



THE COURT OF APPEAL

Sheehan J.
Mahon J.
Edwards J.

Appeal No.: 109/15

Between

The People at the Suit of the Director of Public Prosecutions

Respondent

- and -

John Mongan

Appellant

Judgment (ex tempore) of the Court delivered on 3rd day of March 2016 by Mr. Justice Mahon

1. On 5th November, 2014, the appellant pleaded guilty to six counts of Handling Stolen Property contrary to s. 17 of the Criminal Justice (Theft and Fraud Offences) Act 2001 at Galway Circuit Criminal Court. On 5th December 2014 the appellant was sentenced to concurrent prison sentences of five years in respect of each of the six counts, the sentences to date from 12th April 2014.

2. The appellant has appealed against the sentences.

3. The six offences were committed on 12th April 2014 at Balgeen, Julianstown in Co. Meath. The property items involved ranged in value between €2,800 and €13,355, in total approximately €40,000 and involved assorted power tools and an Ivor Williams trailer. The offences each related to the property of separate individuals. In the course of an investigation arising from a series of burglaries in Co. Galway, gardaí observed a large quantity of power tools in the vicinity of a lock up premises in Corbettstown in Co. Offaly.

4. On 12th April 2014 gardaí observed a white enclosed trailer at the same location, and later on the same date, the said trailer being drawn by a silver Toyota Land Cruiser. Gardaí stopped the vehicle and trailer at the M1 toll plaza at Julianstown in Co. Meath. The appellant was the driving the vehicle. The trailer, which had been stolen, was found to contain the stolen power tools. All the stolen property was later returned to its owners.

5. The appellant is a twenty seven year old married father of three young children. His occupation is in scrap dealing and the buying and selling of cars. He has twenty one previous convictions, comprising of fifteen in Ireland, and six in the U.K.. His previous convictions include offences of theft, two for handling stolen property, and the unauthorised taking of a motor vehicle. Most of the offences in this country were dealt with in the District Court. He received a six month sentence for theft in the U.K..

6. The appellant's grounds of appeal are summarised as follows:-

(i) The learned sentencing judge commenced with an incorrect starting point for the appropriate sentence, in that he took the maximum sentence to be one of fourteen years, whereas, in fact, it is ten years.

(ii) The learned sentencing judge placed the offences at too high a level on the scale of gravity.

(iii) The learned sentencing judge sentenced the appellant on the basis that he had an involvement or responsibility for the burglary of the property itself, rather than being merely a receiver.

(iv) The learned sentencing judge improperly assessed the mitigating and aggravating factors.

7. In the course of his sentencing judgment, the learned sentencing judge stated the following:-

"The first thing I have got to do is fix where the offence, and I am using that in the sense that I have already articulated it, on the appropriate scale of gravity. I think this is in the mid-scale. So we are looking before we consider mitigating and aggravating factors, we are looking at a five year sentence. Now this man comes before the court, and lets deal with mitigating and aggravating factors, he comes before the court no stranger to crimes of dishonesty. He has no visible means of support. The sole mitigating factors that I can identify are his plea of guilty and the fact that the tools were recovered, no thanks to him, of course. Aggravating factors are his previous history of crimes of dishonesty, the obvious pre-mediation and planning that went into this and effectively, the system. A further aggravating factor is the loss that the parties, the owners of these tools, and the trailer were at, to my mind the aggravating and mitigating factors balance out. Taking account of the guilty plea and the matters that I have identified, I find that the proper and proportional sentence is five years in respect of each offence to run concurrently from the date in which he went into custody..".

8. While arguably, the learned sentencing judge determined sentence on the basis of his understanding that the maximum sentence was fourteen years rather than, as is correct, ten years. However, this is most unlikely given the context of the exchange between the judge and counsel immediately prior to passing sentence. It is always noteworthy that the learned sentencing judge assessed the gravity of the offence as being mid way on the severity scale, and then proceeded to identify five years as the appropriate sentence. This would suggest that he was indeed operating on the basis that the maximum sentence was ten years.

9. Notwithstanding the words used by the learned sentencing judge and in particular the reference to pre meditation and planning, and the reference to "*the system*", it is not apparent or indeed likely that the appellant was sentenced on the basis that he had had an involvement in the robbery of the goods. It had been made quite clear in the course of the garda evidence that the appellant was not implicated in the robbery of the various items.

10. The five year sentence is also criticised on the basis that it is unduly harsh, and more particularly, that insufficient weight was afforded to the mitigating factors. The only mitigating factors identified were the plea of guilty and the fact that the goods were recovered, and which the learned sentencing judge said merely acted to balance out the aggravating factors which she identified as the previous convictions for dishonesty and the pre meditation involved in these offences.

11. In relation to the previous convictions, these have already been referred to. They are significant, both in number and in their range, and include convictions for both theft and handling stolen property.

12. In relation to the reference to pre meditation, it is apparent that these offences were part of a relatively sophisticated and planned operation, quite apart from the robbery itself, and this fact correctly viewed, constitutes an aggravating factor. The receiving of the stolen property certainly did not arise in an opportunistic or casual manner.

13. The five year sentence may represent a sentence towards the higher end of the scale and therefore appropriate for these offenses, allowing for the aggravating factors identified by the learned sentencing judge, and prior to any appropriate reduction for relevant mitigating factors. The primary mitigating factor in this case is the plea of guilty. A plea of guilty almost always should be recognised in assessing the appropriate sentence for an offender and that recognition should, ideally, be identifiable in the structure of the sentence as imposed. In a minority of cases, a plea of guilty may be worth little because of the circumstances relating to the manner in which an offender was identified or apprehended. In this case, however, the pleas of guilty were worthwhile – as it generally is in cases of offences involving the receipt of stolen property – and ought to have greater weight attached to them than in fact occurred. To this extent an error of principle evident in the sentencing decision, and it is therefore necessary for this court to sentence the appellant afresh.

14. The appellant is a resident of the U.K., where, it is understood his family reside. This is understandably a cause of some additional hardship for him. It is noted however, that the appellant has applied for transfer to a U.K. prison to serve the balance of his sentence under reciprocal arrangements in existence between both jurisdictions.

15. The Court will in the circumstances reduce the concurrent five year sentences to sentences of three years and six months in recognition of the pleas of guilty and will suspend the final six months of the three and a half year sentences, to incentivise rehabilitation

16. The suspended element will be operative for a period of two years, and the appellant will be required to enter into a bond in the sum of €100 on the condition that he keeps the peace and be of good behaviour for that period.