



THE COURT OF APPEAL

Record No. 295/2016

Birmingham J.
Mahon J.
Edwards J.

BETWEEN/

THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

- AND -

PATRICK McAULIFFE

APPELLANT

JUDGMENT (*ex tempore*) of the Court delivered on the 16th day of April 2018 by Mr. Justice Mahon

1. The appellant pleaded guilty and was convicted on the 24th October 2016 at Cork Circuit Criminal Court on two counts, one of stealing €300 in cash contrary to s. 4(1) and (6) of the Criminal Justice (Theft and Fraud Offences Act) 2001, and one of the robbery of €2,300 in cash contrary to s. 14(1) of the Criminal Justice (Theft and Fraud Offences) Act 2001. The appellant was sentenced on the 1st November 2016 to concurrent sentences of five years on each of the said counts, with the final twelve months suspended on conditions for a period of two years post release. The appellant has appealed against his sentences.

2. On the 12th November 2015 John Mannix, aged eighty three years of age, was in effect, pick pocketed by the appellant while preparing to enter a bus at Grand Parade in Cork. Both men then got on the bus. Mr. Mannix was then followed by the appellant after he got off the bus. He confronted Mr. Mannix, violently threw him to the ground and robbed him of a further cash sum of €2,300.

3. At the time of the offences, the appellant was homeless and had a chronic alcohol and heroin addiction problem. He has two hundred and sixty one previous convictions dating back to 1981, the most recent being on the 12th October 2016. The previous convictions involve many types of offences including theft, handling stolen property, deception, criminal damage, domestic violence, public order, threatening and abusive behaviour, assault, assaulting gardaí, possession of knives and for various types of drugs offences. He has one previous conviction for robbery in 1999. He has a s. 3 assault conviction dated the 7th January 2015 for which he received a six month custodial sentence. He also received a similar sentence for a burglary offence committed on the 7th July 2015 in Cork.

4. The injured party, Mr. Mannix, sustained soft tissue type injuries in the assault and was severely traumatised as a result of his experience. His physical health has deteriorated and he will not now leave his home unless accompanied. He has lost interest in his business.

5. The grounds on which the appellant has appealed the sentences are:-

(i) that the learned sentencing judge erred in principle in assessing the seriousness of the offence on the higher spectrum of available penalties, and

(ii) that the learned sentencing judge did not give sufficient weight to the appellant's plea of guilty.

6. In the course of his sentencing judgment, the learned sentencing judge acknowledged the appellant's early plea of guilty. He specifically referred to the appellant's difficult personal circumstances and his alcohol and heroin addiction problems. He noted also that the appellant had expressed remorse on the date of his sentence in respect of the offences. He considered that on the gravity scale the offence lay in the higher end. He went on to state:-

"His previous convictions are very, very significant, however I hasten to add he will not be sentenced here today by reference to his having previous convictions. The matter on which he will be sentenced relates to the matters solely before the court today. These are contextual. He has previous convictions for assault and he was on bail when he committed this offence. He has a number of convictions for breaches of section 4 of the Criminal Justice (Theft and Fraud Offences) Act described by the guard a moment ago as "dipping" offences, in police parlance, pickpocket.

He has had difficulties with alcohol and drug use and I'm told by Mr O'Flynn that he is now making some efforts to deal with that and hopefully he will be successful in that regard. Therefore, in light of both the mitigating and other circumstances and in light of the initial assessment that the case would attract a sentence of seven years' imprisonment, and having regard to the plea the appropriate sentence in my view is five years' imprisonment, with the latter 12 months suspended for a period of two years post-release provided he enters a bond under section 99 of the 2006 Criminal Justice Act..."

7. This offence was indeed a most serious one. The learned sentencing judge correctly decided it was on the higher end of the gravity scale. While the first offence was opportunistic in that it involved the victim being pick pocketed as he entered a bus and it was not suggested that the appellant knew Mr. Mannix had shortly before hand left his shop premises, the second offence was pre mediated and carefully executed, presumably in the hope or expectation that Mr. Mannix was carrying additional cash.

8. However, what renders the offending, and particularly the second offence, especially serious is the fact that Mr. Mannix was an elderly man and this fact would have been obvious to the appellant. It presumably made Mr. Mannix an easy victim and one unlikely to resist or give chase if robbed. The effect on Mr. Mannix has been nothing short of catastrophic. His independence has been destroyed at a very late stage in his life, as has his ability to work in his business. The following short passage from the sentencing judge aptly describes the sad and life changing consequences for Mr. Mannix:-

"Mr Mannix was a person who had a good sense of independence about him and went about his - went to work in later life and indeed continued to go to work and enjoyed this and all of a sudden there was a major turnaround in his life as a result of the attack upon him. It changed his life. He was a man who'd worked since 1947. He lost confidence, didn't want to go out and became from a person who had a strong sense of his own independence to become one of strong dependency upon his immediate family."

9. The relevant mitigating factors were accurately identified by the learned sentencing judge, including the plea of guilty which was particularly welcome in that it avoided the necessity for the severely traumatised elderly victim to attend court and to give evidence. The headline sentence of seven years was in the court's view entirely appropriate for offences of this nature perpetrated by someone with a depressingly lengthy list of previous convictions. A number of those previous convictions involved assault and violence suggesting that the appellant's offending on this occasion was true to form. The risk of re-offending has to be very high and the chance of rehabilitation low. This was always a case where a significant custodial sentence was appropriate and indeed required. The net custodial sentence of four years can reasonably be described as lenient and therefore will not be interfered with by this court.

10. The appeal is therefore dismissed.