



THE COURT OF APPEAL

Record No. 166CJA/17

Birmingham J.
Mahon J.
Hedigan J.

IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 2 OF THE CRIMINAL JUSTICE ACT 1993

BETWEEN/

THE DIRECTOR OF PUBLIC PROSECUTIONS

APPELLANT

- AND -

AARON BRADY

RESPONDENT

JUDGMENT (ex tempore) of the Court delivered on the 31st day of July 2017 by Mr. Justice Mahon

1. The respondent pleaded guilty at Dundalk Circuit Criminal Court on the 12th October 2012 in respect of a number of offences, and was sentenced on that date. The offences were:-

- Count 1: The unlawful use of a mechanically propelled vehicle contrary to s. 112 of the Road Traffic Act 1961, as amended.
- Count 3: Criminal damage to a motor vehicle registration number 06 LH 6878 contrary to s. 2 of the Criminal Damage Act 1991.
- Count 9: Dangerous driving contrary to s. 53(1) of the Road Traffic Act 1961 as amended.
- Count 2: Criminal damage to a van registration number 06 D 76218 contrary to s. 2 of the Criminal Damage Act 1991.
- Count 4: Criminal damage to a motor vehicle registration number 07 CN 2197 contrary to s. 2 of the Criminal Damage Act 1991.
- Count 5: Failing to have a certificate of insurance or guarantee contrary to s. 56 of the Road Traffic Act 1961 as amended.
- Count 6: Failing to have a driving licence contrary to s. 38(1) of the Road Traffic Act 1961 as amended.
- Count 7: Failing to produce on demand a driving licence contrary to s. 40 of the Road Traffic Act 1961 as amended.
- Count 8: Failing to produce on demand a certificate of insurance or guarantee contrary to s. 69 of the Road Traffic Act 1961 as amended.

2. Sentences were imposed specifically in relation to counts 1, 3 and 9, and were, respectively, 6 months imprisonment, 12 months imprisonment, (with the final six months suspended for a period of twelve months), and six months imprisonment. All sentences were directed to be served concurrently and to date from the 31st May 2017. The remaining offences were taken into consideration.

3. This is the appellant's application for a review of the sentences imposed pursuant to s. 2 of the Criminal Justice Act 1993 on the grounds that they were unduly lenient, specifically in relation to counts 1 and 3. Section 2 section provides as follows:-

"2(1) If it appears to the Director of Public Prosecutions that a sentence imposed by a court (in this Act referred to as the "sentencing court") on conviction of a person on indictment was unduly lenient, he may apply to the (Court of Appeal) to review the sentence."

4. All the offences occurred in the early hours of the 2nd October 2011. The first offence concerned the theft of a blue Volkswagen Golf motor vehicle, the property of Ms. Dawson, together with some items in her car. The stolen vehicle was observed by Gda. Ryan with the respondent driving and engaging in serious acts of dangerous driving including spinning the wheels of the car, revving the car and causing smoke to rise from its tyres. When he noticed Gda. Ryan observing him, the respondent gave him the two fingers sign and took off at speed. The vehicle did a circuit of the town of Dundalk driving erratically before it rammed into a taxi at Crowe Street. It then did a u turn and entered the junction between Earl Street and Park Street. The respondent stopped the car and reversed into another taxi before continuing on his journey. He collided with the side of a third taxi almost causing the vehicle to turn over. It then rammed into the front passenger side of a garda patrol van, drove through red lights, before ramming into another garda vehicle as it attempted to stop him. He continued to drive at speed swerving and narrowly missing an oncoming vehicle. The car then lost its left passenger wheel, and rammed into the side of a garda van before coming to a stop. The respondent left the vehicle and fled, but was chased by gardaí and arrested. Property damage exceeded €10,000. Somewhat surprisingly, only three vehicles were damaged, they being the garda vehicle, a taxi and the car being driven by the respondent.

5. The grounds on which this application is brought are many in number. In general terms, they indicate criticism of the sentences on the basis that they were unduly lenient having regard to the seriousness of the offence, the fact that many people were put at risk of injury, the extent of damage to property and the persistent nature of the offending over a short period of time, in addition to the existence of relevant previous convictions.

6. Following his pleas of guilty to the various offences the respondent failed to attend court for sentencing on the 23rd April 2013 having fled to the United States. He was deported back to this jurisdiction on the 24th May 2017, arrested on arrival into this country, and sentenced approximately one week later.

7. The respondent was nineteen years old at the time of the offences being committed. He has recently married a U.S. citizen and has an infant child. Prior to his deportation from the U.S. the respondent set up home in New York and has an impressive employment record there.

8. The seriousness of these offences is beyond question. The learned sentencing judge had the opportunity of viewing CCTV footage and witnessed first hand the carnage inflicted on the town of Dundalk over a relatively short period of time. In her sentencing judgment she refers to the "terror" experienced by some of those who witnessed the incidents, and the disregard for public safety. Sgt. Moroney's evidence to the court below provided a graphic account of the mayhem caused and spoke of his concern for the lives of people using the streets at the time.

9. The learned sentencing judge very carefully identified the appropriate mitigating and aggravating factors. She also appropriately measured the gravity of the offending. However, in the court's view, the learned sentencing judge's determination of the appropriate headline sentences for the unlawful taking and criminal damage counts - at ten months and twelve months respectively - were unduly lenient, as was the overall net custodial term of six months imprisonment. That net custodial term amounts to, to use the words of Barron J. in *DPP v. McCormack* [2004] I.R. 361, "a clear divergence by the court of trial from the norm", and therefore an error of principle.

10. In general terms this court is particularly careful about significantly increasing a prison sentence where it finds that sentence to have been unduly lenient, although it does do so when appropriate. This is especially the case where a lengthy gap in time has elapsed between the date of the sentence and the date of review of that sentence. This is because, having received a sentence following a full sentencing hearing, an accused person is, through no fault of his own, obliged to endure a second hearing with all the risks associated therewith. Often, an added feature of such cases will be that the sentenced person has served his custodial sentence and is at liberty, or has almost served his sentence and his release from custody is imminent.

11. In this case, while the gap in time between the dates of the offences and the sentencing date is very considerable and was entirely caused by the respondent, only a short time has elapsed since the sentence under review was imposed. In these somewhat unusual circumstances no benefit can accrue to the respondent by reason of the aforesaid delay beyond that to which he is absolutely entitled to by reason of any additional mitigating factors emerging in the interim.

12. It is necessary therefore for this court to sentence the respondent as of today. In so doing it take accounts of the various mitigating factors considered by the court below. In addition, the court must take account of the fact that the respondent is now married and has a young child and is by all accounts, and to his credit, a person of much greater maturity than he was five years ago, and has proved himself capable of remaining out of trouble and working hard in the interim. In taking account of these very positive factors, as the court must do, the respondent is in reality reaping some benefit from the delay, which necessarily occurred, in sentencing in the court below. It should however be said that the benefits accruing therefrom are to some extent diminished as a consequence of the fact that the delay in concluding the sentencing process was entirely the fault of the respondent.

13. The court will increase the sentences in respect of counts 1 and 3 to two years imprisonment in respect of each, such sentences to be concurrent, and it will suspend the final twelve months of each for a period of two years post release on conditions that the respondent enters into a bond in the sum of €100 to keep the peace and to be of good behaviour.