



**THE COURT OF APPEAL**

**Record No. 187/2017**

**Birmingham J.  
Mahon J.  
Hedigan J.**

**Between/**

**The People at the Suit of the Director of Public Prosecutions**

**Respondent**

**- and -**

**Robert Widger**

**Appellant**

**JUDGMENT of the Court (*ex tempore*) delivered on the 31st day of July 2017**

**by Mr. Justice Birmingham**

1. This is an appeal against the severity of the appellant's sentence. The sentences being appealed are a sentence of twelve months imprisonment that was imposed in respect of a theft offence and a consecutive sentence of two years imprisonment with one year suspended in respect of a s. 18 Criminal Justice (Theft and Fraud Offences) Act 2001 offence, that is to say possession of stolen property imposed on the 5th July of this year in Waterford Circuit Court.
2. The background to the matter coming before the court is that on the 21st September, 2014, six eight metre long lighting poles, each valued at €320, were stolen from a construction compound at University Hospital in Waterford.
3. An investigation commenced, CCTV from the site was viewed which covered the incident. That footage revealed the part played by a black land cruiser jeep, the registration number and plate was visible. That vehicle was registered to Mr. Widger.
4. It should be noted that evidence emerged that he had gained access to the hospital by using the swipe card of his wife who is an employee of the hospital.
5. When the footage was viewed, a search warrant was obtained in respect of Mr. Widger's premises. There, the lighting poles were recovered and a number of other items of stolen property were also found. These being a mini digger, valued €25,000, that had been stolen in July 2009 and a strimmer, stolen on the same occasion, eleven aluminium windows and four doors, value €8,308, an Ifor Williams horse box valued at €3,500, and a double axel Ifor Williams trailer, value €2,722.50. These items had been misappropriated between 2008 and 2013.
6. Mr. Widger was arrested, detained and interviewed and exercised his right to remain silent when interviewed.
7. So far as his personal circumstances are concerned, he is thirty eight years of age, a married man, the father of three children - three sons, twins aged four and a seven year old. He is self employed, involved in the training and breeding of horses. At an earlier stage in his career he had worked as a national hunt jockey in England.
8. He has twenty six convictions recorded under the Road Traffic Act. The sentencing judge enquired whether these included cases of driving without insurance and was told that they did not and that they were minor in nature and were in the nature of failing to produce documents and similar offences.
9. A probation report was available to the court which was very positive from the appellant's perspective. It refers to his remorse, to the fact that he was at low risk of offending and it recommended that the court deal with the matter by way of community based sanction.
10. One of the arguments that is made on this appeal is that the judge ought not to have declined to follow the probation recommendation without giving clear reasons for the course of action he was decided on.
11. The court also had before it a number of references and testimonials which were very impressive. These included references from family members, a letter from his wife, a letter from his mother and other members of the family, from neighbours, from people that he had done business with in the equine business. It was also pointed out that he has served his community by giving children horse riding lessons and in particular that he is actively involved in assisting a young boy with learning disability difficulties in teaching him how to read to the extent that that young boy is now about to embark on the Special Olympics programme.
12. The case that is made for the appellant is that the sentencing judge erred when imposing a custodial sentence. It was pointed out that this was Mr. Widger's first appearance before the criminal courts and it is submitted that it was to be expected that the matter would have been dealt with other than by way of an immediate custodial sentence. A suspended sentence or a community service order would have been the appropriate way to deal with the case according to the appellant.
13. On the other side of the coin, the DPP submits that this was a case where the custody threshold was crossed. She says that these were serious offences and that the sentences imposed were appropriate.
14. In response to a question to counsel for the DPP from the court about the appropriateness of consecutive sentences, counsel for the Director submitted that it was within the discretion of the trial court to make sentences consecutive, that there were a number of valuable items of stolen property in Mr. Widger's possession which had been stolen over a period of years must have weighed with the judge when deciding to impose consecutive sentences.

15. This Court is in no doubt that these were serious crimes of dishonesty. The offending was deliberate and conscious. This Court has not been persuaded that the judge erred in concluding that this was a case which required a custodial sentence. The court was, however, sentencing someone of previous good character. In those circumstances, the sentence should be no longer than necessary to meet the case. The judge was also told that a custodial sentence would be particularly difficult for Mr. Widger and it would present difficulties in terms of his interaction with his family members and also difficulties for him given the nature of his business.

16. The sentence that was actually imposed, an aggregate sentence of three years with one year suspended was a very substantial sentence for a first time offender. In the Court's view the sentencing objectives could have been achieved through a lesser sentence. An effective sentence of twelve months custody would mark the seriousness of the offence. Imposing a sentence greater than that was inappropriate and amounted to an error.

17. This Court therefore will deal with the matter by directing that the theft offence sentence and the s.18 offence sentence should be served concurrently. Therefore, the sentences will be twelve months in respect of the theft matter, two years with one year suspended on the s. 18 matter, but the sentences are to be served concurrently and to date from the 5th July, 2017 being the same date as the commencement of the sentences in the Circuit Court.