



**THE COURT OF APPEAL**

**Birmingham J.  
Sheehan J.  
Edwards J.  
238/15**

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

**Respondent**

**V**

**Paul Mason**

**Appellant**

**JUDGMENT of the Court (Ex tempore) delivered on the 18th day of July 2016 by Mr. Justice Sheehan**

1. This is an appeal against sentence.

2. The appellant Paul Mason pleaded guilty at the Circuit Criminal Court in Galway on the 3rd March, 2015, to an offence of burglary contrary to s. 12(1)(b) of the Criminal Justice (Theft and Fraud Offences) Act 2001. The offence was committed on the 30th October, 2013.

3. The background facts are that the injured party Jim Donovan was at home with his family on the night of the 30th October, 2013, when at 9.00 pm a number of men called to his house. Having answered a knock at the door, Mr. Donovan observed five men outside. These men rushed Mr. Donovan and he was knocked to the ground. He outlined to the investigating gardaí how the four men began to beat him while a fifth stood by the stairs. He was asked where the safe was and they demanded money. Mr. Donovan was then thrown a piece of paper on which was written a phone number. He was ordered to cooperate with the number the following day at 7.00 pm and was told that if he did not cooperate with that number, that there would be a bomb placed under his car. A second intruder who spoke said "when we come back, we won't be worried about the kids". All the intruders then ran out the door of the house. The gardaí were contacted and an investigation commenced.

4. The injured party rents a four bedroom detached bungalow which is approximately 3km from Galway city centre, where he lives with his wife, four children, son in law and two grandchildren. The phone number written on the piece of paper was taken possession of by the gardaí at approximately 12.55 am that night. Gardai were on mobile patrol in and around Briarhill Shopping Centre. As they drove around the car park, their attention was drawn to activity there. The gardaí observed an Opel Astra and identified themselves to three occupants of the car and they found a phone number written on a piece of cardboard. The number written on the piece of cardboard was the same number as that which had been handed to Mr. Donovan. One of the person's in the car gave his name as Paul Mason with a date of birth as the 20th November 1987. Inquiries conducted in relation to the phone revealed that the number related to a sim card which had been purchased at an Extravision store in Navan on the 20th October, 2013.

5. On the 21st January, 2014, Paul Mason was arrested in Dundalk for the offence of burglary. He was conveyed to Galway garda station where he was detained under s. 4 of the Criminal Justice Act 1994 and during detention he was interviewed on a number of occasions. He initially stated that he had been in Galway on the night in question for the purpose of speaking to a man to provide door security and he initially denied having gone to the home of Jim Donovan.

6. Later that day Jim Donovan viewed an identity parade containing fourteen men including the accused and he identified Paul Mason as being present in his home on the 30th October. Following the identification by Mr. Donovan, a third interview commenced and in this interview Mr. Mason admitted going there. He admitted that he grabbed Mr. Donovan, pushed him behind the door and punched him. He denied ever demanding money from him. He did not give Mr. Donovan any message he claimed.

7. It was the opinion of the gardaí that Mr. Donovan was visited by members of an illegal organisation which believed he was a person of means and they wished to extort money from him. Mr. Donovan sustained some injuries.

8. The court was told that Mr. Mason is a native of Co. Dublin, and that he lived in Co. Louth with his partner and daughter. He is the eldest in his family and was living in Drumaskien in May 2013,

9. At the time of the offence he was on social welfare and he had worked on and off for a nightclub Dublin. He was a member of the security staff there, but no longer has that work. The court was told that the appellant had two previous convictions, one at Dundalk District Court for failing to produce an NCT and one for using a vehicle without an NCT for which he was fined €200.

10. The garda evidence was that the appellant had a history of employment and the court was also told that he had disassociated from the individuals who he had been involved with on the night in question.

11. The appellant had been assessed by the Probation Service as being at low risk of reoffending and at the time of sentence on the 8th July, 2015, he was in full time employment.

12. At the sentence hearing on the 8th July, 2015, the sentencing judge asked himself the following question "so, do the interests of justice require an immediate custodial sentence" and he answered this by saying:

"I am not certain that they do at this stage, but what I want to do is I want to ask the Probation Service if this man is considered suitable for community service, that's without any guarantee that that's the option that I will adopt, I just want to see if they are prepared to deal with him."

13. Having said this the sentencing judge then inquired from counsel for the Director of Public Prosecutions how long it would take to get a probation report and went on to say:-

"What I am looking at in the event is a three years sentence and it is a question of how we deal with that. Whether I deal with it by way of community service or another way in part or in full."

14. The matter was then put back for sentence to the 8th October, 2015, for a community service report. The court was told that the appellant was not suitable for community service for health and safety reasons but that this was no fault of the appellant's. While the trial judge was told this he stated:

"If the option of community service is not available I don't believe I have any other option so there will be a three year sentence."

15. The court has received helpful submission from both parties. Counsel for the appellant concedes that it was a very serious offence which his client had committed, but submitted nevertheless that he was someone who had pleaded guilty, had no previous convictions and was viewed favourably by the Probation Service. He maintained that the trial judge had erred by not considering a suspended sentence or at least a partially suspended one.

16. Counsel for the respondent on the other had emphasises that while the sentence had been put back by the sentencing judge for a community service report, the sentencing judge had been careful not to commit himself to such an outcome even if the community service had ultimately proved to be favourable. Counsel submitted that the offence was a very serious one and that a three year sentence of imprisonment was a proportionate sentence.

17. We have considered the submissions of both parties and take the view that although this was a very serious offence, which in our view merits imprisonment, the trial judge nevertheless erred in considering that he had no option but to impose a full three year sentence. It was open to him to consider a suspended sentence or at least a partially suspended sentence and on this basis we therefore set aside the original sentence and now proceed to sentence the appellant afresh.

18. Prior to imposing a new sentence, the court received a letter from the Governor of Mountjoy Prison confirming that the appellant is an on enhanced regime and we have also been told that he has completed his junior certificate.

19. In light of this material and the personal circumstances of the appellant, and particularly the fact that he has disassociated himself from the people he was involved with on the night this offence was committed, the court will vary the sentence. However, given the type of burglary that this was, as well as the manner in which the injured party was attacked and threatened, the court must impose a sentence of imprisonment. Notwithstanding his plea of guilty, admissions and no previous convictions and other favourable personal circumstances, including his work record, the court will impose a sentence of three years imprisonment, but will suspend the final eighteen months of that three year sentence on the usual conditions.