



THE COURT OF APPEAL

Sheehan J.
Mahon J.
Edwards J.

The People at the Suit of the Director of Public Prosecutions

V

Sean Casey (No. 2)

52/14

Respondent

Appellant

Judgment of the Court delivered on the 17th day of November 2015 by Mr. Justice Sheehan

1. This is an appeal against severity sentence.

2. The appellant pleaded guilty to dangerous driving causing the death of Megan Johnson and serious bodily harm to other persons namely Kate Petford, Michael Connolly, Patrick O'Sullivan and Michael West contrary to Section 53 (1) of the Road Traffic Act 1961 as substituted by Section 4 of the Road Traffic (no 2) Act 2011. He was sentenced to 7 years imprisonment and disqualified from driving for a period of 30 years.

3. The facts of this case, the sentencing Judge's remarks, the submissions on sentence, and the reason for this Court's decision to quash the learned trial judge's sentence are set out in our judgment delivered on the on the 31st July, 2015.

4. We then proceeded to a fresh sentence hearing and received additional documentation on behalf of the appellant which we were asked to take into account. We were about to deliver judgment on the 19th of October when counsel for the respondent presented the court with a letter which Simon Petford, the father of Kate Petford, had written to the Director of Public Prosecutions. The Court was told that this letter was written by Mr Petford on behalf of himself and his wife. This letter commences with the following paragraph.

"I write to detail my opposition and abhorrence to the proposed reduction in the seven year sentence handed down to Mr. Sean Casey in respect of his criminal culpability for drink and dangerous driving resulting in the car accident on the 8th April, 2013, which caused the death of my daughter's friend Megan Johnson, the catastrophic paralysis of my daughter Kate and serious injury to two other persons."

5. The letter goes on to recount changes that have occurred since the original sentence hearing the main one being the release of Kate Petford from residential care to her own home. Mr Petford reiterates how his daughter's life has been devastated and also speaks about the devastating impact of the accident on the Petford family. The letter also states that this appeal is entirely inconsistent with the appellant's expression of remorse.

6. Attached to this letter Mr. Petford has included a four day diary headed "*Kate Petford, four day diary, things done by the family*". This extract demonstrates in detail to this Court the stark reality of daily life for Kate Petford and also the stark reality of the burden of care that now rests on her family. The court further adjourns sentence to enable it to properly consider this letter and diary extract.

7. Before we go on to consider the general principles of sentencing and what we hold to be the appropriate sentence in this case we remind ourselves that this is a public prosecution on behalf of the people of Ireland taken by the Director of Public Prosecutions. As we said yesterday in the case of the *Director of Public Prosecutions v Shaun Kelly*: "while the Court notes the views of family members these cannot be decisive when it comes to determining sentence".

8. The main aggravating factors before the sentencing judge were:-

(1) The catastrophic injuries suffered by Kate Petford and the effect these injuries have had on her life and that of her family as evidenced by the victim impact reports and the recent letter from Mr Petford and to a much lesser extent the injuries caused to other passengers.

(2) The fact that the appellant was driving under the influence of alcohol. His blood alcohol level was 4 times the permitted level

(3) The excessive speed of the appellant at the time of the accident. Garda forensic evidence suggested that he was driving at 80 km per hour when he approached the roundabout in circumstances where the speed limit was 50 km per hour

9. The principle mitigating factors were:-

(1) The Plea of Guilty.

(2) The appellant's remorse.

(3) The appellant's cooperation with the Gardaí.

(4) The appellants excellent work record and his general good character as evidenced by those witnesses who gave evidence on his behalf.

10. The general principles of sentencing have been clearly enunciated in the judgement of the Court of Criminal Appeal in *The People (Director of Public Prosecutions) v Kelly* [2005] IR 321, delivered by Hardiman J. at page 332:

29. The general principles on which the courts act in determining the appropriate sentence in a particular instance are to be found in a long series of reported cases. They are discussed in a growing academic literature in which pride of place must be given to Professor Thomas O'Malley's book cited elsewhere in this judgment. However, although these sources are available to the public and the media, some public commentary suggests that the principles may not, in fact, be as widely understood as they should be.

