



THE COURT OF APPEAL

**Birmingham J.
Sheehan J.
Mahon J.**

256CJA/16

285CJA/16

The People at the Suit of the Director of Public Prosecutions

Respondent

V

Constantin Zaharia

Appellant

JUDGMENT of the Court (ex tempore) delivered on the 9th day of February 2017 by Mr. Justice Sheehan

1. There are two appeals before us arising out of the six and a half year sentence of imprisonment imposed on Mr. Zaharia at the Dublin Circuit Criminal Court on the 28th July, 2016, for assault causing serious harm to his now former partner Ms. Ondercova on the 9th May, 2015, at Clonee, Co. Dublin. In the first place the Director asked us to review that sentence on grounds of undue leniency while at the same time Mr. Zaharia cross appeals on the basis that the sentence was excessive.
2. At the outset we note that the difference between the parties is not great and our task has been simplified by the helpful positions taken by the parties. Ms. Lacey, S.C., on behalf of the Director of Public Prosecutions does not disagree with the judge's finding that a nine year sentence of imprisonment was the appropriate headline sentence. She does however submit that the trial judge erred by giving too much credit for mitigation, noting in particular that the plea of guilty in this case had only been entered when the injured party had travelled from Romania for the trial.
3. We note here that it appears that there was some confusion at the conclusion of the sentence hearing which may well have prompted the Director's appeal in this case. At the conclusion of that hearing, the sentencing judge was obliged to return to court to clarify that he had not in fact suspended the final two and a half years of a nine years sentence, but had simply imposed a sentence of six and a half years imprisonment.
4. Ms. Lacey fairly concedes that had a sentence of nine years imprisonment with the final two and a half years of that sentence been suspended, she was unlikely to have applied for a review.
5. Mr. Bowman, senior counsel, while resisting the Director's application submitted that the sentence imposed ought to have been lower given the appellant's previous history, his guilty plea and his engagement with rehabilitative programmes while in prison awaiting sentence. These matters allied to the findings in the detailed psychological report submitted on behalf of Mr. Zaharia had not he said, been adequately factored into the sentence.
6. In order to evaluate the submissions of both parties it is necessary to consider the pre-sentence remarks of the judge in the course of which he noted that Mr. Zaharia had on the day in question assaulted his sister, his partner and his partner's father. He noted that he had used a Stanley knife to slash and stab these people and that Ms. Ondercova and her father were now left with residual scarring. He went on to state:-

"It seems to me that on the day in question the defendant was drinking. He returned home and seems to have been of the view that his partner had been unfaithful to him and that this led to a confrontation which led directly to Mr. Zaharia assaulting these three people. Now the assaults were pretty savage as is evidenced by the results. Obviously these assaults were frightening and indeed troubling and it seems that particularly Ms. Ondercova is still suffering as a result of what occurred on the date in question. I have had the photographs of the scarring that resulted from these assaults. It is seriously disfiguring, particularly to a young lady as is Ms. Ondercova, but also her father has a scar and a very apparent one. Obviously there was huge pain involved. To be slashed and stabbed with a Stanley knife is a serious matter and I think everyone here can imagine the fear and pain that was involved for the injured parties on the date in question."
7. The judge went on to say that he agreed with the categorisation of the Director of Public Prosecutions that the assault was in the serious range and he identified nine years imprisonment as the appropriate sentence absent mitigation. He identified the plea of guilty albeit a belated one as a mitigating factor and he paid particular attention to the fact that Mr. Zaharia was a 29 year old man with no previous convictions.
8. He noted that he had taken impressive steps towards his own rehabilitation during the year he had spent in custody prior to sentence and said that he also had to take into account to some degree Mr. Zaharia's background and vulnerabilities as set out in the psychological report. He specifically and rightly stated that the consumption of alcohol provided no excuse for Mr. Zaharia.
9. The principles applicable to s. 2 applications are well known. At the very least the court has to be satisfied that the sentence imposed represented a substantial departure from what would otherwise be regarded as an appropriate sentence.
10. While the court notes that there is merit in Ms. Lacey's submissions that a nine year sentence with the final two and a half years suspended would have been more appropriate, we are not however satisfied that the actual sentence that was imposed in this case represents a substantial departure from the norm and accordingly we dismiss the Director's application. With regard to Mr. Zaharia's

own appeal, it is clear from an examination of the transcript that the sentencing judge approached the question of sentence carefully and considered all the relevant factors. While the sentence is a substantial one for a 29 year old man with no previous convictions, given the serious injuries inflicted, the sentence cannot be said to be excessive. Equally we find no error in the judge's approach to sentence and accordingly dismiss Mr. Zaharia's appeal against sentence.