



THE COURT OF APPEAL

CRIMINAL

UNAPPROVED

Neutral Citation Number: [2024] IECA 101

Appeal Number: CCACJ0217/2023

Bill Number: DUDP0090/2023

Birmingham P.

McCarthy J.

Ní Raifeartaigh J.

BETWEEN/

THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC
PROSECUTIONS

APPELLANT

-AND-

CAMERON CURTIS

RESPONDENT

JUDGMENT of the Court delivered on the 23rd day of April 2024 by Ms. Justice Ní

Raifeartaigh

1. This is an appeal brought by the Director of Public Prosecutions on the ground that the sentence imposed on the Respondent was unduly lenient within the meaning of s.2 of the Criminal Justice Act 1993. It involves what is now frequently referred to as “intimate partner violence”.
2. The respondent had pleaded guilty to a number of individual counts of assault causing harm contrary to s.3 of the Non-Fatal Offences Against the Person Act 1997, and a count of false imprisonment contrary to s.15 of the same act. The sentences imposed were concurrent sentences of two years and six months, with the final 12 months suspended subject to conditions. The sentences imposed were backdated to the 19th of September 2022 when the respondent was in custody in relation to these offences.

Evidence in the Sentencing Court

3. Evidence was heard by the Circuit Court Judge on the 24th of May 2023. The offences related to four different dates from the 19th of July 2022 to the 16th of August 2022, a period of approximately four weeks.
4. Both of the parties were young adults. The respondent was aged nineteen at the time, and the injured party, his partner, aged twenty.
5. The respondent entered an early plea to one of the s.3 assault counts on the indictment and entered a plea to other counts on the date of the sentence hearing. The other offences on the indictment were taken into consideration (these included a threat to kill, production of a knife, and criminal damage - to an iPhone belonging to the injured party and to a doorframe of a premises the respondent and injured party were in at the time)) on a “full facts” basis.
6. The respondent had no previous convictions.

The first incident, 19th July 2022

7. The first incident (count 1 on the indictment, a s.3 assault) took place at the Royal Marine Hotel in Dún Laoghaire, County Dublin, on the 19th July 2022 when the respondent and the injured party were staying in one of the hotel rooms. The respondent accused the injured party of cheating on him before threatening her with a glass bottle. He then kicked her in the face and temple ten or eleven times. He struck her with his fist while screaming at her. Gardaí were called by the hotel staff. At the time, the injured party would not proceed with a complaint although she did attend hospital with the accused and was given anti-inflammatory medication.

Events on the 12th-13th August 2022

8. The second incident (count 2 on the indictment) took place on the 12th of August 2022 and related to events that took place at the Binary Hub on Bonham Street, Dublin 8. The premises were registered to the injured party's sister but the injured party and the respondent had been staying there. The respondent on this date took exception to the injured party not providing him with the password to her Snapchat account and he slapped her. The injured party then fell asleep for a while before she woke to the respondent grabbing her by the neck and again demanding her Snapchat password. The respondent then assaulted the injured party for five minutes by kicking both of her legs, punching her on the side of the head and jaw before slapping her again, punching her on the back and spitting on her face. The respondent accused her of cheating on him and punched her to the right side of the face.

9. Counts 5 and 6 on the indictment related to assaults which took place on the following morning, the 13th of August 2022, at the same location, the Binary Hub. The respondent apologised to the injured party for the injuries he had caused the previous day but then

became violent again and punched her on the left side of her face and pulled her by her hair around the bathroom. She began to bleed heavily at this stage as a result of the punch. There was then a 'period of normality' for a few hours before the respondent again attacked the injured party and kneeled on her chest for five minutes. He told her he would kill her and he dragged the injured party around the room by her hair.

10. He then grabbed the injured party around the neck and brought her into the bathroom, before throwing her on the bathroom floor and proceeding to lock her in the bathroom for a period of 45 minutes. The respondent stated that he would not let the injured party out of the bathroom unless she gave him passwords for her Snapchat account.

11. He proceeded to take a knife from the kitchen and threatened the injured party with it when he released her from the bathroom. After a 30 minute 'period of normality', the respondent threw the injured party's phone at her, hitting her in the head, kicked her in the legs and spat at her. This assault lasted for approximately 25 minutes and the injured party confirmed that she was in throbbing pain as a result of the assault.

12. The respondent then put the injured party in a chokehold, saying that she had been unfaithful to him with two other males, before grabbing her by the hair and pulling her to the ground. He crouched over her while he assaulted her further and again spat in her face. At this stage the injured part was asking the respondent to stop hurting her and he stopped and began crying.

