



THE COURT OF APPEAL

Appeal No. 233/13

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

The People at the Suit of the Director of Public Prosecutions

Respondent

- and -

Alan Healy

Appellant

Judgment (ex tempore) of the Court delivered by Mr. Justice Mahon on the 27th day of July 2015

1. The appellant pleaded guilty to one count of causing serious bodily harm contrary to s.4 of the Non Fatal Offences against the Person Act 1997 at Cork Circuit Criminal Court on 31st October 2013. He was sentenced to nine years imprisonment, backdated to the date on which he first went into custody. The maximum penalty for the offence is life imprisonment.

2. The circumstances of the offence are briefly as follows. On 1st April 2013 at Spring Lane, Blackpool in Cork, the home of the appellant, the appellant assaulted Martin Doyle using a bottle or broken glass. He knocked him to the ground and stuck him a number of times around his left eye, causing a serious injury to his face including his left eye and left eye lid. He required ongoing surgery including skin grafts to re-construct and repair the resulting damage. Mr. Doyle have been left with a permanent left eye injury as a result of the assault. At the time the appellant and Mr. Doyle and another man were drinking in the house. This third individual attempted to intervene and stop the assault on Mr. Doyle, but was struck in the head by the appellant. Immediately following the assault, the appellant called to a neighbour's house and alleged that the third man had attacked Mr. Doyle. He did, however, request his neighbours to attend at his home and provide assistance to Mr. Doyle. This action resulted in the prompt calling of an ambulance to take Mr. Doyle to hospital.

3. When arrested, the appellant was noted to be severely intoxicated. He claimed to have no recollection of the incident, but accepted his involvement and expressed remorse. He pleaded guilty on the first return date before Cork Circuit Criminal Court.

4. The appellant's grounds of appeals are, in summary, that the sentence of nine years was excessive in all the circumstances. It is contended that the sentence was disproportionate, overly punitive, inconsistent with sentencing guidelines, and that too much emphasis was placed on the aggravating factors in the case, and insufficient emphasis placed on the relevant mitigating factors. It is further contended that the learned sentencing judge erred in principle in failing to properly balance the sentencing objectives of deterrents and rehabilitation, and that he failed to afford sufficient credit to the appellant for the significant gap in time between the appellant's previous serious conviction and the commission of the assault in this case.

5. The appellant had seven previous convictions between 1988 and 2001. His most serious conviction was one dated 13th May 1994, when he was convicted at the Central Criminal Court on a charge of rape. He received a sentence of six years. His other previous convictions are relatively minor, and are in respect of public order offences. He was therefore of good behaviour for a period of eleven or twelve years before this offence.

6. The main thrust of the appellant's appeal is that the learned sentencing judge erred in placing the offence at too high a level in the gravity scale, and that the setting of the appropriate sentence before allowing for mitigating factors at fifteen years was excessive. It is submitted that the headline sentence should be seven to eight years, less a number of years for the mitigating factors. Therefore, the suggested net sentence would be in the region of four or five years. The court has been referred to a number of comparator cases all of which produced headline sentences at less than, and in some cases significantly below, fifteen years. It has been suggested that in all these cases the injuries caused were of a more serious nature than in this case.

7. The injury sustained by Mr. Doyle was particularly serious. The learned sentencing judge described the injury as "gruesome". The injury has had a long lasting affect on the victim and almost cost him the sight in one eye.

8. The court is satisfied that there was an error of principle on the part of the learned sentencing judge in his placing the headline sentence at fifteen years. An appropriate headline sentence is twelve years, and it is appropriate to reduce this headline sentence to take account of the following:-

(i) the early plea of guilty,

(ii) the prompt efforts by the appellant to seek help for his victim immediately after the assault even though at that time it was seeking to blame another individual for it,

(iii) the relatively lengthy period (approximately eleven years) during which the appellant remained out of trouble immediately prior to this offence, and

(iv) the expression of remorse.

9. For these reasons the court will impose a sentence of eight years in substitution for the sentence imposed on 31st October 2013, also backdated to the date on which the appellant went into custody. It will further suspend the final eighteen months of that sentence for a period of two years post release. The reason for suspending the last eighteen months of the sentence is to promote and incentivise rehabilitation, and in recognition of the appellant's good behaviour in prison and his attendance at useful courses while in prison. A further reason for suspending the eighteen month sentence for a period of two years post release is to ensure that the appellant has, in effect, an unfinished prison sentence hanging over him for a considerable period after he leaves prison. The

suspension of the said eighteen months period is subject to the appellant entering into a bond in the sum of €100 and subject to the usual conditions.