



THE COURT OF APPEAL

Record No. 40/2015

Birmingham J.
Sheehan J.
Mahon J.

The Director of Public Prosecutions

Respondent

- and -

Louis Lennon

Appellant

Judgment (ex tempore) of the Court delivered on the 24th day of June 2016 by Mr. Justice Mahon

1. This is an appeal against sentences imposed at Dublin Circuit Criminal court being one of two years imprisonment on 3rd December 2014 (relating to Bill No. 114/14), and one of eighteen months imprisonment on 13th February 2015 (in relation to Bill No. 24/15). The second sentence, (of eighteen months imprisonment), was directed to be served consecutively to the first term of imprisonment, (two years), as the second offence was committed by the appellant while on bail in respect of the first offence.

2. Both offences were of burglary contrary to s. 12(1)(b)(iii) of the Criminal Justice (Theft and Fraud Offences) Act 2001. The appellant had pleaded guilty and was convicted of both offences on 30th April 2014 and 30th January 2015, respectively.

The background facts

3. In relation to the 2014 offence, the appellant broke into a bistro premises in Terenure, kicking in the front door, and causing €2,400 worth of damage to the premises in addition to hugely disrupting the business of the premises on the following day.

4. In relation to the 2015 offence, the appellant broke into a business premises through the back door in the middle of the night. He rifled through property of two employees and stole the sum of €390.

5. The appellant is now aged forty seven years. He has fifty previous convictions, five of which are convictions in the Circuit Court. Fifteen of his previous convictions are for burglary, and one is for aggravated burglary. Eight relate to drugs, six relate to theft, and there are a number of other miscellaneous offences.

The grounds of appeal

6. The grounds of appeal advanced on behalf of the appellant are summarised as follows:-

(i) The learned sentencing judge did not have proper regard to the principle of rehabilitation when sentencing the accused. This ground was stated by counsel for the appellant to be the stronger of the two grounds.

(ii) The learned sentencing judge failed to observe the principles of totality and proportionality.

The sentencing judgment

7. In the course of sentencing the appellant, the learned sentencing judge stated:-

"Mr. Lennon is a man who is a career offender and is going to continue unfortunately in his career until he makes, at some point in his life, a decision that he has to deal with his addictions. If he doesn't, he is going to keep offending, he will keep coming back here and he will keep going back to prison. His record is a very unfortunate one but it is not insignificant either. His last conviction where he served a considerable period of time was for the sale / supply of drugs with a value of over €13,000 and he has served five years sentence for that, and before that, remarkably, a sentence for aggravated burglary where I am told he is usually a man who centres on business premises. He got considerable leniency from the court with half that sentence suspended of a three year sentence. So Mr. Lennon has received every consideration, every latitude in the past. It would appear now that the Director has taken the view that whenever charged with offences he should come back to the Circuit Court on indictment. His record before and other than that seems generally to have been dealt with in terms of imprisonment in the District Court within the jurisdiction of that court for similar offending. So, the prosecuting authorities and his record indicated that the courts or the authorities expect that Mr. Lennon will receive more than what would be the District Court tariff and that clearly has to be so, given his record."

Discussion and conclusion

8. The learned sentencing judge expressed the view that he should impose a significant sentence because of the appellant's past record. He noted the negative tone of the probation report, and he identified as his "root" problem that of his drug abuse. The probation service had been unable to identify any scheme which might be put in place to assist the appellant in his rehabilitation

9. The suggestion therefore, made by counsel for the appellant, that the learned sentencing judge did not turn his mind to the appellant's rehabilitation is not accurate. Also, the reference by the learned sentencing judge to the appellant being a *career offender* was, contrary to what was suggested on behalf of the appellant, in the context in which the term was used, a reference to repeat offending over much of the appellant's adult life, and the link between that repeat offending and his addiction problem, and also that nothing was likely to change into the future until such time as the appellant made the decision to deal with that problem. It was not a suggestion by the learned sentencing judge that the appellant was a professional criminal in the sense of making significant income from such activity.

10. In relation to the totality and proportionality ground of appeal, it could not be said that either sentence was unduly harsh having regard to, in particular, the appellant's depressing record of previous convictions, numbering in total fifty, and including particularly relevant offences. It must also be said that the offences themselves, while not the most serious of their type, were in no way of little consequence for the businesses and individuals affected.

11. The second sentence had to be, by law, consecutive to the first sentence. If this had not been the case, the second sentence might reasonably have been the same as that imposed for the first offence, or possibly somewhat greater, it being a subsequently committed offence of a similar type. An obvious explanation for it being less, at eighteen months, less than it might otherwise have been is that it was indeed imposed with due regard to the principles of totality and proportionality given the requirement that it be served consecutively to the first sentence.

12. The court has not identified any error of principle in the sentences imposed, either individually or, more importantly, viewed collectively and therefore dismisses the appeal.

13. It is noteworthy and very much to the appellant's credit that reports already emerging from prison indicates that his time in custody is producing positive results in terms of his rehabilitation. It is to be hoped that he has now turned a corner, and that when released from custody he will be better equipped to avoid a return to crime, and inevitably in that event, prison.