



**THE COURT OF APPEAL**

**Birmingham J.  
Sheehan J.  
Mahon J.**

**158/15**

**The People at the Suit of the Director of Public Prosecutions**

**V**

**Declan O'Donnell**

**Appellant**

**Judgment of the Court (ex tempore) delivered on the 9th day of July 2015 by Mr. Justice Birmingham**

1. This is an appeal against severity of sentence. The sentence being appealed being one of twelve months imprisonment that was imposed on the appellant on the 16th June, 2015, in respect of the offence of careless driving causing death.
2. It may be noted that the appellant was initially charged with the offence of dangerous driving causing the death of Michelle McCabe, who is the victim in this case, on the 25th January, 2013, but that he offered a plea to careless driving causing death, which was accepted.
3. The maximum penalty for the offence of careless driving cause death is a sentence of two years imprisonment and/or a fine up to €10,000.
4. The facts that gave rise to prosecution were that on a wet and dark Friday evening in January 2013, the appellant was driving from Dublin where he was teaching at the time to his home in Donegal. It is of significance that a couple who were driving their car behind the appellant do not make any criticism of his driving. They saw the brakes of the car in front come on and the rear of that vehicle swerving.
5. The appellant's car crashed into the vehicle which the late Ms. McCabe was travelling. Ms. McCabe who was just 34 years of age when she met her death was accompanied at the time by her mother and her two children aged eight and six. She is survived by these two children and also by her husband Seamus.
6. Mr. O'Donnell has no memory of the incident and is not in a position to provide an explanation for what happened. In terms of the appellant's personal circumstances, he was 26 years of age at the time of the offence and 28 years of age at the time of the sentence hearing. He is a teacher and at present he teaches at Lakewood School in Fermanagh, which the court understands to be a secure facility in Northern Ireland, having previously worked in Ballydowd Secure Care Facility here in Dublin.
7. The judge when sentencing sought to identify the aggravating and mitigating factors that were present. He felt that there were no aggravating factors present adding that the evidence was not there for dangerous driving causing death.
8. The only possible aggravation he felt was that it might be that the deceased had fallen asleep and if that was so, then he was to be criticised for not taking a rest before driving. The judge acknowledged that there was no evidence that that was what happened and that raising that is merely to speculate. On the other side of the coin, he felt there were many mitigating factors present including, but not limited to the plea of guilty, the deep remorse, the fact that he would have to live with the consequences of his action and his role in a caring profession.
9. There was also before the court a very positive probation report that raised the issue of community service. The report indicated that community service was available in Donegal and that Mr. O'Donnell was prepared to undertake such service.
10. The judge proceeded to identify three possible ways of dealing with the matter (i) community service, (ii) a suspended service and (iii) an actual custodial sentence. Having done so, he then decided to impose the twelve month sentence that is now appealed. It would seem that in opting for this sentence, that he was heavily influenced by the truly awful consequences that flowed from the driving that evening, rather than by reference to the nature of the driving itself. Because so far as the actual nature of the driving is concerned there were, as the judge commented, no aggravating factors present. Not speed, not drink, not driving a defective vehicle or indeed anything remotely of that nature.
11. Somewhat unusually, there was a request to the trial judge to re-open the matter later in the day after he had imposed sentence initially. At that stage it emerged that there were differences of opinion within the wider family of the deceased. Her mother, it was conveyed through the family solicitor, did not want to see the appellant receive the custodial sentence, while her husband who was called to the witness box felt that the sentence that had been imposed by the Circuit Court judge should be allowed to stand. It is clear from the notes that were before the court in the context of the bail application and from the transcript that is available to the court today, that this was a very difficult, very emotional and indeed traumatic day in the Circuit Court.
12. The court is of the view that this was a case that was capable of being dealt with in a non custodial fashion and the court is of the view that that indeed would have been the appropriate way to deal with the case. In reaching that conclusion, the court is of course required to sentence as of today's date and the court is conscious of the fact that since the sentence hearing, that Mr. O'Donnell has been in custody and for someone who has never been in prison before and who must never have expected to see the inside of a prison, the early weeks of a sentence must be particularly burdensome and traumatic. Accordingly, the court is going to set aside the custodial sentence that was imposed and substitute a non custodial disposition.
13. What the court is proposing to do and we will hear from the parties if there are any technical obstacles in the way of this disposition, is to suspend the balance of the sentence on the basis that Mr. O'Donnell will enter into a bond and a condition of that bond will be that he will provide services to Ballydowd by way of community service to the extent of 200 hours within twelve months from today.

14. The custodial sentence will be suspended, but a condition of the suspension will be performing the equivalent of 200 hours community service, but to be provided to Ballydowd.