



THE COURT OF APPEAL

Neutral Citation: [2025] IECA 22

Record Number: 85/2024 & 86/2024

McCarthy J.

Burns J.

MacGrath J.

BETWEEN/

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

APPLICANT

-AND-

PHILIP MORAN

RESPONDENT

**JUDGMENT of the Court delivered on the 20th day of January, 2025
by Ms. Justice Tara Burns.**

1. This is an application pursuant to s. 2 of the Criminal Justice Act 1993 ("the 1993 Act") seeking a review of the sentence imposed on the respondent on the grounds of undue leniency.

2. The respondent was charged in relation to two bill numbers. Bill 17/2023 related to events which occurred on 19 July 2022. Count 1 related to burglary at his ex-partner's address contrary to s. 12(1)(b) of the Criminal Justice (Theft and Fraud Offences) Act 2001 ("the 2001 Act"); count 2 related to the production of an article capable of inflicting serious injury, contrary to s. 11 of the Firearms and Offensive Weapons Act 1990;

and count 3 related to assault of his ex-partner's uncle contrary to s. 2 of the Non-Fatal Offences Against the Person Act, 1997 ("the 1997 Act").

3. Bill 2/2023 related to events which occurred on 28 August 2022. Counts 1 and 2 related to threatening to kill or cause serious harm to his ex-partner and her mother, contrary to s. 5 of the 1997 Act; count 3 related to criminal damage contrary to s. 2(1) of the Criminal Damage Act, 1991; count 4 related to burglary at his ex-partner's address contrary to s. 12(1)(b) of the 2001 Act; count 5 related to attempting to pervert the course of justice by seeking to have his ex-partner withdraw her complaint, contrary to common law; and count 6 related to assault of his ex-partner contrary to s. 2 of the 1997 Act.

4. On 20 February 2024, the sentencing judge pronounced sentence. On Bill 17/2023, a term of imprisonment of 2 years and 6 months in relation to count 2 was imposed with 12 months suspended. Counts 1 and 3 were taken into consideration. On Bill 2/2023, a term of imprisonment of 18 months' imprisonment with 5 months suspended was imposed in relation to count 3; and a term of imprisonment of 13 months imprisonment was imposed on Count 5, with all other counts taken into consideration. All sentences were to run concurrently and were backdated to reflect when the appellant entered into custody.

Background

5. On 19 July 2022, the respondent entered the house of his ex-partner via an upstairs window. At the time, the parties had separated and the respondent was not welcome in the house. The ex-partner was not present in her house, however her mother was, for the purpose of ensuring that the respondent did not enter the house. A verbal altercation ensued between them. The respondent took keys from the lock of the house and left. Having learnt of what occurred, the ex-partner returned to the house. She met the respondent on the way. He was verbally aggressive and

intimidating to her. An uncle of the ex-partner came upon this scene at which point the respondent was pulling and dragging on his ex-partner. The uncle proceeded to walk the ex-partner to her house followed by the respondent. As they reached the house, the respondent picked up a concrete block which he used in a threatening manner. He then punched the uncle in the left side of his jaw.

6. On 28 August 2022, shortly after midnight, the respondent again attended at this house, demanding to get in. He threw objects at a bedroom window causing it to smash before leaving the scene. At approximately 6am, the respondent re-attended at the house seeking to get in. Having smashed glass in the front door, he came into the house and gained entry into a bedroom occupied by his ex-partner and her mother. He pushed his ex-partner (who was pregnant) and threatened to kill her and her mother. He was subsequently arrested and detained. Whilst in detention, the respondent made a call to his sister which was overheard by Gardaí, during which he instructed his sister to get his ex-partner to withdraw charges against him.

7. The respondent took a trial date in relation to both matters. After a jury was sworn in relation to Bill 2/23, he pleaded guilty on the following day to counts 3, 5 and 6 on Bill No. 2/2023 and counts 2 and 3 on Bill No. 17/2023, with all remaining counts to be taken into consideration.

Grounds of Appeal

8. By Notice of Application dated 15 March 2024, the applicant set out the following grounds asserting the sentencing judge imposed unduly lenient sentences in respect of both bills, namely:-

"1. The Sentencing Judge imposed a sentence which did not adequately reflect the gravity of the offence committed.

