



THE COURT OF APPEAL

**Record No. 166/20 (Coyle)
Record No. 141/20 (Howard)**

**Woulfe J.
McCarthy J.
Kennedy J.**

Between

THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

-and-

STEPHEN COYLE

Appellant

-and-

Between

THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

-and-

LEROY HOWARD

Appellant

JUDGMENT of the Court delivered by Mr. Justice Woulfe on the 12th day of May, 2022

Introduction

1. These are two appeals against severity of sentence. The appellant, Stephen Coyle, entered a guilty plea on the 26th July, 2019, in the Circuit Criminal Court in Trim to two counts of violent disorder and of assault causing harm. He was sentenced on the 13th July, 2020, to a term of

imprisonment of seven years and six months, with the final 24 months suspended on the violent disorder count, and for a period of four years on the other count, both sentences to run concurrently. On imposing sentence, the Court took into consideration five further counts, being one count of assault causing serious harm and four counts of assault causing harm.

2. The appellant, Leroy Howard, also pleaded guilty to the same two counts on the 6th June, 2019, and he was sentenced on the 6th July, 2020, to a term of imprisonment of seven years and six months on the violent disorder count, with the final 12 months suspended, and for a period of four years on the other count, both sentences to run concurrently. The Court again took into consideration four further counts of assault causing harm.

3. Both appellants appeal on the grounds that the sentence was excessive in all the circumstances, and that the sentencing judge erred in principle in identifying the headline sentence as being one of ten years.

Background

4. The events which give rise to this appeal happened in the early hours of the 1st August, 2016, on the Main Street in Ashbourne, County Meath. The sentencing hearing opened on the 29th November, 2019, and Garda John Trimble gave evidence to the Court and spoke to CCTV footage which showed the movements of various individuals on the night of the incident. The Court heard how Mr. Anthony Morgan and a number of his friends, namely his fiancée, Ms. Jennifer Sutton, Ms. Jennifer Reid, Mr. Joseph Long, and others, were in a bar in Ashbourne called Fogarty's Bar, as were the appellants along with two other individuals. The bar was described as effectively a nightclub attached to a hotel. None of the two parties in the altercation that later took place knew each other, and both groups remained there for the evening.

5. There seems to have been some sort of verbal interaction in Fogarty's Bar around 2.00am between Mr. Morgan and a member of the group which the appellants were part of. From their demeanour this interaction did not look like it was friendly in nature, but nothing happened as a result of it within the bar.

6. Mr. Morgan, Ms. Sutton, Ms. Reade and Mr. Long left Fogarty's together and were proceeding to a takeaway on the Main Street after leaving the nightclub. The CCTV footage shows the appellants and their group emerging from under the trees on the Main Street. The sentencing judge noted that she had viewed the footage on quite a substantial number of occasions, and that it did not pass her by that others had passed the same location and were not subjected to the verbal insults in the way

that Mr. Morgan and his group were. As the groups were passing each other on the street, one of the members of the appellants' group became abusive towards Ms. Reid. Mr. Morgan reacted and came out onto the road followed by his friends, and he was then surrounded by the two appellants and other individuals in their group. One of those other individuals separated himself from that group and went a different direction into the Garda station towards which Mr. Morgan was moving, in order to cut off any escape by Mr. Morgan from what was about to ensue.

7. As Mr. Morgan was surrounded and in an attempt to get away from the group that was surrounding him, he retreated through the main gates of the Garda station and this was his last memory of what transpired. He was then subjected to an attack, and he ended up on the ground and was kicked in the face and head. There were four individuals involved in this attack, two of which are the appellants in this appeal. One of the female witnesses to this attack described Mr. Morgan as lying on the ground covered in his own blood, and appearing to have lost consciousness, and yet still being kicked in the head and face by his assailants. She tried to distract one of them by throwing her handbag at him and he turned around and punched her in the face, knocking her to the ground. She described three of the assailants running around punching and kicking herself, Mr. Morgan and Ms. Reid. Mr. Long also observed Mr. Morgan on the ground getting kicked in the face by his assailants, and when he attempted to intervene he too was surrounded and assaulted. Mr. Long also saw one of the females in his group, Ms. Reid, being kicked in the stomach when she had attempted to intervene.

