



THE COURT OF APPEAL

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

245/15

256/15

The People at the Suit of the Director of Public Prosecutions

And

James Hodgins and Ronan Hackett

Respondent

Appellants

JUDGMENT of the Court (ex tempore) delivered on the 8th day of July 2016,

by Mr. Justice Sheehan

1. These are appeals against severity of sentence and arise following pleas of guilty by both appellants to assault contrary to s. 3 of the Non Fatal Offences Against the Person Act 1997. James Hodgins received a three year sentence and Ronan Hackett a similar sentence, but with the final six months suspended.
2. Both appellants contend that the sentences they received were excessive that the learned sentencing judge failed to give adequate consideration to the mitigating factors and both also allege that the sentencing judge made a significant error in the course of his summing up when he stated that the victim had been punched while on the ground.
3. It appears from the evidence that was adduced by the prosecution that this was an unprovoked attack by the two appellants who had been drinking together in a public house in Drogheda in the company of a woman who said something to them about the injured party when he entered the public house and left almost immediately on seeing certain people there. Both appellants got up and followed him outside and shouted at him. The injured party ignored them at first, but when he was called a second time, he turned around and was punched in the head by Mr. Hodgins. Mr. Hackett then joined in the attack and both men punched the injured party a number of times around the head. The injured party fell to the ground and as he did so he heard someone saying "leave him alone". Both men returned at that point to the public house and apparently continued drinking there.
4. The injured party received a number of serious injuries. He attended at Lourdes Hospital where he had a number of suspected fractures to his face attended to and he was then referred to St. James' Hospital where he was operated on and had a plate inserted beneath one of his eyes. This has left him with a permanent feeling of numbness in that area.
5. Both appellants co-operated with the gardaí and pleaded guilty. In the course of his judgment the sentencing judge correctly stated that the over reaction of the two appellants to what was said was irrelevant. However when he went on to outline the aggravating factors in the case, he referred to the injured party being punched in the head while on the ground.
6. Following the imposition of the sentences, counsel for the prosecution told the judge that the injured party did not allege being hit while on the ground. CCTV evidence also supported this. The trial judge was not persuaded however, that he should vary the sentence because of this error. While we note the sentencing judge's brief consideration of the matter, the fact is that he mentioned the injured party being punched while on the ground on three separate occasions in the course of his sentencing remarks and this leads us to the view that he regarded this matter as being of some significance. We are therefore of the view that this resulted in an error which obliges us to proceed to a fresh sentence hearing.
7. In the case of Ronan Hackett, he is a 39 year old man with no dependents who lives at home with his father. He accepted responsibility for the offence and expressed remorse and regret for his behaviour. He has a chronic alcohol problem. He suffered a stroke in 2011 which left him in a coma for three days. He has a history of street drinking, but to his credit he completed a twelve week programme at Cluain Mhuire in the interval between the offence and sentencing. Unfortunately there was a relapse before sentence was imposed.
8. In our view, where someone commits their first offence aged 39, pleads guilty and has serious health problems, the court at least ought to consider whether or not a non custodial option is appropriate. The sentencing judge did not think so and we have to agree with his assessment that this was a very serious assault on a defenceless man resulting in serious facial injuries. Therefore in these circumstances a prison sentence was appropriate. However, in Ronan Hackett's case, we believe that a proportionate sentence is one of two years imprisonment with the final twelve months of that sentence suspended.
9. Mr. Hodgins is a 28 year old single man. He had been in a relationship for ten years, but this relationship ended two years before this offence. He had been homeless for two years prior to sentence. He has some previous convictions, including one for a s. 15 of the Misuse of Drugs Act offence in respect of being in possession of controlled drugs for the purpose of sale or supply to another. He also was remorseful. He pleaded guilty and he also has addiction problems.
10. The court has received a report from the Assistant Chief Officer of Mountjoy Prison which is exceptionally favourable. This report informs us that Mr. Hodgins, since his entry into Mountjoy Prison has become a trustee prisoner and has now reached a level of trust which allows him to work outside the prison. Equally he has behaved himself so well that he is now on an enhanced regime.

11. He is not entitled to the same remission as Mr. Hackett, but there is no reason why the court should impose a different headline sentence. Accordingly, what the court will do in his case, is to impose a sentence of two years imprisonment but suspend the final six months of that sentence on condition that he enter into a bond to keep the peace and be of good behaviour for a year following his release. The same bond will apply in the case of Mr. Hackett.