



THE COURT OF APPEAL

**Sheehan J.
Mahon J.
Edwards J.**

74CJA/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

Richard Sweeney

Applicant

Respondent

JUDGMENT of the Court (ex tempore) delivered on the 15th day of November 2016 by Mr. Justice Sheehan

1. This is an application by the Director of Public Prosecutions for a review of the sentence imposed on the respondent on the 10th March, 2015, at the Circuit Criminal Court in Cavan following a plea of guilty to a count of violent disorder contrary to s. 15(1) of the Criminal Justice (Public Order) Act 1994.
2. The respondent was sentenced to two years imprisonment with the final six months of that sentence suspended on condition that he remain under the supervision of the Probation Service for a period of twelve months following his release from prison.
3. The background to this offence was outlined to the court by Detective Garda Paul Cullen who stated that on the night to the 24th February, 2014, the appellant was one of four men who went to the home of a Mr. William White at 22 St. Mary's Terrace, Belturbet, Co. Cavan between 9.00 pm and 11.00 pm. Mr. White the injured party was then aged 59, he was living on his own and according to the guard had a simple way of life and was somewhat vulnerable. He had lived in the same house since he had been born and was held in very high esteem in his local community.
4. On the night in question the accused and three men pushed through his unlocked kitchen door, one man had a knife and told Mr. White that he would cut his throat. He put the knife to the left side of Mr. White's face. Mr. White sustained a stab wound to the left cheek together with bruising and swelling in that area of his face. He was hit on the top of the head with a steel object. He thinks it was his own poker. He fell on the couch and all four men started kicking him on the ground. They said they would put hot ash on his belly and would put him into the open fire. The put a white bucket over his head.
5. Mr. White gave an account that the men kept kicking him around his head and told him they were going to kill him. He was covered in blood, he thought he would die. All four men had their faces covered. They called him a paedophile. There was no basis whatsoever for this claim and Detective Garda Cullen told the court that Mr. White had never come under garda notice at any stage and he repeated that he was held in high regard in his local community.
6. At the time of the offence, the appellant was 24 years old and had moved to Belturbet about two months prior to the commission of this offence. He had done so in an attempt to deal with his drug addiction and had been helped to move there by a Mr. O'Dwyer, who gave evidence on his behalf. He had one previous conviction for the theft of a bottle of vodka.
7. The principal mitigating factors were his remorse, his early plea of guilty, his capacity to rehabilitate and the fact that Mr. O'Dwyer who had helped him to source accommodation in Belturbet was willing to continue to assist him. It also appeared that the respondent was not the instigator of the offence.
8. In the course of her submissions on behalf of the Director of Public Prosecutions counsel submitted that the following factors were relevant in assessing culpability.
 1. The accused was part of a gang of four men.
 2. The offence was planned and premeditated.
 3. The accused intended to cause harm.
 4. Weapons were used in the attack on the injured party.
 5. The assault was sustained and it was a particularly serious one in which the victim was told that he was going to be killed.
 6. The offence occurred in the home of the victim and violated his constitutional right to the peaceful enjoyment of his dwelling.
 7. The victim was a vulnerable person who lived a simple life in the home in which he had grown up.
9. Counsel on behalf of the respondent on the other hand submitted that the trial judge had approached the question of sentencing carefully and further submitted that the learned sentencing judge had imposed a sentence that was appropriate and proportionate,

taking into consideration the evidence received together with all the mitigating factors. Counsel further submitted that the sentence imposed did not constitute a substantial departure from what would be regarded as an appropriate sentence as identified by comparable case law. The sentencing judge was satisfied as to the reduced role that the accused had played in this offence.

10. Counsel for the Director of Public Prosecutions relied on an unreported judgment of the Court of Criminal Appeal in *DPP v. Black* (ref. CCA 31/709), *People (DPP) v. Fitzgibbon* [2014] 2 ILRM 116 and *People (DPP) v. Counihan* [2015] 3 JIC 2402.

11. The principles governing undue leniency appeals have been set out in a number of judgments of this Court and do not need to be repeated here.

12. We have considered the submissions of counsel for the respondent and the submissions of counsel for the Director of Public Prosecutions in light of the applicable principles. It is clear from the judge's sentencing remarks that notwithstanding the appellant's youth, the efforts he was making to deal with his drug addiction and the fact that he had only one minor previous conviction at the time that this was a case of such seriousness that it had to be met by the sanction of imprisonment. The maximum sentence for this offence is one of fourteen years imprisonment.

13. In approaching the question of sentence we are guided by the principle of proportionality and the need to reconcile that principle with the penal aim of rehabilitation. While the learned sentencing judge endeavoured to incorporate both these principles in the course of his sentencing remarks it seems to us that the imposition of a sentence of two years imprisonment with the final six months suspended fell considerably short of the type of sentence required to mark the seriousness of the offending behaviour in this case, particularly in light of the factors which counsel for the Director of Public Prosecutions has highlighted and which are matters which affect the question of the respondent's culpability.

14. Accordingly we hold that the sentence that was imposed was unduly lenient.

15. In proceeding to a fresh sentence hearing, this court sought the assistance of the Probation Service and adjourned the sentence hearing. Unfortunately the respondent failed to attend on the adjourned date and it was necessary for this Court to issue a warrant for his arrest.

16. The respondent made some progress on his release from prison, but unfortunately he was unable to sustain this progress and relapsed into drug use to such an extent that the latest probation report records him as using heroin on a daily basis. Again we have already outlined the mitigating factors. In his favour he pleaded guilty and there was a report before the sentencing judge indicating that Mr. Sweeney was an intelligent reflective person who is deeply ashamed of what he had done to Mr. White.

17. Notwithstanding this we remain of the view that the sentence should be increased and increased substantially. We are of the view that the appropriate sentence is one of four years imprisonment. We will suspend the final year of that sentence on the usual terms and to avoid doubt the respondent should be given credit for time served.

18. To summarise, we uphold the appeal by counsel for the Director of Public Prosecutions. We set aside the original sentence that was imposed in this case and have substituted in its place a sentence of four years imprisonment with the final year of that sentence suspended on the respondent entering into a bond in the sum of €100 to keep the peace and be of good behaviour for a period of one year following his release from prison.