



THE COURT OF APPEAL

**Birmingham J.
Mahon J.
Edwards J.**

The People at the Suit of the Director of Public Prosecutions

Appeal No. 101/16

Respondent

- and -

Giovanni Obaseki

Appellant

Judgment of the Court (ex tempore) delivered on the 8th of December 2016, by Mr. Justice Edwards

Introduction

1. In this case the appellant was pleaded guilty on the 29th of January 2016 to a count of robbery, contrary to s.14 of the Criminal Justice (Theft and Fraud Offences) Act 2001 committed on the 8th of September 2012. This was on Bill no 57/16.

2. The appellant had also pleaded guilty to counts of assault causing harm contrary to s.3 of the Non Fatal Against the Person Act 1997 committed on the 5th of August 2012; robbery contrary to s.14 of the Criminal Justice (Theft and Fraud Offences) Act 2001 committed on the 19th of September 2012 and attempted robbery, contrary to common law, committed on the 5th of August 2012. This was on Bill no 327/13.

3. The appellant was sentenced to a term of seven years imprisonment to date from the 1st of December 2015 with the final two years suspended in respect of the count on bill no 57/16. He was further sentenced to two years and six months imprisonment for both the robbery and the assault causing harm counts on bill no 327/13, again to date from the 1st of December 2015, both sentences to run concurrently. The attempted robbery was taken into consideration.

4. The appellant now appeals against the severity of his sentence in respect of the robbery count on Bill no 57/16.

The circumstances of the crime giving rise to the sentence under appeal

5. Garda Stephen Tierney gave evidence that he had been involved in an investigation which commenced on the 8th September 2016 when his colleagues came across a male lying on the ground outside 90 North King Street at 10.20 p.m. approximately. On approaching the male, who was later identified as Francis Crossan, it was evident that his right leg was broken and the bone was protruding through his knee. Mr. Crossan told gardaí that he had been assaulted and robbed by three males and that one of them was a large black male. A witness at the scene told the gardaí that the assailants had fled onto Manor Street and had gone into an address on Arbour Hill.

6. Mr. Crossan was taken to hospital and subsequently gave a formal statement to gardaí in which he said that he had been out earlier in the evening and had two pints in a local pub. He ordered food in a takeaway and went outside to have a cigarette while he was waiting for his food and while smoking he used his mobile phone. He noticed three guys walk past him, one of which was a big black guy, over six feet, with short curly black hair. The black man asked him for a cigarette and he noticed that he didn't have an Irish accent but sounded like he had picked up some Dublin lingo. Mr. Crossan said he didn't have a cigarette and one of the other males punched him in the left side of his face and then the three guys started punching him and kicking him and he felt he was hit at least 20 times. Mr. Crossan was knocked to the ground by a punch and when he was on the ground the males kept kicking and punching him. He then felt a sharp pain in his right leg which was intense and he couldn't get up or defend himself. He felt that 'they might kill me' and he had dropped his phone. He then heard them say 'forget him' and they ran off. People came over to help and he noticed that his phone, his glasses and his metal tobacco case were missing.

7. Mr. Crossan was taken to the Mater Hospital and it transpired that his right leg was broken in two places below the knee, his left arm was fractured above the elbow and he had bruising to on the right side of his face. Mr. Crossan told gardaí that he had lived in the city centre for 18 years and nothing like this had ever happened to him before and he was devastated by it. He described the attack as being unprovoked and out of the blue and said he was now apprehensive about going out alone. At the time of making his statement his leg had been in a cast for two months. Mr. Crossan told gardaí that his job involved him travelling overseas and was unable to do that so his personal finances had suffered. He was one of the managers in the family business so he wouldn't get sick pay. His apartment was on a fourth floor up 6 flights of stairs and because he couldn't get up and down he had to move out.

8. Gardaí obtained CCTV from the vicinity of the incident and Mr. Obaseki was nominated as a suspect. In January 2013, gardaí called to a hostel in Tallaght where the appellant was staying and left contact details with the staff and a message requesting the appellant contact them.

