



THE COURT OF APPEAL

[62/2017]

The President

Edwards J.

Hedigan J.

BETWEEN

THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS

APPLICANT

AND

JAMES CRONIN

RESPONDENT

JUDGMENT (Ex tempore) of the Court delivered on the 2nd day of October 2018 by Birmingham P.

1. The situation that has emerged is certainly an unusual one. The case began with Mr. Cronin appearing before the Central Criminal Court charged with rape offences and pleading not guilty. He was convicted and he was sentenced to a term of seven years' imprisonment by Mr. Justice O'Higgins. Nothing unusual so far, but when he appealed the severity of the sentence, what the Court of Criminal Appeal decided to do, and it was perhaps slightly unusual, is that it increased the headline sentence from seven years to ten years, but then proceeded to suspend five years of that ten, so suspending half. Mr. Cronin served the period of the sentence that he was required to spend in custody and he was released into the community. There have been difficulties with the Probation Service and the Probation Service have brought the matter back before the Court.

2. The discussion today has largely focused on the form of bond and the terms of a bond that was entered into by Mr. Cronin. The order of the Court of Criminal Appeal had been to quash the sentence of seven years' imprisonment which had been imposed and impose, in lieu, the sentence of ten years' imprisonment to run concurrently with a sentence of five years' imprisonment that was imposed in respect of Count 5 of the Bill, but the sentences to run and to computed from a lawful determination of the sentence that was then being served. The final five years' sentence was suspended on a bond in the sum of €100 to be taken before the Governor on the following conditions. It sets them out to keep the peace and be of good behaviour while in custody for a period of five years from his release, to remain under the supervision of the Probation Service during such five years' time and abide by the instructions of such service as to an alcohol programme and also to psychiatric counselling. The seven years' post-release supervision order imposed by the trial judge to remain in full force and effect and to commence on his release from custody.

3. The main focus of attention this morning has been on the form of bond that has been produced. The Probation Service have two issues. First, they feel that Mr. Cronin puts difficulties in their way when they seek to engage with him and discuss his offending behaviour, but to that, his Counsel says in a situation where he has always insisted on his innocence, where he pleaded not guilty and appealed his conviction, that he would have difficulty engaging in discussions which operated on a working assumption of guilt is understandable. The second concern of the Probation Service relates to the fact that they say that Mr. Cronin has been identified as having consumed alcohol on a number of occasions, on some occasions, clearly had consumed alcohol to a very excessive degree.

4. The Probation Service have a number of concerns in relation to alcohol consumption. Mr. Cronin has mental health issues, he is on medication and the Probation Service have a number of concerns. The Probation Service are afraid that the fact that he is on alcohol may see him cease to take his medication or certainly miss medication from time to time with potentially very serious results. Secondly, they are concerned that the consumption of alcohol may reduce the effectiveness of the medication or, indeed, eliminate it altogether. On foot of those concerns, the Probation Service brought the matter before the Court, but the focus today has not really been on factual matters because it is accepted that the factual matters contended as having occurred did in fact occur, there is no dispute about that. But there is an issue about the form of the order and the form of the order point was resolved. It is contended that it would still be inappropriate for this Court to activate the part-suspended sentence.

5. Essentially, there are three issues raised in relation to the bond. The first is where there is provision of stating the name of the Court. It says:

"Court No. 1 CCJ District Court in the area of CCJ Parkgate Street"

That is clearly an error. The second point is that it says:

"On 11th May 2007 on foot of a Warrant signed by Justice O'Higgins, James Cronin was sentenced to a term of ten years to run concurrently with the five-year sentence with five years suspended."

The reference to Mr. Justice O'Higgins is an error. Mr. Justice O'Higgins was the judge of the Central Criminal Court who initially dealt with the matter and who imposed a seven-year sentence which was appealed with the result that has already been indicated. The

third matter to which attention was drawn is that the bond concludes with space for the signature and that is signed by Mr. James Cronin on the 22nd October 2013 and then there is provision for signature of a Peace Commissioner and it was signed by a Peace Commissioner on the same day. The point that is made is that the order had required that a bond be taken before the Governor with no mention of a Peace Commissioner.

6. It has been said that the order is invalid and goes to jurisdiction and the analogy has been drawn with search warrants, arrest warrants and detention orders. It seems to the Court that those analogies are not really valid because in the case of the arrest warrants and the search warrants, what is involved there is an order directed to public officials by virtue of which they are empowered to act in a particular way, be that to perform an arrest or to carry out a search. In this instance, the order of the Court was primarily directed to Mr. Cronin and it was an order that was his benefit because it saw him benefitting by having the sentence that was imposed suspended in part, five years of the ten-year sentence being suspended. It seems to the Court that the errors which clearly are unfortunate, it would be much better if they were not there and that appear on the face of the bond do not deny this Court a jurisdiction, we are satisfied that we can and should address the merits of the situation.

7. So far as the merits are concerned, the Court shares the concerns of the Probation Service in relation to the fact that Mr. Cronin has, on a number of occasions, consumed alcohol and on at least one of those occasions, consumed alcohol clearly to excess. The concern is that alcohol will act as a disinhibitor and a further concern relates to the medication to which there has been reference. It seems to the Court that the chance that he was given by the Court of Criminal Appeal was a very valuable chance. The offences with which he had been convicted, rape and attempted rape, were offences of the utmost seriousness and if Mr. Cronin was to benefit from the chance that was being offered to him, it was necessary for him to comply strictly with the terms of the commitments expected of him.

8. It seems to the Court that in those circumstances, it is appropriate and necessary that the Court should consider the question of re-activating the sentence. The question arises as to whether the sentence should be activated in full. It seems to the Court that that would, in the circumstances, be unduly harsh. It is the case that Mr. Cronin, following his release from prison, did not, for a significant period, reoffend, and while he has now come before the courts in relation to another matter and received a sentence, it was for an offence of a quite different character.

9. It seems to the Court that it should look to partial activation rather than full activation. Having considered the matter, the Court is of the view that the justice of the case would be met by activating a period of two years of the five years that was originally suspended. The effect of that is that the sentence that he is required to serve is now seven years which was the sentence that was originally imposed in the Central Criminal Court. The Court feels that such an order is required in order to impress on Mr. Cronin, and indeed others who may benefit from suspended sentences, that the conditions on which sentences are suspended must be complied with.

10. The question then arises as to the date from which that suspension should apply. It seems to the Court there are two possible dates, one would be the date when the matter was first brought back before the Court by the Probation Service and the other would be to activate it from today. There is perhaps a middle course which would be to order that it take effect from the same day as the sentence on the burglary issue.