8. Another individual who tried to intervene on the night in question was a Mr. Shane Ryan, after coming upon the scene of the assault on Mr. Morgan. He was punched in the head by another individual in the appellants' group and he fell to the ground. There was CCTV footage of Stephen Coyle stamping on the head of Mr. Ryan and of Leroy Howard then kicking him in the face, before being pulled away by Stephen Coyle.

9. Mr. Morgan was taken by ambulance to James Connolly Memorial Hospital and admitted and he remained there for ten days. The medical evidence included an opinion that he sustained severe head and brain injuries as a direct result of the assault. He was described as having suffered a deep scalp laceration, or an occipital laceration, which required stitches. He had amnesia and a possible loss of consciousness which necessitated a CT scan of his brain. The CT scan revealed bi-frontal contusions and left temporal contusions. He had multiple lateral frontal lobe haemorrhage contusions, and a left temple subarachnoid haemorrhage and an occipital fracture. He experienced severe headaches and had difficulty sleeping, and he had to take analgesia for his headaches. In

December 2016, some four months after the attack, Mr. Morgan had not returned to work because of his injuries and it was not known when he would be able to return. In November 2016, Mr. Morgan was seen at the National Rehabilitation Centre, and he had hearing issues on one side and a complete loss of his sense of smell. As of the date of the sentencing hearing Mr. Morgan was said to have made a full recovery other than the loss of smell, which he did not believe he was going to recover from.

10. Ms. Sutton, who was also assaulted within the curtilage of the Garda station, sustained injuries to her left hand, right face and elbow. On examination, she was noted to have bruising around her right eye with swelling under the edge of the left hand. X-ray investigations of her facial bones and left wrist were all reassuring. In terms of treatment, she was allowed home with pain relief and advice. Mr. Long was also taken by ambulance to James Connolly Memorial Hospital. His injuries were described as a facial laceration on the lip and periorbital bruising. On examination he had a full thickness laceration over his left eyebrow, a left periorbital laceration, and bruising and swelling to his upper lip and right cheek. X-rays were taken and he had no fractures. He was given analgesia and anti-tetanus injections. His facial lacerations were cleaned and sutured and he was given a prescription for antibiotics. He made a full recovery.

11. It appears that Mr. Ryan was also taken by ambulance to James Connolly Memorial Hospital. His injuries were described as right-sided facial swelling and jaw pain. On examination he was fully alert and orientated. He had right periorbital haematoma and bruising, a right temporal haematoma, tenderness of both cheekbones and of the temporal mandibular joints. He was admitted to the observation ward overnight. A CT scan of his brain and facial bones ruled out any brain injury or facial bone fracture. He was discharged home the next day with analgesia.

12. At the time of the hearing Stephen Coyle had sixty-two previous convictions, fifty of those were for road traffic matters, nine were for public order matters, one was for criminal damage and two for offences under the Theft Act. His most recent conviction, which was in 2015, was in relation to a no insurance event dating back to 2012. Since the 2012 matter, Mr. Coyle had not come to the adverse attention of the Gardaí other than for this incident on the night in question. As regards periods spent in custody, it appears he spent only one period of incarceration after being sentenced to five months' imprisonment in relation to road traffic matters in 2011.

13. In his plea in mitigation, counsel for Mr. Coyle stated that his client was now thirty-three. He submitted that there was a clear daylight between his last offending in 2012 and this offence, which would be regarded as out of character for him. He was remorseful for his participation in what

seems to have occurred spontaneously on the evening in question. As regards his family circumstances, he was in a stable relationship and he and his partner had three children. His own father had spent time in custody, and he had assisted his mother who suffers from significant depression following the death of his younger brother in a motorcycle accident in 2013.