2. *The Sentencing Judge placed insufficient weight on the aggravating factors present.*
3. *The Sentencing Judge erred in the weight attached to the mitigating factors in this case.*
4. *The Sentencing Judge erred in not giving due consideration to the fact that the Respondent had relevant previous convictions.*
5. *The Sentencing Judge erred in placing the offences in the low range on a scale of gravity."*

9. The applicant additionally set out a sixth ground of application in relation to Bill No. 2/2023 as follows:-

"6. The Sentencing Judge erred in imposing concurrent sentences."

Personal Circumstances

10. The respondent was 29 years old when sentenced. He previously experienced difficulties with alcohol and had mental health difficulties. He had a history of employment. The respondent had relevant previous convictions for assault and criminal damage. The respondent and his ex-partner had reconciled with a baby born in January 2024.

Sentencing Determination

11. The sentencing judge sentenced the respondent in the following terms:-

"In relation to the production of an article, namely a concrete block, this is at the upper end of the low range of gravity. The appropriate

sentence is three years' imprisonment. In relation to the section 11, the criminal damage, that is in the low range of gravity, the appropriate sentence is two years' imprisonment. And in relation to perverting the course of justice, again that is in the low range of gravity, the appropriate sentence is 18 months' imprisonment.

In relation to mitigation, Ms Geoghegan is correct that very little can be given by way of mitigation for the late guilty pleas, but they were guilty pleas. So, he is entitled to some mitigation, even though in one of the cases they came on the day a jury had already been empanelled and the other one was a week out from the trial. He has been attending Carlow mental health since March of 2023. He has obtained various certificates and undertaken various courses in relation to manual handling and excavator driving and other matters. He has written a letter of apology which shows insight into the difficulties caused to his partner and to their very young son. Since going into custody on some of his other offences, he has undertaken an anger awareness programme. And the governor's report says that he is not causing any problem to the prison staff and is on a standard regime with no P19s. For the mitigation on the section -- the production of an article, I am reducing the sentence by six months to leave a sentence of two years and six months and I am prepared to suspend the final 12 months of that sentence for a period of 12 months, subject to he being under probation supervision for 12 months. I am taking the section 2 assault on the 19th of July '22 into consideration. In relation to the section 11, I am giving him mitigation of six months in relation to that. [...]

For the 28th of August, [...] Section 2 criminal damage [...] I am reducing that sentence by six months to 18 months, of which I am suspending the final five months of that sentence for a period of five months post release. In relation to the charge perverting the course

of justice, I am also reducing that sentence from mitigation by five months. I am taking the section 2 assault into consideration. He should enter into two separate bonds in the sum of €100 each. [...] The sentences to run concurrently and credit to be given for any time exclusively spent in remand in relation to these matters."

Submissions of the Parties

12. The applicant submits that an effective custodial sentence of 18 months' imprisonment in respect of two separate but related criminal events was manifestly inadequate and a significant departure from the norm when each of the discrete offences are considered.

13. She identifies various aggravating factors in this matter, to include the serious violent nature of the offending; the respondent arming himself with a concrete block; the premeditated nature of the offending; the fear induced in the respondent's partner and her mother; the second burglary occurring at night whilst both were sleeping; the respondent's previous convictions; and the respondent's lack of cooperation and attempts at frustrating the investigation.

14. The applicant submits that the sentencing judge erred in placing each of the offences at the low range of gravity, and that the headline sentences identified are a significant departure from what would be appropriate in the circumstances.

15. She contends that, in circumstances where the sentencing judge remarked that very little mitigation was available to the defendant, the reduction of 50% from the effective sentence in relation to the production of the concrete block and the imposition of concurrent sentences for the repeat offending, each constituted a manifest error in principle. The applicant submits that the imposition of concurrent sentences in respect of both bills did not reflect the gravity of the offences committed by the

respondent. The applicant further asserts that the sentencing judge failed to give sufficient weight to the respondent's previous convictions, in particular, those relating to assault and criminal damage.

