



**THE COURT OF APPEAL**

**Record No. 151CJA/17**

**Birmingham J.  
Mahon J.  
Hedigan J.**

**IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 2 OF THE CRIMINAL JUSTICE ACT 1993**

**BETWEEN/**

**THE DIRECTOR OF PUBLIC PROSECUTIONS**

**APPELLANT**

**- AND -**

**ANTHONY WARD**

**RESPONDENT**

**JUDGMENT (ex tempore) of the Court delivered on the 20th day of February 2018 by Mr. Justice Mahon**

1. The respondent pleaded guilty and was convicted at Dublin Circuit Criminal Court on the 13th January 2017 in respect of five counts, all but one being road traffic offences. These counts (with the sentences imposed in brackets), were as follows:-

- Count 1: Unlawful use of a mechanically propelled vehicle contrary to s. 112 of the Road Traffic Act 1961 (three years imprisonment with the final twelve months suspended for a period of twelve months).
- Count 3: Driving without insurance, contrary to s. 56 of the Road Traffic Act 1961 (four months imprisonment and disqualification from driving for six years).
- Count 4: Dangerous driving contrary to s. 53 of the Road Traffic Act 1961 (four months imprisonment and disqualification from driving for six years).
- Count 10: Drunken driving contrary to s. 4 of the Road Traffic Act 2010 (four months imprisonment and disqualification from driving for six years).
- Count 11: Criminal Damage, contrary to s. 2 of the Criminal Damage Act 1991 (one years imprisonment).

All sentences were ordered to be served concurrently.

2. The appellant brings this application seeking a review of the aforesaid sentences on the grounds that the sentences imposed were unduly lenient. Her application is brought pursuant to s. 2 of the Criminal Justice Act 1993 which provides as follows:-

"2(1) If it appears to the Director of Public Prosecutions that a sentence imposed by a court (in this Act referred to as the "sentencing court") on conviction of a person on indictment was unduly lenient, he may apply to the Court of Appeal to review the sentence.

(2) An application under this section shall be made, on notice given to the convicted person within 28 days from the day on which the sentence was imposed.

(3) On such an application, the Court may either:-

(a) quash the sentence and in place of it impose on the convicted person such sentence as it considers appropriate, being a sentence which could have been imposed on him by the sentencing court concerned, or

(b) refuse the application."

3. The offences were said to have occurred on the 17th July 2015 in the early hours of the morning, in West Dublin. The respondent was observed driving a Toyota Avensis motor car which earlier had been stolen. The car was observed to be travelling at high speed as it approached a roundabout at Nangor Road / Fonhill Road in the Lucan / Clondalkin area. The car appeared to collide with the edge of the road on the roundabout as it continued at speed through a further two roundabouts. It was followed by a garda car which was required to reach speeds of one hundred and sixty kilometres per hour in order to keep up with the stolen vehicle.

4. The car continued to drive in a dangerous fashion, hitting traffic lights, and driving at speed over speed bumps. The respondent lost control of the vehicle which then somersaulted before colliding with a set of traffic lights. The force of the collision lifted the traffic light mechanism from its base propelling it through the front window of a stationary vehicle parked on Cedarbrook Avenue writing off that vehicle which was valued at €900. Some €300 worth of damage was caused to the rear of a second vehicle. When the vehicle came to a halt, the respondent and his passenger, attempted to flee but were pursued by gardai and arrested. Urinalysis carried out at the garda station showed a reading of 145 mg of alcohol per 100 ml of urine.

5. The respondent was born on the 16th April 1991 and was twenty four years old at the date of the offences. He is now almost twenty seven years old and is the father of three children from two relationships. His family background was dysfunctional, and he had substance difficulties with alcohol and drugs. The respondent has a large number of previous convictions for road traffic offences including driving without insurance, dangerous driving, drunken driving and the unauthorised taking of a vehicle, and other offences.

All seven previous dangerous driving convictions arose from one incident on the 4th January 2015. He received a two month prison sentence at that time. He also has two convictions for producing an article in the course of a dispute in respect of which a six month sentence was imposed, and in addition he has a conviction for endangerment in respect of which a two year suspended sentence was imposed.

6. As of the date of the offences which are the subject matter of these proceedings, the respondent was still subject to previously imposed driving disqualifications, including a ten year disqualification imposed in January 2010 and a six year disqualification imposed in January 2013.

7. It is contended on behalf of the appellant that the learned sentencing judge erred in sentencing the appellant in respect of the five counts, and in particular that he:-

- (i) failed to give sufficient weight to aggravating factors;
- (ii) failed to give sufficient weight to previous convictions;
- (iii) failed to incorporate elements of general deterrents into the sentence, having regard to the maximum sentence proscribed by the Oireachtas;
- (iv) suspended a portion of the sentence having regard to the overall circumstances of the cases;
- (v) in all the circumstances imposed an unduly lenient sentence.

