



THE COURT OF APPEAL

[216 CJA/17]

Birmingham P.

Mahon J.

Edwards J.

IN THE MATTER OF SECTION 2 OF THE CRIMINAL JUSTICE ACT 199
THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

v.

F.B.

APPELLANT

JUDGMENT(Ex tempore) of the Court delivered on the 1st day of June 2018 by Birmingham P.

1. This is an application brought by the DPP pursuant to s. 2 of the Criminal Justice Act. The sentences sought to be reviewed were sentences of three years imprisonment, which were suspended for a period of three years, that were imposed in the Cork Circuit Criminal Court on 28th July 2017. On that occasion, the appellant had entered pleas of guilty to a count of threatening to kill and to a count of s. 3 assault.

3. The background to the matter relates to very serious incidents of domestic violence which occurred at a location in rural County Cork on 1st October 2012, and again on 4th October 2015, that is almost three years to the day later. Both incidents took place in the family home. The injured party, in relation to the assault charge, was MB, the wife of the then accused, now appellant, and she was the mother of four children.

4. At the sentence hearing, there were victim impact reports from MB and also from KB, the eldest daughter. While those reports tended to stray somewhat beyond the matters that were the subject matter of the charges with which the Court was dealing, it has to be said that they make very sad and distressing reading indeed.

5. Turning then to the appellant and his personal circumstances. He was born in March 1974. He had a contracting business which involved cutting hedges and also had a farm. It seems that his wife, MB, was the person who was mainly involved in running the farm. The sentencing court heard that FB had long-standing mental health issues. He was seeing a particular counsellor over an extended period. MB, the injured party, reported that when he was seeing the counsellor and when he was taking medication that things were brighter and things went quite well. However when that did not happen, when that would stop, then he was a very different person indeed.

6. It seems that after the events of October 2015 and after a period of hospitalisation of some five weeks or thereabouts as an involuntary patient, that there was an improvement in FB's behaviour and that saw him return to the family home for a period. However, early in 2016, there was a further deterioration and the relationship broke down at that stage.

7. In terms of the court proceedings, the DPP directed a prosecution in the District Court, but the judge of the District Court declined jurisdiction. The sentencing court heard that strict bail conditions had been imposed, and had been observed, and that he was seeking and receiving treatment.

8. At the sentence hearing, counsel on behalf of the then accused urged the judge to mark the seriousness of the matter by imposing a sentence, but then suspending it in its entirety. He said that this was a very sad family situation, but that it was obvious that FB's own mental health difficulties were at the root of it and that he had been addressing those in every way that he had been asked to. Emphasis was laid on the fact that during the more than a year and a half since he had been subjected to bail conditions, that there had been no difficulties.

9. In the course of the sentencing remarks, the judge commented that he was a little concerned that there seemed to be a lack of insight into the real difficulty and that there needed to be further explanation as to why such very alarming and spontaneous outbursts of anger had occurred. He took the view that there was a history of domestic violence, but that it was unlikely that FB would be in a position to ever behave in the manner in which he had in the past because the family unit had completely broken down. He then identified a headline sentence of five years imprisonment, discounted one year from that by reason of the fact that there were no relevant previous convictions and discounted a further year in respect of the early plea. The judge was satisfied that the appropriate sentence was a period of imprisonment for three years suspended for a period of three years on condition that the accused maintain contact with the mental health services for the currency of the suspension. He concluded his remarks by saying that he hoped that the whole family could get on with their lives and that bridges could be mended however that would happen.

10. At this stage, the jurisprudence surrounding applications to review on grounds of undue leniency are well-established and are not in dispute. In truth, those principles have been clear since the first such case, that of *The People (DPP) v. Byrne* all those years ago.

They have been restated on many occasions by this Court and it is not necessary to do so today.

11. In moving the application, counsel for the DPP made clear that she was not taking any issue with the three years per se. Rather, her complaint was that three years, suspended in its entirety, was unduly lenient. It appears implicit in that that she would not necessarily have quarrelled with a part-suspension.

12. The Court recalls that the DPP directed for summary disposal which would have capped the available sentencing options at an effective two years, but as we have seen, the judge in the District Court, perhaps not surprisingly, declined jurisdiction.

13. These offences were very serious. The offence of October 2012 was a serious and nasty assault. However, the offence of October 2015 was a truly awful offence. FB's actions must have terrified his family members. The Court believes that the latter offence so serious that it could only have been dealt with by serving a custodial sentence. Insofar as the judge felt that the case could be dealt with in another way, in our view, he was in error. The Court considers that a sentence of three years imprisonment with the final twelve months suspended would not have been an inappropriate one for the judge to hand down.

14. This Court is required to re-sentence as of today's date. In that regard, we take into account that we have been provided with some information about events that have occurred since then. The Court is also very conscious of the fact that time has moved on and that the decision we have made means that we are incarcerating someone who felt that they had escaped a sentence of imprisonment to be served.

15. In those circumstances, the Court will impose, not the sentence of three years imprisonment with one year suspended that we feel would have been an appropriate sentence to have been imposed in the Circuit Court, but rather, in respect of the October 2015 offence, impose a sentence of three years imprisonment, but with the final eighteen months of the sentence to be suspended.

16. The Court will also restructure the sentence insofar as it will provide for a 12-month concurrent sentence in respect of the s. 3 assault.

17. The sentence, therefore, is three years imprisonment with 18 months suspended and we will set aside the order of the Circuit Court. The said sentence dates from today. FB should enter into a bond in respect of the portion of the sentence that is being suspended.