



THE COURT OF APPEAL

Record No. 134/2017

**Birmingham P.
McGovern J.
McCarthy J.**

BETWEEN/

THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

- AND-

LIAM CONCANNON

APPELLANT

JUDGMENT of the Court (ex tempore) delivered on the 1st day of April 2019 by Mr. Justice McGovern

1. This is an appeal against sentence. The appellant pleaded guilty to two counts on the indictment on the 17th February, 2017 namely to causing serious harm contrary to s.4 of the Non Fatal Offences Against the Person Act 1997 and the production of an article in a manner likely to intimidate contrary to s.11 of the Firearms and Offensive Weapons Act 1990. On the 29th May, 2017 the appellant was sentenced to a term of imprisonment of seven years on count 1, such sentence to run from the 25th October, 2016 with the final eighteen months suspended. A nolle prosequi was entered in respect of count no. 2 on the indictment.

2. The assault, which is the subject matter of the prosecution, took place on St. Patricks Day in 2014. The appellant and his complainant were in a public house in Killorglin, County Kerry. They had known each other previously. Although there were in separate groups they had a number of exchanges during the course of the evening when insults were passed between them. At some stage during the evening the two young men met in a room containing a pool table. Further words were exchanged. Suddenly, and without warning, the appellant struck the complainant over the head with a pool cue. He struck the victim more than once and caused serious and life changing injuries to him.

3. The injuries sustained by the complainant were as follows:-

- (a) two lacerations, one on the forehead and a further one on the head;
- (b) severe headaches;
- (c) a comminuted complex open fracture to the frontal bone in his skull; and
- (d) contusions of both frontal lobes and a five millimetre subdural haematoma;
- (e) the victim of the assault was left with no energy, was unable to drive or read and could only watch television with difficulty in the months following the incident he suffered intermittent headaches and night terrors.

4. A follow up report in February 2017 stated that he had been left with ongoing headaches and difficulty with reading. He also had distorted vision on occasions and he has been left with a 5 cm. scar above his hairline and a 7 cm. scar at the hairline.

5. The victim of the assault was twenty-two years old at the time. He continues to suffer from migraines, impaired vision and night terrors and requires counselling to help him cope with daily life. He still sees a neurologist on account of problems with his vision. There is no doubt that his quality of life has been permanently affected by this assault.

6. The appeal is based on three grounds:-

- (i) the learned trial judge erred in fact and in law in assessing the DPP's view of where on the scale of severity the offence lay in circumstances where the learned trial judge determined that it lay just under the DPP's view prior to considering the submissions of the appellant on the issue and, further, insofar as he proceeded to suspend the final eighteen months, did not make it clear whether the suspension of the eighteen months was an acceptance of the appellant's submissions in this regard or whether the partial suspension related to the mitigation factors in the case;
- (ii) without prejudice to the generality of the foregoing, if the aforesaid suspended portion constituted an acceptance of the submissions of the appellant, the learned trial judge erred in fact and in law in failing to give any discount to the appellant in relation to the mitigating factors, namely:-
 - (a) his guilty plea;
 - (b) his early admission;
 - (c) his letter of remorse; and
 - (d) his work history and other personal circumstances.

(iii) the learned trial judge erred in fact and in law in suspending the final eighteen months for a period of seven years without specifying specific reason for doing so.

7. The appellant relies on *DPP v. Fitzgibbon*, a decision of the Court of Appeal [2014] 2 ILRM 116, [2014] IECCA 12.

8. At the sentencing hearing, the respondent submitted that in his view this case was that at the upper range of sentence. The appellant submitted that the case was within the middle range on the basis that it was not a case where a weapon was brought to a fight but rather a pool cue which was lawfully possessed for the purpose of playing pool and was subsequently used illegally in the course of the assault.

9. The appellant argues that there is an important distinction between this case and *Fitzgibbon* which was, the appellant says, rightly considered to be in the upper range of the scale of s.4 cases. In *Fitzgibbon* the assault was premeditated and deliberate.

10. In considering the submissions, the trial judge stated:-

"It is the DPP's view that this case is in the upper range of seven-and-a-half to 12-and-a-half years. In imposing sentence the Court is tasked with considering where the particular offence lies and having decided that the Court must factor in the aggravating circumstances and the mitigating circumstances in order to determine the appropriate and proportionate sentence. The Court of Appeal has pointed out that while these guidelines are there the sentencing judge is not automatically tied to same and the facts of each case must be carefully analysed in determining what is the appropriate and proportionate sentence. In the circumstances of this case the Court considers that the appropriate and proportionate point on the spectrum is one of seven years."

11. In arriving at the appropriate sentence, the trial judge referred to the fact that it was a very serious assault, vicious in its nature and unprovoked. The initial blow used very considerable force and struck the injured party in the head. He was struck twice and even after the pool cue broke, further injury was inflicted on the victim. The trial judge was required to have regard to the serious injury inflicted and the fact that there could have been fatal consequences. Furthermore, the injury has been a life changing event for the victim.

12. The judge commented on the fact that the pool cue was used as a weapon and on an unarmed and defenceless victim. The victim was a computer science student at the time and has suffered life altering injuries which were the natural and probable consequences of the appellant's actions.

13. The probation report was not particularly favourable to the appellant inasmuch as he told the probation officer that he had been acting in self-defence when this was clearly not the case.

14. While there may have been some ambiguity about the manner in which the trial judge arrived at the sentence handed down in this case, the primary duty of this Court is to review the sentence in the light of whether there was an error in principle and whether the sentence was fair and proportionate in all the circumstances.

15. While it would have been helpful if the trial judge had made it more clear as to what point on the scale of severity he viewed the offence, the guidelines which have been set out for sentencing judges do not have to be slavishly followed. Each case must be analysed in the light of what is an appropriate and proportionate sentence in all the circumstances.

16. The trial judge suspended the last eighteen months of the sentence and it is clear that he did so because of the mitigating factors in this case. But on the other hand, it cannot be overlooked that there were a number of aggravating circumstances not only in the nature of the assault and its effect on the victim, but also the fact that the accused had previous convictions for assault. It is also to be noted that the probation report indicated a moderate risk of further offending and problems with anger management.

17. The appellant was required to enter into a bond to keep the peace and be of good behaviour towards all the people of Ireland for a period of seven years from the 25th October, 2016. The appellant's submission that the suspended period of the sentence would mean, in effect, that he is subject to punishment for a period of twelve and a half years in aggregate of both actual and suspended imprisonment appears to the Court to be a misunderstanding of the position.

18. The period of suspension ends in April 2023 and the Court agrees with the submissions of the respondent that the period commenced to run when he was taken into custody on the European Arrest Warrant in 2016 and does not run from the release date.

19. The Court has not been persuaded that there was any error in principle in this case and is satisfied that the sentence was within the approximate range for an offence of this type.

20. The Court therefore will dismiss the appeal.