took a “*blanket*” approach. She considered each offence and ultimately having identified all relevant factors, she proceeded to nominate a headline sentence of 5 years on each count with reference to the range of penalty available to her. She expressly stated that she was taking all of the offences together as she believed that the factors were in essence common to all counts.

**28.** We find no error in this regard.

### **Incorrectly Identifying Aggravating Factors and Placing Undue Weight on Others**

#### **The Appellant**

**29.** It is submitted that the sentencing judge incorrectly identified the aggravating factors, that there was no evidence *inter alia* of premeditation or targeting homes. Issue is also taken with the judge’s view on the absence of restitution. Reference is made to *People (DPP) v Duffy* [2023] IESC 1 in this respect. Moreover, it is said that too much emphasis was placed on the victim impact evidence. *Crowley* is again relied upon. Ultimately, it is argued that the headline sentence of five years was simply too high.

#### **The Respondent**

**30.** The Director submits that the sentencing judge correctly identified the aggravating factors and that her assessment was based on a reasoned analysis of the evidence. The factors for which it is said there was no evidence were self-evident on the evidence. In particular, it is noted that the appellant followed Mr Hennessy home from the shops.

**31.** The Director says that the appellant’s reliance on *Duffy* is misguided as *Duffy* was a situation where a form of minimal restitution was offered in a case of a serious assault. It is submitted that in assault cases or in cases of sexual offending there is no quantifiable financial loss whereas in the instant case a financial loss can be identified and the failure to have available or to offer some form of restitution can on certain and limited occasions amount to an aggravating factor.

**32.** In response to the submissions made by the appellant regarding the victim impact evidence it is submitted that there is nothing specifically identified in the judge’s sentencing remarks that suggests that undue weight was placed on the effect that these crimes had on the injured parties.

### **Discussion**



**33.** We are satisfied that the matters in respect of which it is said there was no evidence does not withstand scrutiny. The judge was entitled to infer matters such as an element of premeditation and planning from the evidence. Insofar as the issue of restitution is concerned, we agree that the absence of restitution is not an aggravating factor, but if present, it is a factor to be considered in mitigation. However, whilst this is an error on the part of the judge, it is not one of any substance.

**34.** It is also argued in the context of the nominated headline sentence that insufficient regard was had to the mental health difficulties of the appellant, thus failing to adequately extenuate his moral culpability and reliance is placed on *People (DPP) v MR* [2022] IECA 192.

**35.** It is submitted that little regard was had to the adjustment disorder referenced in the psychiatric report of Dr Moran and the letter of Dr Collins which it is said was relevant to the appellant's moral culpability. We do not intend to set out the nature of the appellant's difficulties, however, those difficulties are quite different to those of the appellant in *MR* and we do not see that they would operate to reduce this appellant's moral culpability. However, the judge properly factored those matters on her assessment of the reduction to be afforded for mitigation.

**36.** Ultimately, we examine each of the offences, bearing in mind that the offending was a continuum of offending. We agree that many of the aggravating factors were common to all offences. Certainly, the trial judge could have considered that each preceding offence aggravated the subsequent offences, however, she took a more global view and ultimately and properly came to a headline sentence on each of 5 years. We are not persuaded that she erred in this respect.

### **Mitigation**

#### **The Appellant**

**37.** It is said on behalf of the appellant, that the judge failed to appropriately discount for mitigation and in particular failed to attach adequate weight to the contents of the psychiatric report and a letter from Dr Collins.

#### **The Respondent**

**38.** It is submitted that the adjustment disorder suffered by the appellant is of a wholly different nature to the appellant in *MR* who had diagnoses of paranoid schizophrenia and antisocial personality disorder.

**39.** The Director relies on the judge's sentencing remarks in submitting that the appellant's mental health issues were fully considered by the judge in terms of reducing the headline from one of 5 years to 3 years and that she went further and specifically returned to the issue of his mental health when she considered totality and whether any portion of the sentence should be suspended. The judge, it is said properly discounted for mitigation.

### **Discussion**

**40.** We do not agree that the judge failed to adequately discount for mitigation, the discount afforded was in excess of 1/3 which is a generous discount. The judge went further and suspended 2 ½ years to incentivise rehabilitation. We do not find an error in this regard.

### **The Consecutive Sentence was Disproportionate in all Circumstances**

#### **The Appellant**



**41.** It is submitted that the sentencing judge, erred in failing to take a step back and consider the overall sentence of 6 years as imposed. In other words, that she failed to take account of the totality principle. *Crowley* is relied upon.

**42.** It is said that the 6 year net sentence was disproportionate overall when considering the offending and this particular offender.

### **The Respondent**

**43.** It is submitted that no criticism can be levelled at the sentencing judge for imposing the sentence for one block of offending consecutive to the sentence for the second block of offending as these blocks pertained to separate victims and different incidents that cannot be said to be part of a continuous act. Reliance is placed on the dicta of Charleton J in *People (DPP) v FE* [2021] IR 217 as follows:-

*"In many instances, but even still sensibly looked at, a criminal event may consist of several different offences. The accused could be a male burglar who breaks into a house in order to steal. In doing so he will be carrying housebreaking implements, he will criminally damage doors and windows to enter and make good his escape, he will steal, he may threaten to kill the householder if confronted, he may tie her up, thus assaulting and falsely imprisoning her. That may take half an hour. It is still one event. While separate charges may be sensible in case the jury are inclined to reject part of the narrative, such as the threat to kill, each crime informs the seriousness of the others in the set. It would be wrong in principle for a sentencing court faced with four convictions out of the same events to split these up for tariff purposes and make each term consecutive to the other. That would be to act artificially. The event of the crime was clearly very bad and deserves an appropriate sentence. It is not appropriate to treat the events as separate and requiring consecutive sentences."*

**44.** It is noted that Charleton J further stated that the existence of a gap in time forms part of the consideration to be made on the decision whether to impose a consecutive sentence as opposed to making all sentences concurrent.

