



THE COURT OF APPEAL

**Birmingham J.
Mahon J.
Butler J.**

Appeal No.: 147/2013

Between

The People at the Suit of the Director of Public Prosecutions

Respondent

- and -

Patrick Irwin

Appellant

Judgment (ex tempore) of the Court delivered on 29th February 2016 by Mr. Justice Mahon

1. On 3rd June, 2013, at Sligo Circuit Criminal Court the appellant pleaded guilty to assault causing harm to Det. Sgt. Brian Lee on 29th May, 2010, at Collooney, Sligo, contrary to s. 3 of the Non Fatal Offences Against the Person Act 1997.

2. On 6th June 2013, the appellant was sentenced to three years imprisonment, consecutive to a concurrent sentence which he was then serving, namely a seven year prison sentence imposed on 22nd February, 2011, at Dublin Circuit Criminal Court in respect of an offence contrary to s. 15A of the Misuse of Drugs Act 1977 (as amended), and which was committed while the appellant was on bail in respect of the offence with which this appeal is concerned.

3. Det. Sgt. Lee gave evidence to the effect that, on 29th May, 2010, while driving towards Collooney, he noticed a car parked on the left hand side of the road. As he came close to this vehicle, it drove at speed down the road and turned into a service station. Det. Sgt. Lee followed and on entering the service station recognised the driver of the car to be the appellant. He also noticed that there was a young child in the appellant's vehicle. He approached the appellant and engaged him in conversation. Det. Sgt. Lee then proceeded to search the appellant and found some cash and a packet concerning an unidentified substance. At this point, a struggle ensued as between Det. Sgt. Lee and the appellant during which Det. Sgt. Lee was assaulted and suffered personal injury. The incident lasted for approximately ten minutes, and ended when Det. Sgt. Lee succeeded in detaining the appellant pursuant to s. 23 of the Misuse of Drugs Act 1977.

4. The appellant's grounds of appeal are:-

(i) The plea of guilty. It is contended that insufficient credit was afforded the appellant in relation to his plea of guilty, and the stage at which he entered that plea.

(ii) The learned sentencing judge failed to adequately respect the totality principle given that he was obliged to impose a consecutive sentence.

(iii) The appellant was in custody for approximately seven months (from 29th July 2010) prior to sentencing. He contends that he was not given credit for this period spent in custody before sentencing, although the learned sentencing judge specifically stated that he was taking it into account when passing sentence.

(iv) The appellant maintains that the learned sentencing judge erred in measuring the sentence start point at five years (being the maximum sentence for this offence) prior to reducing it for mitigating factors.

(v) It is contended that the learned sentencing judge did not sufficiently provide for rehabilitation.

(vi) It is contended that the learned sentencing judge did not adequately consider the lack of previous convictions for assault, or the minor nature of such convictions as the appellant had.

5. The assault on Det. Sgt. Lee was a very violent one. It was aptly described by the learned sentencing judge as "*an aggressive and extremely violent attack*". In the assault Det. Sgt. Lee sustained serious injuries including the following:-

- Abrasions to both cheeks and forehead.
- Dental damage and an undisplaced fracture of the left mandible from punches to his face.
- Severe abrasions and punch marks and haematomas to his stomach, his left and right ribs, his left shoulder and his right renal area and abdomen.
- Multiple abrasions over his right calf muscle extending over the right Achilles tendon.
- Abrasions and cuts to his left and right hands and fingers.
- An injury to his hip joint causing restriction of movement.

6. As a consequence of the assault, Det. Sgt. Lee suffered psychological and developed a severe post traumatic stress disorder.

The previous convictions

7. The appellant had what the learned sentencing judge described as a “bad” record. It included a previous misuse of drugs offence including the s. 15A offence which resulted in the seven year sentence, being the sentence which had to be served prior to the commencement of the sentence in this case. While the appellant does not have a previous assault conviction, the offence which is the subject of this appeal is not entirely unrelated to the previous drugs offences, in that the attempt by Det. Sgt. Lee to search the appellant arose from his suspicion that the appellant was in possession of illicit substances.

The appellant’s personal circumstances

8. The appellant is thirty three years old, and at the time of the commission of the offence was an unemployed bricklayer, who did occasional casual work.

The sentencing judgment

9. Having considered the relevant factors as he saw them, the learned sentencing judge proceeded to sentence the appellant as follows:-

“I must bear in mind the totality principles and the question of proportionality. If this case had come before the Court as a stand alone offence without the previous history of convictions, it seems to me that the correct sentence would have been in the region of three to five years. Coming before the Court with the record of serious crime as the accused does, pitches this offence at the upper end of that range; however, taking into account his plea of guilty, the apology tendered, however late, the offer of compensation – properly refused in my view – the principles of totality, the accused own personal circumstances and his efforts in prison at education and upscaling, where I would be more inclined to sentence him to five years for what can only be described as a savage assault, in the circumstances of this case, I impose a term of three years consecutive to the current sentence which he is serving. I should point out that I am also taking into account the fact that there is a time served element included in arriving at the three years as opposed to five years in this case.”

10. It is quite clear that the learned sentencing judge assessed the gravity of the assault at the very upper end of the gravity scale for this offence in that he indicated that but for the mitigating factors, and the principle of totality, he would have been inclined to sentence the appellant to the maximum term of five years.

11. The Court cannot fault this view. Undoubtedly the assault constituted an offence at the very upper end of a s. 3 assault for which the maximum sentence is five years. Indeed it might be said that the appellant was fortunate that he was not charged with the more serious offence in the circumstances. The nature and circumstances of the assault certainly brings it the very upper end of the gravity scale for a s. 3 offence, and one which warranted a headline sentence of close to the maximum of five years, if not the maximum itself.

12. On that basis, the reduction for the various mitigating factors, including credit for the period of six or seven months spent in custody prior to sentencing, is in the region of eighteen months to two years, or about 40% below the maximum sentence.

13. Such a sentence might understandably be described by some as being a lenient one. Be that as it may, a net sentence of three years certainly comes within the discretion which the learned sentencing judge was entitled to exercise in this case.

14. The Court will therefore dismiss the appeal.