



THE COURT OF APPEAL

**Birmingham J.
Sheehan J.
Mahon J.**

288/15

The People at the Suit of the Director of Public Prosecutions

Respondent

V

Archili Mindadze

Appellant

JUDGMENT of the Court (ex tempore) delivered on the 27th day of October 2016 by

Mr. Justice Sheehan

1. This is an appeal against sentence.
2. The appellant pleaded guilty to assault causing harm to Iurii Borta a Romanian dentist at his practice in Summerhill Parade, Dublin on the 1st November, 2012, and received a sentence of three and a half years imprisonment with the final six months of that sentence suspended on the usual terms.
3. The plea of guilty which was entered on the day of trial was accepted by the Director of Public Prosecutions on the basis that two other counts be taken into consideration namely count 2, which charged the appellant with demanding money with menaces contrary to s. 17 of the Criminal Justice (Public Order) Act 1994, as amended, and count 3 which charged the appellant with the production of an article capable of inflicting serious injury contrary to s. 11 of the Firearms and Offensive Weapons Act 1990.
4. At the sentence hearing Detective Garda Niamh Coates gave evidence to the effect that the appellant accompanied by another man attended at the injured party's dental practice repeatedly asking him to whom did he pay protection money. As he did so the appellant produced a knife and attempted to stab Mr. Borta, whose finger was cut in the process. He also punched Mr. Borta in the face and head. At this point the injured party's sister entered the surgery and she also was terrified. The appellant told Mr. Borta that he had ten days to leave the country and warned him that if the police were informed neither himself nor his sister would in fact be able to leave the country.
5. The appellant returned ten days later to the surgery and was arrested. A search of his home resulted in a blood stained knife being found which on examination revealed the injured party's DNA.
6. When he was being interviewed the appellant conceded that he appeared in relevant CCTV footage. In the course of her sentencing remarks, the learned judge noted inter alia, that during the assault the injured party was frightened for his life and also that he had been out of work for two weeks. She also noted that the appellant had pleaded guilty, that a knife was used and that the injured party had been cut.
7. The appellant is a 40 year old Georgian national with one child who lives with his partner in Dublin. The court was told that he suffers from post traumatic stress disorder as a result of his involvement in the Georgian uprising and that he has been living in Dublin since 2004. While he has a number of previous convictions under the Road Traffic Acts he has none for assault or violence related offences.
8. His counsel in written submissions lists a number of different matters as being relevant to sentence. His limited cooperation with the garda investigation and his late plea of guilty seem to us to be the principal mitigating factors.
9. It is correct to say that the learned judge deemed that his previous convictions were not relevant to this offence, but this does not mean that he is entitled to the mitigation that would normally be afforded to someone with an unblemished record.
10. The essential argument advanced by counsel for the appellant is twofold. Firstly, he contends that the trial judge started at too high a point by identifying three and a half years imprisonment as the appropriate headline sentence and secondly, that the trial judge did not give his client adequate credit for mitigation. In support of his argument he relies on three judgments of this Court namely, *DPP v. McDonald* [2016] IECA 246 at pp. 1 to 3, *DPP v. Smyth* [2016] IECA 199 pp. 4 to 8 and *DPP v. Irwin* [2016] IECA 76, pp. 9 to 12. Counsel for the respondent rejects these submissions and places emphasis on the fact this assault took place in the context of an attempted extortion.
11. This is not an ordinary assault case. It is one which has sinister overtones. We have been told that the appellant is a former policeman who worked in Georgia. The injured party was terrified, and a knife was used in the attack.
12. We are satisfied that the trial judge was entirely justified in identifying three and a half years imprisonment as the appropriate starting point particularly in view of the background to the assault. We note that the offence of demanding money with menaces carries a maximum sentence of ten years imprisonment and we also note that having committed the assault in this case, the appellant returned to the injured party's dental practice ten days later in accordance with the threat he had issued at the time of the assault.
13. The cooperation given by the appellant to the gardaí was limited and the plea of guilty was entered on the morning of the trial. In our view the mitigation afforded in respect of these factors was adequate. Accordingly we dismiss the appeal.

