



THE COURT OF APPEAL
Birmingham J.
Sheehan J.
Edwards J.
1/16

The People at the Suit of the Director of Public Prosecutions

Respondent

V

Jane Kearney

Appellant

JUDGMENT of the Court delivered on the 16th day of December 2016 by Mr. Justice Sheehan

1. Jane Kearney pleaded guilty to dangerous driving causing serious bodily harm to Blanaid Molloy at the Citywest Hotel, Saggart on the 8th March, 2014.
2. On the 1st December, 2015, she was sentenced to three years imprisonment and now appeals against the severity of that sentence.
3. On the night in question, the appellant had been attending a fund raising function at Citywest Hotel. The injured party and her husband had been at the same function.
4. The appellant had intended to stay in the hotel that evening but had a falling out with her boyfriend and as a result of this, decided to go home. As she was driving from the hotel she knocked the injured party down and failed to remain at the scene.
5. The injured party was knocked to the ground and rendered unconscious and taken to hospital. She sustained a serious injury to her head which has created long term problems for her. She is a mother and, as the trial judge noted, it seems that for a period of time following the accident life was very difficult for her. She lost her confidence, remained at home and found it very difficult to do everyday things. The accident has caused a huge trauma to her and her family. In the course of her victim impact evidence the injured party stated:

"I have been diagnosed with a moderate brain injury. Except for the large scar from my neck, to my shoulder I physically look fine. I have a hidden disability and people have no idea how to deal with me which makes life very difficult. I avoid all events and occasions. The only thing that I have to make myself do is school runs, which are very difficult for me. This is the most I do. I feel safe and happy at home with my husband, sons and dad. I never feel like that anywhere else, so I am very much confined to the house. This was never me before. I was always socialising and always happy being out and about. These days I wake up and feel happy that I am still here as I know how close I was to the end. I feel so connected to victims of road traffic accidents, many of whom pass away and unfortunately I too frequently read of hit and runs and this really upsets me. Honestly there are many times in the year when I was so unwell that I wish I had gone too and I felt it would have been easier for my loved ones to deal with that rather than the horrible life I was now giving them. I am very thankful to the doctors and nurses who looked after me and particularly my medical team who continue to help deal with my brain injury and learn how to maintain it. I am also very thankful to the gardaí. My life has changed forever and so have the lives of my loved ones. I will never forgive the person who did this to me as I now have to live with the consequences of their actions."

6. In the course of his sentencing remarks, the learned sentencing judge said that the two principal aggravating factors in the case were that the appellant drove her car when she was intoxicated being almost three times over the limit of permitted alcohol and furthermore found as a second aggravating factor that the appellant left the scene.

7. Prior to this the learned trial judge had stated the following:-

"Ms. Kearney did not drive carefully on the night in question. She allowed her car to collide and strike Blanaid Molloy. Dangerous driving is a very elastic crime. I think it can go from mere inattention to horrendously reckless behaviour. Now in this case it seems that I cannot discern from the evidence where the dangerous driving lies, but it seems Ms. Kearney did not see her and struck her with her car."

8. Referring to the personal circumstances of the appellant, the learned trial judge noted:

"Ms. Kearney has her own I suppose life story, and it seems she is a hardworking lady. I think she had modest academic achievements at school, but nonetheless that did not stop her from working and being a productive member of society. I note that she has a record of conviction in relation to road traffic offences and to some small degree that must be taken into account. But what has to be taken into account in sentencing Ms. Kearney is the two aggravating factors, namely the amount of drink involved and the failure to stay at the scene. These are the two serious factors the Court is taking into account in dealing with Ms. Kearney.

The effects of the accident have been horrendous for Mrs. Molloy and her family and obviously some degree to that is taken into account. But principally in sentencing Ms. Kearney I must take into account her level of culpability and I think her level of culpability is high in the sense that she voluntarily drove the car while she had that amount of alcohol in her system. Unfortunately for everybody it seems to me a custodial sentence in this type of case is inevitable. The question is how long should the custodial sentence be. The maximum sentence for this type of offence is ten years I believe and obviously mitigation has to be allowed for her plea of guilty, her hardworking record, her expression of remorse, her immediate cooperation when apprehended by the gardaí and by the fact that I think she is a genuinely good person. Unfortunately this is one fall from grace, a very serious fall from grace nonetheless. I think I am going to impose on her in relation to count 1 a term of imprisonment of three years."

9. The appellant is 27 years old and at the time of sentence was a trainee hairdresser. She has a small number of previous convictions under the Road Traffic Act, including three for exceeding the speed limit and one for driving without insurance. At the time of the accident she was licensed to drive, insured and working. She has suffered from depression from time to time as a result of which she spent two periods as an in-patient in a psychiatric hospital. She herself lost a younger brother in 2008 as a result of a road traffic accident. There was documentary evidence before the Court of her deep remorse and confirmation from the prosecuting garda of her full cooperation following her arrest. She pleaded guilty at an early stage.

10. Counsel on behalf of the appellant submitted that the learned sentencing judge erred in three respects:-

1. He failed to identify a headline sentence thereby making it difficult to understand what credit had actually been given for the very considerable mitigation in the case.
2. The sentencing judge erred by imposing a sentence of three years imprisonment with no portion suspended.
3. The sentence imposed was excessive.

11. In support of his submission that the sentence was excessive, counsel for the appellant referred to the remarks of the trial judge where he had stated:-

"Now in this case it seems to me that I cannot discern from the evidence where the dangerous driving lies, but it seems Ms. Kearney did not see her and struck her with the car."

12. Counsel for the respondent, while conceding that there was considerable mitigation in the case, submitted nevertheless that the sentence was appropriate and "not grossly severe".

13. In the course of his brief remarks prior to sentencing, the sentencing judge did not identify a headline sentence nor did he give any consideration to suspending part of the sentence he ultimately imposed. We do not regard a sentence of three years imprisonment to be an inappropriate sentence in this case having regard to the significant culpability of the appellant and the harm done to the injured party. However, we hold that the sentencing judge fell into error by failing to at least give consideration to suspending part of that sentence with a view to incentivising rehabilitation, having regard to the importance of the penal objective of rehabilitation as emphasised in *The People (Attorney General) v. O'Driscoll* (1972) 1 Frewen 351. We consider that the evidence before the sentencing judge provided strong grounds for optimism that such an incentive would be availed of, if provided.

14. In proceeding to a fresh sentence hearing, the Court received further material pertaining to mitigation. This included three certificates earned by the appellant as a result of the successful completion by her of health and fitness programmes in prison. The Court also received a personal letter from her in which she again expressed her remorse. Finally and perhaps most importantly the Court received an excellent reference from the Governor of the Dóchas Centre. In view of this additional material which is consistent with the mitigating evidence received by the Court below, and which suggests that the appellant is already making progress on the road to her rehabilitation, this Court will suspend the final nine months of her sentence for a period of one year following her release from prison in order to further incentivise her ongoing rehabilitation.