



THE COURT OF APPEAL

[75/14]

The President
Birmingham J.
Sheehan J.
BETWEEN

THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

AND

VASILE STRATAN

APPELLANT

JUDGMENT (Ex tempore) of the Court delivered by the President on 6th July 2015

1. The Court has had the benefit of the written submissions made by the appellant and the respondent and can deal with the matter very briefly.
2. The appellant is from Moldova. On 26th September 2013, he entered as a trespasser a home in Carrick-on-Suir with an attempt to commit an arrestable offence. He was charged originally with aggravated burglary, but after some three days in the trial of the matter, the accused was rearraigned on a charge of simple burglary that has some significance. He was sentenced to six years imprisonment on this charge.
3. There were severe aggravating features of the matter which have been canvassed in the course of the hearing briefly here, but essentially the accused man entered the house with another man and they used violence on the occupants of the house who had been disturbed by the break-in and come down. It was altogether an extremely frightening occasion. It has, understandably, left the unfortunate victims of the crime with admittedly and mercifully minor physical injuries but with major psychological consequences of the crime, as these things do, the invasion of one's home and it is unnecessary for the Court to emphasise the heinousness of this crime and the serious view that the Court take of it.
4. Counsel for the appellant acknowledges the seriousness of the crime which is completely realistic and the Court respects that acknowledgement, but she makes a number of points by way of mitigation that she says were inadequately reflected in the sentence that was imposed by the learned trial judge. The function of the judge is to assess the crime i.e. the crime as committed by this particular accused, and then to go on to consider such mitigating or aggravating circumstances as arise from the character of the accused. The crime was undoubtedly very serious and the Circuit Court judge was perfectly entitled to arrive at the conclusion he did and the Court sees no reason to disagree with the overall assessment by the learned judge of the gravity of the crime and the appropriate sentence.
5. Where the Court thinks that there was an error by trial judge was in his appreciation of three items. Firstly, that the accused was not the ringleader. Just how naive he was is a matter of debate and the Court thinks that Mr. Humphreys' point about naivety being an issue that must have a terminus in the course of the commission of a crime and the Court accepts that point. But to say that he was not the ringleader is a relevant consideration. Secondly, the prosecution did accept a lesser plea than aggravated burglary, so to some limited extent that is relevant to be taken into account. More particularly, the Court takes account of the extra difficulty, extra strain and extra unpleasantness of the experience of prison for somebody whose language skills are inadequate; who is cut off largely from family and friends and the Court is conscious of the family circumstances of the accused.
6. In all those circumstances, the Court will, with some reluctance, interfere by giving some relief. What the Court will do is to uphold the sentence of six years but to suspend the final 18 months of the sentence. These are in the very particular circumstances of this case. It is always difficult to line up the cases on one side and the cases on the other; everybody tries to do it differently and in England and Wales they try to do it with much more specific sentence guidelines and here we try to emphasise the individual or specific items that have to be taken into account. But the result is that in our jurisprudence and our jurisdiction it is a more difficult task to compare and contrast other cases; we have to deal with it on a case-by-case basis and see what lessons can be learned from the accumulated jurisprudence.
7. In all those circumstances, the Court acknowledges the seriousness of the crime, upholds the headline sentence imposed by the learned trial judge, but considers that there was an error in failing to take account of these particular mitigating features that applied, and especially the one of the isolation of the appellant in the circumstances in which he finds himself. So that is the order of the Court, to suspend the final 18 months.
8. There now follows a difficulty because the accused will now be asked to enter into the usual undertaking and bond to keep the peace and be of good behaviour for a period of three years on the basis of which the Court will suspend the last 18 months. I hope that the interpreter understands that. The sentence stands; the only thing that has changed is that the last 18 months are suspended. The accused has to say 'yes' to the next question which will be asked by the Registrar. I should have mentioned that it is also relevant that the accused did not have any previous convictions.