



**THE COURT OF APPEAL**

**Record No. 262/18**

**Birmingham P.  
McCarthy J.  
Donnelly J.**

**BETWEEN/**

**THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS**

**RESPONDENT**

**- AND -**

**CHRISTOPHER BLACK**

**APPELLANT**

**JUDGMENT of the Court (*ex tempore*) delivered on the 26th day of July 2019 by Ms. Justice Donnelly**

1. This is an appeal against severity of sentence imposed on the appellant in Dublin Circuit Criminal Court on the 6th December 2017. He was sentenced to a total of four and a half years imprisonment in respect of three counts contained in three separate bills of indictment. He received a sentence of two and a half years imprisonment in respect of a robbery charge. In respect of a further charge of robbery and possession of heroin with intent to supply, he received a two year sentence on each of those counts which were to run concurrently to each other. Those sentences were to run consecutive to the sentence imposed on the count of robbery in the first bill. Those sentences were obliged to be imposed consecutively to the first robbery sentence. He had been on bail in respect of that sentence when he committed the further two offences.
2. The details of the offences are as follows: -
3. On Bill DU468/2017 this was an offence of robbery committed on the 17th September, 2016. He pleaded guilty at the arraignment date on the 13th June, 2017 and this was accepted as an early plea.
4. The injured party was sixty-five years of age and working in a newsagent in Dublin. The appellant had come into the shop and lunged across the counter when she opened the till and took between €500 and €600 Euro. This had originally been indicated as €200 on the Book of Evidence. There was CCTV footage and the appellant was recognised by a member of An Garda Síochána. His detention under section 4 of the Criminal Justice Act, 1984 in respect of another matter was extended for the purpose of investigating the present offence. He made admissions. A Victim Impact Report was provided to the Court. The victim was quite shocked and frightened.
5. Under Bill DU792/2017 this was an offence under s.15 of the Misuse of Drugs Act, 1977 (as amended). The appellant pleaded guilty on the 20th October, 2017 which was a new mention date, therefore an early plea. The evidence was that on the 2nd December, 2016 he had been observed acting in a suspicious manner on Amiens Street. He was searched under the Misuse of Drugs Act, tried to run away, was stopped again, and he then informed the Gardaí that there was 'stuff' in his waistband. Two large white knotted packets of diamorphine were located, and a further three small deals of diamorphine were found on foot of a further search carried out in Store Street Garda Station. In total this amounted to twenty-seven grams of diamorphine approximately, with a market value of €3,838. The appellant was detained and interviewed when he made admissions that he intended to sell the drug. He claimed he had a drug debt.
6. On Bill 434/2017, the appellant pleaded guilty to an offence of robbery, again on a new mention date. On the 27th January, 2017, the victim in the case, who was an eighteen-year-old woman had gotten out of a taxi in Camden Street to get money out of an ATM. She was approached by the appellant who put his arms around her and told her he had a syringe. She only had eighty Euro in her account which she gave him. She could see the syringe as he walked off. She approached Gardaí and the appellant was tracked down in a room in a hotel where a syringe and €120 were found. He was later identified on CCTV and arrested in respect of this incident. Initially during the interview, he said he didn't remember what had happened, but he later accepted that he must have taken the money. No Victim Impact Report was provided by this injured party.
7. In relation to the appellant's circumstances, he was remanded in custody when he was charged in respect of the third bill on the 13th February, 2017. During that period of time he was also in custody serving a number of District Court sentences.
8. He had fifty-five previous convictions, including a conviction for robbery, for which he had received a three-year sentence. He also had seven convictions under s.15 of the Misuse of Drugs Act, six in the District Court and one from the Circuit Court. He also has s.2 assault convictions and a conviction for burglary.
9. At the time of the sentence he was twenty-six years of age. There were two probation reports before the Court. Although a significant amount of material is provided to the Court on behalf of the appellant, it appears that he provided scant information during interviews with the Probation Service regarding his personal background. It does appear however, that his father had passed away when he was seventeen years of age and it appears that the appellant identified his father dying from cancer as a trigger towards his

own mood management difficulties and subsequent illicit drug use. He had however, developed a significant poly-substance misuse issue dating back to the age of nine. He had a history of trying to deal with this drug use, but unfortunately he had relapsed. The Probation Service said that it appeared that he hadn't fully explored the underlying reasons for his entrenched addiction, and therefore to benefit from entering a residential programme it was necessary to examine addictive patterns, background and immediate factors which had contributed to the long-standing addiction to poly-substances. He had been offered a residential placement in Tiglin, a sixteen-month residential programme in Wicklow. He said he was interested in attending that programme after his sentence had been finalised.

**10.** The appellant only proceeded with two grounds of appeal in oral submissions. These related to: -

(a) A failure to backdate the sentence; and

(b) A failure to pay express attention to the role of his substance abuse in his offending and to provide at least a part suspended sentence with a view towards rehabilitation.

**11.** It is necessary, however to say a little about what had been the first ground of appeal in the written submissions. This was that the sentencing judge failed to adopt best practice in identifying the appropriate sentence. In the present case, the sentencing judge indicated that he would sentence the appellant globally on all three bills. It is correct to say that he did not identify a headline sentence, and thereafter make appropriate reductions in light of mitigation and/or the totality principle as outlined in case law.

