



THE COURT OF APPEAL

Record Number 231/2017

**The President
McCarthy J.
Kennedy J.**

BETWEEN/

THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

- AND -

ALAN DOYLE

APPELLANT

JUDGMENT of the Court (ex tempore) delivered on the 3rd day of December 2018 by Mr. Justice McCarthy

1. The accused pleaded guilty on the 20th February, 2017 to a charge of aggravated burglary at Portlaoise Circuit Criminal Court and was sentenced to six years imprisonment, the final three years of which were suspended on his entry into a bond:-

- (1) to keep the peace and be of good behaviour for a period of five years from the date of release;
- (2) to submit to the supervision of the Probation and Welfare Service for eighteen months' post-release and follow all directions given by them in dealing with his addictions;
- (3) to refrain from consuming alcohol and illicit drugs for a period of five years' post-release and submit himself to urinalysis as directed by the gardaí or the Probation and Welfare Service; and
- (4) to pay the sum of €6,000.00 in compensation to the victim, Mr Alan Morgan, the latter amount was paid.

2. Mr Heneghan for the appellant confined himself to a submission that the trial judge had failed to have sufficient regard to the fact that compensation in the total sum of €6,000.00 was paid in circumstances where it seems proper to conclude that such a sum was a significant burden on the accused.

3. The accused drove two people to a house in the country at Killeen County Laois. They were armed with what is described as a hurley, and an extendable socket wrench. These had been stolen.

4. The other two exited from the car and proceeded to break the windows of Mr. Morgan's car which was parked outside his house and damaged also the bodywork and wing mirrors. Mr Morgan, the householder, heard the noise, came out and when he shouted at the accused's accomplices to desist, they followed him into the house and smashed a patio window or doors in order to do so. He shouted that he was getting a shot gun though he did not have one and this frightened off the two. All three left the scene driven by the accused; the car was his property. On any view, accordingly, this was an offence of a very serious kind.

5. A hoodie which was found discarded at the scene was subsequently analysed and it appears from it that the appellant's DNA was found on it. He was arrested on two occasions but made no admissions. His plea was regarded as one made at the earliest possible opportunity. He is a thirty-nine-year-old man with two children aged twelve and nineteen. He had a strong work history before he suffered a road traffic accident eleven years ago which, inter alia, resulted in the amputation of the lower part of one of his legs. This has had an unfavourable effect on his attempts to obtain employment. He suffers from epilepsy and takes medication for it. This does not appear to be significant in terms of the difficulties he may experience in custody or, at least, not sufficiently so to have a material impact on sentence. He is supporting his family and he demonstrated remorse when interviewed by the Probation and Welfare Service.

6. He has sixteen previous convictions which range in date from 2007 relating to road traffic matters, assaults and the intimidation of a witness, though he does not appear to have served a custodial sentence. He is a drug addict as appears for the probation report. This habit he developed from his late teenage years and he apparently uses heroin daily.

7. Ms. Ryan of the Probation and Welfare Service says that the accused has "not done anything to address his drug use". She says that in the first interview with him he was reluctant to address it and presented as being in denial about the seriousness of it. However, on further discussion, he apparently agreed that he needed to urgently address his addiction and appears to now be better motivated about the possibility of going on a methadone maintenance programme. In her professional opinion, his "drug addiction, low mood and lack of any support from substance use will continue to affect his ability to remain free from offending behaviour".

8. In the present case it is because of the fact that compensation was paid we have decided not to increase the sentence. Absent compensation the sentence imposed, very lenient though it was, would have been unduly lenient and intervention by this court would have had to have been considered as a possibility.

9. The learned Circuit Court Judge took into account every relevant factor in the most comprehensive manner and it seems to us that there is no basis for any approach other than a substantial custodial sentence. There is no doubt that having a regard to all the relevant factors a headline sentence of six years was lenient and an effective reduction of 50% the more so, the sentence cannot accordingly be regarded as excessively severe and we therefore refuse the appeal.