9. The appellant contacted the gardaí and attended at the garda station voluntarily the following day. He was cautioned and invited to make a voluntary statement and he did so indicating from the outset that he had been involved in the incident. The appellant told gardaí that another man punched Mr. Crossan in the face and that he had dragged him to the floor and held him down while he was being kicked from the side. He confirmed he took part in assaulting and robbing him and that the phone was sold for €220 which was split between the males. He said the incident was not planned and that he was drunk at the time. It was suggested to him that CCTV could be played to him but he said he didn't need to see it because he "knew it was us" and he "knew what happened". He went on to say that that he was making admissions of his own free will and that he was very sorry for what happened.

10. The appellant was released from the garda station without charge at that stage, which was January 2013 and was later charged on the 18th August 2013. The appellant subsequently failed to turn up to a remand hearing a bench warrant was issued for him. It was subsequently established that he had left the jurisdiction and the appellant was ultimately located in Madrid and was returned to this jurisdiction on foot of a European Arrest Warrant on the 30th December 2015 and had been in custody since his arrest in Spain on the 1st December 2015.

The circumstances of the other crimes for which he was sentenced at the same time

11. Garda Paul Cullen gave evidence that on the 5th August 2013, he was an observer in a patrol car that went to the scene of an assault on North Brunswick Street, Dublin 7 and that on the way to the scene he observed two men that were personally known to him, one of which was the defendant. On arriving at the scene of the assault, he observed the injured party, George Robotham, who was covered with blood on his head and shoulders and who had a cut to his head. Mr. Robotham, who was a man in his early 60s, told gardaí that he had been out socialising and was walking home when he passed two men at around 3.50 a.m. One of the men asked him 'what time is it?' and he answered and carried on. He became aware that one of the men was behind him and described him as 5' 11", dark skinned, very broad and about 19 years of age. He said the man hit him over the back of his head with the bottle and then said to him "Give me your wallet. If you don't give me your wallet, I'm going to stab you with this knife." Mr. Robotham didn't see a knife but the male reached toward his top as if to take something out and was kicking out at Mr. Robotham at that time. Mr. Robotham was in fear and resisted the man by kicking at him. The second male got involved at this stage and threw a bottle at Mr. Robotham, who managed to get past the two men and rang gardaí as he ran. The gardaí took Mr. Robotham to the Mater Hospital where he was seen the next morning and received 5 staples to the wound on his head. Mr. Robotham declined to make a victim impact statement.

12. Garda Cullen gave evidence that on the 19th September 2012, the injured party Gerard O'Sullivan was standing outside the Maldron Hotel in Smithfield at 10.15 p.m. making a call on his mobile phone when two males approached him. He described one of the males as mixed race, in his early 20s and approximately 6' tall. The mixed race man said 'excuse me' and Mr. O'Sullivan told him to wait while he finished his call. The dark skinned male then punched him to right side of his head with his left hand and pulled his phone from his hand put it in his pocket and ran. Mr. O'Sullivan pursued the two males and managed to clip the ankles of the dark skinned man causing him to fall over but the man got up and managed to get away by running towards North King Street. The phone that was taken was an Apple iPhone 4S with an estimated value of €500. Gardaí obtained CCTV footage from the Smithfield area in the investigation.

13. On the 21st September, Garda Cullen became aware that the appellant had been arrested and was detained in relation to an unrelated matter. Garda Cullen then attended at the Garda Station and had sought for the Appellant's detention to be changed in respect of the matters he was investigating and conducted an interview with the appellant in relation to the above outlined offences. In respect of the incident involving Mr. Robotham, the appellant stated that he and the other male had been walking up the road when they had "a scrap" with Mr. Robotham. He said that everyone was drunk and that Mr. Robotham had not started the scrap but that Mr. Robotham and the other male were slagging each other and he had "swung in" for his friend. He denied hitting Mr. Robotham with a bottle but admitted punching him. He also denied demanding Mr. Robotham's wallet and said there was no knife and he didn't make a threat to stab him. When he was asked how he thought Mr. Robotham had got the injury requiring 5 staples, he said that he didn't know, that he had hit him with his fist while he had a lighter in his hand and that the punch caught him around the top of his head but that he did not hit him with the bottle and he hadn't seen blood. He said his friend had thrown a small wine bottle at Mr. Robotham afterwards. He told Garda Cullen that he was very drunk at the time having been in town drinking all day long and that he had drank a bottle of whiskey and a naggin of vodka. He denied that he had attempted to rob Mr. Robotham but said the incident shouldn't have happened.

