



THE COURT OF APPEAL

[156/17]

The President

McCarthy J.

Kennedy J.

BETWEEN

THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

AND

SEAN GARVEY

APPELLANT

JUDGMENT (Ex tempore) of the Court delivered on the 3rd day of December 2018 by Birmingham P.

1. This is an appeal against severity of sentence.

2. The sentence under appeal is one of seven years imprisonment with the final two years of that sentence suspended that was imposed in the Cork Circuit Criminal Court on 1st June 2017 in respect of an offence of sexual assault. The sentence hearing took place after a four-day trial which had resulted in a conviction. The appellant appealed against both conviction and sentence and this Court, differently constituted, has previously dismissed an appeal against conviction.

3. The background to this case is set out in some detail in the course of the judgment of the Court that was delivered by Hedigan J. and it is not necessary to repeat that exercise today. Suffice to say that the background to the case is that on 6th February 2016, a 10-year old girl went on a sleepover at a friend's house. The appellant was present in the house as the boyfriend of the mother of the host for the sleepover. At approximately 3am, the young visitor to the house woke to find the appellant lifting her out of bed. She went to the toilet first, and he attempted to follow her there, and she was then brought downstairs where she was sexually assaulted. The sexual assault involved her being touched in the vagina and chest area and he attempted to take down her pants. The assault ended when the injured party managed to kick the appellant and she then ran upstairs and told her friend's mother what had happened.

4. In the course of the sentence hearing, the Judge indicated that he saw the offence as being in the upper mid-range. He felt that the only mitigating factors in issue were the absence of relevant previous convictions. The appellant did have some convictions, but these were under the Road Traffic Act and the Public Order Act and indeed go back quite some time. In those circumstances, the Judge did not approach the case on the basis that the appellant was of previous impeccable character, but rather, on the basis that he had no relevant previous convictions whatever.

5. In terms of the appellant's background and personal circumstances, he was born in March 1966. He has a partner and she is the mother of two children. The appellant has a good work record, though for medical reasons, his working career has come to an end and he is now on disability. The Court heard that most of his immediate family were in the United States. A medical report from his long-time General Practitioner was produced which referred to the fact that the appellant was experiencing stress and anxiety.

6. In the Court's view, this was clearly a serious offence and the Judge correctly identified the aggravating factors that were present, these being that the injured party was only ten years of age, that the assault took place while the injured party was on a sleepover at the home of her young friend, the circumstances of the assault saw the injured party being lifted from her bed and then followed into a toilet and then brought downstairs. It is also clear from the victim impact statement that was made to the Court by the mother of the injured party that this incident has impacted very significantly on the injured party, and indeed on the wider family of the injured party.

7. On the mitigation side, as indicated, the Judge felt the only real mitigating factor was the absence of any relevant previous conviction. The fact that the case was contested means that the powerful mitigation that would have been provided by a plea of guilty was not available to the appellant. The sentence is a significant one, but the Court cannot conclude that it fell outside the available range. The Court cannot identify any error of principle and in the circumstances, must dismiss the appeal.