14. Counsel for Mr. Coyle highlighted that his client had pleaded guilty to certain charges at an early stage, with a saving to the State, and the complainants were saved the ordeal of having to give evidence. The extent of the complainants' recoveries was a huge relief, and his client was extremely fortunate in that regard. He had joined the Sports Development Programme run by the North Wall CDP, and had been invited to train as an outdoor activity instructor by the adventure project operated by them. There was a reference from the Ballybough Community Group under 10's regarding voluntary work done by him in his local community.

15. Mr. Howard was aged twenty-seven at the date of the sentencing hearing. He had seventy previous convictions, forty-seven for road traffic matters, nine for public order matters, five for offences under the Theft Act, three for possession of drugs, and six for possession of drugs for sale and supply, with one conviction involving drugs with a value of over €13,000. Mr. Howard was at the date of the sentencing hearing serving a sentence in custody for a drugs offence.

16. In her plea in mitigation, counsel for Mr. Howard stated that he was deeply remorseful for the injuries caused, and that he was going through a very bad time due to cocaine use and alcohol. His life began to change a week after this incident, when he learned he was going to become a father, and he then began efforts to give up his drug use. That child was born in March, 2017, and a second child was born in March, 2018. While Mr. Howard had a considerable number of previous convictions, the majority were dealt with in the District Court with short prison sentences and disqualifications.

17. Counsel for Mr. Howard noted that he had been in custody since November, 2018 and had been enjoying the opportunity of getting an education in prison, as he had left school at fifteen. She referred to courses which he had undergone in custody, and certificates presented to him. He had enrolled on a Pathways to Change Programme *via* the psychology services, which was aimed at endeavouring to rehabilitate persons.

Decision of the Sentencing Judge

Stephen Coyle

18. The sentencing judge gave her decision in relation to Mr. Coyle at an adjourned sentencing hearing on the 13th July, 2020. She noted that the sentence must be a deterrent not only to him but to others, but also that deterrence must not go beyond what is proportionate. She then reviewed the events of the night in question, by reference to the CCTV footage and the other evidence. She again reviewed the medical reports regarding the injuries sustained by the victims.

19. The sentencing judge made reference to Mr. Coyle's previous convictions, while noting that his most recent conviction in 2015 was actually in relation to a matter from 2012, and that he had not come to the adverse attention of the Gardaí since then save for this appalling incident. She also noted that one member of the Gardaí, who knew him from his community, had been surprised at Mr. Coyle's involvement in something like this.

20. The sentencing judge identified first the aggravating factors, having regard to the maximum penalties of ten years' imprisonment in relation to the violent disorder count and five years in respect of the other count. She noted what she described as "the savagery" and the kicking and the stamping on the night in question. While the incident lasted less than five minutes, the ferocity of this aggressive behaviour was described by her as shocking in the extreme. The attack on Mr. Morgan took place in the curtilage of the Garda station, and it was very obvious that this was a complete blatant and brazen attack with disregard for law and order. The assault was a vicious assault, in particular with Mr. Morgan being on the ground. He was unconscious at one point in time, and yet Mr. Coyle's group still insisted on kicking him and stamping on him. As regards the assault on Mr. Ryan, Stephen Coyle was identified as stamping on him while he was lying on the ground, a factor which the sentencing judge described as an "appalling highly aggravating factor".

21. The sentencing judge also had regard to the physical effects on Mr. Morgan of having sustained a traumatic brain injury, and continuing to suffer loss of smell as a consequence. She noted that Mr. Coyle had previous convictions which meant a loss of mitigation in that regard, and she said that the relevance of those convictions was that they were for public order offences and all had been dealt with in the District Court.

22. In terms of the headline sentence and the range of offending, the sentencing judge nominated a headline sentence of ten years' imprisonment on the violent disorder count for what she described as "this appalling behaviour". Similarly, as regards the assault count, she felt that a headline sentence equivalent to the maximum penalty of five years' imprisonment was warranted.

23. As regards mitigating factors, the sentencing judge referred to the fact that Mr. Coyle was remorseful and had given a letter of apology to the victims, which she accepted as genuine. She

stated that he would get the benefit of the fact that he entered a guilty plea well in advance of his hearing date and thereby saved the witnesses from coming to trial. She noticed his past history of alcohol and drug abuse, and how recent urine analysis directed by her was all favourable. She reviewed his family history, and how he was in a long-term relationship and was a father of three children, and how it seemed that he had behaved well since 2012, save for this "appalling matter".

