



THE COURT OF APPEAL

Record Number: CCAOT0259/2024

**McCarthy J.
Kennedy J.
MacGrath J.**

BETWEEN/

THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT/

- AND -

Lee Hutchinson.

APPELLANT

**JUDGMENT of the Court delivered (ex tempore) on the 21st day of October 2024 by
Ms. Justice Isobel Kennedy.**

1. This is an appeal against sentence. On the 1st of November 2023, the appellant was sentenced to 6 years imprisonment with 1 year suspended on conditions in respect of each of the 3 counts of harassment contrary to s.10 of the Non-Fatal Offences Against the Person Act 1997. The sentences were imposed concurrently.
2. The appellant was returned for trial before Waterford Circuit Criminal Court on the 26th of November 2019, and pleaded guilty in respect of counts 1 to 3 on the indictment on the 13th of June 2023 following some discussion with the Director.

Factual Background

3. The background of the offending is that the appellant conducted a targeted campaign of harassment against three members of an Garda Síochána between the years of 2014 and 2018.
4. The campaign involved: a letter addressed to all three victims sent to Waterford Garda Station in August 2018, a letter written to Garda Fitzgerald's wife in September 2018, a letter written to the Board of Management of a local secondary school attended by a child

of Garda Keher which was brought to the attention of Gardaí in September 2018, a letter written to Garda Keher's wife and sent to her place of work in September 2016, a letter written to the Commissioner of An Garda Síochána in or around May 2014 copied to Dunmore East Garda Station and the District Superintendent, and telephone calls made to Dunmore East and Waterford Garda Stations since 2014.

Sentencing Remarks

5. The sentencing judge identified a number of "highly aggravating" factors in the case, including: the persistent nature of the harassment which was sustained over a number of years, the significant distress caused to the victims and their immediate families as evidenced by their victim impact statements, the highly defamatory allegations made, the high degree of maliciousness of the appellant's actions, the anonymous nature of the allegations, the fact that the appellant researched and identified aspects of the individual victim's lives and their families' lives, the fact that the appellant made a threat against the victims' children and is himself a secondary school teacher, and the fact that the victims were targeted due to their occupation as gardaí.
6. The sentencing judge noted several factors proffered by the defence in mitigation, including: a guilty plea, the fact that the appellant is a qualified secondary school teacher with no permanent post, the fact that the appellant has an alcohol dependency, the fact that the appellant has no previous convictions, the fact that his adoptive mother died some years ago, and the psychologist's report of Dr Lambe.
7. The sentencing judge took note of the fact that the guilty plea was entered nearly 4 years after the book of evidence was served, there was no apology, and that the articulate nature of the writing in the letters indicated he was sober while writing them. The sentencing judge noted that it is "very difficult to judge if Mr Hutchinson feels any remorse".
8. The sentencing judge applied the judgment of this court in DPP v. Doherty [2019] 7 JIC 0211, IECA 350, stating that a partially suspended sentence would incentivise the appellant not to repeat the offending.
9. The sentencing judge nominated a headline sentence of 8 years, which he reduced by 2 years to account for mitigation, imposing 6 year sentences in respect of counts 1 to 3, to be served concurrently. The sentencing judge suspended the final year for a period of two years. It is accepted that the judge was misinformed that the maximum penalty was 10 years when in fact it was one of 7 years imprisonment and therefore on this basis there is an error in principle.
10. We agree with this and as a consequence, we must quash the sentence imposed and proceed to re-sentence de novo as of today's date.

Grounds of Appeal and Submissions of the Appellant

11. The appellant identified, in essence, two grounds of appeal; the statutory maximum identified at sentencing of 10 years was incorrect, and in nominating a headline sentence,

it is said the trial judge erred in placing the matter at the higher end of the gravity of offending.

12. The appellant also submits insufficient weight in mitigation was afforded the guilty pleas entered by the appellant, the communication between the appellant and the State prior to the guilty pleas being entered, the previous good character of the appellant notwithstanding his adult cautions, and consequences suffered by the appellant including ostracization by his community and future career prospects.
13. The appellant further submits that excessive weight was placed on the fact that the appellant was a secondary school teacher and the fact that the appellant had been identified as a suspect in or about 2014 but had not been notified at the time of this.
14. The appellant submits that the offending ought to have been placed at the mid-range in light of the above grounds, and relies on the following cases: *DPP v Doherty* [2019] IECA 350, *DPP v Sean Carraher*(No.2) [2018] IECA 170, and *the People (DPP) v Kevin Molloy* [2021] 3 IR 494.

