



**THE COURT OF APPEAL**

**[162/18 & 173CJA/18]**

The President

Irvine J.

Kennedy J.

**BETWEEN**

**THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS**

**APPLICANT**

**AND**

**SEAN WARD**

**APPELLANT**

**JUDGMENT (Ex tempore) of the Court delivered on the 18th day of February 2019 by Birmingham P.**

1. On 17th May 2018 at the Circuit Court in Dundalk, Mr. Sean Ward was sentenced to a term of six years imprisonment, with the final two years suspended, on condition that he enter into a bond and keep the peace and be of good behaviour for a period of two years post-release. The sentence was imposed in respect of an offence of dangerous driving causing serious bodily harm. On the same day, he received a six-months prison sentence in respect of an offence of driving a car without insurance, which sentence was concurrent, and a number of summary matters were taken into consideration. At the same time, he was disqualified from driving for a period of ten years.

2. Mr. Ward, who we will refer to as the defendant, appealed against the severity of the sentences imposed, while the Director of Prosecutions sought to review the sentences imposed on grounds of undue leniency pursuant to the provisions of s. 2 of the Criminal Justice Act 1993. However, during the course of the oral argument before this Court, it was clear that the focus of attention of counsel on behalf of Mr. Ward was very much on responding to and resisting the DPP's application to review on grounds of undue leniency. This culminated in a request for leave to withdraw the severity appeal and this Court granted leave in that regard.

3. The background to the sentence hearing in the Circuit Court in Louth and to the matters now before this Court is to be found with events that occurred at Carnbeg, Dundalk, County Louth on 3rd October 2015. On that occasion, there was a two-car collision, a head-on collision. One vehicle was driven by the appellant, Mr. Ward, and one by the injured party, Ms. Natasha Keenan, a married lady aged twenty-nine years at the time, who had a ten-month old baby in the rear of the car that she was driving. The road on which the collision occurred was the Dundalk to Armagh road. The injured party was driving towards Dundalk with a view to having coffee there with work colleagues on what was a clear, bright, dry day. Near the accident scene, there was a continuous white line, apart from a short distance opposite a hotel where the line was broken so as to allow people get in and out of the hotel car park that was situated off the road.

4. At approximately 11.30am that day, Ms. Keenan was driving a black Mercedes in the direction of Dundalk. There were cars behind her and there was a flow of traffic driving in the opposite direction, heading north. The injured party saw a Ford Focus coming at high speed towards her. She started flashing her lights and beeping her horn and swerved left in towards the entrance of the hotel with a view to avoiding a collision. However, despite her best efforts, the Ford Focus, driven by the appellant, was driven into collision with her. The collision occurred at a time that the appellant was overtaking at speed and overtaking at a time when it was dangerous to do so. The road at the location of the collision is described as undulating and the view of the defendant, thus, was somewhat restricted.

5. In the immediate aftermath of the incident, the injured party was very concerned for her baby who was screaming and her concern was heightened by the fact that there was a large amount of smoke coming from the bonnet of her car. As to her own situation, she became aware that her foot was pointing up towards her with, in her own words, "three bones sticking out". Eventually, she was cut from the car and then brought to the helipad of a nearby hotel from where she was removed to hospital in Tallaght in Dublin by helicopter.

6. So far as responsibility for the accident is concerned, there was abundant evidence that the impact was, on what was for the defendant, the wrong side of the road, and for the injured party, on what was for her the correct side of the road. There was, for example, a brake mark recorded by the collision specialists who examined the scene which was 16.28 metres long and it was entirely on the wrong side of the road for Mr. Ward. There were also a number of witnesses to the accident who were very clear about what they saw and were unequivocal and unanimous in placing responsibility firmly on Mr. Ward.

7. When he came to be interviewed, some sixteen months after the collision, the delay in interviewing was attributable to the fact that Mr. Ward himself had suffered injuries in the accident, the defendant first said that he did not remember the incident. He then purported to give an account which put himself in the right, therefore, putting the injured party onto the incorrect side of the road for her. We will return to this aspect.

