



THE COURT OF APPEAL

Record No. 86/2017

Birmingham J.
Mahon J.
Hedigan J.

BETWEEN/

THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

- AND -

T. G.

APPELLANT

JUDGMENT (*ex tempore*) of the Court delivered on the 6th day of March 2018 by Mr. Justice Mahon

1. This is the appellant's appeal against a sentence of four years and six months imposed in the Dublin Circuit Criminal Court on the 22nd March 2017 in respect of seven offences of sexual assault contrary to s. 2 of the Criminal Law (Rape) (Amendment) Act 1990 as amended by s. 37 of the Sex Offenders Act 2001.

2. The appellant pleaded guilty at an early opportunity in circumstances where he was initially charged with additional offences which were not proceeded with. It is acknowledged that the guilty plea was of considerable value to the prosecution in circumstances where the withdrawn charges related to alleged offences which the appellant could not have committed as he was not resident at the address in question when that offending was alleged to have taken place.

3. The grounds of appeal relied on are that:-

- (i) excessive weight was placed on the aggravating factors;
- (ii) insufficient credit was given for the mitigating factors;
- (iii) no account was taken of rehabilitation, and that
- (iv) in reality the sentence imposed exceeded the five year maximum for the offences in question.

4. In the course of his oral submissions, Mr. Hartnett S.C., counsel for the appellant, clearly focussed on what he contended was a failure on the part of the learned sentencing judge to adequately discount the sentence imposed in recognition for the plea of guilty. He suggested that an appropriate discount would have left the net custodial term at three years and six months. He also was critical of the refusal on the part of the learned sentencing judge to back date the sentence to the 29th July 2016, the date on which the appellant went into custody, albeit in relation to an unrelated matter.

5. The offences were undoubtedly serious. The victim was between eleven and fourteen years old when he was subjected to the sexual assaults in the period between 1996 and 1999. The appellant, who is not sixty five years old, was then a friend of the victim's mother. Both she and the appellant were members of the Morman congregation and he held a senior position in that organisation. A compelling impact statement vividly illustrated the enormity of the impact these offences have had on the complainant.

6. The appellant, as of the date of sentence, had a particularly relevant previous conviction, albeit it for a sexual assault committed in May 2013, long after the instant offences. For that, he received a suspended prison sentence. That suspended sentence was activated in July 2016 because of the appellant's failure to comply with certain conditions, hence the appellant being taken into custody at that time. It was therefore quite appropriate that the sentence imposed in the instant case was not back dated to July 2016 as to have negated what was in effect the consequence of breaching conditions attaching to a previous imposed suspended sentence.

7. The learned sentencing judge explained his approach to sentencing the appellant in the following short extract from his sentencing judgment:-

"Now, obviously Mr. G has a previous offence, previous conviction for this type of offending which I think I imposed a suspended sentence upon him, and I must take that into account when giving my sentence. Now, obviously the mitigating factors are obvious. Mr. G has pleaded guilty, which is - it's a valuable plea in the context of this case because obviously the injured party would have been severely traumatised by having to give evidence in a trial in relation to these matters, so that is to his credit. It's to his credit too that he co-operated with the gardai and it is to his credit that he expressed remorse for what he did. Now, he is a man of a certain age. Obviously, hopefully he can reform himself, hopefully he can deal with whatever problems, if you want to call them that, that gives rise to this type of behaviour, but he must be punished for what he did."

8. The only real issue in the appeal is that relating to whether or not sufficient credit was given for the guilty plea. A guilty plea is always of value and, save in unusual circumstances requires to be rewarded by a significant reduction in what would otherwise be the appropriate sentence. It is common practice to reduce sentence by something in the order of 25% where there is a plea of guilty. Other relevant factors include of course, the stage at which the plea was entered and the strength of the prosecution evidence. In most cases of historical sexual abuse, such as the instant case, guilty pleas are of considerable value, and this case is no exception.

9. In this case the maximum term for each count was five years imprisonment. While a reduction of just six months from the maximum

term may appear inappropriately low, it is of course a fact that consecutive sentences of less than four and a half years each could have been imposed leaving the appellant with a net custodial term of considerably in excess of five years. Arguably, if such an approach had been adopted by the learned sentencing judge, no error of principle would arise.

10. However, the learned sentencing judge did not go down the route of consecutive sentences and chose instead a single sentence of four years and six months on one count while taking the other counts into consideration. He was quite entitled to approach sentence on this basis. Nevertheless, the Court is satisfied that insufficient allowance was provided for the particularly valuable guilty plea, and to this limited extent, an error in principle has been established.

11. In the particular circumstances of this case, the appropriate headline sentence was the maximum term of five years. The Court will reduce this by approximately 25% to fully recognise the guilty plea and it will sentence the appellant to a term of three years and nine months imprisonment, to date from the 22nd March 2017.