



THE COURT OF APPEAL

[5CJA/14]

The President

Kelly J.

Hogan J.

IN THE MATTER OF SECTION 2 OF THE CRIMINAL JUSTICE ACT 1993

BETWEEN

THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS

APPLICANT

AND

PAUL MC MENAMY

RESPONDENT

JUDGMENT of the COURT (Ex tempore) delivered by the President on the 18th day of December 2014

1. This is an application by the Director of Public Prosecutions under s. 2 of the Criminal Justice Act 1993, for the review of the sentence that was imposed on the accused, the respondent to this application, Mr. Paul McMenamy at the Dublin Circuit Court on 9th December 2013. On that occasion, the learned Circuit judge imposed a sentence of six years imprisonment with the final year suspended on conditions.
2. The charge was in respect of an assault under s. 4 of the Non-Fatal Offences against the Person Act, that is, an assault occasioning serious harm on Ms. Nicola Murray who was the girlfriend and partner and indeed fiancé of the accused at the time. The date of the crime was 5th February 2012. On that occasion, the respondent, Mr. McMenamy, inflicted very serious injuries on Ms. Murray.
3. In very brief terms, the parties were living together. At the time of this episode, there were two little boys in the house, the children of Ms. Murray. A third child was elsewhere. The two adults went out for some drinks; they came back; they let the babysitter go and there followed an episode involving considerable violence. We know that the episode lasted for some time. It may not be of any specific period that can be identified with particularity, but it lasted for a sufficient time that it was noticeable and noticed by the neighbours.
4. In this altercation, it is clear that Mr. McMenamy inflicted serious injuries on Ms. Murray. She sustained, inter alia, a subdural haematoma. She had other injuries. The subdural haematoma is the most serious and which is what puts the matter into the category of section 4. But she did not only have a subdural haematoma. She had bruising of her face and body of such a kind that when, eventually, later that afternoon she received hospital treatment, it was apparent to the medical staff that it was likely to have been caused by an assault and not an accidental injury as it had been portrayed at that point.
5. Mr. McMenamy inflicted these injuries on Ms. Murray. She was then in a comatose or semi-comatose condition. It did occur to him that he should ring an ambulance and he rang the ambulance services but then changed his mind, apparently, because he did not follow it up. It is clear that Ms. Murray was in grave need of hospital treatment as of that time and it is a very serious aggravating feature that Mr. McMenamy did nothing about that until late in the afternoon. Other people came to the house and visited the house but let me continue with Mr. McMenamy's role in the matter and the injuries. Ms. Murray was in hospital for months and gradually made a recovery to the extent that she has recovered but she is left with significant sequelae of a long-term kind and probably permanent nature. They include a change of personality and serious problems that she has as compared with the person that she once was.
6. This was not the first time Mr. McMenamy had attacked a girlfriend. Two previous victims had been the subject of assault by him – one girl on two occasions and another girl on one occasion. Once he got a suspended sentence entirely: that did not stop him from committing the next one. In the next one, he got a jail sentence with a part of it suspended: that did not stop him. This incident happened on 5th February 2012.
7. The matter came to trial and Mr. McMenamy, to his credit, pleaded guilty to the s. 4 assault. His Counsel, Ms. Biggs S.C., makes the telling point that since there were only two people involved in the episode and one of those people, the unfortunate Ms. Murray, is not in a position to give evidence about it by reason of the injuries that the accused inflicted on her, there was only, so to speak, his word as to what happened, apart from the legitimate and logical and reasonable inferences that could be drawn from what is otherwise known independently about the facts of the matter. Ms. Biggs emphasises the value of the plea of guilty as evidence of remorse on the part of the respondent and the Court accepts that that is so. The plea has value in any case, but the value of mitigation to be ascribed to plea of guilty in circumstances such as the present is increased and the Court does indeed take that into account.

8. The test here under s. 2 is not what this Court would have imposed if the members of this Court were sentencing the accused. The onus lies on the Director in accordance with the well-established jurisprudence of the Supreme Court and of the Court of Criminal Appeal. The Director of Public Prosecutions has to establish that the sentence is one of undue leniency, not just that it is lenient, that the leniency is undue. That means that the Court has to be satisfied, in order to allow the application, that the learned trial judge imposed a sentence that was outside the zone of acceptability, the margin of appreciation so that it was significantly too low. So that is the test that has to be applied. What is the situation here and how does that apply to the present case.

9. This Court is of the view that if this assault on Ms. Murray were the only crime to be considered, the sentence imposed by the learned Circuit judge fits the category of being located in the zone of acceptability as being a sentence that was legitimately open to the trial judge. However, in view of the serious aggravating features in this case, specifically two, the previous convictions for similar offences and the callous disregard for the health of the injured Ms. Murray in the aftermath of the attack, those are very serious aggravating features.

10. In those circumstances, the Court is satisfied that the sentence in this case was indeed unduly lenient. The Court has had regard to all the submissions in the case, both written and oral for which the Court expresses gratitude to Counsel because they were extremely helpful and thorough and comprehensive.

11. Having considered all of the materials in the case, the Court is satisfied, and I should say that at the end of the argument, Counsel helpfully agreed to provide materials to the Court to enable us to make a decision as to what is the appropriate sentence to be imposed in the event that we came to the conclusion that we have now reached, namely, that the sentence was indeed unduly lenient. The Court has had regard to those materials and to the matters that have been urged on us by Ms. Biggs. They constitute a number. First of all, there was before the trial judge the matter of the plea of guilty to which I have referred. Secondly, there were testimonials and references. In addition to those matters, the Court now has the fact that the respondent has got on well in prison, has addressed himself to processes of education and insight and the Court takes those into account.

12. The sentence that the Court will impose in lieu of the sentence imposed in the Court below is one of ten years imprisonment as to which the Court will suspend two years on similar conditions to those that were imposed in the Court below. So the sentence will be a sentence instead of ten years imprisonment with two years suspended.

Approved: Ryan P.