



## THE COURT OF APPEAL

**Birmingham J.  
Sheehan J.  
Mahon J.**

**200/13**

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

**Respondent**

**V**

**Kevin Ginty**

**Appellant**

**Judgment of the Court (ex tempore) delivered on the 12th day of December, 2014, by Mr. Justice Birmingham**

1. In this case Mr. Ginty appeals against the severity of a prison sentence that was imposed upon him in the Central Criminal Court. The sentence under appeal is one of five years imprisonment that was imposed on the 22nd July, 2013, in respect of the offence of burglary. The particulars of the offence being that he entered a building as a trespasser and having done so, committed the arrestable offence of assault causing harm. It is an offence in respect of which the maximum penalty provided is one of fourteen years.
2. The background facts may be stated briefly, but to put those in context, it is necessary to explain that in the past the appellant had been involved in a relationship with a young lady Ms. McVeigh, and that relationship which was a romantic relationship had gone on for some two and a half years. On the 2nd April, which is the evening before the events with which we are directly concerned, the position is that Mr. Ginty called to the home of Ms. McVeigh and raised with her the question of going to Portugal and he pushed his suggestions in that regard to the extent of getting down on his knees before her. But she was quite firm in rejecting any suggestion of any further contact, quite firm in making it clear that as far as she was concerned, the relationship was over and very definitely and firmly over. She said in terms that she was better off without him. His response to that was that he was quite derogatory of her and she in those circumstances asked him to leave, saying that she would call the gardaí if he did not. He reacted badly to this and she said she was going to go to bed and he said that if she did that, that he would burn the house down. Contact was made by Ms. McVeigh with Mr. Ginty's brother who came on the scene and persuaded the appellant to leave.
3. Coming now to the events that we are more immediately directly concerned with, the following evening Ms. McVeigh was at a party in a private house at what was basically a "girl's night out" as it was described. She returned from her night out to her home at approximately 2.30 am by taxi. She entered her home and having entered her home, very soon thereafter she noticed a shadow, passing the sitting room window. That shadow was in fact made by the appellant. He knocked on the front door and when he did not gain entry that way, he then tried to gain entry through the sitting room window. Having failed, he pushed or forced the front door in and gained entry to the premises. He then made his way to the sitting room. Ms. McVeigh went out the front door and the layout of the house made that possible. The injured party Ms. McVeigh rang a friend of hers to tell her what was happening and asked the friend to inform the gardaí.
4. As she was making her way to a neighbour's house, her phone rang, it was the gardaí and during that call, the phone went dead, the reason for that being that Kevin Ginty had come up behind and put his arm around her and proceeded to drag her back into her own home. Back in her own home, she was screaming and he told her to stop, he banged her head against the bottom step of the stairs, he dragged her up the stairs into the bedroom at the top of the stairs and the phone rang again, it was the gardaí. On this occasion Mr. Ginty answered, he put on or imitated a female voice and said that Ms. McVeigh had gone to a disco. Eventually this very unpleasant incident came to an end and when Mr. Ginty eventually departed, Ms. McVeigh rang the gardaí once more.
5. Those are the basic facts with which the sentencing court was concerned and with which this Court is now concerned. The DPP in submissions to the trial court said that the Director saw this as being at the lower end of mid range.
6. So far as Mr. Ginty is concerned at the time of these offences he was a 46 year old man, he had emerged from a relationship with the injured party, he was a chiropractor, he had no previous convictions and not only did he have no previous convictions, he was, up to his involvement in this incident, very well thought of in his locality and native county.
7. This incident had a significant impact on the injured party. She suffered bruising and abrasions which were referred to in the victim impact report that was set out before the court. But much more than that, it is clear that it had a very significant and persistent impact on her and she had to move home in the aftermath of this and in her new home, was careful to install alarms and such is her loss of the sense of personal security, that it is her practice to carry a personal alarm with her at all times.
8. The case took a somewhat unusual procedural route insofar as while the sentencing court was ultimately concerned with an offence of burglary, there was at one stage a charge of rape preferred and the result of that was that the trial was returned to the Central Criminal Court and it was the Central Criminal Court that came to deal with sentence. Obviously, it was an unusual situation for the Central Criminal Court to find itself dealing with sentence in a burglary case.
9. A number of criticisms are made of the approach to sentencing by the learned trial judge. First of all it is said that he placed too much emphasis on the Adam Keane case and that that was incorrectly seen as a model to be followed. More than that it is said that these sentences are very seriously out of line with the sort of sentences that typically would be imposed for offences of that nature. In that regard it has been asserted, though that is the extent of it, in that no statistical evidence or anything of that nature was put before the court, but it was asserted that if the matter had been dealt with in Donegal as it would have been, had it not detoured, as it were, to the Central Criminal Court that the case might have been disposed of non custodially, given that this was a first offender, without a prior history of involvement with the criminal law and if not a non custodial disposition, that the sentence would have been unlikely to exceed eighteen months.
10. This Court takes the view that this was a serious offence. It involved a violation of the dwelling, a dwelling that is supposed to be inviolable and it involved an act of violence directed against a female in her own home. That is a matter that any court will take seriously and has to take seriously. If there is any suggestion that violence is less serious when committed in a domestic context or in a quasi domestic context, that suggestion should be firmly scotched here and now. The fact that violence occurs in a domestic context or quasi domestic context offers no mitigation, the fact that the violence is in a domestic context may and often will be in fact an aggravating factor.

11. The court while clear about the gravity of the offence, does take the view that the sentence is out of line with sentences that are typically imposed in cases of this nature. It is the case that ultimately this was dealt with as a burglary in the course of which an assault was committed by somebody who is appearing before the courts for the first time. Clearly any prison sentence is going to be very significant for somebody who is receiving that sentence on their first appearance before the court and it seems to this Court that insufficient attention was paid to that and that perhaps there was an over emphasis on the Adam Keane case, which after all, though it did involve a violation of a dwelling was really a very different case indeed. All in all the court is of the view that there was indeed an error in principle here and that the sentence that was imposed cannot stand, but must be set aside and that this Court must proceed to substitute the appropriate sentence.

12. In sentencing Mr. Ginty the court is conscious of the fact that he had no previous convictions, that he did plead guilty and it appears once it was clear that this was the only offence that he was going to be facing, pleaded guilty soon thereafter.

13. In the court's view therefore, the situation could have been met and can now be met by a sentence of two years imprisonment and that is the sentence that the court will now impose in substitution for the sentence originally passed by the Central Criminal Court.