



THE COURT OF APPEAL

**Sheehan
Mahon J.
Edwards J.**

The People at the Suit of the Director of Public Prosecutions

V

Stephen Freeman

179/14

Respondent

Appellant

Judgment of the Court (ex tempore) delivered on the 15th day of October 2015, by Mr. Justice Sheehan

1. This is an appeal against severity of sentence.

2. The appellant received a ten year sentence with the final two years suspended in respect of an offence of attempted robbery that occurred in 2009. The final two years of the ten year sentence were suspended upon the appellant entering into his own bond and agreeing to keep the peace and be of good behaviour for a period of three years post release and engaging with the probation service for twelve months.

3. In written submissions advanced on behalf of the appellant the severity of this sentence is challenged on seven separate grounds which are set out in the written submissions as follows:

1. The sentencing judge erred in law and in fact when the sentenced the appellant as a major player in the offence in the absence of any evidence that such was the case.
2. The sentencing judge erred in principle in failing to place sufficient weight on the appellant's personal circumstances.
3. The sentencing judge erred in principle by giving insufficient weight to the mitigating factors in the case.
4. The sentencing judge erred in principle by giving insufficient weight to the young age of the appellant at the time he committed the offence.
5. The sentencing judge erred in principle by giving insufficient weight to early admissions and expressions of remorse made by the appellant.
6. The sentencing judge erred in principle by giving insufficient weight to the guilty plea of the appellant and by not treating it as an early plea in the particular circumstances of the case.
7. The sentencing judge erred in law by imposing a sentence that was excessive and disproportionate having regard to the all the circumstances of the case.

4. In order to consider these grounds of appeal it is necessary to set out briefly the background to this offence.

5. Detective Inspector Hennebry gave evidence to the Circuit Criminal Court that at approximately 5.00 am on the 3rd November, 2009, a husband and wife woke to find three armed and masked men standing at the foot of their bed. The wife was brought to a bathroom and restrained. Her three children were brought downstairs at gunpoint and placed with her. The husband was kept in his bedroom where the raiders told him they knew he worked at the Bank of Ireland and demanded that he obtain €3 million for them. He was told that if he failed to get this money, his wife would be shot. His wife was taken to a disused weather station, restrained and held at gunpoint for eight hours.

6. Meanwhile the raiders gave the husband a mobile phone on which they would contact him and give him further instructions. The husband drove himself and his three children to the Bank of Ireland and informed his manager of the situation.

7. At 8.45 am the husband received a call and he informed the caller that the most he would have at 10.00 am would be €60,000. This was unacceptable to the caller and he informed the husband that he would call again at 11.45 am which he did and on this occasion the husband told the caller that there was a problem with time locks on the safe, but he could now make €200,000 available. The husband informed the caller that he would be able to meet his demands at 2.00 pm and it was arranged that he would have the money in the car park of the bank at that time.

8. At approximately 2.00 pm the raider who was guarding the wife in the disused weather station heard a car horn and left. The wife managed to free herself and was found in a distressed state by a priest and a passerby. At 2.35 pm gardaí took the husband from his car and told him that his wife was safe.

9. It was common case that the appellant was not involved in the planning or organisation of the crime nor did he attend at the victim's household. His role was to be available to move a package of money, the anticipated proceeds of this crime between two locations.

10. Although efforts were made at the sentencing hearing to minimise the appellant's role he was to be financially rewarded by having a €5,000 gambling debt cancelled as a result of his involvement. The sentencing judge noted that the appellant was enthusiastic about his involvement and even engaged a person he knew to assist him completing his part of the crime.

11. It is clear from this court's examination of the sentence imposed upon the appellant that the sentencing judge applied the principle of proportionality and then proceeded to incorporate the penal aim of rehabilitation by suspending a portion of that sentence

on terms designed to incentivise the appellant's rehabilitation. The sentencing judge noted the impressive documentation handed into court on behalf of the appellant and properly took into account all relevant mitigating factors including the appellant's gambling addiction.

12. While it is accepted that the appellant was not involved in the planning and organisation of this crime he nevertheless agreed to play a significant part in its execution by making himself available as he did to move the anticipated proceeds of the crime from one location to another.

13. This Court finds it difficult to contemplate a more egregious form of attempted robbery. Some five years after the event the victim family were still significantly traumatised by the events that occurred on this occasion.

14. It is this Court's view that the sentence imposed was not excessive. The court can find no error of principle either in the sentence or the sentencing judge's approach to sentence and accordingly dismisses the appeal.