



**THE COURT OF APPEAL**

**Sheehan J.  
Mahon J.  
Edwards J.  
307/15**

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

**Respondent**

**V**

**Mark Carlyle**

**Appellant**

**JUDGMENT of the Court (ex tempore) delivered on the 10th day of October 2016 by Mr. Justice Sheehan**

1. This is an appeal against severity of sentence.
2. The appellant pleaded guilty to one count of violent disorder contrary to s. 15 of the Criminal Justice (Public Order) Act 1994 and was sentenced to five years imprisonment with the final eighteen months of that sentence suspended on terms.
3. The offence occurred outside the entrance to a nightclub on Harcourt Street, on the 23rd September, 2014, in the course of which the appellant initiated a violent altercation with security staff pulling one member away from his colleagues and punching him eight or nine times in the face and head and also throwing a crowd control barrier at security staff. The appellant was restrained in a relatively short space of time by security staff including those from other premises nearby. The charge of violent disorder was preferred against him one year later.
4. The appellant and his co-accused had been attending the funeral of a close family friend on the day in question and it was accepted by the prosecuting garda that the appellant was intoxicated at the time of the offence.
5. The appellant is 26 years old and has 98 previous convictions. These were broken down as follows: 53 convictions under the Road Traffic Act, 31 convictions in respect of public order offences, 3 convictions under the Control of Animals Act, including two for allowing a horse to cause harm, 1 previous conviction for assault on a peace officer and 2 previous convictions for violent disorder, and a conviction for threats to kill. Five of the appellant's previous convictions were in the Circuit Court, 2 of which were in relation to violent disorder and at the time of the commission of the present offence the appellant was subject to a suspended sentence imposed by the Circuit Court in respect of another violent disorder offence.
6. In the course of her sentencing remarks, the learned trial judge noted that Mr. Carlyle was to the forefront of a number of people who had engaged in serious acts of violence towards members of the security staff because they had been refused entry to a particular nightclub. She noted that Mr. Clarke in particular had borne the brunt of the attack and that he had received a number of punches to the head and also that at one stage Mr. Carlyle had lifted a security barrier and thrown it. The Circuit Court judge found that this posed a serious risk to those in the immediate environs. The Circuit Court judge also stated that the case was aggravated by the fact that at the time, Mr. Carlyle was subject to a suspended sentence and that that was a matter which the sentencing court had to have regard. She noted that Mr. Carlyle had been attending a funeral on the day in question and she also noted his previous convictions and stated as follows:-

"Many of the previous convictions involve offences of public order. There are previous convictions also for violent disorder in relation to which you have already received prison sentences which appear to have had little or no effect on you. On the positive side of the scale you entered a very early plea in the matter following your charging with the offence in September of this year and you have met the case very fairly. I note that you have family support and you have the support of your girlfriend and she is present here. I note that you have apologised for your conduct and that it would appear that you have been putting the time that you have spent in prison so far to good use. The very troubling features of the evidence I have heard is that there seems to be an established pattern of violent behaviour in the form of threats and violence itself which appears thus far to have been unaddressed, and in constructing the sentence which I propose to impose, I am taking into account the very serious nature of the offence together with your previous convictions and the fact that you were on a suspended sentence and balancing those factors with all of the matters which have been urged on your behalf including the early plea and the manner in which you met the case. I will incorporate light at the end of the tunnel for you in the hope that you will address some of the issues that are leading you to engage in this kind of behaviour. So I will impose a sentence of five years imprisonment, but will suspend the final eighteen months on you entering into a bond to keep the peace and be of good behaviour for a period of five years from today's date and that you engage with the Probation Service for the entire period of the eighteen months and specifically that you address issues relating to anger management and alcohol abuse."
7. Counsel on behalf of the appellant submits that the learned sentencing judge erred in principle by placing the headline sentence at five years imprisonment in circumstances where there was an absence of aggravating features which he contended are often present in cases of violent disorder. In particular counsel pointed out that this offence had arisen spontaneously and also that there were no weapons used by any of the parties.
8. The appellant further contends that the sentence imposed is excessive given that the injured party received minor injuries and returned to work immediately. Counsel also maintained that it was relevant that it had taken a year before the charge of violent disorder was preferred against his client. He pointed out that his co-accused who had assaulted the injured party in much the same fashion as his client had done received a sentence that was significantly lighter than the one imposed on the appellant namely, three years imprisonment with the final twelve months suspended.
9. Counsel for the respondent pointed out that the co-accused Mr. Rice had only eleven convictions recorded against him, that these had all be dealt with in the District Court and none of the convictions recorded against him were for violent disorder. He also pointed

out that Mr. Rice was not subject to a suspended sentence when he committed the offence as was the case with the appellant.

10. There were therefore significant differences in respect of both accused. The learned trial judge took great care in her approach to sentencing in this case. While she imposed on the appellant a substantial sentence she was nevertheless justified in so doing especially in view of her finding that Mr. Carlyle was to the forefront of the attack on the security people that night. It was also relevant to this case that Mr. Carlyle was subject at the time to a suspended sentence for violent disorder. We find no error in the trial judge's approach to sentence nor do we find any error in the sentence that was actually imposed and accordingly we dismiss the appeal.