



**THE COURT OF APPEAL**

**Record Number: 98/2023**

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

**BETWEEN/**

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

**RESPONDENT**

**- AND -**

**PATRICK KINSELLA**

**APPELLANT**

**JUDGMENT of the Court delivered (*ex tempore*) on the 19<sup>th</sup> day of January 2024 by Ms. Justice Isobel Kennedy.**

**1.** This is an appeal against severity of sentence. On the 3<sup>rd</sup> March 2023, the appellant was sentenced to 4 years' imprisonment in respect of one count of endangerment contrary to s. 13 of the Non-Fatal Offences Against the Person Act, 1997, with a count of assault causing harm contrary to s. 3 of the Non-Fatal Offences Against the Person Act, 1997, taken into consideration. The appellant was disqualified from holding a driving licence for a period of 4 years from the date of sentence in respect of a count of driving without insurance contrary to s. 56(1) and (3) of the Road Traffic Act, 1961, as amended.

**Background**

**2.** On the 21<sup>st</sup> June 2022, the injured party came across the appellant. She was homeless and sleeping rough and it seems there was an arrangement that she could stay with the appellant that night in his car. The pair begged up until approximately 11pm that night at which point they got into the appellant's car and drove off.

**3.** It seems that while in the car an argument broke out between them relating to money during which the appellant struck a kerb and one of his tyres was blown out. He blamed the

injured party for the blown tyre and became violent with her. He was shouting at her, throwing things at her and threatening to kill her. As a result, the injured party attempted to leave the car. She opened the car door; however, the appellant increased his speed, and the injured party was dragged along the road feet first.

**4.** Gardaí on patrol observed the appellant's vehicle breaking a red light and saw a female hanging out of the passenger door from her waist down with her legs being dragged along the road. Gardaí activated the blue lights and siren and the vehicle failed to stop. The pursuit continued onto a roundabout and as the vehicle took a right turn, the injured party fell out of the vehicle and onto the road. The vehicle stopped approximately 50 yards down the road. The injured party approached the gardaí and explained the situation. The surface of her shoes had been worn through and there were cuts on her feet as a result. She also had a number of injuries to her ankle. A medical report and impact statement were before the court.

**5.** The appellant was arrested and interviewed on two occasions as gardaí were not satisfied with his account given during the first interview. He is said to have been uncooperative in the second interview.

**6.** The appellant was given an early trial date, the 8<sup>th</sup> February 2023, and on this date he pleaded guilty to the endangerment, s. 3 assault and driving without insurance count.

#### **Personal Circumstances of the Appellant**

**7.** The appellant was in custody from the date of the offending and is on enhanced prisoner status. He is a man with a history of addiction issues and is doing well in custody. He has worked in the equestrian trade in the past and it is said that he would likely be able to avail of similar employment upon release from custody.

**8.** He has a long history of offending with 174 previous convictions including, 10 under the Misuse of Drugs Act, 1977, 8 for theft, 7 for handling stolen property, 7 for robbery, 5 for criminal damage, 4 threats to kill or cause serious harm, 3 burglary, 2 assault causing harm, 1 possession of stolen property, 1 possession of articles, 1 attempted robbery, 1 production of an article in the course of a dispute and 1 unlawful seizure of a vehicle.

#### **Sentencing Remarks**

**9.** The judge outlined the factual matters and referred to the mitigation present, namely the guilty plea, an expression of remorse, that there was an indication that the appellant has a good or reasonable work record, that he was doing well for a period of time and was now doing well in prison.

**10.** The judge nominated a global headline sentence of six years' imprisonment and reduced this to a sentence of four years imposed on the endangerment count with the s. 3 assault count taken into consideration. He disqualified the appellant from driving for four years for driving without insurance.

#### **Grounds of Appeal**

**11.** The appellant appeals against the severity of his sentence on the following two grounds: -  
*"1. The learned Trial Judge erred in measuring the headline sentence at too high a level considering all of the circumstances of the case.*

*2. The learned Trial Judge erred in not allowing a sufficient reduction from the headline sentence to take account of the mitigating factors which were apparent on the evidence, balanced against the relevant aggravating factors."*

### **Submissions**

- 12.** While not contained within the grounds, in his written submissions, the appellant takes issue with the sentencing judge's decision not to suspend any portion of the sentence.
- 13.** On appeal, the appellant focused on the headline nominated and argued that it is simply too high. While acknowledging that the offence of assault causing harm was taken into consideration, it is said that as the maximum penalty is 7 years, the nomination of 6 years is excessive.
- 14.** The appellant also contends that as the evidence disclosed that he flourished while outside the capital and when engaged in the equestrian trade, a period of the sentence ought to have been suspended. Reliance is placed on *People (DPP) v Damon Buggy* [2023] IECA 34.
- 15.** The appellant relies on the cases of *People (DPP) v M* [1994] 3 IR 306 and *People (DPP) v McCormack* [2000] 4 IR 356 as authority for the principle that a sentencing court must consider both the particular offence and particular offender before it. It is submitted that the sentencing judge failed to so consider.
- 16.** It is further submitted that the sentencing judge failed to take a sufficiently "individuated approach" relying on *People (DPP) v Kelly* [2005] 2 IR 321.
- 17.** In relation to the decision of the sentencing judge not to suspend any portion of the sentence, it is contended that this amounted to a failure to give due weight to the public interest in the rehabilitation of the appellant, particularly in light of the appellant's progress while in prison, which was accepted by the respondent.
- 18.** It is submitted by the respondent that the headline sentence was entirely appropriate in the circumstances of the commission of the offence which it is said was replete with aggravating factors, including that the victim was an extremely vulnerable person, the appellant abused the trust placed in him to offer shelter to the victim, increasing speed when the victim tried to get out of his car, and threatening to kill the victim.
- 19.** It is noted that the discount from the headline sentence, being two years, amounted to a total discount of 33% which it is said was significant and took account of the offending behaviour and the mitigating factors and cannot be criticised as an error in principle.
- 20.** In relation to the decision not to suspend any portion of the sentence, the respondent relies on *People (DPP) v LH* [2023] IECA 307 as follows:-

*"The decision to suspend any portion of a sentence is one within the discretion of a sentencing judge. Matters may be considered to be relevant, such as to incentivise further rehabilitation and/or to deter a person from further criminal activity.*

*[...]*

*There must be an error in principle before this court will intervene."*

### **Discussion and Conclusion**

- 21.** The submissions in this appeal were succinct and focused, with primary emphasis on the headline sentence nominated and the absence of a suspended element to the sentence. There can be no gainsaying of the seriousness of the offending conduct, and while Mr Greene SC for the appellant points out that the headline nominated is at the upper end of the range, the

judge clearly stated that the headline he nominated of 6 years was done so on a global basis. The section 3 assault count was taken into consideration and that offence in and of itself was not insignificant, involving blows, threats and the throwing of items at the injured party.

**22.** The fact that the appellant refused to facilitate the injured party leave the car and in fact increased his speed when she expressed her desire to do so and then continued with her hanging out of the car are significant aggravating factors. He is fortunate the injured party did not sustain more serious injuries. We see no error in principle in the judge's approach.

**23.** On the second argument that the judge ought to have suspended a portion of the sentence, again, we find we are not persuaded. The judge afforded him a very generous discount for mitigation, reducing the headline to a sentence of 4 years. In so doing the judge acknowledged the mitigating factors and noted his past record of offending, leading, of course, to a progressive loss of mitigation. How a judge decides to approach the issue of suspension is within his/her discretion and we cannot see an error in the manner in which the judge exercised his discretion.

**24.** Accordingly, the appeal is dismissed.