THE COURT OF APPEAL

[93/22]

The President

Edwards J.

McCarthy J.

BETWEEN

THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

AND

DAN COAKLEY

APPELLANT

JUDGMENT of the Court (ex tempore) delivered on the 13th day of March 2023 by Birmingham P.

1. This is an appeal against severity of sentence. The sentence under appeal is one of four years and nine months imprisonment, with the final 12 months of the sentence suspended, that was imposed in the Circuit Criminal Court in Cork on 13th May 2022 in respect of the offence of dangerous driving causing death, contrary to s. 53(1) of the Road Traffic Act 1961, as amended. On that occasion, provision was also made for a disqualification from driving for a period of ten years. A lesser concurrent sentence was imposed in respect of the offence of drunk driving contrary to s. 4(4)(a) and 4(5) of the Road Traffic Act 2010, and an offence of driving a defective vehicle contrary to s. 54(1) of the Road Traffic Act 1961, as amended, was taken into consideration.

Background

2. The background to the case is to be found in events that occurred at about 11.30amon 8th November 2020, a Sunday morning, in the village of Inchigeelagh in County Cork. On that occasion, a black Audi A4, which was being driven by the appellant, crossed the centre white line and collided in a head-on collision with a vehicle of which there were two occupants, Mr. David Service and Mr. Gary Service. The vehicle was being driven by Gary Service and his father, David Service, was the front seat passenger. Gardaí were called to the accident scene, and one of those coming on the scene, Garda Darragh Moore, detected a strong smell of intoxicating liquor from the appellant. A breath specimen was

demanded, and the appellant failed the roadside procedure. He was then brought to Macroom Garda station where the test recorded 99 micrograms of alcohol per 100 millimetres of breath. The legal limit was 22 micrograms, so the result was four and a half times the legal limit. The vehicle driven by the appellant was examined and it was found that there were defects in terms of the steering and the near side of the suspension, and there was a rattling noise from the rear side which would have been evident while the vehicle was in motion. It does not appear that the defective condition of vehicle was a major contributing factor to the accident but it is nonetheless indicative of a failure on the part of the appellant to take seriously his responsibility under the Road Traffic Acts.

3. Initially, the injuries sustained by Mr. Service Sr. were not thought to be life-threatening. However, he had several underlying health conditions, and against that background, the injuries he sustained in the road traffic collision proved fatal. He died from his injuries on 26th November 2020, some 18 days after the accident. Mr. Service Jr. received a number of injuries to his knee, back and shoulder from which he made a good physical recovery, but at the time of sentence hearing he was still very anxious when it came to driving.

Personal Circumstances of the Appellant

4. In terms of the appellant's background and personal circumstances, he was born on 6th November 1977, he was 44 years old at the time of the sentence hearing. He was a plasterer by trade and farmed on a small scale. The appellant had twice come to Garda notice, once for not having a car taxed and for the offence of being found on a licensed premises, though these previous convictions are of no real relevance.

The Appeal

5. The judge's approach to sentencing was to identify a headline or pre-mitigation sentence of six years. While, initially, it appeared the appellant had raised an issue in relation to the headline sentence, that ground has not been pursued, and counsel has been very clear that no issue is taken with the headline sentence nominated. Instead, the case that is made before this Court is that insufficient credit was afforded for the matters that were present by way of mitigation. The appellant says that this was a case where the headline sentence was reduced by 34%. The appellant draws a contrast between his situation and the case of DPP v. Flynn [2020] IECA 294, where he points out that the sentence that was imposed by this Court saw a deduction from the headline sentence of 68%, resulting in a reduction from six years to three years with one suspended.

6. In circumstances where no issue is being taken with the headline or pre-mitigation sentence, the question is whether the credit by way of mitigation was sufficient. It is beyond question that significant mitigation was present, and that was so in terms of cooperation with An Garda Síochána, the early plea, the remorse, and it is clear from the sentence transcript that the Gardaí accepted that the appellant's remorse was entirely genuine and that is also something that emerges very clearly from the probation service report. The appellant had experienced difficulties with alcohol but had taken steps to

address the issue, and that had included attending for inpatient treatment, albeit those steps were not altogether successful and there were relapses. There was a history of mental health issues, a matter that was addressed in the course of the probation report.

7. Beyond any doubt, this was serious offending: dangerous and drunken driving resulting in a fatality on a village main street on a Sunday morning, as well as injuries to the other occupant of the other vehicle. The unequivocal acceptance by the appellant of the appropriateness of the nomination of six years as a headline or pre-mitigation sentence sees him recognising the seriousness of the offending in question.

8. Returning then to the sentencing hearing, having nominated a pre-mitigation sentence of six years, the judge then proceeded to address the factors that were present by way of mitigation, and again it has to be said that there can be no doubt at all that there were significant factors present, as referred to earlier in the course of this judgment. She addressed this aspect firstly by reducing the headline or pre-mitigation sentence to one of four years and nine months, and then proceeded to suspend the final 12 months of that sentence. The appellant says that the allowance given was inadequate, and, as referred to, the appellant, in doing so, places reliance on Flynn. We see Flynn as being of limited assistance. First of all, it was an undue leniency review, and we have on a number of occasions made the point that orders made and decisions given in context of undue leniency reviews will rarely provide great assistance if they are cited as comparators in the context of severity of sentence appeals. That general observation is brought into particularly sharp focus in the present case if regard is had to the fact that the Court in dealing with the undue leniency review was reincarcerating someone who had been set at liberty following the conclusion of the sentence. The Court was reimprisoning at the time of the Covid-19 pandemic, and regard is also had to the fact that the Court was providing, for the first time in the context of the case, for a significant financial penalty: a €20,000 fine.

9. We have said on a number of occasions that it is not enough for this Court to intervene, even if, had the Court had sentenced at first instance, it might have imposed a somewhat different sentence. Still less would it trigger an intervention if individual members of the Court might have been minded to impose a different sentence if called on to sentence at first instance. Before this Court will intervene, something in the nature of an error in principle has to be established.

Decision

10. In the context of this appeal, the question really is whether the failure to make greater allowance in respect of mitigation amounted to an error, an error that resulted in the imposition of an impermissible sentence. For our part, we do not think that such can be said. The sentence was not a lenient one; if anything, it fell towards the severe end of the spectrum. A margin of appreciation has to be afforded to sentencing judges. It is not the

case that there is one correct sentence; rather there is a range of sentences to which the sentencing judge can have regard. If regard is had to the margin of appreciation, we have concluded that the sentence imposed fell well within the available range and in the circumstances, we must dismiss the appeal.