



**THE COURT OF APPEAL**

**Record Number: [244/18]**

**The President  
Kennedy J.  
Donnelly J.**

**BETWEEN/**

**THE PEOPLE**

**(AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS)**

**- AND -**

**RESPONDENT**

**CHRISTINA JOYCE**

**APPELLANT**

**JUDGMENT of the Court (ex tempore) delivered on the 19th day of July, 2019 by Ms. Justice Donnelly**

**Introduction**

1. The appellant was sentenced to four and a half years' imprisonment for her criminal conduct in a series of incidents that took place on the 9th April, 2018. This is an appeal against the severity of sentencing.
2. These events took place in the area between Grand Canal Quay, Waterloo Road and Heytesbury Lane in Dublin. On that date, the appellant had driven a motor vehicle, a Volvo jeep, onto a footpath and in an attempt to turn around she collided with a wall causing €1,622.50 damage. There was a male passenger in this vehicle. She then drove off.
3. Two members of An Garda Síochána in a marked traffic car noted the car stopped at traffic lights on Pearse Street and they observed that the vehicle did not have a rear registration plate. When the car turned, Garda Gallagher put on the lights and sirens signalling to the driver of the motor vehicle to stop. While the motor vehicle initially slowed down and pulled into its left, it failed to stop. Eventually the motor vehicle did stop and the Gardaí went to check the car and the driver. The appellant gave a wrong date of birth and name, and informed the Gardaí that she did not have her licence on her.
4. While enquiries were being made as to the insured status of the vehicle, Garda Gallagher continued speaking to the appellant. When he became satisfied that there was neither a driver's licence nor insurance relating to the vehicle, he decided to seize it under the Road Traffic Act. Instead of complying with his lawful request, she started up the motor vehicle and the passenger was heard to say "just put it in drive".
5. As she started the vehicle, she turned the steering wheel sharply to the right and put her foot to the floor of the accelerator. The motor vehicle began to move rapidly and knocked Garda Gallagher off his feet. Fearing that he would be taken under the motor vehicle, he hung on to the door of the vehicle to prevent that from happening. He said that the driver was looking straight at him while this was happening and that the motor vehicle veered across Macken Street onto the opposite side of the road. He said that he felt she was aiming for a parked car on the opposite side of the road, and when he realised she was trying to hit that car, he let go.
6. The incident lasted approximately four seconds and seven car lengths in terms of the period of time he was hanging on to the vehicle. When he let go he fell to the ground, skidded along it, and his legs hit off the parked car on the other side of the road. There was CCTV which showed part of that incident and which this Court has viewed. Garda Gallagher can be seen motionless on the ground for a period afterwards. This all occurred at around 10.41am.
7. Members of the public and Garda Nolan came to the aid of Garda Gallagher. He seemed to be barely conscious but was breathing and was able to say where his injuries were. At that time, he felt that his left knee had dislocated. He was bleeding from his hands and fingers. An ambulance was summonsed and he was brought to St. Vincent's Hospital.
8. The vehicle driven by the appellant travelled for a period of time along bicycle lanes in Fitzwilliam Place before taking a left onto Northumberland Street and going up Haddington Road onto Baggot Street towards Waterloo Road. It collided there with a Dublin City Council van which had been approaching with the green light in its favour. There was a collision with some force, and the airbags in the motor vehicle were deployed. The motor vehicle became immobilised and rolled to a stop. At that point the two occupants left the scene. A member of the public described the male passenger telling the appellant to wipe it down before they left.
9. The two people went up Heytesbury Lane, and a number of members of the public began to follow them and take videos and pictures. At one point the appellant turned to a member of the public and told him to "F." off, and that she told the man she was with to take out a blade, and he reached for his sock. No knife was actually seen and when that man was later arrested, no knife was found on him.

10. At that point the two of them jumped or climbed onto a car parked in the laneway and used that as leverage to get over a wall into a premises. They caused damage to that car to the value of €1,732.00. They then went into a premises at Heytesbury Lane.

