



**THE COURT OF APPEAL**

**Sheehan J.  
Mahon J.  
Edwards J.**

**The People at the Suit of the Director of Public Prosecutions**

**V**

**Maura Thornton**

**72/13**

**Respondent**

**Appellant**

**Judgment of the Court (ex tempore) delivered on the 21st day of July 2015 by**

**Mr. Justice Sheehan**

1. This is an appeal against severity of sentence.

2. Following a jury trial which concluded on the 28th January, 2013, the appellant was acquitted of the murder of Kevin Joyce, but found guilty of his manslaughter. The appellant was sentenced two days later on the 13th March, 2013, to ten years imprisonment with the final three years of that sentence suspended on terms.

3. The appellant contends that the learned sentencing judge erred in principle on the following grounds:

1. He failed to treat the appellant as having pleaded guilty.
2. He failed to give sufficient weight to the offer to plead guilty to manslaughter.
3. He imposed upon the appellant a sentence that was excessive and/or unduly severe and/or disproportionate.
4. He incorrectly accepted evidence of, and placed undue reliance upon, unproven matters which are highly prejudicial to the appellant.
5. He erred in suspending the appellant's sentence for a further period of six months instead of backdating her sentence to credit her for all time spent on remand.

4. In order to consider these grounds of appeal it is necessary first of all to set out the background to the offence.

5. The appellant and the deceased had a shared interest in Celtic studies and met at University College Galway in January 2011, when a friendship and then a relationship developed. It was a relationship which involved the excessive consumption of alcohol by both of them and the appellant decided to withdraw as a result of this. She had embarked on a programme of sobriety and for a period of six weeks prior to the 31st July, 2011, had managed to remain sober.

6. Although she had terminated the relationship, the deceased made numerous efforts to contact her by telephone and while these were rebuffed, the deceased's advances led to the appellant ending her period of sobriety and commencing to drink excessively on the 31st July, 2011. At about 10.30 pm that evening the deceased entered the roof top area of the appellant's apartment which was located above the old Jameson Hotel in Salthill by climbing up the emergency stairwell.

7. The appellant's mother and her mother's partner were in her apartment at the time. Apparently some kind of stand off took place resulting in the deceased man being told to get away. When he did not do so, the appellant left her apartment taking a knife with her. She went down the corridor exiting by an emergency door that led to the roof where she confronted the deceased and stabbed him eighteen times.

8. She returned to the apartment and called the gardaí saying that she had stabbed someone. The gardaí arrived and arrested her, but did not question her until the following day due to her state of intoxication.

9. The appellant offered to plead guilty to manslaughter. That plea and the fact that she was clearly remorseful were two matters which the sentencing judge deemed to be important mitigating factors.

10. The personal circumstances of the appellant at the time of the offence were that she was a 31 year old woman originally from the Spiddal area of Co. Galway. Her father had died when she was 7 years old. She had completed three years of a four year degree course in psychiatric nursing. One of her two brothers died in 2003. Following his death the appellant developed a serious drink problem which in turn led to her getting into trouble and resulted in her acquiring 27 convictions between the 8th September, 2003 and the 4th April, 2011.

11. The majority of the appellant's convictions relate to road traffic matters and include a number of convictions for drunken driving. She had three previous convictions for assault and two for offences relating to the possession of a knife.

12. In respect of the second knife offence, a gentleman had suffered knife wounds and the appellant had rung the gardaí on that occasion to say she thought she had killed someone. The injured party in that particular case withdrew his complaint and the charge relating to the possession of the knife was the only one that proceeded.

13. In support of the contention that the sentence was excessive, counsel for the appellant relied on *Director of Public Prosecutions v. Stephen Kelly* [2005] 2 I.R. 321, *Director of Public Prosecutions v. Finn Colclough* [2010] IECCA 15 and also a judgment of the

14. In support of her submission that the sentence was not excessive, the respondent submitted a book of authorities and relied on a number of cases including *Director of Public Prosecutions v. Carroll* [2009] IECCA 152, *Director of Public Prosecutions v. Black* [2009] IECCA 91 and a judgment of the Court of Criminal Appeal in *Director of Public Prosecutions v. Jurijs Princs* [2007] IECCA 142.

15. In the course of outlining the appellant's previous convictions, the prosecuting Superintendent referred to the circumstances surrounding the conviction for the possession of a knife which has already been set out in this judgment.

16. Irrespective of whether or not a complaint was made or whether one was made and subsequently withdrawn, this Court finds no error of principle disclosed by the admission of these matters into evidence at the sentencing hearing. The Court also notes that no complaint was taken at the time in respect of this evidence by counsel for the appellant. Accordingly, this Court rejects the submission of the appellant that the learned sentencing judge wrongly accepted evidence of unproven matters highly prejudicial to the appellant.

17. The remaining grounds of appeal all relate in one way or another to the length of sentence imposed and in considering these, it is necessary first of all to set out the principal mitigating and aggravating factors. The mitigating factors are:

- (i) the offer to plead guilty to manslaughter,
- (ii) the appellant's great remorse confirmed by the psychiatric evidence presented on her behalf,
- (iii) the appellant's own history of alcohol dependence and other mental health issues which had sometimes resulted in her hospitalisation. The psychiatric report disclosed periods of intense suffering that the appellant had undergone.

18. The aggravating factors in the case are:-

- (i) the appellant's previous convictions, particularly the prior knife offence resulting in injury to another,
- (ii) the medical evidence which disclosed that the deceased had been stabbed eighteen times.

19. The Court is satisfied that the sentencing remarks of the judge disclosed that he took the appellant's remorse and offer to plead guilty into account when considering what the appropriate sentence was. He also took into account the aggravating factors, particularly the prior knife offences. It is noteworthy that the sentencing judge, having heard evidence from Brid Thornton, the appellant's mother, Patrick O'Dwyer, a friend, as well as having heard from the appellant herself and having received a very comprehensive psychiatric report, put the matter back for two days in order to consider the submissions that had been made to him and to consider the psychiatric report.

20. In the course of the sentence hearing he noted in particular the generous and forgiving victim impact statement from the deceased's family.

21. Having considered the submissions made on behalf of the appellant and also those on behalf of the Director of Public Prosecutions, this Court is satisfied that the sentencing judge carefully identified a sentence of ten years imprisonment as the appropriate starting point in this case given the aggravating factors.

22. The Court also holds that the sentencing judge proceeded quite correctly to reduce that sentence in view of the mitigating factors and suspending the final two and a half years of the sentence on terms designed to incentivise the appellant's rehabilitation. The sentencing judge then went on to suspend a further six months in view of the time spent in custody prior to sentence leaving a final sentence of ten years imprisonment with the final three years suspended on terms.

23. The final ground of appeal relates to the time spent by the appellant in custody prior to sentence. The appellant's counsel told this Court that the appellant might be entitled to a further six weeks credit, but that he was unable to say what the exact period of time was. In view of the uncertainty around this, the Court rejects this ground of appeal, but in doing so indicates that this does not preclude the authorities from giving credit to the appellant for a period of up to a further six weeks if it emerges that six months does not represent the full amount of time spent by her in custody prior to sentence.

24. The Court finds no error in the judge's approach to sentence or in the sentence actually imposed and accordingly dismisses the appeal.