**45.** It is contended that the appellant came before the sentencing court as someone who had done very little about any potential underlying issues he may have had which may have contributed to his offending and as a consequence and directly referencing the principle of totality, the sentencing judge approached the issue of a further reduction after imposing a consecutive sentence by suspending a large portion, 40%, of the aggregate sentence. It is submitted that the basis of the suspension was clearly the principle of totality and rehabilitation and to ensure that there was an incentive for the appellant upon release to engage with the community mental health team.

**46.** It is submitted that the approach adopted by the sentencing judge in addressing the principle of totality by a significant part suspension of the overall period of imprisonment as supposed to a straight simpliciter reduction was an entirely permissible approach.

### **Discussion**

**47.** The real complaint here is that the judge failed to consider the totality principle and to make an adjustment accordingly. No issue is taken in reality with the judge imposing sentences on a consecutive basis. In that regard, it seems that the mandatory requirement to impose consecutive



sentences did not arise, but the judge exercised her discretion to do so on the basis of separate incidents.

**48.** When we consider the sequence of the offending conduct, the offending commenced with the offence relating to the Hennesseys, the second offence concerned Ms O'Keeffe, the third the Hennesseys and the fourth, Ms O'Keeffe. However, no argument was made in this regard and the judge considered consecutive sentences appropriate on the basis of separate incidents. However, we take this to mean separate injured parties, as the judge took the offending in *blocks* as she stated.

**49.** Given that there were separate injured parties, the gap in offending and the factual circumstances of each *block* of offending, we are satisfied that the judge properly exercised her discretion. Insofar as the issue of totality is concerned, we say it is not always necessary to adjust an indicative sentence when considering the issue of totality, however the point made here is that the judge failed to consider totality at all.

**50.** We have examined the transcript and it seems that having determined on a sentence of 3 years on each offence having discounted for mitigation, the judge considered it appropriate to impose sentences on a consecutive basis with reference to the fact, that each block was separate. Having thus imposed a period of six years imprisonment, the judge then said:-

*"But I am then going to take -- bear in mind, if you like, the fact that these were two separate incidents, and bear in mind the totality and be proportionate as much as I can, and it seems to me that there has to be a consecutive period of imprisonment. In other words, that each block is deserving of a period of imprisonment of three years, and that each block then runs consecutively. So, in total, therefore, the period of imprisonment arising from these incidents which I am imposing is a period of six years' imprisonment. In that regard, therefore, I have to look at the ---so, that's bearing in mind as I said all of the mitigating factors and bearing in mind the totality of the offending. I then have to look and see in terms of all of this, what is the appropriate period to suspend, because I do believe that the accused has started on a road to recovery, if you like."*

She then, in order to incentivise rehabilitation, suspended the final 2 ½ years of the total sentence.

**51.** The judge first mentioned totality in the context of considering a consecutive sentence, and refers to totality and proportionality, but this appears to relate purely to the imposition of consecutive sentencing, and on the second occasion, when the judge mentioned totality, it appears to be with reference to that same issue. It does not seem to us that the judge considered the issue of totality. Whilst totality was mentioned by the judge, it was said in the context of whether consecutive sentences were or were not appropriate.

**52.** The period of suspension was imposed for the purpose of rehabilitation. We find ourselves in agreement with the appellant, the judge does not appear to have stepped back from the indicative sentence to consider the issue of totality and proportionality.

**53.** Accordingly, we will quash the sentences imposed and proceed to re-sentence *de novo* as of today's date.

#### **Re-sentence**

**54.** In re-sentencing, we consider all matters which were opened before the sentencing judge.



**55.** The first and third offences in time concerned the Hennesseys. These offences were more serious in terms of monetary value and just more serious in nature. The second and fourth offences in time concerned Ms O'Keeffe and while of a serious nature given the background to the offending, were somewhat less serious than those concerning the Hennesseys. The impact on all parties was severe.

**56.** In light of the sequence of offending and the factors above, we will impose a five year headline sentence on all offences. We then look to mitigation, and the recent reports received today. We will reduce each sentence to that of 3 years' imprisonment and we will make the offending concerning Ms. O'Keeffe consecutive to those concerning the Hennesseys. So, the sentences on bill numbers 59/2019 and bill number 61/19 are concurrent inter se and consecutive to the two other bill numbers.

**57.** In considering the totality principle, we look to the indicative sentence of 6 years imprisonment and in order to ensure proportionality, we will address the sentences by imposing 2 years on each bill relating to Ms O'Keeffe, imposed on a consecutive basis to those on the bills concerning the Hennessey's. Thus, leading to a sentence of 5 years' imprisonment.

**58.** In order to incentivise rehabilitation, we suspend the final 2 years of the sentence.