**12.** We are satisfied that in line with the authority of *The People (DPP) v. Flynn* [2015] I.E.C.A. 290, that while it is good practice for judges to engage in that process:

*"However, the mere fact that best practice is not being followed in terms of adequately stating the rationale behind the sentence does not necessarily imply an error of principle. At the end of the day if the final sentence imposed was correct, and there was no obvious error of principle, the sentence may be upheld."*

**13.** It is however important to bear in mind the sentencing judge's global approach to sentence when assessing the other points of appeal.

**14.** In relation to the failure to backdate the sentence, counsel for the appellant submitted that the sentencing judge had failed to backdate the sentence to the date he had gone into custody in respect of the third bill which was the 13th February, 2017; or otherwise to give him credit for the time spent in custody.

**15.** It is accepted that the appellant was also serving a District Court sentence which also had been backdated to that same date. In those circumstances, the respondent in this appeal has submitted that the sentencing judge was correct not to also backdate this sentence as he was not in custody on this matter alone. In those circumstances he was effectively serving another sentence during the time he had been in custody on this offence.

**16.** The appellant relies upon *People v. Colbert* [2016] I.E.S.C. 69. We are satisfied that this case can be distinguished. Indeed, the appellant accepts that there is no principle that every sentence must be backdated to the date that a person went into custody, although that is what happens usually, and with good reason.

**17.** In the present case there was an interchange between counsel for the appellant and the trial judge about the question of the sentence he was serving. The judge said: -

*"So basically the sentence, he went into custody on this matter and probably other matters on that date so, the sentence, [meaning the sentence he was serving] has been backdated to that date."*

The sentencing judge later said -

*"Basically, he's been in custody in relation to sentences from the date he went into custody."*

Those observations were correct.

**18.** We are satisfied that this was a factor that was at the forefront of the judge's mind in this case when he sentenced the appellant. We are satisfied that this is why, in his sentencing remarks, he made express reference to the sentence being to date *"from today's date"*. It was a factor of which the judge was aware and as had been indicated he took into account in his global sentence. It is not insignificant that no further request for backdating the sentence was made by counsel after the sentence had been imposed.

**19.** Counsel at the trial, who was not counsel on the appeal was indicating by her silence in this particular case that she was aware that it was a factor that was considered by the trial judge. In all the circumstances we see no error in principle in this regard.

**20.** Counsel also submitted that there was a failure to deal with the fact that the appellant was a chronic drug user and had been so from an early age; and that this had to be seen against a background of his difficult childhood. It was also submitted that the sentencing judge failed to take into account the appellant's prospects for rehabilitation in light of his efforts since being incarcerated in February 2017. They were his detoxification and his efforts to obtain a residential course.

**21.** In particular, counsel submitted that the trial judge referred to his history of drug addiction in negative fashion but failed to address how he was dealing with it. The appellant in his submissions relied upon the case of *DPP v. Fitzgibbon* [2014] I.E.C.C.A. 12. In particular, he relied upon the following paragraph: -

*"However, that being said, a sentencing court is required to consider as part of the overall circumstances, whether a persistent problem with substance abuse, most particularly if it could be said to stem from a particularly difficult upbringing, can amount to a factor which can weigh significantly in an appropriate sentencing process on the facts in a particular case. This will be so as Geoghegan J. pointed out, especially if there are attempts at rehabilitation or in the view of this court where the accused was particularly young at the time of the offence and where there may be a realistic prospect of rehabilitation in the future."*

**22.** Counsel also referred to *The People (DPP) v. Hall* [2016] I.E.C.A. 11 where it was indicated that the sentencing judge ought to

have given greater consideration to the prospect of rehabilitation in the interests, not only of the appellant himself, but of society generally. At the time of sentencing the appellant presented as an individual who had had a serious drug addiction problem to the point where it may have played a role in the commission of this crime. Counsel for the respondent on the other hand submitted that although the reference to the appellant's addiction history was somewhat terse, it was clear that it was a factor that was taken into account.

**23.** The trial judge clearly referenced the respondent's background and drug use. Over the course of two probation reports, being October 2017 and December 2017 it was clear that the probation service was of the view that he had not demonstrated his motivation and commitment to changing his lifestyle in a custodial or community setting. They could not recommend him for further intervention.

**24.** In the view of the Court no error in principle has been demonstrated. Rehabilitation is an important aspect of sentencing, both from the perspective of the public and the particular defendant. During the course of the hearing it was clear that the trial judge had paid attention to the probation report which had very little positive to say about the prospects of rehabilitation for the reasons set out therein. It is not the case that every entrenched addicted defendant must be given at least a part-suspended sentence to aid in some theoretical rehabilitation.

**25.** The unfortunate reality was that at the time of sentencing there was very little to show that the appellant was engaging in a realistic way on the path towards rehabilitation. He was clearly expressing intention but the real steps had not been demonstrated.

**26.** Although as stated above, it may have been better if the trial judge had expressly stated the headline sentence and how much mitigation he was giving in respect of each relevant matter, we are satisfied that the global sentence imposed for these offences was not in any way excessive. Indeed, we are of the view that in light of the seriousness of the final robbery in particular, the appellant received a total, or global sentence, that was at the lower end of the sentencing range in light of all the circumstances.

**27.** We therefore dismiss this appeal.