14. In respect of the robbery of Mr. O'Sullivan, the appellant was interviewed on the same date and he made full admissions. He said that he had been drinking from early that day and he was very drunk when he got to Smithfield that night. He saw a man sitting with a phone in his hand and decided to take it. He said he took it because he needed money and that he later sold it on Moore Street for €200. He described the clothing that he wore on the night and identified himself on CCTV footage.

The impact on the victim in the case under appeal

15. Mr Crosson gave evidence before the sentencing court in which he described the viciousness of the assault upon him and the trauma he experienced. In addition the Court was supplied with a victim impact report prepared by him, to which a medical report from a consultant orthopaedic surgeon was annexed.

16. Dealing first with his physical injuries, the medical report states:

"The following is a medical report concerning the above named patient. He was allegedly assaulted on North King Street, Dublin, at approximately 10pm on 8/9/12. Thereafter, he was transported by ambulance to the Mater Misericordiae University Hospital. He was admitted under the care of the Orthopaedic team. He had an external fixator applied at the right lower limb where he had sustained a closed comminuted fracture of the right distal tibia and fibula. Subsequently, on 13/9/12, he had formal open reduction and internal fixation performed. He was discharged the following day. He was readmitted one week later with a wound infection and was treated with intravenous antibiotics. Following this, he was followed up in our outpatient clinic. Unfortunately, he developed a non-union of his tibial fracture. He returned to theatre on 6/4/13. At that time he had revision, open reduction and internal fixation with iliac crest bone grafting. A new plate and screws were inserted. We used Inductos, which is a bone morphogenetic protein. Since his surgery, he has had extensive physiotherapy.

I reviewed him in the clinic today. He is doing very well. He still gets occasional pain which he rates at 3-4 out of 10 in terms of severity.

He has returned to work and at present has no restrictions in his working or leisure activities. I feel it is important to note that this was quite a severe injury. It has taken over a year to heal for him. He is at risk of developing post-traumatic osteoarthritis in his right ankle joint. We will continue to monitor his progress as required."

17. In his victim impact report, which he elaborated upon in his oral evidence, Mr Crosson said:

"I have lived in Dublin City Centre for 22 years. Nothing like this ever happened to me before. Before this incident I felt quite safe walking around, even at night, I don't feel safe anymore I am cautious about any group of males that approach me or that I have to pass. I even go as far as crossing the street just to get away from them. I don't expect every group of males I meet to attack me however I just can't relax when I'm walking alone. I suppose I'm being over cautious but I really don't feel safe now when I'm walking the street alone. I now get a Taxi if I'm going anywhere at night. This was not the case before I was attacked.

In the past I really enjoyed walking /cycling around town but I don't take the chance anymore. I couldn't walk unaided for over a year. I spent about 18 months using crutches. For the first few months I had to move back in with my family as I couldn't even get up the stairs to my apartment never mind cook for myself. I had to get assistance from friends and family to do simple things like showering and this made me feel helpless. I couldn't meet my friends as often as I

wished and any social event that I did attend took a lot of arranging, transport etc. When I was out I couldn't relax because I was conscious of protecting my leg from people bumping off it. I was also on strong painkillers and this meant I couldn't have more than one or two pints. Going any place that required me to walk any distance was out of the question. I became very reliant on my partner at the time and this put pressure on our relationship. We are now separated.

To this day I have a constant dull pain in my leg. I was a keen cyclist before I was attacked but now I can't cycle any distance without being in pain. Cycling was my main form of transport and it was a pastime for me but that has been taken from me. I was attacked by three men for nothing, I was standing on the street minding my own business and was not bothering anyone. This incident occurred in 2012 and when the Gardaí told me that the suspect had fled the country. I was unhappy that this was allowed to happen. I just want some closure and I am glad that the case is finally being concluded."