24. The sentencing judge noted that Mr. Coyle had started work with a training board, and the fact that he had attempted to set himself up as a working member of the community. He had been contributing to his local community by taking part in local sports and helping with younger people in terms of voluntary organisations. She referred to letters of recommendation and references and certificates that had been submitted to the Court for mitigation purposes. She noted a positive report from the Prison Governor, and the fact that Mr. Coyle had engaged in psychological services in Cloverhill and was attending school and was employed, which was all to his credit.

25. In terms of the violent disorder count, while a headline sentence of ten years had been nominated, the sentencing judge felt there was much mitigation and so a sentence of seven and a half years' imprisonment would be imposed. To mark the distinction between Mr. Coyle and his co-accused, in terms of the fact that he had not come to adverse attention since 2012, the final twenty-four months would be suspended on terms. As regards the other count, the s.3 assault on Mr. Morgan, the sentence would be four years' imprisonment, with the sentences to run concurrently.

Leroy Howard

26. The sentencing judge gave her decision in relation to Leroy Howard at an adjourned sentencing hearing on the 6th July, 2020. She stated at the outset that she wanted it recorded that this incident was "an appalling act of savagery and ferocity", and that this would be reflected in the structure of the sentence. She noted that the sentence to be imposed by her should be proportionate to the gravity of the offences and to the culpability of the offender. She reviewed the background to the offences and the CCTV footage, and stated that one could not help but be shocked and appalled at the ferocity of the violence that was inflicted by the individuals, including by Mr. Howard, on the night in question.

27. The sentencing judge referred to the evidence of Mr. Long as to remembering Mr. Morgan being kicked to the face, which the sentencing judge found highly aggravating. She also referred to the evidence of Ms. Sutton that the men continued to kick Mr. Morgan in the head even after it appeared that he had lost consciousness, which evidence she described as very troubling and highly

aggravating. In terms of the assault on Mr. Ryan, she referred to how Mr. Howard had kicked him in the face while he was lying prone on the ground, and she described this as a highly aggravating factor in terms of behaviour. She reviewed the medical reports as to the injuries suffered, which she said made for sorrowful reading.

28. The sentencing judge made reference to Mr. Howard's previous convictions. She then considered his background and the fact that he was currently serving a custodial sentence, and she stated that he would get credit for having engaged with all supports and opportunities made available to him whilst in custody. She noted a recent report of the Prison Governor which stated that Mr. Howard continued his sentence in positive manner. She detailed various documentation received by the Court in respect of Mr. Howard. She accepted the fact that his apology was genuine.

29. As regards aggravating factors, the sentencing judge considered such factors were overlapping, bearing in mind what she described as the savagery of the incidents that comprised the elements of the violent disorder count. She was also bearing in mind common design. While this incident only lasted just under five minutes, the ferocity of the aggressive behaviour of the attacking group was shocking in the extreme. The previous convictions acquired by Mr. Howard lessened his mitigating factors, insofar as he had relevant previous convictions in terms of public order behaviour. Another aggravating factor was the fact that he was on bail for this offence when he committed the s.15A offence for which he was then in custody.

30. As regards mitigation, the sentencing judge stated that she was having regard to all that was said and she had given careful consideration to the letters and testimonials submitted on behalf of Mr. Howard. She had regard to his early plea of guilty, which was in ease of the victims and the criminal justice system. She noted again what he had done in custody, and stated that he would get credit for that.

31. The sentencing judge felt that the headline sentence on the violent disorder count should be at the highest end of the range. This warranted a ten-year headline sentence, which was the maximum as provided by law, but this was in her opinion a truly appalling incident. As regards the other count of assault causing harm on Mr. Morgan, that also warranted the top end of the scale, having regard to the appalling attack on Mr. Morgan and the injuries he sustained. Again, the maximum sentence would be indicated by way of nominating five years to be the headline sentence.