13. After 45 minutes, the respondent became violent towards the injured party again and wrapped his arms around her neck and dragged her into the bathroom. He threatened her that he was getting a scissors and the injured party confirmed to Gardaí that she believed that she was going to die at this point. She managed to get out of the bathroom before locking herself in the bedroom and the respondent tried to break down the bedroom door. The injured

party managed to go to a communal area to raise the alarm and Gardaí arrived and the injured party was treated for her injuries before returning to her family home. Photographs of the injured parties' injuries were handed up to the sentencing judge and have been seen by this Court.

Events on the 16th August 2022

14. The last date of offending is the 16th of August 2022, again at the Binary Hub (counts 10, 11, 12, 13, 14). The respondent came to the room after he had been messaging the injured party. He went through the injured party's mobile phone before becoming violent and demanding her password to her Snapchat account. At this stage both the respondent and the injured party were in the kitchen and the respondent punched the injured party twice in quick succession on the right side of the cheek and kicked her six or seven times to the left thigh. The injured party was crying and begging the respondent to stop. She said the assault lasted three minutes and that she was screaming for her sister to come into the kitchen.

15. The injured party's sister stepped in to stop the incident but the respondent again attacked the injured party by strangling her by grabbing her by the neck with his hand and squeezing her throat. The respondent then punched the injured party four or five times in the back of the head after the injured party confirmed that she was going to ring 999.

16. There was a further assault in the courtyard of the complex when the respondent squeezed the injured party's throat and the injured party later told the Gardaí that she felt pain, could not breathe and felt like she was going to get sick. The injured party was then able to contact Gardaí after telling the respondent that she was going to do laundry in the laundry room.

17. Gardaí attended at the scene and the respondent was arrested and conveyed to Kilmainham Garda Station. Photographs of the injuries suffered by the injured party in respect of the series of assaults were shown to the sentencing court and have been seen by this Court.

Material before the sentencing judge

18. A victim impact report and a psychological report were before the sentencing court. The injured party expressed the view in her victim impact report that she had not been damaged by the incidents and her comments were supportive of the respondent.

19. The psychological report indicated that the respondent had grown up in very adverse circumstances, with violence in the home on the part of his father, addiction problems on the part of both his parents, and mental health difficulties on the part of his mother, with the result that he had been taken into care at the age of ten. It also indicated that his intellectual functioning was at a low level, that he had little education, and had a history of addiction and self-harming. It indicated that he had considerable problems in terms of emotional regulation. It considered that he was at “moderate” risk of re-offending. It also indicated that the couple had a baby two days before the assessment who had died shortly after birth.

20. The respondent had no previous convictions.

21. Sentence was adjourned to facilitate the preparation of a probation report and this was available on the adjourned date of 13th July 2023 when the sentence was imposed. The probation report considered the Respondent to be in the “high risk” category but also considered that the service could work with him and made certain recommendations in the event of a suspension of sentence.

22. In mitigation, counsel for the Respondent relied upon his early guilty pleas which were of particular assistance in this case given the attitude of the injured party, his (limited) admissions to the Gardaí, the absence of previous convictions, his young age, the adverse circumstances of his upbringing as detailed in the psychological and probation reports, his addictions, his low intellectual functioning (again as set out in the psychological report), and his young age.

Remarks of the sentencing judge

23. The judge's sentencing remarks on the 13th July 2023 were as follows:

“The aggravating factors in this case is that a series of repeated assaults upon his intimate partner on four separate dates over a period of four weeks, July into August of 2022, which were escalating in their nature and intensity, and by that I mean that he was coming into chokeholds and choking and having not been able to breathe, as well as the physical damage. He pleaded to eight counts of section 3 assault and a count of false imprisonment, and the Court, notwithstanding the contents of the victim impact report, has seen the damage to the injured party. So, these are inherently serious matters. They are the aggravating factors in relation to it.

In mitigation, he did make some admissions regarding the offending on the 16th of August 2022. He comes before the Court with no previous convictions, the Court is informed. He pleaded guilty in early course in relation to these matters. He was aged 19 at the time. He did have a very difficult childhood, objectively speaking, was exposed to all sorts of things that were such that he was taken into care at a young age. The Court notes the diagnosis of ADHD and drug

issues that appear to be there on his own account from a very young age. So -- and the Court notes all of the personal circumstances as previously outlined in relation to this.

But these were serious and sustained assaults by a young man on his equally young partner. They happened over the course of four separate days over this period of a month, and they caused her injury. There was an escalation in terms of the violence that was being meted out to her, to this injured party, and, notwithstanding her forgiving attitude towards him, this Court is of the view that the threshold for a custodial sentence has been met. Now, this man grew up with significant adversity, but he has been visiting upon his partner that which he witnessed in his young life. There are eight counts of assault and one count of false imprisonment that this Court is sentencing him in respect of, and I have to take into account the other counts, which are on the indictment and already specified.

