



## THE COURT OF APPEAL

**Sheehan J.  
Mahon J.  
Edwards J.**

**66/15**

**The People at the Suit of the Director of Public Prosecutions**

**Respondent**

**V**

**Daniel Rains**

**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 Daniel Rains pleaded guilty to the offence of assault causing harm at a Club in Dame Street, Dublin on the 26th January, 2014 and received a sentence of two and half years imprisonment. The appellant also admitted three other serious assaults on security staff who intervened in the immediate aftermath of the assault on the principal injured party and these offences were taken into account by the sentencing judge.
3. The appellant contends that the learned trial judge who imposed this sentence at the Dublin Circuit Criminal Court on the 20th February, 2015, erred in principle by imposing a sentence that was excessive and failed in all the circumstances to adequately reflect the mitigating factors in the case.
4. In order to consider these grounds of appeal it is necessary to consider the background to this offence, the appellant's personal circumstances and the judge's sentencing remarks.
5. The background to the case was the evidence of Garda Ciaran O'Sullivan who told the court that on the 26th January, 2014, the injured party, a 21 year old gentleman named Mr. Manthalay from Mauritius was out socialising in Lapello nightclub on Dame Street. Just before 2.00 am he decided to leave the club. As he was leaving the appellant stopped him and for no reason hit him in an unprovoked attack into the left hand side of his face. The injured party fell back on being hit and the appellant then punched him a few more times into the face. The injured party felt pain in his face and he felt his face getting cut with a glass. There was blood coming from his face. The appellant also kicked the injured party when he was lying on the ground.
6. Gardaí were present on the scene within four or five minutes of the assault occurring and the injured party was taken to St. James's Hospital where he received thirteen paper stitches. An x-ray of his face was carried out which revealed that his right cheek bone was fractured and some days later he returned to St. James's Hospital where he was detained for a week and had plates permanently inserted into his right cheek bone. He has been left with a scar on the left hand side of his face.
7. The court had received at the time medical reports and a victim impact report.
8. When interviewed the following morning the appellant stated that he had no recollection of the event, that he was highly intoxicated and that he had got the boat over from Manchester that day with the intention of staying in Dublin for a short period of time. He apologised and he agreed that the attack was totally unprovoked.
9. The personal circumstances of the appellant are that he was at the time of the incident a 30 year old married man with two young children aged nine and five. He had a good work record and was a qualified electrician. However, he had a number of previous convictions, although the last one was at least eight years prior to the present offence.
10. The court was told of two convictions for personal violence. One a conviction for assault and one a conviction for assault occasioning actual bodily harm.
11. When imposing sentence the sentencing judge stated that the assault on the 29 year old male was incredibly serious. He reminded himself at the time that Mr. Manthalay was minding his own business, heading home when he was accosted, pushed and punched to the ground. He went on to say when talking about the affect on Mr. Manthalay that he noted that he had to have plates inserted to stabilise the fractures and that he had no doubt that for him it was a very distressing experience which had left residual difficulties.
12. With regard to the appellant himself, the learned trial judge stated:

"Now, Mr Rains, is a family man, he's a man of some ability, he's qualified as an electrician. He is a good family man and by all accounts and has had in the past his own difficulties. He has some criminal record, convictions for assault, but those are about eight years ago and, by the sentences imposed by the various judges and magistrates in England, they seem to me to be on the minor side of criminal offending. I take into account what's been said on his behalf, and I take into account that he is extremely sorry for what he did. It seems that he was intoxicated to the state of incoherence. But the assault is unprovoked and very serious and, unfortunately, despite some excellent mitigation in this case I feel I must impose upon Mr Rains an immediate custodial sentence. I think there's no way around it, by reason of what he did and the

extent of the rampage he committed on the night in question. Mr Manthalay sustained very serious injuries. I would have thought that the injuries and the assault are at the higher end of s. 3, and the maximum sentence for s. 3 assaults is five years imprisonment. Obviously, Mr Rains is entitled to mitigate from that by reason of his plea of guilty, and I also take account what I've indicated in relation to his personal circumstances and personal characteristics. He is from Manchester, I'm told, and he's going to have to serve his prison sentence in this jurisdiction and for a period of time at least he would have no visitors."

The trial judge then went on to say:-

"But I've decided in this case that compensation has no place in this case and I think the appropriate sentence, taking all the factors into account, is a term of imprisonment on the count that's the assault on Mr Manthalay."

13. The sentencing judge then imposed a sentence of two and a half years imprisonment.

14. This was undoubtedly a case where the appellant following his arrest and the viewing of CCTV footage did everything possible to mitigate his offending behaviour. In particular he admitted his behaviour immediately, he pleaded guilty and brought a significant sum of money to court with a view to making some compensation available to the injured party.

15. It is fair to say that there was little more that he could have done to demonstrate his contrition.

16. However, the first task of this Court is to consider whether or not the sentence or the sentencing process discloses an error of principle.

17. This Court holds that the sentencing judge was correct in locating the offending behaviour at the higher end of the scale, was correct in the circumstances of this case in not seeking to incentivise the appellant's rehabilitation by suspending a portion of the sentence and further that he took adequate account of the mitigating and aggravating factors.

18. Counsel on behalf of the appellant with a view to advancing his argument that the sentence was excessive sought to rely on *People (DPP) v. McEvoy* [2003] WJSC-CCA 4118, *DPP v Crowley* [2000] WJSC-CCA 2467 and *People (DPP) v. Johnson* [2002] 12 JIC 1711. This Court is not satisfied that these authorities are relevant to the circumstances of this case.

19. Equally given that the victim rejected the offer of compensation, the trial judge was quite correct in his decision to leave that question to another venue.

20. This Court considers that the learned trial judge's approach to sentence was correct, that the sentence imposed was not excessive and accordingly no error of principle is disclosed. The appeal therefore is dismissed.