8. In relation to Ms. Keenan, the injured party, she was brought to the operating theatre at Tallaght Hospital and that procedure lasted some seven hours after which she was removed to the Intensive Care Unit. She underwent eight further operations at Tallaght Hospital and at St. James's Hospital in Dublin. These were major operations involving orthopaedic surgery and skin grafts and each

operation lasted some ten or eleven hours, and in one instance, lasted no less than fifteen hours. The reference to the duration of the surgical procedures is taken from the victim impact report that was put before the Court by the injured party's husband. In the aftermath of the incident Ms. Keenan was placed in an isolation unit for one month in order to reduce the risk of infection. The effect of this was to deprive her of the company of her baby.

9. At the time of the sentence hearing in the Circuit Court, she was facing further surgery, and indeed at the sentence hearing, was actually back in hospital. After the incident, she was some three months in hospital, both in Tallaght Hospital and St. James's Hospital. Ms. Keenan was told she would have to put on hold plans that she had for expanding her family for five years, and indeed there was an issue as to whether she would be able to have children in the future. The injured party, her husband and her baby, were living in a three-bedroom, semi-detached house and that required to be converted in order to make it wheelchair-accessible by providing a downstairs bedroom complete with washroom.

10. In the accident, Ms. Keenan suffered multiple injuries including severe damage to the ankles of both feet, an open wound to her right leg, she had pins inserted into both feet, each of her toes were wired. There was reference to bilateral ankle fractures, fractured ribs, bones broken in her back, anterolateral cutaneous thigh flap from the left leg had to be removed for a skin graft to the right leg. When preparing her statement for the sentence hearing, Ms. Keenan was, at that stage, confined to using a wheelchair every day. Her husband had to be with her at all times and she could not cope alone with her child. By way of update, and the update of course becomes relevant only in a particular context, when, in the usual way, we enquired of both sides whether, in the event that the Court was proceeding to a resentencing stage there was any up to date information that either wished to provide, counsel on behalf of the prosecution, on the basis of information provided by the investigating member: Sergeant McCabe, told us that the present position is that, generally, Ms. Keenan gets about on crutches, though from time to time, she has to resort to a wheelchair. It was also indicated that Ms. Keenan will be embarking on a further course of surgery. It is beyond doubt that Ms. Keenan will experience lifelong consequences from this road traffic accident. X-rays performed in June 2016 demonstrated the existence of post-traumatic degenerative changes in both ankle joints. This means that her ankles will continue to deteriorate throughout her lifetime. Overall, it is clear that she will be permanently and significantly adversely affected by her injuries. It is likely they will impact upon her enjoyment of her life with her husband and with activities which she might otherwise have hoped to enjoy with her family.

11. So far as the defendant's background and personal circumstances are concerned, he was born in February 1991 and so was twenty-seven years of age at the time of the sentence hearing. He was married and is the father of two young children and came from what was described as a settled Traveller background. He had sixty-eight previous convictions recorded. A number of these were road traffic offences, including an offence of driving without insurance, there was a hit and run offence recorded and there was an offence of unauthorised carriage in a motor vehicle. There were a significant number of public order offences, offences of entering a building with intent to steal, counts of obstruction of Police officers, and counts relating to various sections of the Thefts Act. A significant aspect of the prior record of the appellant is that he had been disqualified from driving in February 2015 for a period of four years. Indeed, on examination of the records, it emerged that by the time of the sentence hearing, he was subject to two disqualification orders that were in force at that stage. It is to be noted that he had suffered significant injuries in an accident in 2013. The circumstances of that accident were that he was a pedestrian who was involved in a road traffic accident. Medical reports that were prepared in relation to that accident referred to the fact that he had been involved in an earlier high speed collision back in 2008. The injuries in 2013 included a head injury and there was again a head injury in the accident that gave rise to the charges that saw him before the Court. Then, in terms of his personal circumstances, the Circuit Court in Dundalk heard that in the past, he had been an accomplished boxer.

