THE COURT OF APPEAL

Birmingham J.
Sheehan J.
Mahon J.
No. 229/15

The People at the Suit of the Director of Public Prosecutions

Respondent

V

Martin Stokes

Appellant

JUDGMENT of the Court delivered on the 3rd day of March 2017 by

Mr. Justice Sheehan

1. This appeal concerns a sentence which was imposed in a case which ran into the summer vacation in 2015. Following an eighteen day trial, the appellant was sentenced to twelve years imprisonment with the final two years of that sentence suspended for the rape of CS in June 2011. A similar sentence was imposed for the defilement of CS, she being at the time a child under the age of fifteen. Two convictions for sexual assault were also taken into consideration. All the offences occurred in the course of a single incident which happened on the 3rd June, 2011 at the Old Tuam Road, Monkland, Co. Roscommon.

2. The background facts are that sometime between 6.45 pm and 7.00 pm that evening when the injured party was fourteen years old and the appellant twenty, they met up with each other as the injured party was on her way to her friends home. She told the court that she had met the appellant on a previous occasion and chatted to him. She stated that she thought he was sixteen years old as he had told her his age on the occasion of their previous meeting. She told the court that he had asked her to go with him for a few minutes as they walked down the road. She said that he kept asking her and said that he was only going to be a few minutes and that she then climbed onto a fence and jumped into a field. He followed her and told her to sit down, whereupon he started to touch her breasts. Her evidence was that she told the appellant that she did not want to do it, but that he continued to touch and that he digitally penetrated her and had sexual intercourse with her. She said that she kept asking him to get off her saying that she did not want to do it and also telling him that she was only fourteen years old.

3. The injured party went home afterwards but did not tell her parents. That night she went with friends to a disco where she told some of her friends about her relationships with other boys, but did not say the appellant had raped her. Subsequently she told a neighbour what had happened and as a result her parents became aware and a complaint was then made to the gardaí.

4. Counsel for the appellant submitted that the sentence imposed was disproportionate and excessive having regard to the circumstances of the appellant and the circumstances of the offence. In particular counsel for the appellant complained that the sentencing judge placed undue weight on the lies told by the appellant and failed to place sufficient attention to the following matters:-

> 1. The relative youth of the appellant at the time of the offence, he being 20 when it was committed and 24 at the time of the sentence hearing.
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> 2. He had the support of his parents and siblings.
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> 3. He has a limited educational background with essentially primary and partial secondary school attendance.
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> 4. He has a partial employment history with occasional employment for odd jobs.
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> 5. He is a married man with a three year old son. He has not seen his family since he was charged with the present offences.
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> 6. He is a member of the travelling community and the charges and conviction have had a serious impact on his extended family.
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> 7. His previous convictions were not in relation to any sexual matters.
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> 8. The offence itself did not involve any gratuitous violence or threats to kill.

5. In the course of his sentencing remarks the judge did note that the appellant was a married man with one child who had not seen his wife and child since he had been charged in November 2011. He held the appellant's six previous convictions to be of a minor nature and described them as being "not relevant". He noted the appellant's limited educational attainment and his work record.

6. During the course of the sentence hearing before the Central Criminal Court counsel for the appellant had introduced the well known sentencing judgment of Charleton J. in *DPP v. Drought* [2007] IEHC 310 in the course of which he had carried out an extensive review of sentences imposed in rape cases. Counsel for the appellant relied on this judgment in support of a submission that the appropriate sentence was in the lower range of sentences as identified by Charleton J. Counsel for the respondent urged the sentencing judge to disregard the judgment in *Drought* but did not present the sentencing judge with any comparators relying rather on basic principles.

7. In the course of the hearing before us counsel again relied on the judgment in *Drought*, but also on the recent judgment of this Court *in The People (at the Suit Director of Public Prosecutions) v. T.V.* delivered by Edwards J. on the 6th December, 2016. In that case an eight year prison sentence with the final three years suspended was substituted for an original sentence of eleven years with

the final three years suspended in a case where the appellant had unsuccessfully raised the defence of consent.

8. Counsel for the respondent seeks to uphold the sentence imposed and points in particular to the appalling consequences this case has had for the injured party whose life has had to be put on hold for a period of four years while waiting for the trial to take place. Counsel also noted that the appellant and her family had to move away from the area where they were living at the time this offence occurred and that her secondary education had been seriously disrupted.

Conclusion
9. It is undoubtedly the case that the victim's age at the time this offence occurred is the principle aggravating factor. We have considered the pre-sentence remarks of the judge and it is difficult to avoid the conclusion that he paid undue attention to the lies told by the accused. He concluded his extensive remarks on this subject by stating:-

> "Persistent lying particularly when it is to one's disadvantage must lead one to question the soundness of a person's judgment."

10. In our view this excessive attention to the lies of the accused led to an error on the part of the sentencing judge when he identified a sentence of twelve years imprisonment as the appropriate headline sentence. In our view the proper starting point particularly having regard to the victim's age is a sentence of ten years imprisonment. A further matter requires to be noted here. It took four years for this offence to come to trial. This was grossly unfair to the victim, but it was also unfair to the appellant whose life was also on hold following his initial arrest. This significant system failure is a factor to which we also have regard in considering what portion of the ten year sentence that we now impose ought to be suspended. In view of this delay the young age of the appellant at the time of offence and the need to encourage his rehabilitation we will suspend the final three years of the ten years sentence we now impose in lieu of the original sentence provided the appellant enters into a bond to keep the peace and be of good behaviour for a period of three years following his release from prison. We also direct that the appellant be subject to a post release supervision order for eighteen months pursuant to the Sex Offenders Act, 2001.