



THE COURT OF APPEAL

**Birmingham, J.
Mahon, J.
Edwards, J**

**Appeal Number: 43/2012
Appeal Number: 49/2012**

**The People at the Suit of the Director of Public Prosecutions
-v-**

Sean McDermott and Jason McLoughlin

Appellant

Judgment of the Court (ex tempore) delivered on the 16th day of December 2014 by Mr. Justice Mahon

1. These are appeals against sentences of ten years, (with the final three suspended on conditions), imposed at the Dublin Circuit Criminal Court on 16th February 2012 in respect of offences relating to the use of a firearm and criminal damage. Because the offences were committed while both of the appellants were on bail in relation to earlier offences, the sentences were consecutive to sentences then being served, and which would serve to keep both appellants in prison until approximately 2014 and July 2013 respectively, that is two and a half years and one and a half years after the sentences imposed in these cases.

2. On the 27th January 2011 both appellants travelled by motorbike to a particular house in Ballyfermot and there discharged a total of three cartridges through the front living room window, a bedroom window and the front door of the house. The intention was to frighten the occupants, rather than injure them. In their attempt to escape the scene the appellants crashed their motorbike while being pursued by Gardai, sustaining injuries to themselves in so doing. Their actions were clearly planned, reckless and could so easily have caused very serious injury and/or even fatalities. Their offences were undoubtedly of the more serious type and had to result in lengthy prison sentences and sentences consecutive to those already being served by both men.

3. Both appellants had long lists of previous convictions, (77 and 62 respectively), for various offences, some very serious and others less so in nature, stretching back over a number of years. This fact, coupled with the very serious nature of the offences committed, left the learned trial judge with little option in terms of arriving at an appropriate sentence other than the imposition of severe sentences, even allowing fully for mitigating factors, including the pleas of guilty, their stated remorse and their difficult backgrounds and personal circumstances.

4. The appellant's submissions focused on the totality of the sentences, and the contention that the learned trial judge erred in principle in failing to sufficiently respect this principle, having regard, in particular, to his decision that the sentences were to run consecutively to then current sentences, and which resulted effectively in delaying the commencement of the sentences imposed by approximately two and a half and one and a half years, respectively.

5. This court is satisfied that the ten year sentences were entirely appropriate and proportionate in both cases, and that provision for the last three years being suspended adequately and fairly provided for the mitigating factors and fully recognised and respected the totality principle. Indeed, had the appellants not committed these offences while on bail, and if consecutive sentences were not a necessary feature of the case, it may well have been the case that the suspended element of the sentences might properly have been two, rather than three, years. The appellants were, in effect, given some element of discount in their overall custodial terms to compensate to a degree for the extended period they faced in prison.

6. These appeals are therefore dismissed.