THE COURT OF APPEAL

Record Number 129/18:

Birmingham P.
McCarthy J.
Kennedy J.

BETWEEN/

THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

AND

BRANDON CROSBIE

APPELLANT

Judgment of the Court delivered on the 31st day of January, 2019 by Mr. Justice McCarthy

Appeal
1. This is an appeal against the severity of a sentence imposed on the 7th February 2018 by Dublin Circuit Criminal Court on a plea of guilty to reckless endangerment contrary to s. 13 of the Non-Fatal Offences Against the Person Act, 1997. The accused had in fact pleaded guilty to 3 counts thereof, one of dangerous driving contrary to s. 53 (1) of the 1961 Act as substituted by s. 4 of the Road Traffic (Number Two) Act, 2011 and a count of driving with no insurance contrary to s. 56 (1) and (3) of the Road Traffic Act, 1961, as amended by Section 1B of the Road Traffic Act, 2006. He had been charged with 21 offences in all of which, 18 were contrary to the Road Traffic Acts. In imposing sentence the trial judge marked two of the three counts of Reckless Endangerment, that of Dangerous Driving and that of driving with no insurance, to which the accused had also pleaded taken into consideration and he made a similar order in respect of all of the remaining counts on the indictment. All of these counts were summary of offences. All of the latter were summary of offences under the Road Traffic Act including failure to report an accident and driving without a driving licence.

Facts
2. On the 28th April 2017, at approximately 5.30 p.m., two Garda cars which had been dispatched to Coultry Road, Ballymun, where a Hyundi car which transpired to be driven by the accused, who was identified by the Gardaí, was seen to be driven erratically. There followed a journey on the urban roads in the area in the course of which the appellant committed the offences of reckless endangerment and dangerous driving. The journey was from Ballymun via Santry in the direction of Finglas ultimately being brought to a halt near Charleston shopping centre. At all time the vehicle was driven at high speed. One of the Garda cars had to take evasive action at the commencement of the sequence of events to avoid collision. The vehicle was driven erratically throughout. It was driven on the incorrect side of Ballymun Road against oncoming rush hour traffic. On that road it collided with a Ford Fiesta vehicle driven by a Mr Kallu. Thereafter the vehicle was driven through Santry Cross without stopping (the lights being red against the appellant) crossing again to its incorrect through lights showing red against and overtook vehicles in a dangerous manner. There was a high volume of traffic in the area where he stopped at all times. He and his passengers, having abandoned the car, sought to escape. The vehicle was brought to a halt when it crashed into another driven by Mr O'Brien and another driven by Mr Prunty. Both vehicles were extensively damaged and both drivers suffered injury. The appellant was arrested near the scene, made admissions and expressed remorse.

3. The appellant has forty-seven previous convictions of which the following appeared to be germane: –

- one offence of assault contrary to section 2 of the Non-Fatal Offences Against the Person Act, 1997,
- two of criminal damage,
- six of dangerous driving,
- two of burglary,
- one of being carried unlawfully in a mechanically propelled vehicle,
- two of unlawfully taking mechanically propelled vehicles.

4. The accused's previous convictions had been in the District Court and those for dangerous driving dated from January 2014. The accused was eighteen years old at the time of the offences and on arrest had said:-.

> "I'm very sorry for the public's safety. My head was…I wanted to stop and I didn't, and I'm glad no one was hurt"

The appellant was estranged from his family and was of no fixed abode.

5. The appellant had a difficult background involving substance abuse at a young age: the drugs appear to have been cannabis and benzodiazepines.. He left school at an early stage but completed a number of periods in Oberstown; the most lengthy was said to be ten months. He had some work history in McDonald's.

6. The judge pointed out that the offences were serious and that it was fortunate that the injuries caused were not more severe. He had regard to the appellant's large number of convictions. He had regard to the pleas of guilty, that the accused had made admissions, and described him as having a co-operated and having expressed remorse. He took the appellant's youth into account. He

concluded that the appropriate sentence, taking all relevant factors into account, on count No. 1 was a term of imprisonment of three and a half years and all other offences were taken into consideration.

Ground of Appeal
7. The appellant submits that the learned trial judge:

Erred in law in failing to structure a sentence balancing punitive, deterrent and rehabilitative elements, and in failing to structure a sentence proportionate to the gravity of the offence and the circumstances of the offender.

Submissions on Appeal
8. The appellant submits while the sentencing judge did not nominate a headline sentence, and speculates that in order to arrive at a final sentence of three years and six months imprisonment, on a guilty plea and where the Court indicated that it was giving an additional discount due to the youth of the accused, one must assume a headline sentence of in the region of close to six years, placing the offending behaviour at the uppermost end of the scale for an offence of endangerment, carrying, as it does, a maximum penalty of seven years imprisonment. Whilst it was accepted that the appellant undoubtedly engaged in very dangerous driving and into the realm of conduct which created a risk of serious harm to another, on the facts the offences are not the most extreme example of reckless endangerment. The principal ground relied upon this appeal was that the sentencing judge erred in failing to have sufficient regard to the objective of rehabilitation by structuring a sentence involving a partial suspension with a period of supervision by the Probation and Welfare Service involving rehabilitative programs. The proposition that insufficient regard was had to the mitigating factors and that the sentence was "out of kilter" with others imposed in respect of reckless endangerment and dangerous driving causing death or serious injury, as advanced in the written submissions was not stressed before this Court. In response, the respondent rightly emphasised the seriousness of the offences and the record of the accused to support the proposition that there was no error in the conclusion reached by the Circuit judge.

Decision
9. The first thing to be said about this appeal is that we are not dealing here with merely one charge of reckless endangerment but rather all 21 of the offences on the indictment. It is an oversimplification to seek to compare the sentence in this case with others where one only freestanding incident of reckless endangerment occurred. Here, multiple incidents over time occurred and the sentence imposed was not merely in respect of one of that multiplicity but rather for them all. Therefore, any appropriate sentence here would have to be substantially in excess of that in respect of a single freestanding incident notwithstanding the fact that in a broad sense, all of the offences arose in the course of one transaction.

10. The facts need not be repeated; it seems to us that all relevant considerations were taken into account by the very experienced Circuit Court judge. He rightly emphasised the seriousness of the offending; certainly there is no basis for saying the sentence was unduly severe; indeed, a higher sentence might well have been appropriate. If the Circuit judge had imposed such a higher sentence it might have been appropriate to consider part- suspension of it, with the period actually to be served to remain the same. Indeed, we have given some thought to increasing the sentence and then suspending part to facilitate rehabilitation. However, since the sentence is within the margin of discretion of the learned Circuit Court judge we cannot intervene. We accordingly dismiss this appeal.