



THE COURT OF APPEAL

**Birmingham J.
Irvine J.
Edwards J.**

Appeal Number: 305/2012

BETWEEN

The People at the suit of the Director of Public Prosecutions

Prosecutor/Respondent

-v-

Rory Gahan

Accused/Applicant

Judgment of the Court delivered on the 18th day of March 2015 by Ms Justice Mary Irvine

1. The court's decision will be announced by Ms. Justice Irvine.

2. On 16th January last this court dealt with an appeal brought by the appellant, Mr. Gahan, against the severity of a sentence of eight years imprisonment, with the final three years suspended for a period of five years, that had been imposed on him in the Kilkenny Circuit Criminal Court on 11th October 2012.

3. That sentence had been imposed further to Mr. Gahan's plea of guilty on 3rd October 2012 to one count of aggravated burglary in respect of an offence committed on the night of 9th January 2011 at the home of a Mr. Hayden, a sixty five year old man living on his own, in Graiguenamanagh in Co. Kilkenny. On the hearing of this appeal the court expressed its satisfaction that the Circuit judge has not overestimated the gravity of the offence when she concluded that a term of eight years imprisonment was appropriate, having regard to the circumstances of the offences committed by Mr. Gahan.

4. However, the court was nonetheless satisfied that the trial judge had erred in principle in failing to unconditionally reduce the period of imprisonment imposed to reflect the significant mitigating factors prevailing at the time sentence was imposed. The court was concerned that Mr. Gahan, because of his personal circumstances, might, during the period of the suspension of that part of the imprisonment sentence, fall foul of the conditions attached and he would end up then serving a period which was unduly severe having regard to the mitigating factors.

5. Accordingly, the court adjourned the matter until today to allow it receive updated information giving that, in light of its conclusion, it was tasked with imposing sentence afresh. Thankfully since the matter was before the court on the last occasion the court has been furnished with a great deal of information which would appear to stand to Mr. Gahan's credit.

6. The court first has the report of Ms. Cowzer the Probation Officer which shows that Mr. Gahan began a methadone maintenance programme several months before the sentencing hearing in October 2012 and her understanding of the situation is that Mr. Gahan's dependence on methadone had reduced in recent times and that he is currently drug free.

7. In addition, the court has been furnished with the urinalysis test results for Mr. Gahan from which it appears that at least insofar as January and February of this year are concerned he has been completely drug free and is no longer in receipt of methadone. Also the court has, I think, persuasive evidence now that he is drug free and this achievement is really to be commended against a backdrop of what was clearly a significant heroin addiction.

8. So, taking those matters into account the court now has to deal with imposing a sentence afresh. I am not going to go back into the significance or the gravity of the offence that was committed by Mr. Gahan because that was dealt with by the court on the last occasion. But the court does accept counsel's submissions that in re-imposing sentence it must at least give an unconditional reduction in the sentence initially imposed to take account of the mitigating circumstances which were very significant.

9. So, the court is disposed to substitute for the eight years initially imposed by the Circuit Court judge an imprisonment sentence of six years taking into account the significant mitigating factors. It also feels that it would be appropriate, in order to encourage Mr. Gahan to continue with his rehabilitation and to stay on the straight and narrow so to speak in relation to his prior drug problem that the court would suspend the final two years of that six year imprisonment sentence for a period of two years on condition that he keep the peace and be of good behaviour and that he remain entirely drug free during that two year period save for any prescribed medication that may be advised.

10. The court will also impose a post release supervision order and will direct that Mr. Gahan will, as a condition of the suspension of that two year period, that he will co-operate with the Probation Service in all of their requirements.