



THE COURT OF APPEAL

Birmingham J.  
Sheehan J.  
Mahon J.

90/14

The People at the Suit of the Director of Public Prosecutions

V

James Cash

Appellant

**Judgment of the Court (ex tempore) delivered on the 9th day of July 2015 by Mr. Justice Sheehan**

1. This is an appeal against severity of sentence.
2. The appellant James Cash appeared in the Circuit Court in Dublin on the 14th March, 2014, for sentence in respect of two separate matters each involving a number of offences.
3. The most serious of the offences were two counts of endangerment contrary to s. 13 of the Non Fatal Against the Person Act 1997, which occurred on the 19th February, 2013, in respect of which the appellant received two concurrent sentences of six years imprisonment with the final eighteen months suspended on terms designed to assist and encourage his rehabilitation.
4. The appellant was also disqualified from driving for 20 years, for driving whilst disqualified. The court took into account 17 other road traffic related offences committed at the same time.
5. The second set of offences relate to burglary and an attempted burglary on the 28th April, 2013, malicious damage to both properties and resisting a police officer when he sought to arrest the appellant as he tried to escape. The appellant also pleaded guilty to an offence of being in possession of house breaking articles contrary to s. 15 of the Criminal Justice (Theft and Fraud Offences) Act 2001.
6. The appellant received two concurrent sentences of four and a half years imprisonment in respect of the burglary charges and lesser sentences in respect of the other offences.
7. The sentences in this case were deemed to be concurrent with the sentences in the first case.

The appellant contends in the course of written submissions filed on his behalf that the learned trial judge erred in principle on six grounds in respect of the endangerment charges and further contends that there were three errors in principle regarding the burglary offences. The following are the six grounds of appeal filed in respect of the endangerment charges:-

- (i) that the learned sentencing judge erred in law in imposing a six year sentence in circumstances where the maximum sentence is one of seven years imprisonment,
- (ii) erred in suspending the final eighteen months of the sentence for three years.
- (iii) erred in failing to have any or any adequate regard to the mitigating factors advanced on behalf of the appellant.
- (iv) erred in regarding the nature of the charges as being an aggravating factor,
- (v) erred in double counting the speed at which the appellant was driving as constituting two aggravating factors in relation to the endangerment counts and
- (vi) erred in imposing a 20 year disqualification.

8. With regard to the burglary counts the appellant submitted that the learned trial judge had erred in imposing four and a half year sentences where both premises were vacant at the time of the offences, he erred in failing to attach sufficient weight to the pleas of guilty and erred in failing to have regard to the psychological reports and that of the addiction counsellor and other materials when imposing sentence.

9. With regard to the burglary counts the appellant submitted that the learned trial judge had erred in imposing four and half years sentences in a situation where both premises were vacant at the time the offences were committed and further that the sentencing judge had erred in failing to attach sufficient weight to the pleas of guilty and further erred in failing to have regard to the psychological reports and in particular that of the addiction counsellor as well as other materials furnished on behalf of the appellant prior to sentence.

10. The respondent submits that the learned sentencing judge made no error in principle, carefully weighing the mitigating and aggravating factors and imposed sentences, in both cases which were proportionate.

11. In order to consider the grounds of appeal in this case, it is necessary set out the background to these offences.

12. On the 19th February, 2013, at 7.35 pm in the evening, the gardaí were informed about an incident at Seaview Park, Dun Laoghaire involving a silver saloon vehicle which the gardaí subsequently observed parked down from the Rathmichael halting site. As the gardaí approached the vehicle, they turned on the strobe lighting as a result of which the appellant who was the driver of the white car drove off at speed towards Ballycorus Road, and turned off his lights. He drove at approximately 100km per hour at times along the Rathmichael Road, which has a 50km per hour speed limit, continuously crossing the white line overtaking other cars and

causing other cars coming in the opposite direction to swerve and use their emergency breaking in order to avoid head on collisions. He drove through a red light at the end of Ballycorus Road causing opposing traffic to take heavy evasive action and continued in a similar dangerous manner along Enniskerry Road and Glenamuck Road.

13. The gardaí sought permission to use a stinger device and asked aerial support. The appellant continued to drive towards the Ballyogan roundabout and then past the Carrickmines shopping centre and at the Carrickmines roundabout, he mounted a kerb at a flyover and struck the safety barrier causing sparks to fly off the barrier. He then drove the wrong way down a slip road and on to the M50 travelling the wrong way against oncoming traffic as he went down the hard shoulder where two drivers, one being a disabled driver were waiting for the gardaí following a minor incident. The appellant hit the silver Saab that belonged to the disabled driver and then spun out and hit a black Volkswagen Tourer being driven by a Mrs. Tiernan who had three of her children with her in the car. The appellant then hit a Toyota Corolla being driven by an Aideen Kenny at which stage his car flipped and broke in two and he was ejected as the vehicle was splitting.

14. There were three victim impact statements, the first was from Aideen Kenny in which she set out her loss and the effects that the accident had had on her.

15. The next victim impact report was from the owner of the disabled vehicle and she told the court that she had suffered psychological injuries for some time following the accident and also that she was now nervous driving. The final victim impact statement was from Grainne Tiernan whose vehicle was severely damaged and who herself suffered severe pain in her knees as well as shoulders and neck. Her initial fears for the life of the appellant caused her further stress, resulting in her calling to the garda station on a number of occasions to see how the appellant was. She was not able to stand for long period of time. Her children were engaged in sporting activities and she stated that she was now unable to attend in the same way as before and she stated they also suffered some physical and psychological harm.

