



THE COURT OF APPEAL

[323/18]

The President

Edwards J.

Whelan J.

BETWEEN

THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

AND

WILLIAM BUTLER

APPELLANT

JUDGMENT (Ex tempore) of the Court delivered on the 25th day of June 2019 by Birmingham P.

1. This is an appeal against severity of sentence. The sentences under appeal are sentences of three years imprisonment with the final 12 months suspended which were imposed in respect of five counts of theft on 13th December 2018 in the Circuit Criminal Court in Dublin. The appellant had appeared before the Court on an indictment containing 33 counts and the counts to which pleas were entered were representative of that indictment.
2. The appeal presented today might fairly be categorised a restrained or restrictive one. The approach of the trial Judge had been to identify a headline sentence or pre-mitigation sentence of four years imprisonment and then to mitigate that to a sentence of three years and then, having regard to the contents of the probation report which was before her, to suspend the final 12 months of the sentence. Counsel on behalf of the appellant says he has specific instructions to take no issue with the headline or pre-mitigation sentence of four years, and, in oral argument, he has made clear that his real concern was with the decision to suspend 12 months or one-third of the sentence. Counsel says that suspending half of the sentence would have been more appropriate.
3. The background to the case is that pleas of guilty were entered to certain counts, initially, on 18th June 2018, and then additional pleas were entered on 22nd October 2018, on which day evidence was heard. On that occasion, the Court learned that the injured party in the case is a widow. Her late husband had passed away in February 2013. Mr. Butler was a friend of hers and had been for a number of years, and from time to time, she allowed him stay in her home. In particular, she allowed him stay in her home at a time when he was experiencing acute accommodation difficulties of his own. While a guest in her home, the appellant gained access to her bank card, her ATM card, and to her PIN number. He used this to take a sum totalling €19,380 from her account over a three-month period. The Court was told that some, perhaps a good deal of the money taken, was then gambled. The injured party became aware that there was appreciably less in her account than she would have expected and aware that withdrawals had occurred at a time when she had not been making any withdrawals. Having become so aware, she contacted Mr. Butler and he admitted wrongdoing. By way of follow up, he made admissions to Gardaí. At both stages, he said that he would be making restitution, but he did not. It is a feature of this case that there has been no restitution whatever despite the fact that the progress of the case through the courts has been very slow because of a degree of prosecutorial delay.
4. In the course of her sentencing remarks, the Judge commented as follows:

"This Court always considers prison as a last place to finalise matters and I always consider very seriously how can I structure a sentence, if at all possible, to ensure that a prison sentence can be avoided. Unfortunately, in this case, this Court has no alternative but to impose a prison sentence. This is a difficult case where a person of previous good character who is now in his 50s is now going to be forced to serve a prison sentence. It is disappointing that no effort has been made at redress despite the fact that [the injured party] was told that he would try to pay the money back, and despite the fact that he has had some work in the interim period, no attempt has been made to make any redress."
5. As it happens, this Court had occasion to consider sentences imposed by the same Circuit Court Judge on a number of occasions and is well aware of the fact that she will always explore non-custodial disposal when that is a realistic option. However, this Court completely agrees with her that this was a case which had to be met with a custodial sentence.
6. In terms of the personal circumstances of the appellant, he was a person without previous convictions. He came before the Court as a 52-year old man of previous good character.
7. In the course of written submissions, there has been reference to a number of cases where this Court has found itself dealing with persons of previous good character, in some cases, positively exemplary citizens, who became involved in dishonesty. For the most part, they involved employees of financial institutions or similar institutions who abused the trust reposed in them as employees and succumbed to temptation. The Court has to say that it does not see these cases as valid comparators.
8. What distinguishes this case is the vulnerability of the victim, a widow. In this case, the fund that was raided was the pension fund that was provided for the victim by her late husband and almost half of the pension that was provided for her was taken from it. A further distinguishing feature from a number of the cases to which reference has been made in the submissions is that in many of those cases, there were significant efforts at recompense; sometimes recompense in full, sometimes the recompense was partial, but

here, there has been no recompense whatsoever.

9. Looking at the offending in the round, and the Court is conscious of the fact that the person before the Court was a 52-year old man without previous convictions and that, therefore, the fact of custody was going to be very difficult for him, but bearing all that in mind, the Court is still quite unable to conclude that the sentence imposed was unduly severe. This was serious dishonesty committed by someone who was abusing trust and hospitality and it was serious dishonesty committed against a vulnerable victim.

10. In the circumstances, this Court has not been persuaded that any error has been identified and must dismiss the appeal.