



THE COURT OF APPEAL

**The President
Birmingham J.
Sheehan J.**

253/13

The People at the Suit of the Director of Public Prosecutions

V

P.F.

Appellant

Ex Tempore Judgment delivered on the 6th day of July 2015 by Mr. Justice Sheehan

1. This is an appeal against severity of sentence.

2. On the 12th November, 2013, the appellant pleaded guilty to sexually assaulting a young woman on the night of the 27th October, 2008, in Mullingar. He was sentenced to eight years imprisonment with the final third of that sentence suspended for a period of three years provided that he keep the peace and be of good behaviour during that time. In addition the sentencing judge imposed a two year post release supervision order requiring the appellant to comply with any reasonable orders of the probation service during that time.

3. The victim in this case was nineteen years old and was on her way home from a disco in Moate at about 2.00 am when the appellant approached her on a side street, put his arms around her and grabbed her in a headlock and dragged her into a secluded wooded area nearby. The appellant groped the victim, pulled down her underwear and his own trousers and appears to have attempted anal penetration. In the course of the assault, some people were passing nearby, heard what was going on and approached the scene, as a result which the victim made good her own escape and the appellant fled, and was chased, but got away. A thorough garda investigation ensued which included viewing extensive CCTV footage and the appellant was arrested some days later. During the course of his arrest he admitted that he had been with the victim, but maintained that any sexual activity that occurred was consensual.

4. On the 25th September, 2010, while on bail for this offence, the appellant was charged with sexual assault and rape arising out of one incident with someone he apparently knew. The details of this offending are limited, insofar as the papers before this Court are concerned.

5. It appears that the appellant went into custody two days later following his being charged with these offences and pleaded guilty when he appeared in the Central Criminal Court in 2012, where he was sentenced to eight years for the rape offence with the final three years suspended. A post release supervision order was also made at the time. The appellant received a two year concurrent sentence in respect of the sexual assault that appears to have occurred at the same time. The sentence was backdated to September 2010, which left the appellant with a release date of the 26th June, 2014.

6. Much of the oral hearing in this case was taken up with the trial judge's concern that the appellant had in some way used the system to avoid a consecutive sentence. However, it appears that Carney J. having granted an adjournment at the Director's request refused a second one at a later stage and proceeded then to sentence the appellant.

7. In November 2013, the appellant appeared before Hunt J. in respect of the 2008 offence - the five year delay being attributable to delays in the Mullingar list and the fact that the appellant had maintained his innocence until shortly after he had pleaded guilty and been sentenced in the Central Criminal Court for the subsequent rape offence.

8. In this particular case, the victim impact report disclosed that the victim suffered bruising to her legs and thighs, chest, neck and head and received treatment on the night for bruising, getting sleeping tablets from her local doctor to help her to sleep after the incident. For some time she was unable to sleep and attended counselling in Moate and in the college where she studied nursing. Her local doctor prescribed sleeping tablets to assist her. She became frightened of the dark and became anxious when going out at night. Before the incident she was well able to leave her own home and walk into town on her own but since then would not go out alone.

9. The sentencing judge was told that at time of the sentence in this case that she worries about going for walks or heading up for a walk to meet her friends in town and she has to have somebody with her and she also said that her parents worry a lot about her personal safety when she is out. She told the court that she had found it hard to trust men since the incident, but that in late 2012 she started a relationship with a young man whom she has known for some time.

Personal circumstances of the appellant

10. At the time of sentence the appellant was 26 years of age, his sister and father were in good employment and he himself had spent five years with the Irish Naval Service and received an honourable discharge. In the course of his imprisonment he had been attending the Better Lives Programme for sex offenders. Following his discharge from the naval service and while he was awaiting the outcome of an application to join An Garda Síochána, he had worked as a lorry driver. The appellant expressed remorse and while the court was told that he had consumed a lot of drink on the night in question, this was not offered as an excuse.

11. The sentencing judge allowed one sixth remission for the late plea of guilty and said that if the plea had been entered at an early stage, he would have allowed one third remission in respect of that and he allowed one sixth remission for the remaining mitigating factors. He also sought to incentivise the rehabilitation of the appellant by including a post release supervision order.

12. The appellant and the respondent have both filed detailed and helpful submissions. Essentially the appellant contends that the learned trial judge erred in principle in treating as an aggravating factor the potential advantage which the appellant gained by pleading guilty to the rape offence in the Central Criminal Court prior to the plea of guilty in this case.

13. This Court is of the view that no matter how one looks at this matter the sentencing judge was perfectly entitled to take the subsequent convictions into account when considering what the appropriate sentence was.

14. This Court holds that the approach of the trial judge to sentence was the correct one. He identified an eight year sentence as the appropriate starting point on the scale having been told that the maximum sentence was ten years imprisonment and he then proceeded to suspend portions of the sentence in a very careful way, going so far as to identify one sixth of the sentence to be suspended in respect of the plea of guilty and one sixth in respect of the remaining mitigating factors.

15. This was an extremely serious sexual assault. The court is satisfied that both in approach and in outcome the learned trial judge's sentence was entirely correct. Accordingly, the court dismisses the appeal.