

Birmingham J. Sheehan J. Mahon J.

252/13

The People at the Suit of the Director of Public Prosecutions

V

Gavin Carabini

Appellant

Judgment of the Court (ex tempore) delivered on the 10th day of July 2015 by Mr. Justice Sheehan

- 1. This is an appeal against severity of sentence.
- 2. On the 4th June, 2013, the appellant pleaded guilty to the armed robbery of a jewellery shop in Galway in November 2008 and was subsequently sentenced later that year to ten years imprisonment with the final eighteen months of that sentence suspended for a period of five years following his release from prison provided he be of good behaviour during that time. The sentencing judge also directed that the appellant be subject to a post release supervision order. The sentence was backdated to the 23rd January, 2012.
- 3. The appellant contends that the sentence imposed was unduly harsh and disproportionate in light of the mitigating factors and also having regard to the level of sentences imposed in more serious cases, both in the first instance and on review by the Court of Appeal and its predecessor.
- 4. The appellant also contends that the sentencing judge failed to distinguish his involvement from that of his co-accused. In this regard it was contended that the appellant was not the leader of the enterprise and did not personally carry the firearm and ought therefore to have been dealt with in a more lenient fashion as a result of these matters and other mitigating factors.
- 5. The appellant also submitted that without notice to him and improperly the prosecuting garda stated at the sentence hearing that the appellant was part of an organised crime group that was based in the Crumlin and Drimnagh area of Dublin.
- 6. In the course of his oral submissions to this Court, counsel on behalf of the appellant submitted that the introduction of this further improper evidence had unfairly prejudiced the appellant in the eyes of the sentencing judge. Counsel also submitted that the sentencing judge had before him at the time of sentence profound evidence that the appellant had mended his ways at the time of sentence and that this had not been adequately factored into the sentence that was imposed.
- 7. Counsel referred in particular to the school report, the urine analysis report, the report from a community drug team and a favourable report from the Assistant Governor of Mountjoy Prison which also confirmed that the appellant had completed a Red Cross programme while in prison which enabled him to contribute to the well being of other prisoners.
- 8. Finally counsel also submitted that the sentencing judge erred in locating the sentence at fourteen years imprisonment as the appropriate starting point on the scale taking into account the aggravating factors.
- 9. The respondent contends that the sentencing judge did not indicate or say that he was accepting those remarks about the appellant being a member of a particular gang and submits that the sentencing judge's approach to sentence in this case discloses no error in principle either in the length of the sentence imposed or in the sentencing judge's approach to sentence.
- 10. In order to consider the grounds of appeal in this case, it is necessary to consider the background to the offence.
- 11. On Friday the 28th November, 2008, at approximately 1.10 pm three men brandishing a handgun and two iron bars entered Hartmans Jewellers on William Street, Galway. All three men wore dark hoodies and had their faces covered with scarves. Having entered the shop, they threatened the staff and ordered them to lie on the ground. The raider with the handgun told one staff member to get down on the floor or he would shoot her. The raiders proceeded to smash a number of glass cabinets that were in the shop which contained expensive Rolex and Cartier watches. They filled a pillow case with 28 Rolex and 18 Cartier watches to the value of €108,887 and then departed.
- 12. Four female members of staff were in the shop at the time as was one customer.
- 13. The owner of the shop was in a room at the rear and she entered the shop floor when she heard the commotion. She was threatened by the raider with the handgun. During the ordeal, one staff member was kicked a number of times in the head and was stepped on as she lay on the ground. The only customer in the shop was a male who suffered severe shock and became totally disorientated, developing respiratory problems necessitating the calling of an ambulance for him. Having spent approximately one minute in the shop, the men left on foot and made their way to Eglington Street, where they got into a navy 5series BMW which was driven by a fourth man. The vehicle drove away at speed on the incorrect side to the road, colliding at one point with a female motorist and causing considerable damage to her car. The men then got out of the BMW at Wood Quay and split up into two groups and got into two separate cars. One of these cars had a Dublin registration which was subsequently seen by a garda at traffic lights outside Galway. She confronted the driver and attempted to take the keys from him, but the driver escaped and in doing so rammed a car that was in front of him at the time. The driver of the car that was rammed never came forward to report the damage and remained unidentified at the time of sentencing.
- 14. Two suspects were subsequently sighted near Athenry where the appellant and his associate hid in a low loader that was being

driven by the employee of a construction company. They got out of this near Derrydonnell Bridge and ran to a nearby railway track. Following an intensive search by the gardaí of that area the appellant and his associate were found in a wooded area in the townland of Athenry and were both arrested under s. 30 of the Offences Against the State Act 1939, and taken to Galway garda station. The appellant was detained and in the course of nine interviews answered no questions. The two men were put on an informal identity parade, but covered their faces and shouted at witnesses, thereby making it impossible for the staff members from the shop to identify them.

