



THE COURT OF APPEAL

**Birmingham J.
Sheehan J.
Mahon J.**

282/15

The People at the Suit of the Director of Public Prosecutions

Respondent

V

Ron Tulie

Appellant

JUDGMENT of the Court (ex tempore) delivered on the 28th day of October 2016 by

Mr. Justice Sheehan

1. This is an appeal against sentence.

2. At the Dublin Circuit Criminal Court on the 10th July 2015 and the 28th July, 2015, the appellant pleaded guilty to four counts of the defilement of a girl under the age of seventeen years contrary to s. 3(1)(b) of the Criminal Law (Sexual Offences) Act 2006, on the basis of full facts being disclosed. On the 16th November, 2015, he was sentenced to seven and a half years imprisonment with the final two years of that sentence suspended on a number of terms for a period of four years following his release.

3. The offences occurred in 2008 and arose in the following circumstances. The victim first met the appellant when she was in transition year and took part in a basic First Aid and Fire Safety Course. This course was run by the appellant and a colleague over a number of weeks and involved the appellant attending once a week for those few weeks of the course and delivering two 40 minute classes on each occasion.

4. The four to six week course ended in April/May 2007 and when the course ended the appellant said as he left the school: "keep in contact". A week or two later the complainant made efforts to contact the appellant and shortly afterwards informal contact occurred by way of email.

5. Between February 2008 and June 2008 the injured party and two of her friends met the appellant on a number of occasions and went for drives with him. Subsequently at some point in or around June 2008, the complainant went on her own, for a drive with the appellant to the Dublin Mountains and on this occasion the appellant committed the first of these offences.

6. He met the injured party on five subsequent occasions, the last offence occurring the day before the victim's seventeenth birthday. The relationship continued until February/March 2009 and then ended. Shortly thereafter the complainant became ill developing anorexia which required hospital treatment. As a result she did not go on to third level education with her own classmates as had been expected.

7. The appellant was arrested in September 2012 and subsequently charged. He pleaded guilty at an early date.

8. At the time of these offences, the appellant was 50 years old and had no previous convictions. He is a married man with four grown up children and who has 30 years unblemished service as a member of the Dublin Fire Brigade.

9. In this case the charges that the appellant faced were contrary to the Criminal Law (Sexual Offences) Act 2006. Section 3 of that Act states:-

"Any person who engages in a sexual act with a child who is under the age of 17 years shall be guilty of an offence and shall, subject to subsection (3), be liable on conviction on indictment to imprisonment for a term not exceeding 5 years, or if he or she is a person in authority, to imprisonment for a term not exceeding 10 years."

10. A person in authority is described in the Act as:-

"1(a) a parent, step-parent, guardian, grandparent, uncle or aunt of the victim,

1(b) any person who is, for the time being, in loco parentis to the victim, or

1(c) any person who is, for the time being, responsible for the education, supervision or welfare of the victim."

11. The Act provides that a person who engages in a sexual act with a child who is under the age of 17 and who is a person in authority shall be liable to imprisonment for a term not exceeding 10 years. It is necessary that the offender be a person in a position of authority at the time the sexual act takes place in order for the ten year penalty to apply. If the offender is not a person in authority then the maximum penalty is five years imprisonment.

12. In the course of the oral hearing it became apparent that at the time the offences occurred the appellant was not someone who could be properly described as a: "a person who is for the time being responsible for the education, supervision or welfare of the victim".

13. The question of what the maximum sentence was in this case had surfaced during the hearing in the Circuit Court following an assertion by defence counsel that the maximum penalty for the offence was five years imprisonment. This was what was first suggested by defence counsel during the course of the sentencing hearing:

"PC That is not the position.

DC I do apologise, my colleague has a submission to make.

PC Yes sorry, just in relation to that judge and I am not sure what my friend's attitude to this will be, but certainly from the prosecution's point of view he comes within the definition of a person in authority and under s. 3(1) being if he or she is a person in authority, the maximum term is a term of imprisonment not exceeding ten years.

D.C. My apologies my colleague is entirely correct, I don't for a moment suggest otherwise in terms of his position having been invited by the staff of the school and that."

14. This exchange may have served to mislead the sentencing judge. This Court also notes that the indictment on foot of which the appellant was arraigned made no reference to the appellant being a person in authority. Accordingly, we are satisfied that the learned sentencing judge fell into error when he sentenced by reference to the incorrect maximum sentence and imposed a sentence in excess of the statutory maximum.

15. In these circumstances this Court must conclude that an error occurred obliging us to intervene and resentence the appellant

16. However, while the court may have fallen or been led into error, the significance may be limited. When the appellant first met the injured party in the classroom, he was a person in authority and it was clearly wrong for him to enter into a sexual relationship with a sixteen year old girl whom he had first met in these circumstances. This is clearly an aggravating factor. The appellant had been brought into the victim's school as a person of authority and distinction in society and it is not insignificant that on the various occasions that he met her he was wearing his official uniform. Furthermore the age differential speaks for itself.

17. We note also that the victim was sexually inexperienced, and was taken advantage of by a 50 year old man whom she looked up to. Moreover she was a vulnerable person, a fact confirmed by the exceptionally serious impact the offending has had on her.

18. In our view these offences fall at the upper end of the scale for the reasons we have identified.

19. We hold that a sentence of four years imprisonment is the appropriate starting point for the offending behaviour in this case. In the court below the final two years of the sentence was suspended in order to take into account factors that were in favour of the appellant in particular his early plea of guilty, his previous good character, and the fact that these offences brought to an end what had been a distinguished career in the Dublin Fire Brigade.

20. Accordingly this Court will likewise suspend the final two years of the four year sentence it now imposes.

21. In suspending the final two years of this sentence we are also taking into consideration the substantial progress that the appellant has made while in prison. We note a number of certificates that have been handed into court today in respect of courses that he has successfully completed and in particular we note his willingness to engage with the Psychology Service while in prison.

22. In summary then we set aside the original sentence that was imposed in the Circuit Court and substitute in its place a sentence of four years imprisonment with the final two years of the said sentence suspended on terms that the appellant enter into a bond keep the peace and be of good behaviour for a period of two years following his release from prison. The appellant remains on the sex offenders register.