In relation to counts 1, 2, 5, 6, 10, 12, 13 and 14, the maximum custodial sentence is five years. In respect of count 11 the maximum penalty is life imprisonment. This Court is of the view, in light of the -- the amount of matters he pleaded guilty to, being eight counts of section 3 assault, concurrent sentences of three years and four months are warranted in respect of all of the assaults, and in respect of the -- sorry, a headline sentence, I should say, of three years and four months are warranted in respect of the assaults and also in respect of the false imprisonment. However, in light of his personal and mitigating circumstances, this Court will impose concurrent sentences on counts

1, 2, 5, 6, 10, 11, 12, 13 and 14 of two years and six months in respect of those matters.

Now, having regard to the principles of punishment, deterrence, and rehabilitation, and given that the Probation Service feel that they can work with him, and they have said that; I will suspend the final 12 months of those concurrent sentences on the following terms. In the first instance, that he enter into a bond in his own -- his own bond in the sum of €100 that he keeps the peace and be of good behaviour for a period of two years from the date of his release, and further that he will submit to probation supervision for two years from the date of his release in the following terms, and these are as per the probation report. Firstly, that he engage and complete any Probation Service offence or offence-focused programme of work. Secondly, that he cooperate with any recommended referral to a therapeutic programme to address intimate partner violence such as the men overcoming violent emotions, MOVE, or men ending domestic violence, MEND, programmes, or any other recommended anger management and offence focused intervention, and complete such programmes if deemed suitable. He should also reside at an address agreed with the Probation Service. He should inform the Probation Service of any change to his contact details and attend all appointments offered by the Probation Service. He should disclose to the Probation Service any intimate partner relationship and cooperate with any recommended safeguarding measure. He should not obstruct any multiagency collaboration regarding victim safeguarding measures. He should cooperate with any Probation Service recommended addiction related intervention, including required treatment, counselling, and urinalysis, and he should cooperate with any Probation Service recommended

support to address his vocational development needs with liberty to re-enter to the Probation Service in the event of default in relation to this.

Now, furthermore, he has been in custody for a period of time in relation to this. The Court has been informed that he was originally remanded in custody, that he then had bail for a brief period of four weeks or approximately thereabout. So what the Court is going to do is the Court notes that he was remanded in custody originally on the -- I think it was the 19th of August 2022, and he had a brief period where he was at liberty, so what I will do is I will backdate those concurrent sentences of two years and six months with the final 12 months suspended to commence on the 19th of September 2022, to take account of the period of time that he has been in custody in relation to those matters. And, as I say, I take the balance of the counts into consideration."

24. The conditions of the suspended part of the sentence were therefore as follows:-

- Engage and complete any Probation Service offence or offending-focused programme of work.
- Co-operate with any recommended referral to a therapeutic programme to address intimate partner violence such as the Men Overcoming Violent Emotions, MOVE, or Men Ending Domestic Violence, MEND, programmes, or any other recommended anger management and offence focused intervention, and complete such programmes if deemed suitable.
- Reside at an address agreed with the Probation Service. He should inform the Probation Service of any change to his contact details and attend all appointments offered by the Probation Service.

- Disclose to the Probation Service any intimate partner relationship and cooperate with any recommended safeguarding measure.
- Not obstruct any multiagency collaboration regarding victim safeguarding measures.
- Co-operate with any Probation Service-recommended addiction- related- intervention, including required treatment, counselling, and urinalysis, and co-operate with any Probation Service-recommended support to address his vocational development needs, with liberty to re-enter to the Probation Service in the event of default in relation to this.

25. The Respondent was released from prison on the 3rd November 2023. Meanwhile the Director’s application had been lodged with this Court and the undue leniency appeal came on for hearing on the 18th January 2024.

