



THE COURT OF APPEAL

**Peart J.
Birmingham J.
Sheehan J.**

146CJA/15

In the matter of Section 2 of the Criminal Justice Act 1993

The People at the Suit of the Director of Public Prosecutions

V

Christopher Zinck

Appellant

Respondent

JUDGMENT of the Court (ex tempore) delivered on the 6th day of February 2017 by Mr. Justice Birmingham

1. This matter came before the court by way of an application to review a sentence on grounds of undue leniency which was brought by the Director of Public Prosecutions. On the 22nd February, 2016, this Court delivered a written judgment which concluded that the sentence that had been imposed in the Circuit Court was unduly lenient. However, the court concluded that judgment by saying that the material that was then before the court indicated that the extent of the progress and transformation that had occurred could be described as exceptional. Indeed wholly exceptional.

2. We indicated it raised the question of whether it would be wise to undermine the progress that had been made at that point by incarcerating Mr. Zinck at that stage. However, we said having regard to the gravity of the original offence we were not prepared at that stage to confirm a non custodial disposition. We made the point that even at that point a non custodial disposition might not ultimately be possible. We put the matter back though for a year to see whether the really quite exceptional progress that was reported as of then would be maintained.

3. The court this morning has been provided with an up to date report from the Warton House Private Clinic from psychologist Mr. Ger Whelan and we have also been told that the employment situation has remained positive. He has continued to have the support of his employer, which was such a feature of the sentence hearing in the Circuit Court and indeed this appeal a year ago, but he has also been exploring the question of self employment and setting up his own business as indicated by the fact that he has taken the step of registering a business name.

4. The report from Warton House merits quotation and the concluding paragraphs are as follows:-

"Christopher is now a dedicated father and this new responsibility also adds to Christopher's willingness to stay clean and sober. This has been a blessing for him in many ways and he continues to show his capacity as a loving father. He also continues to work hard and has started his own business as a plumber. He is keen to be a good provider for his family and shows plenty of ambition here. Overall Christopher has fully turned his life around in an exceptional manner from the suicidal person of a couple of years ago described in our first report. At present he is a credit to himself and his family. We expect him to continue with his psychotherapy to ensure continued progress, stability and crime living."

I do not think it is necessary to continue the quotation.

5. In summary the position would seem to be that the chance that was first given by the Circuit Court and was left open by this Court a year ago has been taken eagerly and with determination. In those circumstances the court is of the view that to now incarcerate Mr. Zinck notwithstanding the extreme seriousness of this offence would not be appropriate. What the court has decided to do in order to mark the seriousness of offence and to confirm the court's very clear view that there was indeed an error in that the original sentence was one that was unduly lenient, what the court proposes to do is to increase the sentence from nine year to ten years, but that ten years will, as the original sentence was, be suspended. The suspension will run from the date of the original Circuit Court sentence. To that extent Mr. Zinck is as it were, well into his suspended sentence at this point, but it remains the case that the court has been dealing with a very serious offence and Mr. Zinck is not yet in the clear. That very significant suspended sentence will hang over him and it remains to be seen whether he will take the very unusual chance he has been given, it is very much to be hoped that he will.