32. Having regard to the benefit of the plea and all of the mitigation present, the sentencing judge decided that the actual sentence in respect of the first count would be a sentence of seven and a half years' imprisonment, and in respect of the other count a sentence of four years'

imprisonment, to run concurrently. The sentencing judge suspended the final twelve months of that sentence on the first count, on conditions, bearing in mind that Mr. Howard was currently serving a serious sentence and taking into account the fact of his rehabilitation and all that he was doing in custody.

Grounds of Appeal and Submissions on Appeal

33. Both appellants appeal against severity of sentence on a number of similar grounds, including that the sentencing judge erred in principle in identifying the headline sentence at ten years on the violent disorder count, failed to have sufficient regard to the mitigating factors, and failed to have due regard to the personal circumstances of the appellants. In addition, Mr. Coyle also pleaded that the sentencing judge failed to distinguish between the respective roles of the co-accused.

34. As regards the headline sentence, counsel for Mr. Coyle accepted that there was no rule of law that the headline sentence nominated cannot be the maximum sentence laid down by law. However, that headline sentence of ten years was inappropriate in the present case having regard to the following factors: the lack of premeditation, the absence of weapons and the short duration of the assault. He asked this Court to consider a number of comparative cases where, it was said, an aggravating factor such as a weapon was involved, yet the headline sentence appears to have been considerably lower.

35. Counsel submitted that the sentencing judge failed to distinguish sufficiently between Mr. Coyle and his co-accused who had more serious convictions, and failed to give any sufficient consideration to the fact that his last offence, other than this incident, dated back to 2012. He also argued that insufficient weight was given to the mitigating factors, in particular the plea of guilty and Mr. Coyle's significant efforts at rehabilitation.

36. Counsel for Mr. Howard acknowledged that there was a commonality between the two appeals, and he adopted all the submissions made by his colleagues. He made clear that his principal ground of appeal was that the ten-year headline sentence was inappropriate. This was because of the absence of markedly more aggravating factors such as an element of premeditation, the presence of a weapon, or an attempt to conceal or disguise the assailant's face. He also referred to the fact that the incident extended into a period of only slightly under five minutes, but acknowledged that this could seem like a lifetime for a person involved in such an incident.

37. In reply, counsel for the respondent responded to the challenge to the headline sentence based on an alleged absence of certain aggravating factors. As regards the alleged lack of premeditation, he pointed to the evidence of some engagement between the parties earlier on in the evening, and thereafter out in the street, and argued that the incident did not commence entirely spontaneously. As regards the absence of weapons, he submitted that this was incidental having regard to the stamping and kicking which was meted out. He took fundamental exception to the description of the incident as occurring over a short period of time, and submitted that five minutes is a significant period, having regard to the intensity of the violence.

38. Counsel submitted that on no account could it be said that the offence ought to be placed anywhere other than in the highest range, and in those circumstances, whether one would nominate a headline sentence of nine years' imprisonment as opposed to ten years is a judgment call, in respect of which he argued deference should be shown to the assessment by the learned sentencing judge.

39. As regards the other grounds advanced by Mr. Coyle, counsel submitted that the discount for the plea was appropriate, as it could not be characterised as an early plea, and it was entered in the face of good evidence. It was clear from the transcript that the sentencing judge had very considerable regard to Mr. Coyle's personal circumstances, and his particular circumstances were adequately distinguished from those of his co-accused.

40. As regards Mr. Howard, subsequent to the occurrence of this incident he was convicted of an offence contrary to s.15A of the Misuse of Drugs Act, resulting in a four year term of imprisonment being imposed upon him, which he was serving at the time the sentencing for these offences came before the sentencing judge. It would have been open to the sentencing judge to make the sentence imposed in respect of these offences consecutive to the sentence imposed in respect of the s.15A offence, and in exercising her discretion not to do so, he submitted that Mr. Howard was extended a very considerable degree of leniency. That degree of leniency would, no doubt, have reflected the sentencing judge's assessment of the mitigation presented on his behalf.