18. In his oral evidence Mr Crosson also related how at the time of the offence he worked in the family business which was a language school which required him to travel for 6-8 weeks of the year. He stated that the property taken was worth €950 and that his medical bills came to €1,500. He said that the family business was at a loss of about €45,000 because he could only work part time while he was on crutches for a year and that it would have been at a further loss as a result of him not being able to travel for marketing trips and he put that loss at about €50,000. He also said that he had had to move out of his apartment for a while because he lived on an upper floor and the building had no lift. In addition he had had difficulty with day-to-day tasks such as shopping while he was on crutches. He had expended in the region of €5000 on taxis in his circumstances of reduced mobility.

The appellant's personal circumstances

19. The sentencing court heard that the appellant was born on the 17th of March 1993, and accordingly that he was aged 19 during the entire spree of offences committed by him during August and September 2012. He had no previous convictions.

20. The background to his offending was that the appellant was from Germany, was of African descent on his father's side, and had been sent to Ireland at the age of 17 to complete his schooling while staying with relatives. His relatives observed very strict house rules that were in contrast with the greater freedom the appellant had enjoyed while living with his parents in Germany and the appellant was asked to leave home due to failure to obey an early curfew imposed by his Uncle. Thereafter the appellant was effectively homeless, and at the time of the offences he hanging around the city centre while engaging in poly substance abuse. Each of the robberies had been committed to fund the purchase of drugs and alcohol. Moreover, he had been intoxicated both with drugs and alcohol at the time that Mr Crosson was set upon and robbed.

21. While abroad Mr Crosson had obtained a job in a call centre. He had not got into further trouble since his 2012 offending.

22. The sentencing court had the benefit of a Probation Report dated 13th April 2016 which had concluded (inter alia):

"Mr Obaseki committed these offences over a six-week period in 2012 when he was nineteen years of age and homeless. He outlined that that he committed these offences under the influence of cocaine, cannabis herb and significant quantities of alcohol and with criminal associates he had recently met in homeless hostels. It is my view that Mr Obaseki understands the seriousness of his offending behaviour and accepts responsibility for his criminal actions. He displayed good insight into his criminality, the consequences of his actions and he cooperated fully with the Garda investigation into these offences. Furthermore Mr Obaseki acknowledged the physical injuries he inflicted on the victims, the fear felt by the victims both during and following his criminal acts and the possible long-term psychological implications for his victims.

Mr Obaseki is assessed as being at a low risk of re-offending over the coming twelve months. The pertinent risk factors for Mr Obaseki are his involvement in this criminal behaviour and his past poly-substance abuse. Mr Obaseki possesses significant protective factors that reduce his likelihood of re-offending and which should be supported. These are his good education and employment record and associated financial stability, pro-social familial and peer support, his absence of current drug or alcohol issues over the past two years, his emotional and physical well being and his stated desire to live a law-abiding lifestyle.

As Mr Obaseki is assessed as being at a low risk of re-offending over the coming twelve months, he does not require a period of probation supervision, as he is not currently presenting with any criminogenic needs."

23. There was also a report from the Governor of Cloverhill Prison, where the appellant had been on remand since his return to the jurisdiction. The report showed that the appellant had sought to use the time in custody to a productive end. He was working in the prison system as well as attending school. He had completed the first three parts of the alternatives to violence programme. He had also undergone urinalysis while in custody in Cloverhill and he had not tested positive for any illicit substance.

24. Finally, the sentencing court was furnished with a no of certificates of accomplishment, as well as testimonials concerning the appellant's previous good character. Amongst the certificates furnished were certificates confirm participation while in prison in an Alternatives to Violence project, and also in a counselling program provided by Merchant's Quay Ireland.

