THE COURT OF APPEAL

[110/18]

The President

Edwards J.

McGovern J.

BETWEEN

THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

AND

JASON COFFEY

APPELLANT

JUDGMENT (Ex tempore) of the Court delivered on the 21st day of January 2019 by Birmingham P.

1. This is an appeal against severity of sentence. The sentence under appeal is one that was imposed on 14th March 2018 in the Circuit Court in Tralee. The sentence in issue was one of two years and six months imprisonment that was backdated to 11th October 2017 that was imposed in respect of a robbery offence following a contested trial.

2. The background facts are that the appellant was, on 2nd October 2017 at about 7.20pm, urinating in a laneway in Killarney. Darkness had not fallen at the time. His actions were noted by the injured party who had a business in the area and who asked him not to do this and the response of the appellant was to say "fuck off, mind your own business". The injured party took out his phone with a view to taking a photograph of the individual wo was engaged in this misconduct and anti-social behaviour. At that stage, a beer can was thrown at the injured party by the seventeen-year old companion of the appellant. The companion was in fact the appellant's brother. The can struck the injured party. The appellant then attacked the injured party from behind and struck the phone from the hand of the injured party. In the course of the incident, the appellant knocked the injured party to the ground. The seventeen-year old produced a claw hammer, but the appellant said "come on, I have the phone" and they then left. The prosecution case at trial was laid on the basis of joint enterprise and the verdict of guilty returned by the jury indicated that they indeed accepted that this was a case of joint enterprise. After the incident, the appellant went to the Garda station and complained that intimate photographs had been taken of him: they had not. It is of note that the companion who was present, and it must be said was perhaps the prime mover in the incident, the appellant's seventeen-year old brother, was dealt with in the District Court as a juvenile while the appellant was dealt with in the Circuit Court where he contested the trial with the jury returning a verdict of not guilty.

3. At the sentence hearing, the Court learned that the appellant was born on 24th June 1990, he was aged twenty-seven years, he was in a relationship and was the father of three children. There was no real work history. Seventy-one previous convictions were recorded, of these fourteen were for theft, one for robbery, there was a suspended sentence still in force in respect of the robbery conviction when this offence was committed, and two were for assault causing harm and two for assault simpliciter. The Court heard that the appellant had significant alcohol-related difficulties.

4. In the course of the sentencing hearing, the Court heard that the incident had had a very significant effect indeed on the victim, a middle aged gentleman.

5. There were, in fact, two matters before the Circuit Court. There was the need to sentence in respect of the offence where a conviction had occurred and there also an application by the prosecution to have activated a suspended sentence from the earlier robbery conviction where the injured party was in fact the mother of the appellant. The Judge indicated at quite an early stage of the proceedings that he was not minded to activate the suspended sentence.

6. In the course of his sentencing remarks, the Judge indicated that he saw the offence as mid-range, but he expressed concerns about the fact that the appellant had made allegations about the injured party being a pervert, and had described him as such and as a paedophile because of his actions in producing a phone with a view to taking photographs of him at a time when the appellant was urinating.

7. In the course of the appeal, it has been contended that the sentence should have been at the low end of the lowest range for indictable robbery. It is also said that the reduction of six months from the headline sentence that had been indicated of three years was inadequate. An issue was also raised about the different treatment of the two participants involved, one dealt with in the District Court and the other dealt with on indictment who received a substantial custodial sentence. It is accepted that this was not and could never have been a case for complete parity, but it said that the extent of divergence is quite unjustified.

8. In the Court's view, the arguments in relation to parity are somewhat misconceived. There could never be any real equivalence of the situation of a seventeen-year old without previous convictions dealt with in the District Court on a plea and the position in which the appellant found himself as an adult with a significant record including a robbery conviction from the Circuit Court which had given rise to a part-suspended sentence which was in force at the time when this offence was committed.

9. In this Court's view, this was a serious offence. A public spirited individual, offended by anti-social behaviour, who sought to respond, was attacked and robbed. It is clear from the victim impact report that was read to the Court below that the incident impacted very severely indeed on the victim. Apart from the incident itself, which was a very frightening one for him, being described as a pervert and a paedophile and having those remarks put into the public arena was deeply distressing.

10. In the Court's view, in considering the extent to which the Judge's treatment of the matter could be regarded as severe or lenient, his actions in offering a concession to the injured party by declining to reactivate part of the suspended sentence is a matter that has to be weighed in the balance and taken into consideration. Particularly, if regard is had to that concession by the Judge, then, in the Court's view, the sentence that was imposed cannot be seen as being particularly severe, still less, as excessively severe.

11. In the Court's view, the sentence that was imposed fell within the available range. No error in principle has been identified.

12. The Court will dismiss the appeal.