16. It was also noted that had it not been for the gardaí placing the appellant in the recovery position at the scene before the ambulance arrived, he was unlikely to have survived the accident.

17. At the time of sentencing the appellant was a 25 year old man with 85 previous convictions, including 16 for dangerous driving, one for endangerment and 31 for burglary as well as one for the unlawful seizure of a vehicle.

18. Between the time of the accident in February and his arrest for burglary on the 28th April, 2013, he had committed eighteen other offences. The court was told that the appellant was addicted to heroin.

19. With regard to the burglary offences the appellant resisted his arrest in the front garden of one of the houses. In the first house he had stolen property worth €1,520 which was not recovered and had committed malicious damage estimated at €1,480. The second house which he attempted to enter, he caused €2,837 worth of damage.

20. Since going into custody, the appellant had begun to address his addiction problem by attending counselling sessions and had undergone eight modules of a relapse prevention programme. The learned sentencing judge requested a probation report and noted the contents of the two psychologists' reports that had been submitted on his behalf.

21. In the course of her sentencing remarks at pp. 8 and 9 of the transcript of the 14th March, 2014, the learned sentencing judge stated as follows when she was talking about the endangerment accounts:

"The aggravating matters it appears to the court of count 1 and count 2 and count 3 are the serious natures of the charge. Count 1 and 2 (the endangerment charge) occurred over a considerable period to time. The third aggravating factor is the speed at which Mr. Cash was travelling, the fourth aggravating factor well in excess of the speed limits of 100km per hour and six other people had to take evasive action during the course of this driving and the court in taking into account the nature of the dangerous driving including going through yield sign at speed and finally driving the wrong way at speed down the M50. The mitigating factors are his early plea of guilty, the value of that plea of guilty to the injured parties and his particular family circumstances. The court is taking into account the contents of the probation and welfare services report. The court is also taking into account his wish now to engage with the drug treatment programme. The court in marking the seriousness of the offence but also taking into account the personal circumstances of Mr. Cash will impose a prison sentence on count 1 and count 2 of six years with eighteen months suspended for three years on condition that he enter into a bond and keep the peace and be of good behaviour towards the people of Ireland in the sum of €150 for a period of three years and he place himself under the supervision of the probation and welfare service for eighteen months post release and comply with any of their directions as regards specific offence related work and address his issues with addiction and address his serious offending behaviour and give liberty to the probation and welfare service to re-enter the matter before this Court for the purpose of reactivation of the sentence in the event of non compliance. I am not putting the condition that he engage in a drug treatment residential treatment programme. If he wishes that can be at his own request during that supervision period of eighteen months."

22. The learned sentencing judge went on to impose a 20 year disqualification in respect of the offence of driving while disqualified.

23. On the next set of offences, the learned sentencing judge stated:

"The court has heard the circumstances surrounding the commission of the burglary and the damage done to the property of the injured party. The court in all these matters is taking into account the letter from the accused, the psychologist report, the Merchant's Quay Project report, the other psychologist report and the report from the addiction counsellor. The aggravating factors and the serious nature of the charge with regard to resisting a police officer in the execution of his duty. The court is taking that into account as that is a serious matter. The mitigating factors are his plea of guilty, the admissions made in interview, his apology and the efforts he has made to rehabilitate himself and his particular family circumstances. On count 1 and count 2 which is a burglary and attempted burglary, the court will impose a prison sentence of four and a half years imprisonment. On count 5, which is the possession of articles contrary to s. 15, the court will impose a prison sentence of three and a half years imprisonment and on the final count which is resisting a police officer, the court will impose a prison sentence of nine months imprisonment and those are concurrent to each other and credit should be given for the time he went into custody on these matters."

24. The court has considered the submissions of both parties in this appeal and it is clear from an examination of the facts of the case and from an examination of the transcript that the learned sentencing judge approached the question of sentence in this case in a careful way taking into account all aggravating factors and also taking properly into account those aspects of mitigation and in

particular the pleas of guilty. Indeed it is this Court's view that were it not for the compassionate approach of Mrs. Tiernan, the sentencing judge might well have imposed a longer sentence.

25. The court is satisfied that no error of principle is disclosed in either the sentence imposed or the learned trial judge's approach to sentence. In the course of this appeal, counsel on behalf of the appellant focused on certain matters and submitted that the root of the appellant's offending was to be found in his chronic addiction difficulties and asked the court as a result of these to take these into account in a very special way in this appeal. Counsel also told the court about the severe problems that the appellant Mr. Cash has encountered while in prison and also asked the court to note the very serious injuries incurred by the appellant in the accident.

26. The court has given serious consideration to the question of increasing Mr. Cash's prison sentence in light of the very serious facts that have already been outlined in the course of his judgment and bearing in mind not only his previous record, but also the offences that he committed between the time of this accident and the time that he went into custody.

27. The court would indeed have done so and would have imposed a greater sentence were it not for the careful and restrained submissions of his counsel Mr. Mícheál P. O'Higgins, S.C. These submissions have persuaded the court not to proceed in a more severe way. Accordingly, the court will simply dismiss the appeal.