The Sentencing Judge's Remarks

25. In sentencing the appellant as he did, the sentencing judge commencing by summarising the circumstances of the offences committed by the appellant, which in the case of the robbery of Mr Crosson he justifiably characterised as "vicious", involving as it did Mr Crosson being "kicked savagely" and seriously injured. The sentencing judge then made the following remarks:

Now, obviously that's a description of the crimes and, in deciding the appropriate sentence for Mr Obaseki, I must also take into account the mitigating factors. He took a trial in relation to some of the counts on the first bill mentioned. He took a bench warrant on the trial date. Eventually he was located in Spain and he did not contest the deportation to Ireland, and that's to his credit. It's to his credit also that he pleaded eventually in relation to counts that were mentioned, I think 1 and 2. It's to his credit that he pleaded -- indicated an early plea always to the attack and robbery of Mr O'Sullivan. It's to his credit that he's pleaded guilty to the robbery in relation to the crime involving Mr Crosson and that's to his credit and that must be taken into account in deciding the appropriate sentence. I must also take into account Mr Obaseki's personal circumstances. For the purposes of this sentence hearing, I'm treating Mr Obaseki as a foreigner to these shores and I think everybody in this court knows, or people should know, that prison time for people and parties such as Mr Obaseki, let's say, is more difficult than the ordinary Irish prisoner by reason of the cultural differences, as well as probably the paucity of visitation and suchlike, so in deciding the appropriate sentence, I must

take that also into account. I must take into account his age. He was young at the time, 19 at the time, and obviously Courts always hope for improvement and that people will reform themselves, particularly at that age. I must take into account also that, prior to the events that we're dealing with today, he has had no criminal record whatsoever and since that time he has had no record whatsoever and obviously that's positive from his point of view and, I suppose, in general it's positive for society that Mr Obaseki has gone a long way to reform himself. I must take into account also the generally positive report from the probation service. It outlines his circumstances, his insights into his wrongdoing and what he has done to reform himself and the positive factors in his favour. It is a positive probation officer's report. And I also have to take into account finally, I suppose, in mitigation - and this is the strongest evidence of his reform - is that since those dates mentioned in the bills, he has not committed crime since that date. It seems Mr Obaseki wants to work and is well able to work. It seems that, when he returns to Germany, he's got a family there to help him and to support him and that's a factor the Court must take into account.

Now, obviously there's many objective purposes in relation to sentence and reform is certainly one of those. And the reforming of accused and defendants is an aim for sentencing. Also punishment is also one of the purposes of sentencing and I think -- I exercise a function of sentencing on behalf of the community and, in certain circumstances, I think it's right, and the community demands, punishment, particularly in crimes in relation to violence towards their fellow citizens and human beings. In this case, Mr Obaseki displayed, at the time, violence towards three members of our community. He injured one of them reasonably badly, Mr Robotham and he has damaged Mr Crossan in a serious way and this wasn't accidental, it wasn't an unimaginable consequence of what he did. If you knock somebody over, punched him and kicked him, the injuries sustained by Mr Crossan are to be expected. And therefore I have to punish Mr Obaseki. Now, obviously the circumstances of the assault I must take into account. He was under the influence of addictive substances, either drugs or alcohol, but that doesn't, to a great degree, help Mr Obaseki.

So therefore, taking all the factors into account, I must impose I think what could be termed a severe sentence on Mr Obaseki because of what he did and the nature of the robbery on Mr Crossan particularly. I think the appropriate sentence on the robbery of -- the assault on Mr Robotham is a term of imprisonment of two and a half years. In relation to the robbery of the phone involving Mr O'Sullivan, two and a half years. In relation to the robbery on Mr Crossan, I'm going to impose a sentence of seven years and, by reason of the mitigating factors, including his positive -- the steps he's taken to reform himself, I'm going to suspend the last two years on the following conditions: that he must be of good behaviour for a period of two years following his release from custody, and obviously while in custody, and secondly he must enter into a bond in the sum of €100. I've thought about probation but it seems to me, from the report, Mr Obaseki doesn't need an additional period of time of probation and therefore the seven years to be imposed on bill 57/16 on count 1. And all the sentences are to be run concurrently.