30. It is not, of course, suggested that these principles are immutable or that others might not be adopted. In fact, as will appear below, some other comparable jurisdictions have, by statute, adopted significantly different and more rigid principles such as the well known 'three strikes' principle adopted in parts of the United States whereby a third felony conviction, regardless of its nature or triviality, attracts a minimum sentence usually of 25 years. It is not for the court to say whether that or any other innovation should be adopted in this country.

31. In cases where there has been a death and especially a death caused by an intentional as opposed to a negligent act, unhappiness with the sentence is often expressed in the reflection that even the longest sentence will end at some point, probably while the defendant is still quite young, whereas the suffering and deprivation of the deceased person's family will be permanent. This is very sadly true. But it ignores the fact that under our present sentencing regime, sentences must be proportionate not only to the crime but to the individual offender.

32. This principle in itself is well established and is derived at least partly from the Constitution. In *The State (Healy) v. Donohue* [1976] I.R. 325, Henchy J. said at p. 353 that the Constitution guarantees that a citizen should not be deprived of his liberty by a trial conducted so as to shut out a sentence appropriate to his degree of guilt and his relevant personal circumstances (emphasis added).

33. In *The People (Attorney General) v. O'Driscoll* [1972] 1 Frewen 351 Walsh J. said at p.359:-

The objects of passing sentence are not merely to deter the particular criminal from committing a crime again but to induce him in so far as possible to turn from a criminal to an honest life and indeed the public interest would be best served if the criminal could be induced to take the latter course. It is therefore the duty of the Courts 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.'

34. These passages have been approved many times in particular in *The People (Director of Public Prosecutions) v. M.* [1994] 3 I.R. 306. That case also emphasised that though the principles are as stated nevertheless, in the words of Denham J. at p. 318 of the judgment:-

Sentencing is a complex matter in which principles, sometimes being in conflict, must be considered as part of the total situation. Thus, while on the one hand a grave crime should be reflected by a long sentence, attention must also be paid to individual factors, which include remorse and rehabilitation, often expressed inter alia in a plea of guilty, which in principle reduce the sentence.'

The same judge, at p. 316, described the requirement that the personal situation of the accused must be taken into consideration by the courts in sentencing as 'the essence of the discretionary nature of sentencing'.

35. It is, of course, obvious that a different approach could be adopted. In particular, the approach often described as being based on 'just desserts' has attracted attention and support in several parts of the world. This approach would centre largely and perhaps exclusively on imposing a sentence proportionate to the offence leaving largely or even entirely out of account the personal circumstances of the offender. This might be thought to yield a result more proportionate to the distress, grief or outrage caused by a particular offence and to have a manifest deterrent effect. It might also be thought to lead to injustice in many individual cases. Be that as it may, our principles of sentencing as they stand require an individuated approach. To quote Denham J. again in *The People (Director of Public Prosecutions) v. M.* [1994] 3 I.R. 306 at p. 317:-

'Sentencing is neither an exercise in vengeance, nor the retaliation by victims on a defendant. However, the general impact on victims is a factor to be considered by the court in sentencing ... The nature of the crime, and the personal circumstances of the appellant, are the kernel issues to be considered and applied in accordance with the principles of sentencing, for this is an action between the State and the appellant and not an action between the appellant and the victims.'

In that case the Supreme Court was, *inter alia*, considering appeals against sentences of nine years for an offence where the maximum sentence was ten years. Egan J. said, at p. 315:-

'It must be remembered also that a reduction in mitigation is not always to be calculated in direct regard to the maximum sentence applicable. One should look first at the range of penalties applicable to the offence and then decide whereabouts on the range the particular case should lie. The mitigating circumstances should then be looked at and an appropriate reduction made.'

11. In considering what sentence this Court should now impose, this Court is also obliged to take into account the personal circumstances of the appellant as they presented at the time of the new sentence hearing. Counsel on behalf of the appellant submitted a booklet of documents in support of his plea in mitigation.

12. The first document is a report from the Governor of Cork Prison which states that the appellant has been an extremely hardworking and willing worker who is a trustee prisoner. The reports notes that he is attending a prison psychiatrist and an addiction counsellor as well as attending school and concludes by saying:-

"He is very respectful towards all staff and management and gets on well with his fellow offenders."