11. In that premises were a woman in her late seventies and her husband who were upstairs. When the woman heard voices downstairs she put on her dressing gown and went down. She saw that there were two people there, a man and a woman in her hall going towards the kitchen. She described them as being extremely agitated and panicked. She said to the woman that they were being pursued and they would be shot if they were caught. She said these people were shouting "let us out, let us out!". The householder was trying to find out what to do. She said the door was locked and she could not find the key. She was shocked and scared and could not remember where the key had been put. They kept screaming at her. They did not threaten her and they did not go near her handbag. They kicked open the door, she thinks that was probably the man who did it and a burglary charge included that count of criminal damage.

12. The two people made their way into an apartment on Waterloo Road. They forced that door open and were there for half an hour before they were detected and arrested by the Gardaí. While in the flat, it appears they went through various jewellery boxes. The only thing that was taken were some euros from a wallet and a Hungarian note worth about €1.50 or thereabouts.

13. After her arrest and detention under s.4 of the Criminal Justice Act, 1984, the appellant was taken to St. Vincent's Hospital as she complained of pains. She was later interviewed and while she accepted she was in Heytesbury Lane, on one occasion she said that the incident was the fault of the Gardaí. However, in the fourth and final interview she gave a much more frank account of the incidents that had occurred that afternoon. She said that herself and her companion had been smoking crack. She admitted crashing the car into the wall, and that she was the driver. She also made general admissions. She said she panicked after the Garda had fallen on the car and her companion had said, "You're after killing him, get us out of here."

14. The appellant was sent forward from the Dublin Metropolitan District Court to the Dublin Circuit Criminal Court on signed pleas relating to six charge sheets. She affirmed those signed pleas in the Circuit Court. She had pleaded guilty to reckless endangerment contrary to s. 13 of the Non-Fatal Offences Against the Person Act, 1997. This related to the manner in which she drove the vehicle in respect of Garda Gallagher, whereby she intentionally or recklessly drove the motor vehicle in a manner as to create a substantial risk of death or serious harm. The maximum penalty for that offence was seven years.

15. She also pleaded guilty to assault causing harm contrary to s.3 of the Non-Fatal Offences Against the Person Act, 1997; that related to the assault on Garda Gallagher and the maximum penalty for that offence was five years. It was for this offence that the sentencing judge imposed the four and a half years. However, in doing so he stated he was sentencing her globally on all the counts and he took the other offences into account.

16. She also pleaded guilty to two burglary offences in relation to the premises outlined above. In one, she had committed theft and in the other she had committed criminal damage. The maximum penalty for each of these offences was fourteen years.

17. She also pleaded guilty to two criminal damage charges, the first was to the wall at Grand Canal Quay and the second was the damage to the motor vehicle at Heytesbury Lane.

18. At the time the appellant committed those offences she was on bail in respect of matters that were dealt with in the Dublin District Court on the 12th July, 2018. These were assault causing harm, burglary and handling stolen property, possession of knives contrary to s.9(1) of the Firearms and Offensive Weapons Act, 1990. She received a six-month sentence in total on that date. The sentence in this case was made consecutive to that sentence.

19. Evidence was given that the appellant had 67 previous convictions. The first was in 2003 and the last was in July, 2018. She had six convictions for s.2 assault, 12 convictions for failing to appear under s.13 of the Criminal Justice Act, 1984, 14 convictions under the Public Order Acts, 1994, a conviction under s.3 and s.15 of the Misuse of Drugs Acts, 1977-2015, 13 convictions under the Criminal Justice (Theft and Fraud Offences) Act, 2001, including handling and theft. She also had two Road Traffic Act, 1961 convictions for driving without insurance and a driver's licence.

20. In relation to the Circuit Court, she had been convicted at Dublin Circuit Court in January, 2017 of injuring another person with a syringe. She received a three-year sentence which was suspended for three years on that date. In March, 2015 she had received a two years' suspended for 14 months for production of an article in the course of a dispute or fight contrary to s.11 of the Firearms and Offensive Weapons Act, 1990. She had received a two-year sentence in respect of assaulting a police officer on the 8th May, 2014 at Dublin Circuit Court. In July, 2012 she had also produced an article in the course of a dispute or fight contrary to s.11 of the Firearms and Offensive Weapons Act, 1990. For that offence she was sentenced to a two-year period suspended for two years. Finally, in February, 2006 she had also been sentenced for criminal damage and theft offences. It should also be noted that as regards the incident in question in this appeal, the appellant had no insurance or driving licence on that date.

