



THE COURT OF APPEAL

**Sheehan J.
Mahon J.
Edwards J.**

259/15

The People at the Suit of the Director of Public Prosecutions

Respondent

V

Stephen Wilson

Appellant

JUDGMENT of the Court (ex tempore) delivered on the 21st day of November 2016 by Mr. Justice Sheehan

1. On the 22nd October, 2015, following a two day trial at the Circuit Criminal Court in Castlebar the appellant was convicted of a burglary at the Court Hotel in Ballina and sentenced to six years imprisonment. He now appeals the severity of that sentence and counsel on his behalf submits that the sentencing judge erred on three separate grounds which can be summarised as follows:-

1. The learned sentencing judge erred in locating the headline sentence at six years imprisonment.
2. The learned sentencing judge erred in finding that there was no mitigation in the case.
3. The learned sentencing judge erred in failing to suspend part of the six year sentence in order to incentivise the appellant's rehabilitation.

2. Counsel for the respondent rejects each of these submissions and submits that there is no general rule of law requiring a sentencing judge to partially suspend an otherwise correct sentence. He also contends that the sentence imposed was proportionate and should not be interfered with by this Court.

3. The facts of this case are that the appellant was walking down Main Street, Ballina, at about 5.30 am in the morning on his way to the bus station when he unlawfully entered the Court Hotel in Ballina, as a trespasser and removed the till from behind the bar. The till contained over €1,000, and when it was later found in a black plastic bag behind the hotel, it contained over €535.

4. At the time of the offence the appellant was a recovering heroin addict who had faltered in his recovery. He was 39 years old and had moved from Dublin to Ballina in an attempt to overcome his addiction. He has a son aged 21 years who is in gainful employment. The appellant is clearly proud of him. There was some dispute about the extent of the number of his previous convictions, but despite this it was still clear that before the trial judge there was evidence that the appellant had committed twelve burglary offences since 2000.

5. While he had served various sentences for these offences, the sentencing judge was rightly concerned about the appellant's record of previous convictions and in particular those for burglary.

6. When the sentencing judge was considering whether or not to suspend part of the sentence, he noted that he had no evidence to suggest that the appellant had any reasonable prospect of rehabilitation. It is clearly difficult for a judge to construct a proper sentence in the absence of evidence. Again as is the position before this Court today, neither counsel opened any comparators which might have been of assistance to the sentencing judge.

7. This was not a planned offence and in particular it was not the burglary of someone's home. This does not mean that it was not a serious offence nor does it mean that the appellant ought not to have been sent to prison. The principal question that arises for us is whether or not the sentence imposed was out of line with sentences for similar offending. We hold that it was and that the headline sentence in the context of the particular facts of this case ought to have been four years imprisonment. In coming to this conclusion we are conscious of a number of judgments of this Court where we have had to consider the appropriate sentence in cases of burglary.

8. In proceeding to re-sentence here, we have been told that the appellant's father has died during the course of his present imprisonment. This has imposed an additional hardship on him especially as he was not permitted to attend his father's funeral or visit his grave. We have also been told that he is presently undergoing a detoxification programme. In order to incentivise the efforts that the appellant is presently making, we will suspend the final year of the four year sentence that we now impose provided that he enters into a bond in the sum of €100, to keep the peace and be of good behaviour for one year following his release from prison.