



THE COURT OF APPEAL

[80/16]

The President

Edwards J.

McCarthy J.

BETWEEN

THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

AND

STEPHEN HENDRICK

APPELLANT

JUDGMENT (Ex tempore) of the Court delivered on the 7th day of March 2019 by Birmingham P.

1. This is an appeal against severity of sentence. The sentence under appeal is one of eight years imprisonment imposed in respect of offences of possession of a firearm and possession of explosives by the Special Criminal Court on 24th February 2016. The sentences were concurrent with each other, but were also consecutive to a sentence of three years imprisonment that was imposed on the same day in respect of a count of possession of ammunition. The three-year sentence is not the subject of an appeal to this Court, but the point is made that the aggregate sentence imposed in the Special Criminal Court is excessive and, when viewed in that context, falls outside the totality principle and offends the totality principle.

2. In relation to the factual background, the position is that as regards the offence that was first in time, which resulted in the three-year sentence, Gardaí were in possession of information about storage containers on a site at the back of Right Price Cars on Turnapin Great, Old Airport Road in Cloughran in Dublin. On a date in early July 2013, Gardaí obtained a search warrant authorising the searching of one of the containers. When the Gardaí arrived, the appellant was present and Gardaí followed him into the container when he opened it. The container was described as a 'work container'. The appellant was noted to be wearing latex gloves and he was in possession of a shotgun cartridge. The container and the yard were then searched by Gardaí and within the container they found a plastic box and in that plastic box were fifty-nine rounds of ammunition of various calibre.

3. In relation to the second offence in time, that which gave rise to the eight-year sentence, this related to matters that occurred on 15th November 2014. On that occasion, Gardaí, who were in possession of a warrant, went to the appellant's address at Balbutcher Drive, Ballymun. In the early afternoon of that day, they entered the house and the appellant was present along with his daughter. Initial findings revealed evidence in relation to possession of explosives and the possession of firearms. The initial search revealed a plastic container with black powder and also part of a firearm, a Glock pistol backstrap. The appellant was arrested and brought to a Garda Station and the search continued, extending to a shed area at the back of the house. In the shed, a number of items of note were found, including items that were secreted in the eaved section of the shed. A Glock 19 semiautomatic pistol was recovered in that area. There was the top slide of a Glock 19 pistol with barrel and spring, with component part of a pistol, there was a timing power unit consisting of an adapted mobile phone, this was a remote initiator for an improvised explosives device, a Smith & Wesson calibre Glock Model 22 top slide was found. There were also a number of additional firearm component parts, and hidden on the shelves in the shed was an AK47 Kalashnikov rifle with a magazine and 125 rounds of AK ammunition. Elsewhere on the premises there were shotgun cartridges and AK47 ammunition, as well as 125 rounds of 7.62mm of ammunition. Also recovered were three test tube items, and again, these were hidden in the eaves underneath the roof. One test tube had a mixture of PETN, which is a high grade military explosive. The second test tube was filled with a pyrotechnic mix, and the third test tube was filled again with a pyrotechnic mix and it was completed with an airbag initiator. The Court was told that these are items that have been found, particularly so the airbag initiator, in the past in forming part of explosive devices. As a result of this find, the PETN was a high grade military explosive, an army bomb disposal team was called and a number of controlled explosions were carried out on the site. In making their way to Balbutcher Drive to carry out a search there, Gardaí were in possession of intelligence which indicated that the appellant was involved in the process of importing firearm parts into this jurisdiction. That he was involved in importation was not and is not in dispute, but it is pointed out today on his behalf that the importation was in his own name and that is indicative of an exercise that lacked any sophistication and an indication that Mr. Hendricks was not forensically aware.

4. It was accepted in the Court below and it is accepted today that the Balbutcher Lane offence was committed at a time when the appellant was on bail in respect of the Turnapin Lane offence, and that, accordingly, the sentences to be imposed by the Court were required to be consecutive.

5. In terms of the background and personal circumstances of the appellant, at the time of the sentence hearing, he was forty-nine years of age. He was the father of three children, two daughters from his first marriage, aged twenty-six years and nineteen years, and of a son from a second relationship.

6. In terms of previous convictions, those on record from this jurisdiction were in relation to road traffic matters and there were two summary convictions from Northern Ireland. Details of these were not available, but they were dealt with by the courts in Northern Ireland by way of the imposition of a fine and Garda giving evidence surmised, and no doubt in this regard, he was correct that these they were minor matters and of no consequence.

7. The Sentencing Court was provided with a number of letters and testimonials which referred to the appellant's significant contribution to society, including voluntary work with a local football club and a boxing club. There was a psychologist's report which had been commissioned and which was put before the Court which indicated that the appellant was extremely acquiescent and that he scored highly on the Gudjonsson compliance scale. That scale assesses a respondent's eagerness to please and the need to protect one's self-esteem and social interaction and the level of avoidance of conflict when in the company of people in authority. There was evidence before the Court that he was a very good family man, and in that regard, there was a powerful, and it must be said, moving letter, from his younger daughter and that letter was referenced by the Special Criminal Court in the course of its sentencing remarks.

8. In imposing sentence, the Court took the view that there was a basis for departing from the mandatory presumptive minimum in the case of the Turnapin Lane offence. However, the Court saw the second offence as far more serious, pointing out that it was the second time that he had been caught with offending material and that he was on bail at the time, going on to add that the list of materials recovered read like an arsenal and so they could not but take a most serious view of the situation.

9. This Court would agree with the assessment of the Trial Court that these were serious offences, and in particular, would agree with their assessment that the second offence in time was by any standards a particularly serious offence indeed. The Court has reviewed the transcript and is satisfied that the Special Criminal Court was cognisant of the factors that were present in ease of the appellant, in particular, were cognisant of the fact that pleas of guilty had been entered in respect of both matters and took those into account. In the Court's view, the sentence decided upon in respect of offences of this seriousness was a sentence that fell within the available range. The Court has not been persuaded that an error of principle has been identified.

10. In those circumstances, the Court is obliged to dismiss the appeal.