### **Personal circumstances**

21. In relation to the appellant, she was 30 years of age at the time of the sentencing. At the age of three weeks she was taken away from her family and was placed in care. There have been a number of deaths, including cot deaths, among her siblings. She was in 23 foster families from then until she attained the age of majority. She was a victim of abuse and sexual abuse at the hands of two of these foster fathers and foster brother. That occurred at about the age of six, and it was at the age of nine that she first began to self-harm. She had a long history of self-harming, of suicidal ideation and she bears the physical manifestation of her psychological illness. On a number of occasions, she was assisted by Gardaí by being taken out of the River Liffey when she tried to end her life. When she does not take her medication, it appears she becomes extremely paranoid and believes that Gardaí or people in authority have a vendetta against her.

22. From an early stage she had expressed her regret in relation to the offences in this appeal. She had offered an apology and made admissions and came forward on signed pleas. She had at times engaged in a somewhat industrious life, working in occupations of retail, hairdressing and had also done various courses. She is being maintained on methadone. She had developed at an early age an addiction to tablets, and all manners of tablets. She tried to hide from her demons. There was no psychological report before the Court below. She is however, somebody with an acute psychiatric history. She has three children and is ashamed and regretful that those children are now in care.

23. The victim in the case, Garda Gallagher completed a Victim Impact Report. He had both physical and psychological effects arising out of this incident. Apart from the contusions to his left knee joint and to his left elbow joint, right wrist joint and left and right lower limbs, it appears that he may have dislocated his left patella which he had self-reduced. Certainly it appears that he spent about

eight weeks in a knee brace, and during that time his mobility was severely restricted. He is an avid runner and sportsperson generally, and has fears that this will be restricted afterwards. He also has young children whom he had to tell about the incident at work. He is worried about the effect on them that he might be hurt at work and he feels that was not something that they should have been aware of at such a young age. It also appears that he has become very anxious; he is wary of moving traffic, and he is much more aware of his own mortality and vulnerability since the incident as he believed at the time that he was going to be killed. He was in extreme pain when he landed on the roadway and he thought his knees were shattered.

### **Sentencing remarks**

24. In terms of the sentencing remarks, in his characteristically succinct sentencing remarks, the sentencing judge referred to the details of the incident and noted that it seemed the Garda Gallagher had no option but to grab the door to stop being run over, and that the appellant was intent on getting rid of him. He referred to the consequences for Garda Gallagher. He referred to the subsequent events carried out by the appellant in her bid to escape. He also said that she was under the influence of crack cocaine which was not an excuse. He referred in particular to the mitigation which he said was clear. He said she had pleaded guilty and expressed remorse which he accepted that as true remorse. He also said that there is always hope for rehabilitation, but in terms of her previous offending he said it would be a hard road for the appellant. He accepted that she had a very difficult life and upbringing. But he said that while she had a sad life, she was before him on serious criminal offences. He said that: -

*"In relation to count number two that that is the count of assault on Garda Gallagher, what I am going to do, is impose upon Ms. Joyce a prison sentence of four and a half years. I am going to take all the remaining counts into account. I am sentencing her globally, on all the counts, on the assault count. I think a headline sentence in this case will be in the region of seven years, for her misbehaviour on the date. But for convenience sake I am going to impose it on the assault count."*

This was made to run from the date of her release on the District Court matter.

### **Submissions**

25. Counsel for the appellant relies on the case of *DPP v. O'Driscoll* (1972) 7 Frewen 35 in which it is stated: -

*"The objects of passing sentence are not merely to deter the particular criminal from committing a crime again but to induce him insofar as possible to turn from a criminal to an honest life and indeed the public interest will be served as the criminal could be induced to take the latter course. It is therefore the duty of the Court to pass what are the appropriate sentences in each case having regard to the particular circumstances of that case – not only in regard to the particular crime but in regard to the particular criminal. The sentences in the present case may have a very deterring effect on other people but are not such as to induce these young men to turn from a criminal to an honest life. Regard must also be had to the fact that this is the first crime of violence of which either of them has ever been convicted."*

26. Counsel submitted that no inducement other than the punishment was given to the appellant to deal with her long-term addiction or to work with personnel in the Probation and Welfare Service. While it was conceded that she had previous convictions for violent behaviour, it was submitted that unlike in *O'Driscoll's* time, Ireland was clearly no longer effectively drug free.