15. Subsequent garda investigation and forensic evidence linked the appellant to the crime.

Personal Circumstances of the appellant at the time of sentence

- 16. The appellant was 29 years old and a married man with two children. He is from Dublin and is the youngest in a family of five children. The court was told that he had no history of employment and had a total of 63 convictions, 33 of which were recorded against him in England and Wales and the remainder in Ireland. Among his convictions in Ireland were 5 for unauthorised taking, 4 for burglary, 1 for false imprisonment, 1 for handling stolen property, 7 for possession of controlled drugs, 3 for offences under the Firearms and Offensive Weapons Act. At the time of sentence he was serving four and a half years imprisonment in Mountjoy Prison for burglary charges and was due for release in respect of these matters on the 20th May, 2015.
- 17. The evidence before the sentencing judge included a probation and welfare service report in the course of which the appellant expressed remorse for what the victims had experienced. The report also disclosed that the appellant when aged seventeen had received a nine year sentence in respect of three counts of burglary and that on his release in 2007 he found it difficult to reintegrate and began to drink heavily and take drugs. The probation report also disclosed that the appellant had used his time in custody prior to sentence in a productive way and that he had engaged with a drug rehabilitation programme and also with an education programme which was confirmed by a letter from the head teacher in the prison. Urine analysis reports were also submitted to the court showing that the appellant was drug free at the time of sentence and there was also a report that he was working in the prison as a painter and working in the kitchen. The court also received a moving letter from the appellant's sister which suggested that he had reached a turning point in his life.
- 18. The learned sentencing judge stated the following:-

"This was a serious and planned armed robbery, which involved careful preparation and determined action on the part of the people who were involved. Thankfully the preparation and execution were not careful enough to escape garda detection and the gardaí are to be congratulated in the manner with which this matter was investigated and also the members of the public who gave them assistance.

The entire exercise involved considerable financial loss, involved a wanton disregard for human life displayed during the execution of the robbery and the driving of the getaway vehicles and a cost to the taxpayer of detecting and apprehending the accused and his associates was considerable."

- 19. The learned sentencing judge went on to identify the appropriate point on the scale of gravity where the offence lay and identified that as a sentence of fourteen years imprisonment bearing in mind that the maximum sentence for the particular offence was life imprisonment. He then went on to consider the mitigating and aggravating factors and stated that he regarded the appellant's previous convictions as being an aggravating factor. He said that the use of firearms and the threats of violence and the actual use of violence in the course of the robbery were aggravating factors. The learned sentencing judge said that while the appellant was not the person who wielded the gun, he was just as guilty as the person who did, they were all part of the same operation.
- 20. The sentencing judge noted the plea of guilty, the saving of expense in that regard, he noted the appellant was not the organiser, but nevertheless held that he was an integral and necessary participant in every sense of the word and at every step of the offence. The learned sentencing judge said that he had read carefully the letters and testimonials handed in on behalf of the appellant and concluded that the appellant was not a person without hope. He noted his difficult background and said he was entitled to take that into account and he also noted the steps the appellant was taking with regard to his education and his addiction problems and again emphasised that there was hope for rehabilitation. He said that bearing in mind the mitigating and aggravating factors, the appropriate sentence was ten years imprisonment and in the hope that the appellant might be rehabilitated, he suspended the final eighteen months of that sentence for a period of five years as well as directing a twelve month period of post release supervision.
- 21. While this Court appreciates that the appellant may feel aggrieved about being linked to a particular gang by the prosecuting garda, this court pays no attention to this matter. On the other hand the circumstances of the offending were such that this was a well planned robbery by a group of young men, some of whom had spent the previous night in a Dublin hotel, the premises had been inspected some two weeks previously by at least one of those people who carried out the raid which was speedily and violently executed.
- 22. While it is clear that identifying a sentence of fourteen years imprisonment as the appropriate starting point is placing this offence at a particularly high level of seriousness the aggravating factors in this case are such as to entitle the sentencing judge to so do. The mitigating factors reduce the sentence to one of ten years imprisonment and the sentencing judge then sought to further incentivise the continuing rehabilitation of the appellant by suspending the final eighteen months of that sentence.
- 23. The fact that the appellant was not the leader of the group, nor was he the one who carried the firearm are not factors in the view of this Court that would entitle him to mitigation.
- 24. The court holds that the sentencing judge's approach to sentence in this case was exemplary and accordingly the appeal is dismissed.