



**THE COURT OF APPEAL**

**Record Number: 177/2021**

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

**BETWEEN/**

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

**RESPONDENT**

**- AND -**

**STEPHEN MAHON**

**APPELLANT**

**JUDGMENT of the Court delivered (*ex tempore*) on the 4th day of April 2022 by Ms. Justice Kennedy.**

1. This is an appeal against severity of sentence. The appellant was sent forward on a signed plea of guilty which he affirmed on the 7th of September 2021. On the 28th September at Cork Circuit Criminal Court, the appellant was sentenced to three years' imprisonment with the final six months suspended for the offence of robbery.

**Background**

2. At approximately 3:45am on the 20th May 2021, the injured party, who was 40 years of age at the time, was cycling to her job as a cleaner in a suburb of Cork City when she passed the appellant, who was intoxicated, and who then turned and began to follow her. The appellant ran behind this woman, she attempted to pick up speed and he pushed her from her bike. The injured party fell to the ground, hurting herself. The appellant stood over her and aimed a punch at her which fortunately did not connect with her. She made her escape and the appellant took her bike which he used to cycle back home. The bike had a value of €749. The incident was captured on CCTV.
3. The Gardai called to his address on the 23rd of May 2021, but the appellant was not present. On the same date the appellant presented himself to the Garda Station, was arrested, detained and questioned. He stated that he did not recall the incident but

readily admitted to it, stating he was on a cocktail of prescription drugs (25 Xanax) and alcohol on the night in question. The appellant apologised to the injured party.

#### **Personal circumstances of the appellant**

4. The appellant was 29 years of age and living with his grandparents at the time of sentencing. He has one son who he was living with before this incident, however, he moved in with his grandparents after he was laid off due to the Covid-19 pandemic. It is said that he had not come to regular Garda attention for the year he was in employment and that being laid off had sent him on a downward spiral, reactivating his drug and alcohol difficulties.
5. The appellant is a man with 62 previous convictions; *inter alia* one for burglary, one for arson, three for criminal damage, three for theft, two section 2 assaults and 45 public order offences. The offence contained herein occurred while the appellant was under a bond to keep the peace and be of good behaviour in connection with a conviction for two counts of arson and unauthorised taking. The bond was entered into by the appellant on the 24th March 2021, some 2 months before this offence. By the date of the within sentence, the bond had expired.

#### **The sentence imposed**

6. The judge stated that the appellant had total disregard for the injured party, noted the situation concerning the bond and stated that even in consideration of the very early guilty plea that the appropriate sentence was three years with six months suspended on the condition that he keep the peace and be of good behaviour for a period of 12 months.

#### **Grounds of appeal**

7. The appellant appeals his sentence on six grounds, namely;
  1. That the judge did not give sufficient weight and balance to the evidence adduced in mitigation of sentence
  2. That the judge erred in law in the sentence in that he did not take into account, the remorse and the fact that the appellant came forward on a signed plea, the judge erred in not giving the benefit to the remorse shown by the appellant.
  3. That the judge did not give sufficient weight and balance to the appellant's age and personal circumstances in that, at the time of the sentence, the appellant was 29 years of age and a father to a 3 year old child.
  4. That the judge did not give sufficient weight and balance to the fact that the appellant had spent 4 months in custody awaiting sentence.
  5. That the judge did not give sufficient weight and balance to the fact that the appellant was under the influence of a large amount of prescription medication and alcohol.
  6. The appellant intends to rely on such further or other grounds of appeal as may be argued by counsel acting on behalf of the appellant at the hearing of this appeal.

### **Submissions of the appellant**

8. The appellant cites the case of *People (DPP) v Tim O'Sullivan* (unreported, Court of Criminal Appeal, 22/3/02) in which Keane CJ delivered an *ex tempore* judgment. It is said that this case is authority for the principle that a failure by a trial judge to have adequate regard to any and/or all of the mitigating factors concerning a particular accused can be an error in principle. *The People (DPP) v Kelly* [2016] IECA 204 is also cited wherein this Court held that a sentence should be appropriate for the crime committed by that criminal. It is submitted that taking into account these two cases that the sentence handed down to the appellant was excessive and oppressive in all the circumstances and that the judge failed to have proper and adequate regard to the mitigating factors.
9. It is further submitted that the judge did not afford sufficient weight to the prospect of rehabilitation of the appellant herein which is in the public interest and would have motivated the appellant to turn away from crime. In this respect, *The People (A.G) v O'Driscoll* [1972] 1 Frewen 351, is cited. A recent case of this Court, *DPP v Mario Tache* [2021] IECA 280, is also relied on in which Edwards J applied the totality principle in reducing the appellant's two-year sentence to one of eighteen months. It is concluded, following *Mario Tache*, that the judge erred in principle when imposing sentence on the grounds set forth and argued above.

### **Submissions of the respondent**

10. In considering the nature and circumstances of the commission of the offence, the appellant's previous convictions and most particularly the fact that the appellant was on a bond to keep the peace and be of good behaviour which he entered less than two months previously, the respondent submits that the sentence imposed was entirely appropriate and proportionate and also gave him full credit for all mitigating factors. It is further submitted that, in suspending a portion of the sentence, the judge also had regard to the interest of rehabilitation.
11. The respondent contends that the judge made no error in determining the final sentence herein, as the only significant mitigating factors were the appellant's cooperation and early plea of guilty and these had to be balanced against the aggravating factor of the offence having been committed whilst the appellant was on a bond.
12. It is also noted that while it is clear that the appellant is a person with a significant addiction issue, there was no evidence before the court of any recent efforts by him in terms of dealing with the addiction such as to warrant further suspension of the already suspended sentence for reasons of mitigation or for affording sufficient weight to the public interest in the rehabilitation of the appellant.

### **Discussion and Decision**

13. On first blush one may not consider this to be a serious offence, but when we consider the circumstances surrounding the commission of the offence, a different picture emerges. The victim, a lady in her 40's was cycling to work in the early hours of the morning during a pandemic, she was, in effect as properly observed by the trial judge, a frontline worker, doing her bit during very difficult times. The appellant follows her,

which must have been a very frightening situation for a woman alone at 3.45am, pushes her from her bicycle, aims a punch at her and then takes the bicycle.

14. He is a man with 62 previous convictions and while many are for public order offences, he has three previous convictions for theft and two convictions for s.2 assault which aggravate this offence. He had also received a 9 month suspended sentence just two months prior to this offending which also aggravates this offence. When all factors are taken into consideration including the undoubted effect on the victim, notwithstanding that she did not wish to make a victim impact statement, it is very difficult to see that the judge erred in coming to the ultimate sentence of 3 years' imprisonment.

15. We acknowledge that the judge did not identify a headline sentence, but he did indicate that even with a plea, he considered the appropriate sentence to be one of 3 years, thus the headline sentence must have been at the upper end of the low range for offences of this kind.

A headline sentence of that order, would be, in our opinion, entirely within the margin of appreciation afforded to a sentencing judge.

16. Mr Leahy BL for the appellant emphasises the mitigating factors present and undoubtedly there was mitigation, not least the signed plea of guilty. The appellant also co-operated with the Gardai, but it must be borne in mind that there was CCTV footage from which the appellant was identified. The judge imposed a sentence of 3 years' imprisonment and then suspended the final 6 months of that sentence, which, had he nominated a headline sentence at the upper end of the low range, is a significant discount for mitigation.

17. The criticism that the judge did not afford sufficient weight to the prospect of rehabilitation is an argument without merit in our view in the circumstances of this case, where the offence was committed in the currency of a suspended sentence.

18. We therefore dismiss the appeal.