



THE COURT OF APPEAL

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

27/16

The People at the Suit of the Director of Public Prosecutions

Respondent

V

Joseph McInerney

Appellant

JUDGMENT of the Court (ex tempore) delivered on the 5th day of December 2016 by Mr. Justice Sheehan

1. This is an appeal against severity of sentence.

2. On the 2nd February, 2016, the appellant received a sentence of six years imprisonment with the final two years suspended for a period of four years on condition that he:-

1. Be of good behaviour.
2. Abstain from alcohol and illegal drugs.
3. Be subject to the Probation Service for eighteen months following his release from prison and comply with all their directions.

3. He was also disqualified from driving for a period of twelve years. The sentence was imposed following a plea of guilty to endangerment contrary to s. 13 of the Non Fatal Offences Against the Person Act 1997, an offence which carries the maximum sentence of seven years imprisonment.

4. The sentence was imposed in respect of the reckless driving by the appellant between 4.45 pm and sometime after 5.00 pm on the 21st July, 2015, when he was observed by Garda Declan Kinsella driving a motor vehicle at a time when he was disqualified.

5. Garda Kinsella pulled up beside him in the street at which point the appellant took off at high speed. As he was pursued by Garda Kinsella he drove recklessly and dangerously through the streets of Templemore endangering a number of people in the process. In the course of his evidence to the Circuit Court Garda Costello stated the following:-

"He drove down the mall in Templemore at high speed straddling the white line and crossing over the centre white line. He had no regard to any other drivers who might have been there at the time. As he approached the junction of the mall on Church Avenue, which is governed by a stop sign, he failed to stop or give cognisance to any traffic that might have been coming from his right and he turned left. I followed with the lights and the siren activated in the patrol car. He made his way down Church Avenue towards the junction of Church Avenue and Bank Street. As he approached this junction there was no sign of a break light slowing down."

6. Garda Kinsella went on to say that he himself slowed down in an effort to give the appellant some room to take the pressure off him, but the appellant just continued at high speed, failing to stop, and drove through that particular junction. He further stated:-

"As he made his way down towards the church, he took a bend completely on the wrong side of the road on the opposite side. This is a narrow enough road and he drove down that road towards a horse and carriage on which there were adults and children. This was a recreational pony and trap which was in use at the time and there were several people on board. He passed these people at a ridiculously high speed and had to swerve past them and just after passing them he had to take a sharp left when he turned onto Mary Street. He then failed to stop at the junction of Mary Street and Main Street and later on as he made his way up towards the town hall in the centre of the town the traffic congestion stopped him for a brief period, but a white van which was causing the obstruction turned right and freed up the passage way for the appellant to drive on. As he did so there was a vehicle coming from the right hand side. This vehicle was a white jeep. Given the distance between the vehicles he believed that he had time to pull out onto the main road and turn right. However, Mr. McInerney was driving at such speed that a collision was narrowly avoided when the driver had to pull in on the left hand side."

7. Garda Kinsella went on to say:-

"There was a lady who was getting a child from her car seat on the roadside and she had the door partially opened and she was inside leaning in to get the child out of the car. She heard the screeches and the car siren and had to jump into the back seat of the car on top of her child to avoid contact."

8. Garda Kinsella went on to say that the appellant continued on out of town at seriously high speeds and eventually drove into a wooded area where the gardaí lost sight of him. He was subsequently arrested and charged with a number of offences.

9. At the time of the offence the appellant was a 25 year old unemployed man with a partner and two children. His mother had died in a road traffic accident when he was thirteen years old and not long afterwards he started getting into trouble. He has 67 previous

convictions for a variety of offences including 6 for the possession of illegal drugs contrary to s. 3 of the Misuse of Drugs Act, 6 for burglary, 6 for theft, 7 for public order offences and a number of convictions under the Road Traffic Acts. At the time of this offence he was addicted to prescription drugs.

10. In the course of his sentencing remarks the learned trial judge stated that he would have adopted a more lenient approach if he had received documentary evidence that the appellant was dealing with his drug problem as he had instructed his counsel. However, the probation report disclosed that he was not dealing with it in prison as he had claimed.

11. The appellant challenges his sentence on a number of grounds, including that the sentence imposed was excessive particularly having regard to the headline sentences identified by this Court in cases of dangerous driving causing death or serious injury. He also criticises the condition whereby the suspended sentence would be activated if the appellant took a drink following his release from prison.

12. We are satisfied that there is some merit in both these arguments which allow us to proceed to a fresh sentencing hearing. We note the appellant is now doing well in prison. He has successfully completed two programmes and the court has received documentary evidence in respect of these programmes. One certificate indicates that he has completed a course in a community based health and first aid in action programme and the second certificate says that he has successfully completed an eight week anger management programme at the education centre in Limerick prison. We have also been told that he is about to start a parenting course.

13. The original sentence was somewhat out of line with other sentences for endangerment which have been before us for review. We will substitute a sentence of four years imprisonment for the original sentence that was imposed in this case and we will suspend the final year of that four year sentence in order to further incentivise the rehabilitation of the appellant provided he enters into his own bond in the sum of €100, to keep the peace and be of good behaviour for a period of twelve months following his release from prison. The twelve year period of disqualification remains in place.