13. The next document is a report from an addiction counsellor who describes the appellant as someone who has not only actively engaged with counselling, but is also someone who has shown great insight into his use of alcohol and its consequences.

14. The next matter which the court has been asked to consider is a detailed report from a consultant psychologist dated the 9th June, 2015. This arises in circumstances where a fellow prisoner and fellow kitchen worker whom the appellant had befriended was stabbed to death in his presence. Dr. Maura Groarke concludes her report as follows:-

"This gentleman is currently suffering from severe post traumatic stress disorder and should be receiving ongoing psychological support. He does not want to take medication on an ongoing basis, but feels he would benefit from having a forum in which he could open up.

I feel Mr. Casey was just becoming accustomed to a life in prison when this unfortunate fatal incident has thrown him back to a regressive state of fear of the unknown and an inability to trust anybody around him. He has, it would appear, been a model prisoner and admitted to me that he has tried to put on a brave face to his family when they visit as he feels they have been upset enough. He was tearful on several occasions on his recall of his own wrongdoings and the murder within the prison.

He is quite visibly shaken and finding it at times difficult to concentrate. He has lost a significant amount of weight and is finding it hard to motivate himself. He is what I would describe as a vulnerable prisoner in his current environment and I would stress the importance of psychological support for him in the immediate future before he sinks into a further depressive state and his suicidal ideation becomes a reality."

15. Finally the parents of the deceased woman Megan Johnson have furnished a further addendum to their original victim impact report. In this further report, Valda Long and Stephen Johnson state as follows:

"We feel that Sean Casey has served enough time in prison to make amends for what he did. Keeping him in prison is of no benefit to us and will not bring our daughter Megan back to us. We feel that Sean Casey has taken the responsibility for the devastation that came from the accident on his shoulders. We believe that the young man we saw being sentenced to imprisonment in Cork Circuit Criminal Court was genuinely remorseful. We believe that he deserves some mercy."

16. The statement goes on to say:-

"We are the parents of a daughter that lost all of the rest of her life on that night and we do not want him to lose anymore of the rest of his young life.

We do not have a difficulty with the period of disqualification which was imposed in the Circuit Criminal Court as it might be best if he was not on the public road for a long time. But we feel that the length to the prison term does not serve any benefit to the public, to us as grieving parents or to the memory of our beautiful daughter."

17. In endeavouring to apply the principles as recited in the *Kelly* judgment and in considering what sentence we should impose in substitution for the sentence that we have quashed we are guided by the principle of proportionality and the need to reconcile that principle with the penal aim of rehabilitation. We must also bear in mind the sentences that have been imposed in other cases of dangerous driving causing death while at the same time bearing in mind that at the end of the day each case has to be decided according to its own special facts. We have referred to a number of these cases in our judgment of the 31st July, 2015.

18. The maximum penalty for this offence is ten years imprisonment.

19. The first task of this Court is to identify where on the scale of penalties available to this Court it should locate this particular crime bearing in mind the seriousness of the aggravating factors which we have just outlined. This Court takes the view that the appropriate starting point in these circumstances is a sentence of seven years imprisonment.

20. This Court is of the view that the mitigating factors require us to reduce the sentence of seven years to one of five years.

21. The question that now arises for this Court is what further credit if any, ought to be given for the additional matters that were brought to the court's attention at the sentence hearing in July of this year.

22. We do not propose to interfere with the disqualification order in this case which is going to be an ongoing punishment for the appellant for a significant period of time following his eventual release from prison. Indeed it may well be argued that this disqualification will impact on his employment prospects in the future to such an extent that it may adversely affect his ongoing rehabilitation. Be that as it may, we propose to leave this disqualification in place. In view of this and in light of the further documentary evidence that this Court has received, we believe that it is appropriate to give some further credit to the appellant. The report of the consultant psychologist discloses how in this case the punitive aspect of imprisonment has gone far beyond the mere deprivation of liberty. Accordingly the court will suspend the final twelve months of the five years sentence on the usual terms. As we have just indicated we also disqualify the appellant from driving for a period of 30 years. We back date both this disqualification and the sentence to the date of the original order of the Circuit Court.