The grounds of appeal

26. The formal grounds of appeal advanced were:

- i. That the learned sentencing judge erred in law in failing to structure a sentence balancing punitive, deterrent and rehabilitative elements, and in failing to structure a sentence proportionate to the gravity of the offence and the circumstances of the offender.
- ii. That the learned sentencing judge erred in law in imposing a sentence solely for punitive purposes.
- iii. That the learned sentencing judge imposed a sentence which undermined rather than supported the "protective factors" identified by the probation service as reducing the risk of re-offending.
- iv. That the learned sentencing judge erred in law in failing to take any or adequate account of the mitigating factors submitted on behalf of the appellant, in particular the youth of the appellant, the unusual and very specific circumstances in which the offending had occurred, the fact that the appellant had no previous convictions and had been assessed as presenting a low risk of re-offending, having addressed and reversed the factors that had contributed to the commission of the offences.
- v. That the learned sentencing judge erred in law in failing to place any or adequate value on the Applicant's admissions and his guilty pleas.
- vi. The learned sentencing judge erred in law in his approach to the role of alcohol and drug abuse in the offences, having regard to the appellant's success in turning away from substance abuse.
- vii. That the learned sentencing judge erred in law in failing to take adequately into account the time that had elapsed since the offences occurred, in relation to the evidence of rehabilitation during that time.

27. However, counsel for the appellant has suggested in oral submissions to this Court that in truth these grounds can be distilled down into a single substantive complaint, namely that the trial judge failed to get the balance right and that the result was a sentence that was disproportionate and much too severe.

28. Following further exchanges with the Court it became clear that while the appellant maintains that the headline sentence of seven years was severe, and was possibly at the extreme end of what could legitimately have been nominated in that regard, it was not being suggested that it fell outside the sentencing judge's legitimate range of discretion. The real complaint was that a discount had been afforded to reflect mitigation which the appellant maintained was wholly inadequate having regard to his personal circumstances and the substantial mitigating factors in the case.

29. The mitigating factors, for which it was said inadequate discount was afforded, were identified as being:

- i. The appellant had co-operated with the garda investigations, had made admissions and had pleaded guilty to all charges.
- ii. While the appellant had left the jurisdiction during the prosecution, he had done so in circumstances where he was a young man facing custody for the first time; he had not sought to contest the European Arrest Warrant proceedings returning him to this country and had pleaded guilty to the remaining matters immediately on his return.

iii. At the time of the offences, the appellant was a young man of nineteen, living homeless in a foreign country, heavily abusing alcohol and controlled drugs, and associating with criminals he had recently met in homeless accommodation. He was a German national of African descent and had come to Ireland at the age of 17 to improve his English and finish his studies. He had been staying with relatives but was asked to leave due to his failure to comply with strict house rules.

iv. The appellant had no previous convictions and had not offended in the period between the incidents in 2012 and the sentence hearing in 2016.

v. The appellant was very remorseful and the incidents had weighed heavily on his mind in the years since the incidents occurred. The Probation Officer was of the view that he understood the seriousness of this offending behaviour and displayed good insight into his criminality and accepted the consequences of these actions.

vi. The appellant had effectively rehabilitated himself in the years that had passed since the commission of the offences. He had gained employment and discontinued his abuse of alcohol and drugs.

vii. The appellant had been assessed by the Probation Officer as being at a low risk of re-offending and as not presenting any "criminogenic" needs in circumstances where he had a good education and employment record, pro-social family and peer support and no drug or alcohol issues for the past 2 years.

viii. The appellant had demonstrated his commitment to rehabilitation by working in prison and completing an Alternatives to Violence programme to the stage where the next step was to become an instructor himself. He had provided urinalysis which was negative of illicit substances.

ix. There was a strong likelihood of continuing rehabilitation in circumstances where the factors which caused the appellant to become involved in the offences had resolved and he now had a strong prospect of continued employment.

x. The appellant had only become aware of the significant financial losses to Mr. Crossan the day before and was willing to commit to paying compensation within a certain period if the court wished to order same.

