



THE COURT OF APPEAL

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

Appeal No.: 261CJA/14

The People at the Suit of the Director of Public Prosecutions

Applicant

- and -

Dean Kelly

Respondent

Judgment (ex tempore) of the Court delivered on the 7th day of December 2015 by Mr. Justice Mahon

1. This is an application made pursuant to s. 2 of the Criminal Justice Act 1993 seeking a review of sentences imposed on the respondent on 28th November 2014 in respect of a number of offences, including six counts of burglary contrary to s. 12(1)(b)(iii) of the Criminal Justice (Theft and Fraud Offences) Act 2001, four counts of unlawfully taken of a mechanically propelled vehicle contrary to s. 112 of the Road Traffic Act 1961, as amended, seven counts of criminal damage contrary to s. 2 of the Criminal Damage Act 1991, two counts of theft contrary to s. 4 of the Criminal Justice (Theft and Fraud Offences) Act 2001, and one count of producing an article capable of inflicting serious injury in the course of a dispute contrary to s. 11 of the Firearms and Offensive Weapons Act 1991.
2. Concurrent sentences were imposed, three offences attracting two years, one offence attracting one month and the balance attracting sentences of one year. The learned sentencing judge then proceeded to suspend the entire of the sentences for a period of three years on stipulated terms as to the appellant's place of residence and also a condition that he seeks treatment for his drugs problem.
3. All of the offences involved unlawfully entering a number of occupied homes in the Dublin area on 19th January 2014, and stealing, or attempting to steal, items including electrical goods, vehicles and a motor bike. While in most instances the appellant ran away when confronted by an occupant of the house, force or violence was used or threatened on other occasions. In one incident, the appellant shoved an eighty eight year old lady aggressively against the wall and demanded the keys of her car; in another incident the appellant threatened a person with a knife and in another case, he tried unsuccessfully to force his way into a house as the householder attempted to close the door against him.
4. On the date of sentencing the appellant was in custody, having had an earlier suspended sentence re-activated. That sentence has since been served.
5. The court is satisfied that the sentences imposed were unduly lenient, as was the decision to suspend entirely such sentences as were imposed. These offences, both individually and in their totality, were serious, especially those involving the violent confrontation with an elderly lady and the use of a knife in another case.
6. The offences were committed in quick succession over a short period of time. The appellant already had fifty two previous convictions, many of which resulted in prison sentences, so much so that a great deal of his life since the age of seventeen has been spent in prison. He had been often given chances in the past to avoid further crime, but did not take them up. For this reason alone, there was no justification for imposing entirely suspended sentences. This court must now sentence the appellant afresh.
7. It is the case that the appellant has many personal problems and difficulties, including the condition known as ADHD and has had regularly psychiatric treatment to date. The reports of Dr. Leader and Dr. Barry well illustrate the extent of the appellant's problems over a number of years.
8. These personal difficulties do not in themselves provide any excuse for these offences, and the appellant must take full responsibility for his actions, and the extent to which he caused so much trauma to the victims of these crimes. Neither does this court accept as an excuse for these crimes the contention that the appellant was under the influence of any third party, or was acting under duress because of the existence of a debt owed by him.
9. It is the view of this court that the appropriate sentences would in normal circumstances be, in respect of counts 10, 11 and 17, four years imprisonment with such sentences been concurrent. However, in the particular circumstances of this case and to provide some hope for rehabilitation, and in recognition of the fact that the appellant is now facing a significant sentence over twelve months after receiving an entirely suspended sentence, the court will instead impose concurrent sentences of three years in respect of the aforesaid three counts, and will take the remaining offences into account.