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

*"The aggravating circumstances in relation to this matter; I should say first of all his previous road traffic matters, his previous convictions are of concern to this court and they are of concern to this court in circumstances which I have outlined, where this is not the first time to be before the court in relation to serious road traffic offences. That being said, it is not this court's - this court is not entitled and would be at error to attempt to sentence him in relation to matters for which he has already been sentenced and I stress that this is not regarded by this court as an aggravating circumstance. However, it is a matter of concern that he is not somebody who is before the court on the first occasion for this type of offending.*

*The aggravating circumstances and the manner of the driving in question. I have already given a summary of the detail which the court heard earlier. He is very lucky that he is not here in respect of more serious charges in relation to the manner in which he was driving. He was a serious risk to the safety of the public and also to the passenger who was in the car with him at the time. Ms. French was no doubt at a loss and a victim of this offence, in circumstances where her car was the vehicle which was used in respect of count no. 1 and an offence of that nature is not a victimless crime; it is upsetting for a person to have their property stolen.*

*...by way of mitigating he has pleaded guilty in relation to these matters. He has a support of partner and a mother who is supportive of him. He is a parent. He is in employment and I have had the benefit of considering the testimonial which was handed in in that regard. I have already referred to his - the negative influence of his father in his formative years. He has suffered with addiction and has attempted to address his addiction and I have considered the letter which was handed into me by the Clondalkin Addiction Support Programme in that regard and it seems that Mr. Ward is attempting to address his issues and presents as somebody who is remorseful in relation to his behaviour and that is clear to this court from the letter which he has furnished to the court."*

9. The learned sentencing judge suspended the final twelve months of the three years imposed in respect of count 1 because of what she described as his attempts to rehabilitate.

10. It is well established that in order to satisfy this court that a sentence is unduly lenient it is necessary to show that the sentence is not merely lenient, but is so lenient that its imposition was inappropriate and outside the discretion available to the sentencing judge. In *DPP v. McCormack* [2000] 4 I.R. 356 at p. 359, the Court of Criminal Appeal stated:-

*"In the view of the court, undue leniency connotes a clear divergence by the court of trial from the norm and would, save perhaps in exceptional circumstances, have been caused by an obvious error in principle."*

11. The outstanding feature of the offences with which the respondent was charged and convicted is the manner in which he drove a stolen vehicle on the public road and in a generally built up area of suburbs in West Dublin, and which can only be described as appalling and which totally disregarded the safety and welfare of other road users, including his passenger and the gardaí who were risking their own safety in their attempts to stop him. The extent of the respondent's reckless and dangerous driving is evident from the fact that this car uprooted a traffic light propelling it through the air and through the window of a parked car, fortunately unoccupied.

12. Of great concern to both the sentencing court and this court is the fact that the respondent has a very significant number of previous road traffic convictions, including dangerous driving and driving while intoxicated. Worse still is the fact that the respondent was, on the date of the offences, already the subject of two relatively lengthy driving disqualifications.

13. All of the foregoing points to an individual who, over a period of time, has developed a complete disregard for the road traffic laws and a total disrespect for the safety of other road users.

14. Previous efforts to persuade the respondent to dissent from this serious anti social behaviour by the imposition of relatively lenient sentences, one of two months, and another two year suspended sentence for endangerment, as well as the imposition of lengthy periods of disqualification from driving clearly failed.

15. Count 1, the unlawful use of a mechanically propelled vehicle, and the most serious of the offences with which the appellant was charged, carries a maximum sentence of five years. The actual sentence imposed in respect of this count was a net custodial term of two years reduced from a headline sentence of four years.

16. The focus of this appeal is the contention that insufficient weight was paid to the aggravating factors in the case, including the

fact that the respondent was driving while disqualified and while intoxicated, the extremely dangerous manner of his driving and his large number of past relevant convictions.

17. The court is satisfied that the sentence imposed by the court below was indeed unduly lenient. In its view the headline sentence ought to have been five years, the maximum term, rather than four years as identified by the learned sentencing judge. This court will however reduce the headline term of five years to one of four years imprisonment to reflect the mitigating factors such as they were, and it will further suspend the final twelve months of that four year term on similar terms to those imposed in the Circuit Criminal Court. The court will leave the sentences imposed for the remaining counts unchanged.

18. Having regard to the fact that the respondent has had to face sentencing on two occasions, and must now suffer the disappointment of his expected release date being delayed, the court will additionally suspend a further period of three months on similar terms to those imposed in the court below.

19. In summary therefore, the position is that the sentence now imposed for count 1 is altered to one of four years imprisonment with the final fifteen months suspended on similar conditions as were imposed in the court below. All other sentences remain unchanged. In arriving at the revised sentence the court has considered the booklet of materials submitted to it on behalf of the appellant, including the impressive testimonials submitted, and it has also taken account of the fact that the appellant has done well in prison to date.

20. Finally, the court will also increase the disqualification period from six years to fifteen years.