Submissions of the Respondent

15. The respondent concedes that the maximum sentence was exceeded by the judge's headline sentence, but that notwithstanding this, the sentencing judge was correct to place the case "*at the higher end of gravity*".
16. The respondent seeks to distinguish the instant case from the authorities of *Doherty* and *Carraher*, on the basis that the offending in this case involved harassment of three individual Gardaí and their families. The respondent further submits that while those cases involved contested trials, the instant cases involves a very late plea. The respondent cites the judgement of this court in the case of *DPP v Shaun Kelly* [2015] IECA 250 in relation to a remorse being best evidenced by a timely guilty plea.
17. The respondent underlines the significant impact the offending had on the victims, both in a professional and personal context.
18. The respondent places reliance on the judgement of the Supreme Court in *Kevin Molloy* in submitting that the sentencing judge was correct to place this case in the higher band of offending.

Re-Sentence

19. We agree with this and, as a consequence, we must quash the sentence imposed and proceed to re-sentence de novo as of today's date.
20. The appellant was 40 years old at the time of sentence. He has no previous convictions but was given adult cautions in relation to two previous public order incidents, one in 2016 and one in 2017.
21. Since entering custody, the appellant has worked in the prison kitchen and is taking steps to volunteer to assist in respect of educational activities. Additional documents have been furnished to this Court; namely, a letter of apology demonstrating a level of insight, a

certificate from the red cross, a letter from the Irish Wheelchair association, a report from the prison and a letter from Merchants Quay Ireland.

22. It is argued that the offending falls in the mid-range of sentencing rather than the high range for various reasons, including that the offending was not persistent in that it was not on a daily basis, it did not involve following an individual or numerous text messages. However, as observed in *Kelly*, given the nature of the offence, it is unlikely that the facts in any given case will be the same, "*or perhaps even particularly similar*". It is axiomatic that each case must be considered on its own particular facts, and this is even more so when considering the within offence.
23. It is clear that this was serious offending concerning not only 3 victims, but also indirect victims of the appellant's conduct. The sentencing judge properly identified the aggravating factors including the prolonged nature of the offending; a period of 4 years, the methods used by the appellant; including writing letters to various parties; those letters contained malicious, spurious and untruthful allegations, including contentions of criminal activity, sexual impropriety and corruption. The letters were sent to the victims' employer, to the Garda Commissioner, the principal of a primary school, and spouses of the victims. It must be recalled that the 3 victims targeted by the appellant were serving members of an Garda Síochána.
24. The impact was most severe, the insidious content regarding the victims' family members was deeply upsetting. The fact that the appellant researched the individual's family members is another aggravating factor. He knew of their spouses' workplaces, and the names and ages of the children.
25. Gravity is assessed with reference to the culpability of the offender and the harm done. There is no doubt that the harm done was significant. His moral culpability was high, the fact that the conduct was targeted and prolonged and involved research of the families is a serious matter. The impact extended beyond that of the 3 immediate victims, which also served to exacerbate the impact on the immediate victims.
26. In those circumstances, we consider in re-sentencing the appellant that the appropriate course to properly mark the gravity of the offending is to impose a headline sentence of 4 years on each of the counts to which the appellant pleaded guilty, bearing in mind the maximum penalty of 7 years imprisonment.
27. We now look to mitigation, the appellant pleaded guilty to the offending where the original charge on the book of evidence was that of a single charge of harassment and three counts of making threats to kill or cause serious harm. It seems that the matter was returned for trial on the 26th November 2019, discussions took place, Covid intervened causing the court lists to reduce and ultimately the indictment reflected three counts of harassment and three counts of making threats. Pleas were entered to the three harassment counts. This cannot be said to be a plea at the first opportunity, and it is difficult to gauge if it was entered at the first reasonable opportunity as we do not know

when the indictment was proffered. We will in the circumstances consider it to be an early plea and give credit accordingly.

28. Taking account of the other aspects of mitigation and the apology now expressed, we will reduce the 4 years on each count to that of 3 years imprisonment.
29. We consider in the circumstances of the offending and in particular that there are three separate victims that the sentence ought to be imposed on a consecutive basis to properly reflect the gravity of the offending. Accordingly, the total sentence is that of 9 years imprisonment, being the indicative sentence.
30. We look now to the principle of totality and in order to ensure a proportionate sentence we will reduce the 3 years on each count to that of 2 years and 4 months, giving a total sentence of 7 years.
31. From that, in order to incentivise the appellant's rehabilitation, we will suspend the final 2 years of that sentence for a period of 2 years post release.