



THE COURT OF APPEAL

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

67/16

The People at the Suit of the Director of Public Prosecutions

Respondent

V

Vincent Cadden

Appellant

JUDGMENT of the Court (ex tempore) delivered on the 6th day of February 2017 by Mr. Justice Sheehan

1. This appeal against sentence has been properly and helpfully narrowed down by Mr. Kinneally S.C. for the appellant to one issue namely that the learned trial judge erred when he failed to take into account the need to incentivise Vincent Cadden's further rehabilitation by suspending the final part of the sentence. Counsel for the appellant rightly acknowledges that the headline sentence of six years imprisonment in this case is correct and bases his appeal against sentence solely on the question of the absence of part of that sentence being suspended.
2. On the 17th February, 2016, the appellant was sentenced to six years imprisonment for dangerous driving causing the death of his friend Colm Melia. The accident occurred on the 5th October 2015.
3. Colm Melia's death at the young age of 22 has had a devastating effect on his parents Tom and Rose Melia and on his sister and brother and this is disclosed in deeply moving victim impact statements made by them which this Court has received and read. As the sentencing judge rightly stated "their loss could not be remotely calculated by the court".
4. The background circumstances to this case are that on the night in question Vincent Cadden and Colm Melia had both been out socialising and had consumed alcohol. Both men were driven home and at some point later on that night the appellant called to his friend and it was assumed by the prosecution and not challenged that the purpose of this call was to go for a spin in the appellant's motor vehicle which had been considerably modified. At about 4.00 am that morning a local taxi driver came across the scene of a traffic accident at McShane's Cross near Oldcastle. The deceased man was in the front passenger seat of the vehicle and the appellant was found nearby in a confused state.
5. A garda forensic examination at the scene revealed the presence of a number of tyre marks in sweeping right orientation commencing in or around the vicinity of the stop sign. The nature of the tyre marks indicated that the vehicle was attempting to execute a right hand turn as it approached the T Junction. However, the vehicle did not execute this turn and collided with a stone wall and a pole on the far side of the T Junction. Having regard to the longest tyre marks and the co-efficient of friction, it was concluded that the vehicle was travelling at a speed in excess of 67km per hour when this collision occurred.
6. Garda Joseph Doyle carried out an examination of the vehicle. This examination revealed that it had been extensively modified. These included modifications to the horse power of the vehicle which placed it at double the specification of the manufacturer. As a result of the modification to the horsepower, the vehicle was capable of considerable speeds which Garda Doyle believed rendered the brakes insufficient to accommodate the power of the vehicle. The vehicle had also been fitted with adjustable front lowering coil springs which resulted in it being lower to the ground. The modifications were of such a nature that Garda Doyle was of the view that the vehicle had been rendered dangerously defective and was only appropriate for use on a closed circuit track.
7. When the appellant was brought to hospital following the accident and during the course of his admission to the intensive care unit of the local hospital, a blood sample was taken from him and that revealed that he had in his urine more than twice the permitted level of alcohol.
8. While counsel for the Director of Public Prosecutions agreed that the appellant's cooperation with the gardaí had been important in light of the fact that there were no witnesses to the accident had been important, he nevertheless maintained that the sentence imposed was an appropriate and suggested that the judgment of this Court in the *O'Rourke* case was the most appropriate comparator (*the People (at the suit of the Director of Public Prosecutions) v. O'Rourke*) [2016] IECA 299.
9. In the course of cross examination on behalf of the appellant, the following matters were established or confirmed by Garda McQuillan:-
 1. She had conducted the interview with the appellant on the 15th January, 2015 and he had been cooperative throughout the interview process.
 2. The appellant had a history of being involved in closed track racing and he had been a very successful competitor in this motor sport.
 3. The appellant was extremely passionate about cars and was involved in the modification of cars primarily for the purpose of participating in close circuit racing.
 4. It will have been evident to investigators that the vehicle had been modified for this purpose.

5. The appellant and Colm Melia had been very close friends since childhood and the appellant became visibly upset during the interview when recalling Mr. Melia.

6. There was no other evidence to indicate otherwise than that the taking out of the vehicle on the night in question had been a spur of the moment decision made by the appellant who had consumed approximately three times the legal limit of alcohol and had also consumed cannabis.

7. During the course of interview the appellant fully agreed with any and all propositions put to him in respect of this accident and accepted full responsibility.

8. The appellant was seriously injured and suffered fractured ribs and a laceration of his spleen which required surgical intervention.

9. The appellant was guilt ridden and was experiencing depression since the accident.

10. It was clear from the garda dealings with the appellant that he realised the loss he has caused the Melia family and he is deeply remorseful for this.

10. We have considered the sentence in this case and the failure of the trial judge to suspend the final part of the sentence. As a result the sentence imposed is somewhat out of the line with other cases which this Court has dealt with. It is also somewhat out of line with some of the comparators which are contained in the book of authorities which the court has been furnished with. We have considered the argument by the Director of Public Prosecutions to the effect that at the time of sentence, rehabilitation had effectively been achieved by the appellant and that therefore there was no need for a structured sentence.

11. We are not fully persuaded by this argument. The appellant pleaded guilty and has no previous convictions and in light of this important mitigation, suspending a limited part of the sentence was a factor which the court ought to have considered. Had this happened it is unlikely that an appeal would have been entertained by this Court.

12. In proceeding to resentence the appellant we note the original steps that he had taken to rehabilitate himself and we note that these steps have been reinforced by him while in custody. The court has received a booklet of impressive testimonials. These include character references from former employees, a former parish priest, and his general practitioner. Among the documents is a letter confirming that while in prison the appellant has completed a Samaritan listening programme and there is also a letter from the prison Psychologist.

13. In light of the testimonials and the plea of guilty and the fact that this appellant has no previous convictions, we are of the view that while a headline sentence of six years imprisonment it is equally appropriate to suspend the final eighteen months of that sentence provided the appellant enters into a bond on the usual terms to keep the peace and be of good behaviour for a period of eighteen months following his release. The ten year disqualification remains in place.