12. A probation report was prepared that referred to the fact that he had reoffended since the offence the subject matter of the case before this Court and that probation report described him as being at very high risk of reoffending. It referred to the fact that at interview, he had attended one of three interviews that had been arranged. He showed little empathy for the victim of the offence, he minimised his behaviour and focused on his own injuries. He gave the Probation Officer the impression that the injuries and trauma sustained by the victim were not as serious as documented. He repeatedly stated that the accident was not his fault.

13. The Director contends that the headline sentence of six years was too low and could and ought to have been higher. In addition, the Director says that the decision to suspend two years of what was already a lenient sentence constituted a clear error. In response, the defendant says that the sentence of six years with two suspended did not fall outside the available range. Counsel on behalf of the defendant has reminded us that it is not sufficient to justify intervention by this Court, that the Court would, if sentencing at first instance, have been minded to impose a somewhat different sentence. Rather, before the Court would intervene, it would be necessary for the Director to establish a clear departure from the norm. It may be said that there was no real dispute between the parties as to the legal principles referable to undue leniency reviews. Indeed, those principles have not really been in dispute since the first such case came before the courts, that of DPP v. Byrne [1995] 1 ILRM 279, where the decision of the then Court of Criminal Appeal was delivered by O'Flaherty J.

14. There are aspects of the Judge's sentencing remarks which are somewhat difficult to understand. The Judge referred to the cooperation that was present. Today, his counsel says that there was a degree of cooperation, in that by answering questions put to him by Gardaí at interview, he ensured that the identity of the driver involved in the collision could not be in issue.

15. For our part, we cannot see any real level of cooperation. Mr. Ward claimed to have been on the correct side of the road and that Ms. Keenan was on the incorrect side of the road. There was one particularly striking exchange. The interviewing Garda put it to Mr. Ward as follows:

"Q. A number of independent witnesses have stated that you were overtaking a number of cars driving on the right-hand side of the road when this accident happened, what do you say to that?

A. They're telling lies, I told you what happened. Have you proof of what they said? I told you what happened. She told my wife that she was overtaking three cars. I'm not obliged to say anything so I'm not saying any more. I can get my wife to come in and say that."

Again, in the course of his sentencing remarks, the Judge referred to remorse, but that finding and that observation is hard to square with the contents of the probation report. It seems to us that the focus of this Court's attention has to be on the actual sentence imposed, that of six years with two years suspended. The sentence of six years might well have been higher, but in our view, it is not so lenient as to be categorised as unduly lenient per se. However, in the Court's view, the decision to suspend two years of that sentence was not justified and gave rise to an effective sentence which was unduly lenient and unduly lenient to an appreciable extent. The defendant's prior record, including the fact that he was driving while disqualified, did not suggest that Mr. Ward was a suitable candidate for a sentence with a significant suspended element. On the basis of a starting of a sentence of six years

imprisonment, there was, in this Court's view, little scope for suspending. If there was to be any element suspended, that element would have had to be very limited and could only be justified, if it could be justified at all, by a desire to achieve a structured release back into the community with the suspended element designed to discourage reoffending.

16. Being of the view, as we are, that the sentence was unduly lenient then we must proceed to resentence. We resentence, as is the practice of this Court, as of today's date. In doing so, we are conscious of the fact that the sentence being increased will be a real disappointment for Mr. Ward and for his family. We have read an impressive, and indeed, moving letter from his wife. We also take into account and have regard to the fact that a number of certificates have been provided to us indicating that Mr. Ward has been using his time in custody productively.

17. In the circumstances, the Court will deal with the matter by quashing the sentence of six years with two years suspended that was imposed in the Circuit Court. Instead, what we will do is we will re-impose the sentence of six years, but on this occasion, we will suspend the final nine months of the sentence. That will be suspended for a period on the same terms as applied in the Circuit Court, in other words, he will be required to be of good behaviour during his period in custody and for the period of two years post-release.