



THE COURT OF APPEAL

**Finlay Geoghegan J.
Peart J.
Hogan J.**

265/13

The People at the Suit of the Director of Public Prosecutions

Respondent

V

Karl Harford

Appellant

Judgment of the Court (ex tempore) delivered on the 23rd day of February 2015, by Ms. Justice Finlay Geoghegan

1. On the 10th December, 2013, the appellant was sentenced by the trial judge to eight years with the last two years suspended. The sentence related to a single offence of possession of an explosive substance contrary to s. 4 of the Explosive Substances Act 1883. The appellant pleaded guilty to the offence on the 19th July, 2013. For the reasons stated in a judgment delivered on the 28th January, 2015, this Court allowed the appeal against severity of sentence and directed the preparation of a probation report and Governor's report and an education report and adjourned the sentencing to today's date.
2. The court has considered all three reports and heard submissions. It has also been told that the appellant had a further sentence imposed for an offence of violent disorder. That sentence is five years with the final two years and six months of the sentence suspended on a number of conditions, one of which is a period of supervision post release for eighteen months. That sentence is consecutive to the sentence to be imposed by this court.
3. The facts in relation to the commission of the offence by the appellant are fully set out in the judgment delivered on the 28th January, 2015 and it is not intended to repeat them now. As appears from that judgment, the appellant was found in possession of a viable incendiary device that was in a relatively small 500gm jar.
4. The applicant was born on 24th October 1991. The offence was committed on the 5th November, 2010, he had just turned nineteen at the time of the offence. Regrettably the appellant is a person who at the date of sentence for this offence in December 2013 had already amassed a remarkable number of convictions, 140 in total.
5. This Court is of the view that the offence committed by the appellant falls on the lower end of the mid range of gravity of such offences. The offence contrary to s. 4 of the 1883 Act carries a maximum sentence of fourteen years. Prior to taking into account mitigating factors, the court considers that a five year sentence would be the appropriate sentence. The appellant pleaded guilty and albeit that he was caught red handed in the sense of being found in possession of the device in question, he is entitled to some benefit by way of mitigation for his plea of guilty.
6. In assessing the factors in mitigation, the court must have regard to his very considerable prior criminal record. Notwithstanding the appellant was at the date of the commission of this offence a relatively young person with a troubled background. The probation report indicates that the appellant in the past abused illicit substances, including cannabis and cocaine and is considered to be at a high risk of re-offending in the next twelve months. He was transferred to Portlaoise Prison on the 23rd January, 2014. He has had five disciplinary reports, three for prohibited articles and two for assault.
7. The governor considers that while polite, he lacks motivation to address his offending behaviour. The probation officer identifies his lack of structured activity, his lack of education and employment and his previous abuse of illicit substance in contributing to his high risk of re-offending. She also identifies the appellant has had a problem with controlling his temper and that he acknowledges this now and it has had an impact on his life. This appears to be borne out by the disciplinary reports for assault while in prison apart from any prior convictions.
8. On the positive side, whilst in prison, the appellant is completing a FETAC qualification in business, he has been involved in prison dram classes and a production and is a present on the enhanced regime in prison, and he is attending the gym and has a painting job. The probation officer recommends post release supervision. That does not arise for this sentence by reason of the subsequent sentence pursuant to which he will remain in custody at the end of the custodial part of the sentence now being imposed by this Court.
9. His mother and sister live in the south side of the city in a socially economically deprived area. However he has had a good relationship with them and his father who lives in the north inner city. He also has a long term girlfriend, who visits once a week and his mother visits every couple of weeks and he has a form of family support.
10. This Court is sentencing the appellant as of today's date. Notwithstanding the disciplinary reports, the Governor's report, the educational report and probation report indicate that the appellant is now attempting to make some positive use of his time in custody towards rehabilitation.
11. The probation report identifies the need for the appellant to address his anger management issues whilst in custody. The court has decided that provided he does this and remains free of illicit substances, that having regard to his age, there is a prospect of rehabilitation and to provide an incentive, it will now suspend the last two years of the five year sentence upon his own bond of €200 and upon the following conditions.

1. That he keep the peace from this date and be of good behaviour for the balance of the five year sentence.
2. That from this date he remain free of all illicit substances for the balance of the five year sentence and
3. That he attends whilst in custody on this sentence, the alternative to violence course, levels 1 and 2 offered in the prison.

The five years sentence with the last two years suspended is to date from the date upon which the sentence imposed by the trial judge commenced, which is the 10th December, 2013.