



THE COURT OF APPEAL

**Birmingham J.
Sheehan J.
Edwards J.**

106/15

The People at the Suit of the Director of Public Prosecutions

Respondent

V

Gediminas Zigmantas

Appellant

JUDGMENT of the Court (ex tempore) delivered on the 16th day of December 2016 by Mr. Justice Sheehan

1. This is an appeal against sentence.
2. The appellant pleaded guilty to falsely imprisoning and robbing Silvia S at the Metropole Hotel in Cork.
3. The offence occurred on the 20th November, 2013 and the appellant was sentenced on the 28th April, 2015 to eight year's imprisonment. The sentence was backdated to the date of his arrest for this offence namely the 10th September, 2014.
4. The offence arose in circumstances where the appellant engaged the services of the injured party who was operating as an escort from a hotel room in Cork. As the appellant was leaving the room his accomplice entered and they both proceeded to shout at the injured party asking her who she was working for. She told them that she was not working for anyone except herself. They then tied her hands and feet, put a towel over her head and placed her in the bath. Following this they searched her room finding €4,000 in cash and other property valued at €620 which they took with them as they left the hotel. The appellant was later identified on hotel CCTV footage.
5. He is 35 years of age and has been in Ireland for fifteen years. He came to Ireland having separated from his first wife and child who both live in Lithuania. He subsequently established a second family in Ireland in Douglas and has two children with his partner there. The Circuit Court was told that he is now separated from his partner.
6. The appellant has fifteen previous convictions under the Road Traffic Act and a previous conviction for robbing another escort at a hotel in Ennis in similar circumstances. The offence in Ennis occurred subsequent to the one in Cork.
7. The appellant was sentenced to five years imprisonment with the final eighteen months of that sentence suspended for the robbery in Ennis and he was serving this sentence when the sentence of eight years imprisonment was imposed at Cork Circuit Court.
8. In the course of his sentencing remarks the learned judge stated:-

"Very good. This is a very nasty type of offence. Anything involving imprisonment is particularly heinous given that to deny a person their freedom or detain a person against their will is a particularly worrying type of offence. Now there are serious aggravating factors in this case. There was a level planning and organisation. There were two people involved, the amount of violence used and this was all a well planned operation to identify and abuse a woman who was on her own. They overpowered and then they put her through the terrifying assault of having herself tied up with her phone charger. That wasn't good enough, to be forced into the bath and then covered over with a towel, the terror she felt is understandable and it is also outlined in her victim impact statement. She simply did not know and they weren't inclined to tell her what was going to happen because they kept on shouting and roaring and abusing the girl. They took their time and robbed her of anything they could find including accoutrements like bags she had around the place. A complete level of disregard for another human being. If this man had been convicted by a jury, I think a sentence of ten years plus would be in order. The offence is certainly in the midrange of what one might have expected given the level of violence used and the planning. Now whereas once he saw the CCTV he accepted his involvement but he gave no great further information than that, nor did he show any great remorse. Again significantly there was a plea but it was not an early plea. It occurred on the day of the trial once the girl had come from Lithuania or Czechoslovakia wherever she was and presented herself in court. . . . I think the appropriate sentence is an eight year sentence without deduction to date from the 10th September, 2014."
9. Counsel for the appellant in the course of written submissions challenged the severity of the sentence under three headings:-
 1. The learned sentencing judge failed to afford sufficient weight to the mitigating factors.
 2. The learned trial judge failed to take into consideration the fact that the appellant was from Lithuania and that imprisonment for him would impose additional hardship in view of his limited command of the English language and the fact that he had few ties in Ireland.
 3. The learned sentencing judge erred in principle in imposing a sentence that did not pay sufficient attention to the public interest in the rehabilitation of the appellant.
10. However, without abandoning any of these grounds of appeal, counsel for the appellant with the permission of the court stated at the commencement of the oral hearing that her principal focus was that the sentencing judge incorrectly identified the headline

sentence as being in excess of ten years imprisonment. When asked by this Court to express a view counsel for the appellant suggested that the headline sentence ought to have been two years lower than the figure chosen by the trial judge.

11. The original sentence hearing was short and the transcript is silent on a number of matters. Fortunately the victim was able to free herself in 20 minutes and while she was undoubtedly terrified her physical injuries were minimal.

12. One of the functions of this Court is to try and achieve a degree of consistency in sentencing. While it is correct that this type of case is unusual, some help is available from the Irish Sentencing Information web site which in January 2013 published a detailed analysis of sentences imposed for robbery over a ten year period. This analysis is of some help to us and supports us in the conclusion that we have reached, namely that the headline sentence identified by the trial judge was somewhat excessive when compared to sentences for robbery imposed or upheld by the Court of Criminal Appeal between the years 2003 and 2013.

13. Accordingly, and to this limited extent, we find that there was an error in the sentencing judge's approach to sentence. We will now proceed to a fresh sentence hearing. In so doing we have carefully considered the submission of Ms. Fawcett that the headline sentence chosen by the trial judge erred by two years. We have also considered the further submissions she makes on behalf of the appellant to the effect that he has been making considerable progress in prison, attending school and also studying music. More importantly we have been told that the appellant has reconnected with his family in Douglas.

14. We will take these matters into account in the sentence that we now propose to impose. In accordance with the sentencing principles suggested by the Supreme Court in *The People (Director of Public Prosecutions) v. M.* [1994] 3 I.R. 306, we identify the appropriate headline sentence in this case as being one of eight years imprisonment. However given the plea of guilty, the appellant's cooperation with the gardaí limited though it was and the progress that he has made in prison, we will mitigate the headline sentence of eight years to one of six years imprisonment which is the sentence that we now impose to be backdated as the Circuit Court judge backdated the sentence to.