



THE COURT OF APPEAL

[305/18]

The President

Kennedy J.

Donnelly J.

BETWEEN

THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

AND

MARK BISSETT

APPELLANT

JUDGMENT (Ex tempore) of the Court delivered on the 2nd day of July 2019 by Birmingham P.

1. This is an appeal against severity of sentence. The sentences sought to be appealed are sentences of three years imprisonment, concurrent with each other, that were imposed on two Bill Nos. in respect of offences of robbery and attempted robbery in the Circuit Criminal Court in Dublin on 12th November 2018. The sentences in question were consecutive to a 2-year sentence that had been imposed on 22nd June 2017, which had been activated on 8th November 2018. That earlier sentence involved a threat to a charity worker who was operating a soup kitchen, but was threatened by the appellant that he would have his house burnt down.

2. The background facts are that the attempted robbery occurred at the Spar shop in Ranelagh in Dublin on 1st October 2017. On that occasion, the appellant entered the store with a hoodie covering his face. He waved a knife. The Court was told it was not a steak knife. The shop assistant on duty moved away from the till, and at that stage, the appellant jumped the counter. He tried to open the till, but he did not succeed in taking anything and left the store. He was subsequently identified from CCTV footage. As far as the robbery offence is concerned, that occurred at a pharmacy on Dunville Avenue in Dublin on 26th October 2017. On the occasion in question, the appellant came in with his face covered. The female pharmacy owner saw that the appellant had what appeared to be a fork in his hand which he held in a threatening manner. The appellant took the contents of the till, some €220.

At the time that he entered the store, she was engaged in serving a family group. In fairness to the accused, when he was taxed with this offence at a later stage, he expressed dismay that he had been involved in offending at a time when children were present and that expression of regret is to his credit.

3. Both of these offences were committed during the currency of a 2-year suspended sentence which had been imposed by a different Circuit Court Judge and which was activated by her when these matters came to light. These present offences were committed some four months after he had entered into the bond to keep the peace and be of good behaviour as a condition of benefiting from the suspended sentence. The Circuit Court Judge dealing with the present cases was told that the sentences that she was going to impose had to be consecutive. While all counsel in the case were agreed that this was the situation, it would seem that this was an error, and that, rather, the question of consecutivity was a matter of discretion. A statutory amendment which would require consecutive sentences had not taken effect at that stage. Be that as it may, in the Court's view, this was very definitely a case for consecutive sentences. It was, in truth, a case where the discretion could realistically be exercised only in one way.

4. So far as the background and personal circumstances of the appellant are concerned, he is 33 years of age. He has three children aged nine, five and four years. The sentencing Court was told that he had a good relationship with his children and that this familial relationship was a positive feature of his life. In terms of his previous convictions, 65 were recorded of which 16 were from the Circuit Court, one came from the Central Criminal Court and was for manslaughter in respect of which he received a 6-year sentence in 2003. There were also five robbery offences, two s. 3 assaults, two s. 2 assaults, offences of possession of knives, affray, assaults on a Peace Officer and three recorded theft convictions.

5. A focus of the appeal hearing, apart from the question of consecutivity, has been on the failure of the sentencing Judge to suspend any portion of her sentence. It is the situation that the sentencing Judge did address the question of potentially suspending the sentence, she referred to the fact that the suspension of six months was an option that she had considered, but indicated that she had decided against that in a situation where the appellant had reoffended so seriously a very short time after entering the bond.

6. In the Court's view, the suggestion that the sentences imposed were unduly severe borders on the unstateable. The only question for consideration by the Court is whether the sentences should be increased. In particular, the Court has given active consideration to increasing the aggregate sentence and then proceeding to suspend a portion, leaving the appellant to serve the same actual custodial term, but which would mean that he would be subject to a significant suspended sentence on his release.

7. In the circumstances of the case, we have decided not to embark on that route. The Court, however, would like to make the point that practitioners and others should not assume that the Court will always give a specific warning in relation to the extent of the

sentencing powers available to the Court of Appeal when dealing with appeals against severity of sentence. Practitioners will need to consider the full implications of proceeding with cases where there is no realistic prospect of success. In the circumstances of this case, the Court will confine itself to dismissing the appeal.