Submissions on Appeal

The Director of Public Prosecutions

26. The Director submits that the headline sentence (3 year and 4-months) chosen by the sentencing judge in the instant case was unduly lenient and that, having regard to the facts and the recent caselaw of this Court, the sentencing court would not have been incorrect in choosing the maximum five-year sentence as a headline sentence in respect of each the section 3 assaults, with a higher headline sentence in respect of the false imprisonment count. The Director draws attention to the considerable violence perpetrated by the respondent on the injured party, the prolonged length of the assaults, the fact the violence was committed during the course of an intimate partner relationship and the injuries caused to the injured party. In particular, the Director points out that strangulation was a prominent feature of the

offences which were inflicted upon the injured party across several days of offending. On the 12th and 13th of August 2022, the injured party faced multiple instances of being placed in a type of chokehold, once waking to the accused grabbing her by the throat and a separate incident of having her chest knelt on by the accused for a period of 15 minutes, all whilst facing threats to her life and further instances of choking. Again, on the 16th of August 2022, the injured party was subjected to two further instances of strangulation during serious assaults which again occurred at the Binary Hub. The Director submits that although the sentencing judge did refer to this, she did not give sufficient weight to this seriously aggravating factor.

27. The Director submits that the sentencing judge did not place sufficient weight on the fact that there was also a false imprisonment count.

28. The Director also submits that the sentencing judge did not place sufficient weight on the view expressed in the probation report that the Respondent is at high risk of reoffending:-

“Mr. Curtis has a HIGH risk of re-offending in his intimate relationships, with identified areas of concern including: The serious nature of the index offence, recidivism of domestic violence behaviour, use of intimidation, use of threats, use of physical violence, use of weapons, the chronic nature of intimate partner violence and the role of substance misuse in his offending.”

The report also said:-

“It is determined this case requires a high-level prioritisation to manage the high level of serious physical harm that Mr. Curtis poses in his intimate partner relationships. Mr. Curtis remains in (a) relationship with the victim of the offence and they’re in contact limited to phone contact with her from the prison

setting. As such, the imminence of such harm has been currently assessed as moderate, however on release from prison the imminence of said concerns will increase to high”

29. The Director refers to *The People (DPP) v Jake Boles* [2023] IECA 211 and *R. v. Campbell* [2020] NICA 25. which was cited with approval in *Boles* with regard to the seriously aggravating nature of strangulation in the context of s.3 assaults. She also refers to *DPP v Maguire* [2018] IECA 71, *The People (DPP) v Kane* [2023] IECA 86, *DPP v Sidney Sutton* [2020] IECA 280.

30. The Director takes no issue with regard to the mitigating factors which were taken into account and accepts that they warranted an appropriate reduction, but submits that the sentencing judge discounted the sentence too much in all of the circumstances. The Director refers to the principle of deterrence and submits that what was a carceral sentence of 18 months was unduly lenient in all of the circumstances.

The respondent

31. The Respondent submits that the remarks of the sentencing judge make it clear that she was fully cognizant of the aggravating features in the case.

32. The Respondent submits that while the probation report indicated that they considered him at high risk of re-offending, they did consider that they could work with the Respondent and that this was explicitly referred to by the sentencing judge. He draws attention to the following passage towards the end of the probation report:

“It is determined that the most appropriate intervention to address these concerns is through one-to-one intervention to specifically address intimate partner harm. Consideration to group work intervention may be warranted following further engagement with Mr Curtis.”

The report went on recommend a period of two years' Probation Service supervision with conditions.

33. The Respondent notes the Director's submission that because the Respondent's sentence was backdated, he had little if any further time to serve in custody and submits that the court should not impose a longer sentence due to the fact that the Respondent had been on remand prior to his sentence being imposed as this would be inherently unfair. He submits that the Respondent was entitled to have his sentence backdated to give him credit for the time he had spent in custody in relation to this prosecution.

34. The Respondent seeks to distinguish *Boles* by reason of a number of factors: (i) that the offender was an adult (aged 20) and the injured party, at the beginning of the relationship, a minor of 17 years of age, whereas in this case the injured party was 20 years old, a year older than the Respondent; (ii) The offending in *Boles* took place over a protracted period of time from mid-September 2017 to mid-April 2019, unlike the current case which occurred over a 4-week period; (iii) the accused in *Boles* was also charged with and pleaded to coercive control of the complaint; and (iv) The victim impact statement in *Boles* indicated that the victim had suffered severe after-effects, including anxiety, depression, and PTSD. The Respondent points out that Mr. Boles received a net sentence of 3 years imprisonment on each count with the final 2 years thereof suspended and therefore actually received a shorter carceral period than the Respondent in the present case.

35. The Respondent submits that the facts of *Maguire* are entirely different from the present case respondent in that Mr. Maguire as 29 years of age at the time of offending, had previous convictions, and the injured party, his former partner, was severely traumatized as a result of her treatment at the hands of the respondent and indicated in her victim impact statement that her nine-year-old son had also been impacted as he witnessed the offending.

He also submits that court in Maguire also dealt with an offence of kidnapping so that there were global sentences in relation to the assault and kidnapping.

