



**THE COURT OF APPEAL**

**Record Number: 145CJA/2022**

**The President.**

**McCarthy J.**

**Kennedy 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**

**CAITLIN CORCORAN**

**RESPONDENT**

**JUDGMENT of the Court delivered (*ex tempore*) on the 20<sup>th</sup> day of January 2023 by Ms. Justice Kennedy.**

**1.** This is a tragic case. The respondent was convicted on the 15<sup>th</sup> October 2021 of one count of manslaughter on the basis of gross negligence and one count of child cruelty contrary to s. 246 of the Children Act, 2001. A sentence of three years and three months' imprisonment was imposed on each count with the final three years of the sentence suspended on terms. The

respondent was remanded in custody following the sentence hearing and has spent a period of time in custody.

**2.** The essence of the argument advanced on behalf of the Director of Public Prosecutions is that the sentence is simply too low both in terms of the headline nominated by the trial judge and the discount permitted for mitigation. It is said that the trial judge misinterpreted the basis of the jury's verdict and did not properly consider general deterrence.

### **Background**

**3.** We do not intend to rehearse the background facts in detail save to say that the respondent became pregnant when she was 18 years old and gave birth at the age of 19. The circumstances of the birth of her child are the subject of the counts preferred on the indictment.

**4.** On the 22<sup>nd</sup> April 2018, the respondent and her mother attended a Care Doc facility as the respondent was complaining of *inter alia* back pain. She was asked to provide a urine sample and spent a period of time in the bathroom. Whilst in the bathroom, the respondent delivered a baby, who, on her account fell into the toilet bowl. She retrieved the baby, held it for a period of time, placed the baby and bloodstained tissue within the bin liner in the bin.

**5.** Subsequently, she attended hospital and it became apparent that she had recently delivered a baby. An investigation followed and the aforementioned charges were preferred.

**6.** Significantly, the respondent denied her pregnancy and continue to do so even after the birth of her baby. This is notwithstanding the undoubted support of her mother, who believed her daughter to be pregnant, however, it appears that she was unable to seek help at any point in time. Her inability to confide in her mother is evidenced by the fact that her mother asked her to take a number of pregnancy tests, all of which were negative as the respondent tampered with the urine samples by diluting them.

**7.** When the Gardaí arrived at the hospital, the respondent denied that she had given birth and this continued even after the baby was discovered. However, she eventually told the Gardaí that the baby was hers. She outlined how she had given birth in the toilet cubicle, how she thought during pregnancy, after a particular period of time that there was no movement and how she was unable to offer an explanation as to why she did not seek medical help for the baby.

### **Sentencing Remarks**

**8.** Following the sentence hearing, as stated, the respondent was remanded in custody and there is no doubt that in the intervening time, the sentencing judge very carefully considered the appropriate sentence in such an unusual and tragic case. It must be said that his very detailed sentencing remarks are a model of its kind. He identified headline sentences of four years' imprisonment in respect of each of the counts.

**9.** In terms of mitigation, the sentencing judge had regard to the psychiatric report put before the court, the Probation Service report in which the respondent is assessed at low risk of reoffending, the young age of the respondent at the time of the offending, the absence of previous convictions, her good work history, her ongoing engagement with psychiatric services and her cooperation with Gardaí at the time of the investigation in handing over her clothing, providing a voluntary DNA sample and not invoking her right to silence when detained for questioning.

**10.** Taking into account mitigation, the judge reduced the headline sentences of four years by nine months in each case leading to a sentence of three years and three months' imprisonment. The judge then suspended the final three years of each sentence for a period of three years post release on a number of conditions, leading to an effective incarceration of three months' imprisonment.

### **Grounds of Review**

**11.** It is said that the headline sentence of four years for each offence is too low and in assessing the aggravating factors, the sentencing judge erred in his interpretation of the jury's verdict. This is premised on the trial judge's remarks that while it was not possible to determine the jury's reasoning in coming to their verdict, that the jury must have either taken the view in relation to the gross negligence manslaughter that the respondent knew her baby was alive but proceeded as she did nonetheless or, in the alternative, that she believed the baby to be dead and that she failed to seek assistance. The Director argues in written submissions that this was incorrect given the direction to the jury in respect of the child cruelty charge.

