



THE COURT OF APPEAL

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

203/14

The People at the Suit of the Director of Public Prosecutions

Respondent

V

Samuel Rostas

Appellant

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

1. This is an appeal against sentence.
2. The appellant was sentenced on the 10th October, 2014, and has now spent over two months in detention.
3. Samuel Rostas was one of four people, who stole jewellery from a shop in Carrickmacross on the 28th December, 2012. They entered the shop in the afternoon at a point when the assistant had gone upstairs to check a repair for an elderly customer who was in the shop at the time.
4. As a result of CCTV footage, the appellant was seen to wait at the door in some kind of lookout out capacity. Jewellery was put in two bags by two associates of the appellant and the three men left and got into a car which was subsequently seen to drive away from Carrickmacross with four men in it. This particular vehicle was registered to the appellant's co-accused.
5. In the course of the evidence that was given before the learned trial judge, Garda Dillon, the prosecuting officer agreed that the appellant was the youngest of all of the individuals involved in the theft, being seventeen at the time and still only nineteen on the date of sentencing. He agreed that the appellant had no previous convictions and he also agreed that a guilty plea had been indicated at an early stage. He told the court that the co-accused had absconded.
6. The court was told that there had been previous thefts at the shop and the owner had decided to close down his business and emigrate, following the theft in which this appellant had participated.
7. At the time of sentencing the appellant was nineteen years old, living at home with his parents in Lucan, Co. Dublin, and had no previous convictions. He was then in part time employment in the Lucan area and hoping to be employed full time. A point not lost on this Court and one that no doubt will not be lost on the appellant is that following this theft, at least one other person lost their job when the shop had to be closed down. It was also submitted that the appellant had received nothing from the proceeds of the theft.
8. Counsel on behalf of the appellant submits that in view of the fact that Samuel Rostas was a young man without previous convictions, the failure to consider a suspended sentence or other non custodial sentence was an error in principle. Counsel also submits that the sentence was excessive and failed to take into account the many mitigating factors.
9. Counsel for the respondent contends on the other hand that this was a well planned offence, that the learned trial judge took into account all relevant matters and that there is nothing in principle wrong with the sentence that was imposed.
10. Having considered the submissions of both parties, this Court holds that the learned trial judge fell into error in failing to explore a non custodial outcome and further, this Court also takes the view that when the learned trial judge had reached a point where he felt custody was necessary then he fell into error by not considering a lesser sentence than one of two years in a case where the appellant is a young man with no previous convictions.
11. In proceeding to a fresh sentence hearing the court notes that an offer of €5,000 is being made today to the injured party by way of partial compensation.
12. This Court takes the view that this will be of some benefit to the injured party and given the fact that it is collaborative effort namely the money being provided by the appellant's family, the court is hopeful that it will ensure his future good behaviour and perhaps also incentivise him towards regular and proper employment.
13. Accordingly, in all the circumstances of the case, the court will substitute a sentence of one year's detention for the sentence of two years detention originally imposed. We will suspend the balance of that sentence as and from today provided that the appellant enters a bond in the sum of €100 on condition that he keep the peace and be of good behaviour for a period of twelve months and that a sum of €5,000 compensation be paid to the injured party within one month from today's date.