Decision

41. The Court takes the view that there was no error of principle by the sentencing judge in nominating a headline sentence on the violent disorder count of ten years, albeit that this is the maximum sentence for that offence as laid down by law. In our view, these two appeals involve a very serious offence where the sentencing judge was entitled to find that the nature and level of the

violence involved was a highly aggravating factor on the evidence before her, which meant that this was offending of such seriousness that it had to be met with a significant custodial sentence in both cases.

42. The fact that a different Court might have imposed a slightly lower headline sentence does not provide a basis for intervention by this Court. Indeed, even if it were the case that this Court or individual members might have considered a different headline sentence, that would still not lead this Court to intervene. It would be necessary for the headline sentence nominated to fall outside the available range, which is not the case here.

43. As regards the appellants' reliance on comparator cases, while the Court accepts that consistency of sentence is of course a desirable objective, the Court is of the view that the outcome of one or more comparator cases, involving somewhat different factors, cannot necessarily be decisive in a later case. The Court is of the view that the headline sentence nominated in the present case, taking account of all of the material factors, was within the range of the headline sentence available to the sentencing judge, given the very serious offending involved.

44. Mr. Coyle also pressed a couple of other grounds of appeal, which were not really relied upon by Mr. Howard at the appeal hearing. Mr. Coyle's counsel submitted that the sentencing judge gave inadequate weight to certain mitigating factors, and in particular failed to have sufficient regard to his personal circumstances, his genuine remorse and his plea of guilty. The Court is satisfied that the sentencing judge took into sufficient account each of these relevant mitigating factors, as set out in the summary of her decision as detailed above.

45. Finally, counsel for Mr. Coyle pressed the ground that the sentencing judge failed to sufficiently distinguish between this accused and the other accused. He relied on the fact that Mr. Coyle's previous convictions were all for relatively minor offences, and none for offences of the kind in this case, and that his last conviction related back to events in March, 2012. While the sentencing judge did take into account the differences between the accused insofar as she suspended the final twenty-four months of the term of imprisonment imposed on the violent disorder count, as opposed to suspending twelve months in Mr. Howard's case, it was submitted that this was wholly insufficient. It was argued that Mr. Coyle must clearly have a grievance as he ends up with the same effective sentence of five and a half years as Mr. Howard, in circumstances where Mr. Howard's sentence overlaps with another sentence which commenced in November, 2018, even though Mr. Howard has got a worse criminal record than Mr. Coyle.

46. As regards disparity of treatment between co-accused, in the judgment of this Court in *DPP v. Davis* [2022] IECA 57, Birmingham P. stated as follows:

“18. The starting point for consideration is that co-offenders should ordinarily receive the same, or certainly similar, sentences unless there are appreciable differences in levels of culpability or in terms of their personal circumstances. It has long been recognised that, absent that happening, an accused receiving a longer sentence than his co-offender may be left with a sense of grievance, and in some cases, that may be a justifiable sense of grievance. However, as far back as the case of *People (Attorney General) v. Poyning* [1972] I.R. 402, it has been recognised that the fact that an unduly lenient sentence was imposed on one defendant does not of itself justify interfering with a longer sentence imposed on another where the latter sentence is otherwise appropriate. In the case of *DPP v. Daly* [2011] IECCA 104, the point was made that the foremost consideration has to be the imposition of an appropriate sentence. Parity, it was pointed out, is a laudable aim, but there will exist circumstances where two sentences cannot be reconciled and parity has not been achieved. In such a case, parity will sometimes have to yield and appropriateness will have to prevail.”

47. Applying the above principles to the present case, the fact that what could be seen as a relatively lenient sentence was imposed on Mr. Howard (arising in particular from the sentencing judge making the sentence concurrent with the sentence imposed in respect of the s. 15A offence), does not of itself justify interfering with a similar sentence imposed on Mr. Coyle, where that latter sentence is viewed by the Court as otherwise appropriate. It seems to us that the extent of any divergence that has emerged does not give rise to a situation where an intervention by this Court would be required.

48. We therefore dismiss both appeals.