



THE COURT OF APPEAL

Record Number: 81/2018

**Birmingham P.
Whelan J.
McCarthy J.**

BETWEEN/

THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

- AND -

LEANNA HUGHES

APPELLANT

JUDGMENT (ex tempore) of the Court delivered on the 26th day of February 2019 by Mr. Justice McCarthy

1. This is an appeal against the severity of a sentence of three years' imprisonment imposed at Dublin Circuit Criminal Court on the 14th March 2018 in respect of a count of robbery.
2. The offence was committed on the 29th March 2017. On that occasion the injured party, a Somali man, was walking along South Richmond Street making his way home when the appellant engaged him in conversation. She asked him for money for bus fare. When the injured party said that he did not have change, she said that she knew a nearby shop where change would be provided. The appellant led the injured party along the canal and shortly thereafter he was attacked by the co-accused, Mr. O'Connor. Mr. O'Connor was in possession of a knife and the injured party was struck on the face with the handle. The appellant took his phone out of his pocket whilst the co-accused was attacking him. She then ran off and her co-accused proceeded to take the injured party's wallet which contained approximately €250. In the course of the robbery the injured party was caused to fall on the ground and bang his head. He was struck a second time by Mr. O'Connor after she had moved away. Both the appellant and the male co-accused were identified from CCTV footage from a nearby public house and a nearby hostel.
3. The appellant was born in March 1994. She has sixty-seven previous convictions which include forty-eight for offences under the Criminal Justice (Theft and Fraud Offences) Act including thefts and burglaries. She has no previous convictions for robbery. Her co-accused has fifty-six previous convictions which include eleven under the Criminal Justice (Theft and Fraud Offences) Act.
4. The sentencing court heard that the appellant had a difficult upbringing and adolescence and that she had been sexually abused by her mother's partner. She had been introduced to drugs in her early teens and was a chronic drug addict. It was accepted by the prosecuting garda that much of her offending took place in the context of a heroin addiction.
5. The sentencing judge identified the aggravating factors as being the nature of the offence, the impact on the victim, that there was a degree of planning involved and that there was a significant record of prior convictions. He saw the mitigating factors as the pleas of guilty and remorse.
6. While a sentence of three years was imposed on the appellant the co-accused received a sentence of three and a half years; the appellant says that the differentiation made between the two accused was inadequate, that her role was less and that the more serious violence was inflicted after she had run away.
7. Subsequently, in July 2018 also on a plea of guilty and in respect of the burglary of a house a sentence of three years consecutive to that imposed on the 14th March the last eighteen months of which were suspended was imposed.
8. Mr. Kelly has very properly brought to our attention that at that stage the principles of proportionality and totality were applied when considering the appropriate sentence having regard to its consecutive nature. Whether or not the court was aware of the present pleas is unclear. Mr. Kelly sought to distinguish between the role played by the appellant and the co-accused stressing the fact that after she had moved away from the victim that further gratuitous violence was perpetrated on him for which she did not bear any responsibility. He stressed the short interaction of the appellant with the victim. He submitted that it was wrong to suggest that there was anything in the nature of planning involved but that there was a spontaneity, so to speak, about the offence.
9. We think that the judge was right in saying that there was "a degree of planning" having regard to the manner in which the offence occurred. A sentence of three years and six months was imposed on the co-accused, a part of which was concurrent with a previously imposed sentence of which thirteen months was let to run.
10. It was submitted that no or no adequate distinction was thereby made between the appellant and the co-accused, it being contended that the treatment of the co-accused should have been more severe and that the appellant less severe in the light of their roles.

11. However, we feel that the focus has to be on the actual sentence imposed on the appellant and in that regard we have no hesitation in saying that what was a nasty robbery involving a joint enterprise did not fall outside the available range.

12. We are fortified in this view since the judge who dealt with the burglary and s.3 assault was urged to have regard to the principles of proportionality and totality and did so.

13. Therefore, we refuse this appeal.