



THE COURT OF APPEAL

[118/18]

The President

McCarthy J.

Kennedy J.

BETWEEN

THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

and

ROSEMARY JONES

APPELLANT

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

1. This is an appeal against severity of sentence. The sentences under appeal were imposed on 15th March 2018 in the Circuit Court in Nenagh. On that occasion, a sentence of two years imprisonment was imposed in respect of a forgery charge and a sentence of three years imprisonment consecutive to the forgery sentence was imposed in respect of the a count of criminal damage. When imposing sentence, the Judge indicated a willingness to suspend the final year of the aggregate sentence on terms if the appellant was prepared to enter a bond. She was not so prepared.

2. The background to the case is to be found in the fact that the appellant had rented a property, a 3-bedroom house in Nenagh from the injured party, Mr. Paul Egan, in 2010. In mid-2014, difficulties developed in the landlord/tenant relationship. Ultimately, the injured party complained that his signature had been forged by the appellant on a Rent Supplement Review Form. It is this that has given rise to the charge of forgery. It is the case that the appellant had, at one stage, been in receipt of rent supplement, but the point was reached where the landlord declined to complete the necessary documentation to facilitate continued payments. It appears his motivation was to apply pressure on his tenant, the appellant, in the hope that she would leave. He was anxious to secure vacant possession as he was of the view that she was not an appropriate tenant at that stage. She had not paid any rent whatever for a very prolonged period indeed.

3. In terms of the procedural background to this case, the appellant had faced two charges in the District Court, one, a forgery and one of criminal damage. It appears that the DPP was willing to have both matters dealt with on a summarily basis in the District Court on pleas of guilty. The appellant, for her part, was willing to plea to forgery, but not to criminal damage. The effect of this was that both cases found their way to the Circuit Court. There, an indictment was prepared containing one count of forgery and one count of criminal damage. It might be described as a composite criminal damage count. The indictment was severed at that stage. For the single composite count of criminal damage, there were substituted four counts, each relating to damage to different area of the house. The criminal damage to which a plea of guilty was ultimately entered on 18th October 2017, related to damage to kitchen furniture. Other counts related to damage to a door from the kitchen to a utility room, damage to household property, in particular, a shower, and damage to walls and skirting boards. The Court was told that the injured parties had estimated the cost of repairing the damage as being of the order of €10,000.

4. The procedural history is that on 17th October 2017, the appellant entered a plea to the forgery count and then, on the following day, entered a plea to one of the counts of criminal damage, but did so on a full facts basis.

5. So far as the forgery count is concerned, it does not appear that Ms. Jones achieved any financial benefit, though that was obviously her intention.

6. So far as the criminal damage is concerned, it appears that the appellant's reluctance to plead guilty, either in the District Court when that was available, or initially in the Circuit Court, was on the basis that she was not prepared to accept that she had deliberately set out to damage the property.

7. At the sentence hearing, the Court was told that the appellant had made arrangements to install a fitted kitchen and had acquired an oven, a fridge, a dishwasher, a hob and an extractor fan to make these available.

8. In terms of the appellant's background and personal circumstances, she was born in 1970. She was the mother of a son who was sitting his Leaving Certificate at the time of the sentence hearing and of two other children. She had 20 previous convictions recorded of which nine were for public order, five under the Road Traffic Acts, one for criminal damage dating from 2004, one was for a s. 2 assault, one for theft and one for s. 3 Misuse of Drugs Act.

9. It is clear that the Judge in the Circuit Court took a very serious view of the case. In that regard, he may well have been influenced by the victim impact reports that were put before the Court from the victim and his wife. It is clear that they had been

tormented by Ms. Jones and that their lives had been made an utter misery. The Judge went to so far as to indicate his strong disagreement with the DPP's willingness to consent to summary disposal.

10. In the Court's view, the aggregate sentence of five years that was actually imposed was excessive and even if regard is had to the final year of the sentence being suspended, as the Judge had contemplated, the sentence would still, in our view, have been too severe and too severe to the extent as to require intervention by this Court.

11. That requires this Court to readdress the question of sentencing. In resentencing, the Court does so as of today's date. The information before us indicates that Ms. Jones is using her time in custody productively. We have been told that the landlord has now reacquired possession and has sold the property, though at a loss, we are told, and no doubt, the price achieved reflected the condition that the premises was in and had been put into by Ms. Jones.

12. In the Court's view, the forgery charge can be adequately met by a sentence of 12 months imprisonment. The criminal damage, even if it did not involve deliberate, calculated determination to wreck the property, was nonetheless serious, and gave rise to very grave consequences for the injured parties. The Court will deal with that aspect by imposing a sentence of two years imprisonment. We have considered whether the sentences should be consecutive or concurrent. We have concluded that the nexus between the two offences to which pleas were entered was so close that concurrent sentences were not inappropriate. We will, therefore, direct that the sentences should be served concurrently. We have also decided that we will suspend the final six months of the sentence on the same terms as offered in the Circuit Court. It will, therefore, be a condition of the suspended sentence that the appellant keep the peace and be of good behaviour for the remainder of her period in custody and for a period of two years post-release. Secondly, it will be a requirement that she not approach Mr. and Mrs. Egan or their child. In deciding to suspend the final portion of the sentence, we have taken the view that society's interests would be served by a structured re-entry back into society by the appellant after her period in custody.

13. In summary, then, a sentence of 12 months imprisonment on the forgery charge, a sentence of two years imprisonment on the criminal damage with the final six months suspended on the terms indicated, the two sentences to be concurrent and to date from the same day as in the Circuit Court.