



**THE COURT OF APPEAL**

**Record No. 181/2016**

**Birmingham J.  
Mahon J.  
Hedigan J.**

**BETWEEN/**

**THE DIRECTOR OF PUBLIC PROSECUTIONS**

**RESPONDENT**

**- AND -**

**JASON DOYLE**

**APPELLANT**

**JUDGMENT (ex tempore) of the Court delivered on the 9th day of May 2017 by Mr. Justice Mahon**

1. The appellant pleaded guilty and was convicted at Trim Circuit Criminal Court on the 6th April 2016 of two counts, namely:-
  - (a) Robbery, contrary to s. 14 of the Criminal Justice (Theft and Fraud Offences) Act, 2001, and
  - (b) Possession of an imitation firearm (a 6mm air pistol) with intent to commit an indictable offence, namely robbery, contrary to s. 27B of the Firearms Act 1964 as substituted by s. 60 of the Criminal Justice Act 2006, as amended by s. 30 of the Criminal Justice Act 2007.
2. This is the appellant's appeal against concurrent sentences imposed on the 15th June 2016 of four years imprisonment, backdated to the 22nd February 2016, and with credit allowed for an earlier period spent in custody in respect of these offences, between the 29th August 2015 and the 23rd November 2015.
3. At about 6 p.m. on the 20th October 2015 the appellant, with an accomplice, entered the retail premises, the Village Store, at Kildalkey in Co. Meath. Both men's faces were obscured. One of the men was carrying what appeared to be a Glock handgun, but which subsequently transpired to be a 6mm air pistol, while the other carried an iron bar. The gun was pointed at a young staff member, Christian McCarthy, (then aged sixteen and a half). and money was demanded. The raider with the iron bar came around the back of the counter and ripped the till from its position. The raiders then left the premises and drove away in a car. Other staff took particulars of the vehicle, and it was subsequently traced to a house in Kells, Co. Meath. The vehicle was kept under observation. Approximately one week after the robbery, the appellant surrendered himself to gardaí. He led the gardaí to the till which had been dumped and he also provided information which led to the recovery of the firearm. The till was damaged beyond repair and consequently the premises owner suffered a loss of €3,500. No money was taken from the premises, as when the till was forcefully removed, the cash box, unbeknownst to the raiders, fell from the till and was left behind in the premises.
4. Victim impact statements were submitted on behalf of two of the shop staff. The incident caused both of them significant psychological and psychiatric difficulties, in addition to loss of income.
5. The appellant is twenty one years old. He has thirty seven previous convictions, including a conviction for possession of a knife on the 3rd March 2015 for which he received a nine month suspended sentence, and a conviction for theft on the 26th February 2016 for which he received a three month custodial sentence. A number of convictions are in relation to road traffic matters.
6. The grounds of appeal as originally lodged, are as follows:-
  - (i) The learned sentencing judge imposed a sentence that was excessive.
  - (ii) The learned sentencing judge failed to construct a sentence which adhered to principles of proportionality, and in particular did not adequately reflect the efforts and achievements of the appellant with regard to rehabilitation and the attainment of insight reflected in the evidence of remorse, regret and active rehabilitation presented by the appellant to the court.
7. At the commencement of the appeal today, the court was advised that the appeal would focus on the failure to suspend a portion of the four year sentence. Counsel for the appellant accepted that a gross sentence of three and a half to four years was appropriate.
8. The following matters are emphasised on behalf of the appellant under the umbrella of rehabilitation:-
  - (i) The appellant has undertaken a number of courses while in custody including in maths, art and English - a certificate to that effect was handed into the Circuit Court.
  - (ii) The appellant commenced drinking and taking drugs when he was approximately sixteen years old. At the time of these offences he was addicted to valium, a matter which he notified the gardaí about during interview. At the date of the sentencing hearing he was drug free.
  - (iii) The appellant informed the Probation Service that he engaged in this offending to discharge a drug debt. He accepts that there is no justification acceptable or otherwise for the offences he committed. He accepts that he was engaged in serious offences which warranted the imposition of a prison sentence.
  - (iv) The appellant has previously endured psychological difficulties and was engaged with psychological services as recently as 2015. He is currently in good health and wasn't engaged with psychological services at the date of the commission of these offences.

(v) The appellant was extremely cooperative with the gardaí in respect of these offences. He presented himself to the gardaí and made a full statement of admission detailing his involvement. It was confirmed by Gda. Ganley that but for the submissions made by the appellant it may well have been a difficult case in which to secure a conviction.

(vi) The appellant entered a guilty plea.

(vii) The appellant has expressed remorse for his offending and maintains that he has insight and empathy into the impact this incident has had on injured parties. A letter to this effect was handed into the Circuit Court.

9. On the negative side, the Probation report points to a poor level of engagement with the service in the period prior to the sentencing. It also suggests a high risk of re-offending, and a reticence to deal with factors, including lack of employment, bad company keeping and dealing with his alcohol and substance abuse.

10. In the course of his sentencing judgment, the learned sentencing judge noted that the maximum sentences in respect of both offences were of life imprisonment and fourteen years respectively. He also referred to the presumptive minimum sentence in respect of the firearms charge. He went on to indicate his satisfaction that there were present exceptional and specific circumstances relating to this offence which permitted him to impose a sentence less than the presumptive minimum. In this regard he identified specifically the manner in which the appellant surrendered himself to the gardaí, his early plea of guilty and his assistance to the gardaí in their investigation.

11. Although not originally notified as a separate ground of appeal, reference has been made by counsel for the appellant to the co accused's sentence of six years with the final two and a half years suspended, in the context of emphasising its relevant leniency compared with the four years custodial sentence imposed on the appellant. Arguably, however, there is little difference in reality between the two. While the appellant's custodial sentence is six months longer than that of his co accused, his co accused has to contend with a significantly lengthy post release period in which he runs the risk of being returned to custody. It is also noteworthy that the appellant's list of prior convictions is significantly more extensive than that of the co accused. Additionally, and importantly, the appellant was the person who carried the imitation gun, and pointed it aggressively at the shop assistant. Arguably, and contrary to what has been argued before this court, compared to the co accused's sentence, the appellant's sentence was lenient.

12. A person such as the appellant who is convicted of an offence which involves the pre-mediated use of a firearm in an aggressive and threatening manner, putting another in real fear of been murdered, should not, in the absence of wholly exceptional circumstances, expect a custodial sentence of less than four or five years. By any measure the sentence of four years falls on the lenient side of what might be described as the appropriate term. As such it more than adequately accounts for the undoubtedly present mitigating factors, including in particular, the appellant's impressive efforts at rehabilitation. These were already evident at the date of sentence and were expressly referred to by the learned sentencing judge and clearly contributed to the sentence being relatively lenient.

13. In the circumstances no error of principle has been established in the imposition of a four year sentence. It was, in the court's view, a sentence within the discretion available to the learned sentencing judge.

14. The court will therefore dismiss the appeal.