16. The respondent asserts that the sentencing judge gave due consideration to the gravity and seriousness of the offending behaviour, the aggravating factors and the mitigatory factors present. He submits that the headline sentence does not represent a substantial departure from the norm and that the sentencing judge gave appropriate weight to the mitigatory factors present in the case.

Discussion and Determination

17. The offending in this matter was of a serious nature. Although the respondent and his ex-partner were separated, and at that time his presence was not permitted into her house, he entered into her house without permission on two separate occasions: on one occasion by entering through an upstairs window and on the second occasion by breaking a glass panel in her front door. On both occasions his behaviour was threatening and intimidating to those present resulting in him producing a concrete block to intimidate the ex-partner and her uncle on the first occasion and making threats to kill or cause serious injury to his ex-partner and her mother on the second occasion. In addition to this behaviour, the respondent then sought to subvert the course of justice, whilst detained in custody, by contacting his sister seeking for her to get his ex-partner to withdraw her statement of complaint against him.

18. These events took place within a short period of each other.

19. The offences with which the appellant was charged pursuant to the 1997 Act, attract the provisions of s. 40 of the Domestic Violence Act, 2018 ('the 2018 Act') and therefore aggravate any sentence to be imposed in respect of any such offences. While the 1997 Act offences reflected in this

matter were taken into consideration, it is necessary that regard be had to the aggravating circumstances arising pursuant to the 2018 Act.

20. We are of the opinion that the headline sentences identified by the sentencing judge in respect of each of the offences he considered, fell within his margin of discretion and in and of themselves do not amount to an error in principle. We also are of the view that the level of allowance the sentencing judge permitted in respect of the mitigatory factors which he outlined in his sentencing remarks was appropriate and does not represent an error of principle.

21. However, we are of the opinion that the failure by the sentencing judge to mark the aggravation of the offences which occurred second in time (Bill 2/23) by the first set of offences was an error in principle, whether this was achieved by the identification of a higher headline sentence or the imposition of a consecutive sentence. We are of the opinion that in light of this error, the sentences imposed by the sentencing judge were unduly lenient with the meaning of the 1993 Act. For that reason we will quash the sentences imposed on both Bill numbers.

Re-Sentence

22. We are of the opinion that the rapid succession of the offences which occurred in August 2023 to the initial offences which occurred in July 2023 is a significant aggravating factor and that in the particular circumstances arising, the imposition of a consecutive sentence in respect of Bill 2/23 is appropriate.

23. Accordingly, having regard to the circumstances of the offending behaviour, together with the respondent's previous relevant convictions for assault and criminal damage, and having regard to the mitigatory factors set out by the sentencing judge which we adopt, together with the additional information we received with respect to the respondent's

engagement with his G.P. regarding his mental health since his release from prison and the fact that he has reconciled with his ex-partner who is now expecting a second child, in addition to the letter we received from her, we will impose the following sentences:-

- On Bill 17/2023, in respect of Count 2 (Production of an Article) we agree that the headline sentence identified by the Sentencing judge of 3 years was appropriate for the reasons outlined by him. We also agree with the reduction he adopted having regard to the mitigatory factors present in the case, to include the plea of guilty and his expression of remorse. We will therefore impose a term of imprisonment of 2 years and 6 months. We have taken counts 1 and 3 into consideration.
- On Bill 2/2023, in respect of Count 3 (Criminal Damage), we agree that the headline sentence of 2 years is appropriate and again, having regard to the mitigatory factors present in the case, we will impose a term of imprisonment of 18 months' imprisonment. In respect of Count 5 (Attempted Intimidation), we are of the view that a headline sentence of 2 years is appropriate for this matter. Having regard to the mitigatory factors present we will impose a sentence of 18 months. We have taken all other counts into consideration and have had regard to the provisions of s. 40 of the 2018 Act.

24. The terms of imprisonment on Counts 3 and Counts 5 are to run concurrently to each other however, they are to run consecutively to the term of imprisonment imposed in respect of Bill 17/2023.

25. To give effect to the principle of totality and proportionality and to encourage rehabilitation, we will suspend the final 12 month of the sentences imposed on Bill 2/2023 on the same terms and conditions as imposed in the Circuit Court.

26. Credit is to be given to the respondent in respect of any time already spent in custody solely on these matters.

Approved

No Redaction Needed