30. Counsel for the respondent has submitted in reply that in suspending the final two years of the seven year sentence the sentencing judge adequately reflected the available mitigation and that the ultimate sentence was both appropriate and proportionate.

Analysis and Decision

31. We consider that counsel for the appellant was wise not to press any suggestion that the headline sentence of seven years selected by the sentencing judge was excessive. The sole issue therefore with which this Court has to concern itself is whether in fact there was a sufficient discount for mitigation.

32. The Constitution mandates that sentences must be proportionate and it has been said many times, particularly following *The People (Director of Public Prosecutions) v McCormack* [2000] 4 I.R. 356, where what was always the law was restated with singular clarity by Barron J, that the sentence to be imposed is not the appropriate sentence for the crime, but the appropriate sentence for the crime because it has been committed by that offender. The offender is entitled to have all of his relevant personal circumstances taken into account, both those suggesting reduced culpability on his part and those providing mitigation in general.

33. In suspending the final two years the discount for mitigation afforded by the trial judge amounted to approximately 30%. We consider that this was an insufficient overall discount in circumstances where there were so many significant mitigating factors.

34. We have said in other cases that a plea of guilty on its own will almost always entitle an accused to a significant discount. While every case is different, and we expressly do not wish to lay down any hard and fast rules, it cannot be ignored that typically the discount for a plea is generally somewhere in the range from 15% to 30%, with obviously the highest discount being given where the plea is at the earliest possible opportunity and where it is of particular value in terms of sparing a victim further trauma.

35. In addition in this case there is the factor that the accused had no previous convictions and has not been in trouble since. There is a strong line of jurisprudence to suggest that where, in the case of a young person (and that expression is used in this instance in the ordinary sense and not as a term of art or as having any specific statutory meaning) who is a first offender, a court feels it necessary to impose a custodial sentence it should be the shortest sentence necessary to achieve the desired penal objectives. A custodial sentence was undoubtedly required in this case but it did not require to be as long as it would have been in the case of a recidivist offender. Moreover, in balancing the penal objectives of retribution, deterrence and rehabilitation greater weight required to be afforded to the latter by reason of the fact that the appellant was a first time offender, particularly in circumstances where he had already taken significant steps to turn his life around. These factors would have entitled him to further credit over and above any credit that he was entitled to for having pleaded guilty.

36. The appellant's personal circumstances in terms of his background and the adversities in his life, particularly his addictions to drugs and alcohol also required to be recognised, and his work towards overcoming those adversities rewarded and his continued rehabilitation incentivised.

37. In assessing the mitigation in any case the ultimate figure to be discounted is rarely the sum of its parts, not least because of overlapping mitigating influences that frequently arise, and it is legitimate in the circumstances to determine upon a global figure to reflect total mitigation without in any way breaking it down. Nevertheless, whatever global figure is selected must adequately reflect the total mitigation available.

38. We are satisfied that in the present case the discount of 30% to reflect the total mitigation available was too little by a significant margin, and to that extent the trial judge erred in principle.

39. In circumstances where we have identified an error of principle it is now necessary for this Court to quash the original sentence and proceed to a resentencing of the appellant.

40. In accordance with established jurisprudence the Court invited the parties to submit to it on a contingent basis any materials that they might wish to have taken into account in the event of the court finding an error of principle and setting aside the sentence that was imposed by the sentencing judge.

41. In response to that an additional document has been submitted on behalf of the appellant comprising a letter from "The Open College" indicating the appellant's progress on a course relating to digital marketing run by that institution. In addition we have been informed that the appellant continues to make good progress towards his rehabilitation in prison.

42. In the circumstances we will now proceed to resentence Mr. Obaseki. We have already indicated that we consider that the headline sentence of seven years determined upon by the sentencing judge was correct in principle and we will not interfere with that. However, to adequately reflect the mitigating factors in this case, we will suspend 50% of that and therefore we are suspending three years and six months of the overall seven year sentence, leaving a net sentence to be served of three years and six months.

43. It will be on terms that the appellant enters into a bond before this Court in the sum of €100 to keep the peace and be of good behaviour for a period of three years from today's date.