



THE COURT OF APPEAL

[111/22]

**The President
Edwards J.
McCarthy J.**

IN THE MATTER OF SECTION 2 OF THE CRIMINAL JUSTICE ACT 1993

BETWEEN

THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS

APPLICANT

AND

SATURNIN SZOPA

RESPONDENT

**JUDGMENT of the Court (*ex tempore*) delivered on the 7th day of November 2022 by
Birmingham P.**

Introduction

1. This is an application brought by the Director pursuant to s. 2 of the Criminal Justice Act 1993, seeking to review a sentence on grounds of undue leniency. The principles that are applicable to such reviews are now, at this stage, not in dispute. They are not in dispute between the parties today, and in truth, they have not been in dispute since the first such case came before the Court in *DPP v. Byrne* [1995] ILRM 279. The sentence sought to be reviewed is one of four years imprisonment with the final two and a half years of the sentence suspended, the sentence dating from 6th October 2021, that was imposed on 18th day of May 2022. The sentence was imposed in respect of a count of assault causing harm, contrary to s. 3(1) of the Non-Fatal Offences Against the Person Act 1997, as amended. The Circuit Court was invited to deal with the matter on a full facts basis, and the full facts involved breaches of a safety order, contrary to s. 33 of the Domestic Violence Act 2018 ("the 2018 Act") on three occasions and these matters were taken into consideration. The dates of the safety order breaches were 27th July 2021, 19th September 2021 (the date of the substantive offence) and 2nd October 2021.

Background

2. The matter particularly in issue related to events that occurred on 19th September 2021. On that occasion, despite the existence of a safety order, the respondent came to the house where the complainant was living, which was at that point in time the joint family home. It is noteworthy that the complainant has since moved out; she has obtained another address, has sought and obtained a barring order, and is receiving support from relevant services.

3. Initially on the occasion in question, the respondent verbally abused the complainant. He then pushed her to the floor, grabbed her left foot, raised it, and twisted her left leg and foot, and when it was at that angle, having been twisted, jumped on the leg, causing extreme pain. Though the complainant did not realise it at the time, her leg was broken. However, she managed it, and the complainant struggled on to 8th October 2021, when she finally sought medical attention. At that stage, the injury was dealt with by way of open reduction and internal fixation surgery, with screws and a plate being inserted into her foot. It was the situation that the leg had been broken.

Personal Circumstances of the Respondent

4. In terms of the respondent's background and personal circumstances, he was 47 years of age at the time of the sentence hearing. He had previous convictions under the Road Traffic Act 1961, as amended, but more relevantly, he had one for breach of a safety order in respect of the same complainant, which was dealt with by way of a fine and the imposition of a two month sentence, suspended.

5. The sentencing Court heard that the respondent had a good work history, and there was an extremely positive reference from a former employer, which referred to fact that the respondent had worked for a number of years, initially as an agricultural worker on an organic farm, before being promoted to farm foreman. The reference was by any standard very positive indeed. The sentencing Court also heard that the respondent has two daughters, their mother being the complainant in this case. They were aged nine years and twenty-two years, and at the time of the sentence hearing, the respondent was a grandfather. The sentencing Court was told that alcohol was a factor in the offending. The Court heard that he has been living in Ireland since 2004, though not on an entirely constant basis.

The Decision of the Sentencing Judge

6. The sentencing judge identified a headline sentence of four and a half years, which he then reduced to four years, but then having done so, proceeded to suspend two and a half years of the sentence on conditions, these being that there would be no contact with the complainant, and that he would seek treatment for his alcohol abuse.

The Appeal

7. The Director's position is to indicate that she takes no objection to the headline sentence identified, but her stance is on the basis that the suspension of two and a half years of the sentence rendered it a sentence that was unduly lenient.

8. The Director points out that the victim was "a relevant person" under s. 40(1) of the 2018 Act:

"Where a court is determining the sentence to be imposed on a person for a relevant offence, the fact that the offence was committed by the person against a relevant person shall be treated, for the purpose of determining the sentence, as an aggravating factor."

9. The respondent for his part does not dispute that the sentence is lenient, but rather argues that the sentence was one that was structured, carefully considered, was one that was imposed after due deliberation and one that should not be interfered with.

10. The respondent draws this Court's attention to the authorities of *DPP v. Kelly* [2019] IECA 11 and *DPP v. Farnan* [2020] IECA 256, both of which are undue leniency cases, and ones in which the sentences had been suspended in their entirety.

Discussion and Decision

11. For our part, we regard this offending as very serious indeed. The actions of the respondent were designed to cause maximum pain and inflict injury. It is the position that the Oireachtas has addressed the issue of domestic violence and it has done so through s. 40 of the 2018 Act. Though, it must be said that even in advance of legislative intervention, it has been the attitude of the courts for quite some time to regard the fact that offending was occurring in the context of domestic violence as being an aggravating factor.

12. The Director has expressed no issue with the headline sentence and for our part we will approach our consideration on that basis. Although we pause to observe that, such was the viciousness of the assault, the sentencing Court may have taken 5 years, the statutory maximum, as the starting point. This Court has made the point previously, such as in the case of *DPP v. McGrath* [2020] IECA 50, that a sentencing Court should not feel precluded from taking the statutory maximum as the starting point when dealing with cases relating to s. 3 of the Non-Fatal Offences Against the Person Act 1997.

13. Apart from the viciousness of the assault and the gravity of the injuries inflicted, the offence was aggravated by the fact that it was an offence committed on bail, and that by no stretch of the imagination can it be seen as an isolated incident because it followed a previous incident committed on 27th July 2021, and, indeed, it was followed up by a further incident on 2nd October 2021. There is also a relevant prior conviction in respect of a breach of a safety order relating to the same complainant.

14. It is true that there are mitigating factors, such as the early plea, though the investigating Gardaí left the Court in doubt as to the value of the pleas from the perspective of the Gardaí. In those circumstances, there is scope for reduction, not only from the headline sentence, but for part suspension. While making that observation, we agree with the Director that the element of part suspension was excessive, and indeed, was excessive to such an extent as to amount to an error in principle. The amount suspended from the effective sentence of four years was in excess of 60%, and that sentence of four years was one that included a discount from the headline sentence.

15. As already indicated, while we understand why the judge would have suspended in part the sentence, subject to conditions, it is the opinion of this Court that the objective sought to be achieved would have been given effect to by a suspension of twelve months of the sentence. On the other side of the coin, we cannot see why a suspension of more than eighteen months could have been justified. A suspension of eighteen months requiring two and a half years to be served could not be regarded as overly severe, and any lesser sentence would not address the seriousness of the offending that was in issue.

Resentencing

16. In those circumstances, being of the view that the sentence was unduly lenient, and that the undue leniency involved an error in principle, we will quash the sentence imposed in the Circuit Court, and in substitution therefor we will impose a sentence of four years, being the same sentence that was imposed, but on this occasion with eighteen months of the sentence suspended. The sentence will be subject to the same conditions stipulated in the Circuit Court and the sentence will date from the same as that of the Circuit Court.