



THE COURT OF APPEAL

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

23/12

The People at the Suit of the Director of Public Prosecutions

Respondent

And

Michael McMahon

Appellant

Judgment of the Court delivered on the 19th day of January 2016 by Mr. Justice Sheehan

1. In this appeal against sentence the appellant confines himself to a single ground namely, that the learned trial judge erred when structuring the sentence to attach any or any sufficient weight to the offer of compensation.
2. In the penultimate paragraph of his submissions, counsel for the appellant helpfully and realistically submits that the offer of compensation simply entitled the appellant to a discreet if modest further discount of the sentence nominated by the trial judge as the appropriate one for this case.
3. The appellant received a sentence of twelve years imprisonment with the final three years suspended for five years following a plea of guilty to a charge of falsely imprisoning Sean and Emer Lavelle on the 14th February, 2010, at their own home in Achill, Co. Mayo.
4. On that particular evening Sean and Emer Lavelle returned home at 8.30 pm having been out socialising. Two men in balaclavas and dark boiler suits had gained unlawful entry into their house while they were out and were waiting for them on their return.
5. Mr. Lavelle was taken to his bedroom, his hands and legs were taped with duct tape. He was struck by a nail bar to his shins and he was struck to his hands a number of times. Mrs. Lavelle was also tied up in that her arms and mouth and legs were taped, but that she did not suffer any physical injury apart from pain involved in her being tied up. In the course of this ordeal, Mr. Lavelle was accused of interfering with girls and was warned not to do so and warned to leave the island.
6. The intruders left and Mr. Lavelle managed to free himself and contact the gardaí. It appears to have been accepted in the course of the sentencing hearing that the ordeal whilst undoubtedly frightening and traumatic was relatively speaking of a short duration.
7. A neighbour of the Lavelle's came across what appears to have been the intruders making good their escape by car. He was immediately suspicious and decided to pursue this vehicle. While in pursuit he contacted the gardaí. He kept the gardaí informed about the position and direction of travel of the vehicle which he claims to have been a vehicle observed by him parked outside of the Lavelle's house and which he claims to have pursued.
8. The vehicle was stopped by the gardaí and two men were arrested at the scene. One of those men arrested was the appellant. The other man was his brother who has since died.
9. Following on from this the appellant was arrested and detained and released without charge on the 15th October, 2010.
10. Forensic investigations were carried out which ultimately led to the appellant being rearrested on the 7th November, 2011 and charged with these offences on the 8th February, 2011.
11. It goes without saying that both injured parties were deeply traumatised, so much so that Mr. Lavelle was unable at the time of the sentence hearing to continue living in his family home and in the course of his victim impact report he stated the following:

"The experience of the 14th February, 2010, will forever live in my mind. It has changed my life forever. I have been unable to come to terms with the experience. I have found it impossible to relax or to settle down in my own home in Achill since. I find that I am constantly anxious and on edge. I cannot sleep at any time during darkness. Even during daylight hours, I feel the need to keep the doors in my house locked while I am there. I am constantly on the alert for strange cars that might pass by my house. I find I can only sleep from dawn onwards. I have a fear that if I take the sleeping tablets and do sleep that I may be murdered in my sleep. I constantly worry about these men who attacked us."
12. The statement goes on to describe how Mr. Lavelle is baffled about how and why the incident occurred and whether the danger continues. A psychological report described the effect on him as serious and profound. Mrs. Lavelle's stated in her victim impact report the following:-

"After the 14th February, 2010, I was forced to give up my work for a period of four and a half months due to the trauma I endured. I lost all confidence. I was unable to concentrate and I suffered from memory loss. I was in a constant state of anxiety and I was unable to sleep or enjoy anybody's company. I felt my world had turned upside down."
13. She continued at a later part of her statement to say:-

"The truth is that the effect of the 14th February, 2010, has changed my life forever. I am now constantly anxious and worried and in a state of fear, particularly on occasions when I return to my house. Each time I turn the key in the door I

am frozen waiting to hear whether there are unusual sounds in the house. I find that my personality has changed and I now have difficulty meeting groups of people socially. I was a person who was outgoing and very much involved in voluntary community activity. I find it very upsetting that I now do not have the confidence to continue these activities any longer. I feel very angry. Neither Sean nor I have any idea why this attack was perpetrated on us in our own home by men that we did not know. I feel that until such time as the question is answered as to who instigated this attack on us and why neither Sean nor I will be able to overcome the difficulties we are currently experience as a result of the impact that this attack is having on us. I personally have undergone psychological therapy in an effort to overcome the effects of this trauma. However it is impossible to come to terms with the whole experience."

14. The principle aggravating factors in the case were the level of violence used by the appellant in the course of the imprisonment which involved the use of a weapon and involved unprovoked threats and assaults. A further aggravating factor was the significant and ongoing adverse impact on the psychological health of the victims and the fact that the false imprisonment occurred in their own home.

15. The principle mitigating factor in the case was the plea of guilty. There was also a medical report furnished regarding the appellant's background which stated that he suffered from drug addiction and depression and finally there was the offer by him of compensation. A sum of €5,000 was offered in respect of compensation with a promise of a further €15,000 within a week of the sentencing hearing commencing. This offer of compensation was refused.

16. The personal circumstances of the appellant are that at time of sentence he was 43 years old and living in Dundalk. He had previous convictions in Ireland for public order and road traffic offences as well as the previous convictions in Sweden, including one for false imprisonment.

17. In the first instance the court notes that Mr. Hartnett for the appellant makes no effect whatsoever to resile from the seriousness of the offending behaviour. The argument he makes appears to us to be mainly if not wholly predicated on the argument that the minimum reduction a person in the appellant's position could expect for a plea of guilty would be a 25% reduction in sentence.

18. While the sentencing judge appears to have given that amount of credit for the plea of guilty, no authority has been advanced for the proposition that every person who pleaded guilty is automatically entitled to a 25% reduction in sentence.

19. Mr. Dwyer for the Director of Public Prosecutions states that an offer of compensation constitutes a mitigating factor. We do not accept that such an offer is always something which entitles an accused person to some reduction in sentence. Indeed in this case the offer of compensation is entirely dwarfed by the failure of the appellant to provide any meaningful explanation to the victims in this case as to why these particular offences occurred. The mere statement by the appellant's that this was a case of mistaken identity is simply not good enough.

20. Even if it were the case that an accused person is entitled to some mitigation it still remains for this Court to consider whether the overall sentence arrived at could be considered excessive.

21. The facts of this case speak for themselves. We do not consider that any injustice attaches to the outcome insofar as the appellant is concerned and accordingly the appeal against sentence is dismissed.