



THE COURT OF APPEAL

Birmingham J.
Sheehan J.
Edwards J.

Record No.: 82CJA/14 DPP

IN THE MATTER OF SECTION 2 OF THE CRIMINAL JUSTICE ACT 1993

The People at the Suit of the Director of Public Prosecutions

Appellant

v

Warren Bowen

Respondent

Judgment (ex tempore) of the Court delivered on the 30th day of July, 2015 by Mr. Justice Edwards

1. In its judgment of the 1st of May 2015 this Court expressed the view that while it could readily appreciate how the sentencing judge could have justifiably treated this offender with considerable leniency having regard to all of the mitigating circumstances listed at paragraphs 39 to 44 of the judgment, there was nothing in his situation that constituted special reasons of a substantial nature and particularly exceptional circumstances such as would have justified a wholly suspended sentence.
2. In particular, the Court rejected the submission put forward by counsel for the respondent that special reasons and particularly exceptional circumstances were to be found in the fact that he engaged very positively with the Probation Service during the year long adjournment, and showed himself to be particularly amenable to rehabilitation. While the respondent was to be commended for his positive engagement, and progress towards rehabilitation, the Court did not consider that this, *per se*, was sufficiently exceptional.
3. The Court opined that the sentencing judge would certainly have been justified in promoting the objective of his continued rehabilitation by a partial suspension of the figure of four years that he had arrived at after making due allowance for mitigating factors, but he was not justified in the circumstances of this particular case in completely suspending the sentence. By doing so he had got the balance wrong in that he had in effect placed too much weight on the side of the scales representing the mitigating circumstances in the case, and in consequence he had fallen into error.
4. The respondent comes before the Court today for re-sentencing. This Court must sentence the respondent on the basis of the information before the Court as of today. In accordance with established *jurisprudence* the Court invited the parties to put before it any additional material that they might wish the Court to receive for the purpose of updating the Court as to how the respondent has got on since the matter was dealt with by the Circuit Court on the 27th of February 2014.
5. The Court was told that following the imposition of a suspended sentence on the respondent on that date, he had gone to England and had attempted to get on with his life. The appeal against severity came as a surprise to him having regard to the course that the proceedings in the Circuit Court had taken. While he had not initially engaged with the proceedings before this Court, and this had necessitated the issuing of a bench warrant by this Court, he had in recent times recognised that it was necessary for him to so engage and he had voluntarily and by prior arrangement made himself available to the Gardaí so that the warrant could be executed. This is very much to his credit, and is consistent with the insightful and remorseful attitude that he had earlier exhibited to the probation service and which they had recorded in their reports.
6. This Court has also been furnished today with a series of very positive testimonials from various customers who have employed the services of Mr Bowen as a carpenter, cabinet maker and theatrical set fabricator in the period since the matter was before the Circuit Court. These customers include a design company, Typhoon Services Ltd, a cabinet making firm, Richard Newenham Furniture Ltd, another cabinet maker, a Mr Paul King, a catering company Kandana Ltd, and a theatre company, Katah Events Ltd. These testify that the respondent is putting his undoubted skills to excellent use, and that he is hard working and industrious and is held in high regard by those for whom he has worked.
7. There is no indication whatever that the respondent has been in any trouble in the meantime.
8. The Court also notes that during the period of the suspended sentence the respondent has successfully re-established a relationship with his daughter, after a period of estrangement.
9. This Court has previously indicated that the headline sentence of seven years fixed upon by the sentencing judge as being appropriate to the seriousness of the offence, before taking into account mitigating circumstances, was unobjectionable. It has further indicated that discounting the headline figure to four years on account of mitigating circumstances was also an unobjectionable step in so far as it went. Arguably, however, an even greater discount would not have constituted an error of principle having regard to the extensive mitigating circumstances in the case, but rather than adopt that approach the sentencing judge opted instead to suspend the entire four years that he had arrived at after initially discounting by three years for mitigation and sought to justify this on the basis that it was with a view to incentivising continued rehabilitation. For the reasons already stated this Court felt that for the Circuit Judge to have adopted this approach was unjustified in the circumstances obtaining at that time.
10. In resentencing the respondent today this Court considers it appropriate to approach matters somewhat differently and to structure the sentence it intends to impose somewhat differently from how the Circuit Judge did so. This Court considers that a discount of five years from the headline sentence of seven years is justifiable having regard to the very substantial mitigating circumstances in this case. As of the date of sentencing in the Circuit Court a sentence of two years to be served would have been the minimum sentence that could have been considered.
11. What then remains to be considered is whether, as of today, the Court would be justified in suspending some or all of the

remaining balance of two years. While it was not the case that special reasons and particularly exceptional circumstances sufficient to justify a wholly suspended sentence existed in February 2014, when the matter was dealt with by the Circuit Court, we are now at a point some seventeen months further on, and that issue needs to be reconsidered.

12. It requires to be borne in mind that the sentencing judge adjourned the case for a year from February 2013 to February 2014 on the basis that the respondent would be placed under the supervision of the Probation and Welfare Service, and to see how he got on. He got on very well, and did not come to adverse notice. This led to him being rewarded with a wholly suspended sentence, albeit one that this Court felt was unjustified on the totality of the information and circumstances as presented in evidence before the Circuit Court. Understandably the respondent would have felt relieved and most likely believed that the matter was at an end. A further seventeen months has now passed. All the evidence suggests that he has continued to keep faith with the trust reposed in him by the sentencing judge in that he has stayed out of trouble, has not come to adverse notice of any sort, and has been living a worthwhile and industrious life.

13. In other undue leniency cases, such as DPP v Ryan [2015] IECA 2, this Court has acknowledged that where a respondent has been at liberty, admittedly subject to the terms on which the sentences were suspended and to the Director's application for review, there is additional disappointment at the end of an extra period of anxiety for a person who has survived more or less unscathed in one court sentencing process to find himself facing sentence following a successful prosecution appeal. Obviously, legal advisers will have informed an accused person of the possibility of a more severe sentence being imposed on appeal and the party is on notice as soon as the Director's application comes in within the short time frame permitted. Nevertheless, the stressful nature of that experience has been recognised as, perhaps, justifying some degree of additional leniency, particularly where a considerable period has elapsed since the date of sentence.

14. Considering all of the circumstances of the case as of today's date, including the additional consideration just mentioned, coupled with the appellant's continued good behaviour, the further positive testimonials, the positive probation reports that were relied on in the Circuit Court, and the undesirability of taking a step that might undermine the recently re-established relationship between the respondent and his daughter, the Court considers that cumulatively they are sufficient at this point to push this case across the line and to allow the Court to conclude that special reasons and exceptional circumstances now exist to justify wholly suspending the two year indicative sentence mentioned earlier.

15. Accordingly the court will so order, and the suspension is to be on an own bond of €100 to keep the peace and be of good behaviour for a period of two years from today's date.