36. The Respondent seeks to distinguish *Kane* on the basis that the detail set out by the Court of Appeal in paragraphs 5 to 11 of its judgment portrayed a history of extreme violence over a period of 20 months which included stamping on the complainant's head, cutting her face with a pizza slicer, burning with cigarettes, strangulation, fracture to the arm and injuries which required the injured party receiving staples to her head. These injuries were caused where there was a background of coercive control (of which the accused was also convicted).

37. The Respondent seeks to distinguish *Sidney* on the basis that a knife was used to cause harm to the injured party, and that he was convicted after a trial where there was a unanimous verdict by the jury and he did not accept that verdict.

38. The Respondent submits that the fact that he received a custodial sentence was a matter of some importance given his age, lack of previous convictions and the fact that he had never been in custody before.

39. The Respondent submits that the sentencing judge acted within her range of discretion in structuring the overall sentence as she did, having regard to the principle of totality and the importance of rehabilitation, and that there was no error such as to bring the sentence into the territory of "undue leniency".

Hearings before this Court

40. This Court heard submissions in the appeal on the 18th January 2024. After hearing counsel on both sides, the Court indicated that the sentence was unduly lenient. However, instead of proceeding to resentence the respondent on that date, the Court ordered an updated probation report and relisted the matter for re-sentencing on the 1st March, indicating to

counsel that the respondent's position was precarious and that he needed to put his best foot forward.

41. The respondent failed to appear for the re-sentencing hearing on 1st March 2024. After discussion with counsel and information obtained from Gardaí, the Court issued a bench warrant.

42. The respondent was present before the Court on the 5th March 2024. Detective Garda Costello gave evidence of the execution of the warrant. Counsel for the respondent urged the same matters in mitigation that were urged at the original sentencing hearing, further noting that he had no new convictions and that the respondent had shown he can work within a support structure to rehabilitate. The Court was shown two emails from the injured party expressing support and sympathy for the respondent. There was an updated probation report before the Court, and the probation officer who had been working with the respondent since his release from custody, Ms Kinsella, also gave evidence as to his engagement with the service. Her evidence was that after one missed appointment just after his release from custody and warning letters being sent, the respondent made contact with the service and was very consistent in his attendance at appointments, which was almost weekly. She said that the respondent was attending with the MOVE programme and with drug treatment services. She said that overall his attendance was very good 'except for the very beginning and end'. She said that the respondent had made a lot of efforts and tried very hard, and she indicated that she would be willing to continue to work with him. The Court decided to adjourn the matter to the 23rd April. The respondent was to be under the continued supervision of the probation service while the matter was adjourned, and he was to reside between two specified addresses during the period.

43. On the 23rd April 2024, there was a further probation report before the Court. This report indicated that the respondent had been largely compliant with the conditions of post

release supervision. He was attending with appointments with the probation service, was engaging with MOVE, and was engaging reasonably well with drug counselling at Finglas Addiction Support Team (FAST) and had recently commenced submitting for urinalysis screens. He was residing at his mother's address and occasionally availing of the offer of accommodation at the other address which had been specified by the Court on the 5th March. There was a letter from MOVE appended to the report indicating that the respondent had completed initial assessment and group preparation and was deemed suitable to progress to the group work stage of the programme. The Court was also given a letter from the appellant in which he took full responsibility for his offending behaviour and said that he is making sure to do these courses (MOVE) because he wants to break a 'horrible cycle' of violence within his family.

44. It appears that the respondent has at times been seized by a degree of panic at the thought of being returned to prison and that this has provided a partial explanation of his lack of engagement at times (and failure to appear in this Court on one occasion).

The Court's Decision

45. As previously announced by the Court, we are of the view that the original sentence was unduly lenient. The offences as described above were very serious and we would have considered a headline sentence of five years as a more appropriate starting point. In resentencing the appellant, however, we note the considerable progress he has made in recent months, and we note also that he was released in November 2023 (some six months ago), having served the sentence imposed upon him at first instance, and that he remains involved in post-release supervision. We note the Garda view that there have been no further incidents involving the injured party. We also note the letter from the respondent which was well written and indicates quite a degree of insight and commitment to reform. In the

circumstances, we have decided to increase the sentence to one of **four years** (observing that a headline sentence of five years would have been a more appropriate starting point) to mark the seriousness of the offence; but we have decided to give credit for the period already spent by the respondent in custody and to suspend the remaining part of today's sentence on conditions. The terms and conditions of the suspension are to be the same as those imposed by the sentencing judge. The period of suspension is until the expiry of the four-year period which is deemed to commence from the 19th September 2022 (the date to which the sentence had been backdated), that is to say the suspension will expire on the 19th September 2026.