**12.** The judge took the latter view in determining the culpability of the respondent and concluded that the appropriate headline sentence was one of four years' imprisonment. At the sentence hearing, counsel for the Director indicated the Director's view that the case fell within the medium culpability range in accordance with the guidance given by the Supreme Court in *The People (DPP) v Mahon* [2019] IESC 24. It is submitted that this was an error in fact and in law and that in light of the guilty verdict returned in respect of both offences, it was not open to the judge to interpret the verdicts in this way.

**13.** The respondent argues *inter alia* that by virtue of their often unusual and tragic circumstances, gross negligence cases are far more likely to fall within the lower culpability bracket in terms of the *Mahon* analysis.

### **Discussion**

**14.** As we have already observed this is a tragic case resulting in the death of a baby in unusual circumstances where the respondent concealed her pregnancy throughout and also concealed the birth of her child. The argument advanced by the Director that culpability is in effect heightened by the fact that she concealed her pregnancy notwithstanding the support available to her, bears in our view of an alternative interpretation and that is that this was a troubled young woman who concealed her pregnancy notwithstanding the offers and efforts of her family of assistance and the very fact that she did not take that assistance tells its own story. This approach on behalf of the respondent may demonstrate a very limited understanding of her position and thus impact on her culpability.

**15.** Insofar as deterrence is concerned, it is difficult to see how in the present circumstances that the nomination of a headline sentence greater than that of four years' imprisonment would operate to deter such unusual conduct as in the present case.

**16.** The judge's approach to sentence was one which was careful and considered and conducted in accordance with *Mahon*.

In *Mahon*, the following was said: –

*"The first consideration in determining sentence is the public interest, which is served not merely by punishing the offender and showing a deterrent to others, but also by affording a compelling inducement and an opportunity to the offender to reform. The punishment should be appropriate not only to the offence committed, but also to the particular offender."*

**17.** On the Director's argument that the judge erred in his assessment of the basis of the jury's verdict, we acknowledge that this argument is not without substance, however, in the unusual circumstances of the case and on any view of the facts, we are satisfied that the nomination of a headline sentence of four years, which is at the lower end of the medium range of penalties as set out in the *Mahon* decision, was within the discretion of the sentencing judge.

**18.** Insofar as the argument is made that excessive discount was permitted for mitigation, we disagree with this proposition. The judge carefully identified the mitigation available, he considered the issue of remorse, the respondent's letter of apology, her circumstances, her young age, her cooperation with the Gardaí and the long-term impact on the respondent and he thus reduced the sentence to one of three years and three months. He then went on to consider as to whether this was one of those rare and exceptional cases whereby a significant portion of the sentence ought to be suspended and he was satisfied, in the circumstances, that a custodial sentence could not be avoided. In this regard, he then considered as to whether a nominal period of actual incarceration would be sufficient to achieve a proportionate sentence. He rightly found that the offence was so much against the natural instincts of a parent that the need for deterrence in the circumstances of the present offending was not particularly high. He was also mindful of the likely nature of the respondent's incarceration given the nature of the particular offence and as a consequence, he suspended the final three years of each sentence.

**19.** Again, in this regard we can find no error in principle for the reduction afforded by the trial judge for the mitigation present. Moreover, the judge carefully assessed as to how best to impose a proportionate sentence. In this regard, as stated, he found it necessary that the respondent spend a period of time in custody.

**20.** In our view, this was the sort of exceptional case whereby a wholly suspended sentence might have been imposed and indeed, if sentencing at first instance, that is probably the course of action which we would have taken. However, after very careful consideration, the sentencing judge imposed a period of incarceration and that period has now been served. The Director has sought to review that sentence and we have no hesitation in dismissing the review.