27. It was also submitted that the trial judge had given insufficient weight to her personal circumstances which required trained personnel and guidance in the community as well as in custody.

28. In reliance upon *DPP v. G.K.* [2008] IECCA 110 in which it was stated that the applicant cannot be sentenced again for past offences and cannot be sentenced in anticipation for offences which he has not committed and might never in fact commit, it was submitted that this is what the sentencing judge had done in this case, that is, he was not sentencing and punishing her for past and anticipated offences.

29. Counsel relied upon the fact that it had been correctly accepted by all that were it not for an accidental collision involving the appellant's car and a wall she would never have fled from the Gardaí. He referred to the appellant's personal circumstances and he submitted that it was an error not to give her the assistance of the Probation Service at the end of her sentence. He said this was a case which required such a sentence structure.

30. Counsel for the DPP submitted that although the sentencing judge did not specifically identify aggravating factors, he recited all relevant evidence relating to those aggravating factors. Counsel relied on the fact that the sentencing judge took into account in mitigation her early guilty plea, her remorse and her hopes for rehabilitation. He also referred to her personal circumstances as set out above and counsel relied upon the fact that the gravity of the offending in the case was significant. It was over a period of time and a period of incidents and each of the offences had significant aggravating factors. Counsel also submitted that the sentencing judge had been invited to consider the question of suspension after he imposed a sentence but he declined to do so.

31. A judge has considerable discretion to decide how a sentence should be structured and there was no requirement that a portion of the sentence be suspended. Her desire for rehabilitation was taken into account, but there was no evidence before the sentencing court of any concrete steps taken in pursuit thereof.

32. In relation to the submission that she was being punished for past offences and for anticipated future offences it was submitted that this was not so. She was sentenced on the basis of her offending behaviour on the 9th April, 2018 and the submissions counsel had referred to what had occurred at the end of the sentence in terms of the request for a reduction in the sentence.

### **Determination of this Court**

33. There is no doubt that the events of the morning of the 9th April, 2018 involved serial offending of a serious nature by this appellant. The endangerment and assault of a member of An Garda Síochána carrying out his duty were particularly egregious offences. Undoubtedly Garda Gallagher could have received even more serious injuries if he had not had the presence of mind to act as he did. Her offending was compounded by the further recklessness in driving away, and the break in to two separate homes in her bid to escape justice. Although no threats were made, it was particularly serious that there was a confrontation with a resident in her seventies in her own home.

34. The sentencing judge took the decision to impose a global sentence on all matters in this case. He would have been entitled to

impose consecutive sentences given the serial nature of the offending. But if he had done so, he would have been bound by the principles of proportionality and totality. Structuring the sentence as he did, by focusing in particular on the assault causing harm charge (which carried a maximum sentence of five years) was somewhat unusual, but the manner of structuring the sentence was clearly a matter for him. It is the case that he gave a clear indication that he was sentencing on a global basis, that this sentence represented a sentence for all of the criminal conduct involved.

35. We are satisfied that the sentence of four and a half years was clearly within the range of sentences available to him. Indeed, it was on the lower end of the scale of sentences available. After he imposed that sentence, the sentencing judge was asked to suspend the sentence as an incentive to the accused. He stated that the incentive was that she would know that if she reoffended again she would go to prison. We reject the submission that the sentencing judge was punishing her twice for her past crimes and in anticipation of future ones. The opposite occurred in this case, he paid little heed to her previous convictions in his sentencing remarks, but accepted that rehabilitation for her was going to be difficult considering her previous offending.

36. In terms of whether there was an error in principle not to suspend part of this sentence, we are satisfied there was no error in principle. The sentencing judge was not obliged to do so. He was not obliged to do so particularly in a case where there was evidence of relatively recent prior suspended sentences having been imposed, where the offences were committed on bail and where there was little, if any, evidence of concrete steps towards rehabilitation in the time between the offences and the date of sentence.

37. The global sentence imposed without part suspension was within the acceptable range of sentences and we therefore dismiss the appeal.