



THE COURT OF APPEAL

Record No. 250/2015

Birmingham J.
Sheehan J.
Mahon J.

Between/

The Director of Public Prosecutions

Respondent

- and -

Darren Coss

Appellant

Judgment (ex tempore) of the Court delivered on the 17th day of October 2016 by Mr. Justice Mahon

1. The appellant was convicted on 27th January 2015 at Nenagh Circuit Criminal Court of one count of being carried in a motor vehicle contrary to s. 112 of the Road Traffic Act 1961 (as amended by s. 65 of the Road Traffic Act 1968 and by s. 18 of the Road Traffic Act 2006) having pleaded guilty. The appellant was sentenced on 14th October 2015 to a term of imprisonment of two years and six months such sentence to commence on the legal expiration of a sentence of eight months imposed at Portlaoise District Court on 26th June 2015. This is the appellant's appeal against severity of sentence.

2. At approximately 5 a.m. on 28th August 2013 gardaí spotted a stolen Toyota Hilux jeep being driven through the village of Moneygall. The vehicle was pursued by a number of garda patrol cars for approximately three quarters of an hour. The vehicle turned into a laneway leading to a house and yard in the townland of Killough, and while in the yard reversed into one of the garda patrol cars. Two men ran from the jeep and were arrested hereby. One of these men was the appellant. The other was Mr. David Condon, the appellant's co-accused.

3. The appellant's co-accused pleaded guilty to a charge of being carried in a motor vehicle without its owner consent. He pleaded guilty and was sentenced to two years and six months with the final twelve months suspended on 10th February 2015.

4. The first trial of the appellant for offences including the offence which is the subject matter of these proceedings concluded on 24th October 2014 with the jury failing to reach a verdict. A re-trial commenced in January 2015, and on the second day of that re-trial, on 27th January 2015, the appellant pleaded guilty to the s. 112 count. The remaining charges were not proceeded with.

5. The appellant was remanded on bail to June 2015 for sentencing. The appellant did not turn up on the scheduled sentencing date, and a bench warrant issued. This was executed on 2nd July 2015, and the appellant was remanded in custody between that date and his sentencing date, 14th October 2015.

The grounds of appeal

6. The grounds of appeal can be summarised as follows:-

(i) The learned sentencing judge incorrectly placed the offence in the high range.

(ii) The learned sentencing judge failed to attach sufficient weight to a number of mitigating factors including the plea of guilty, his "relatively few" previous convictions for road traffic offences and his dysfunctional childhood and background.

(iii) The learned sentencing judge identified aggravating factors which were in fact not such. In particular it is contended that the learned sentencing judge viewed the dangerous driving and injury to Gda. O'Connor as aggravating factors in circumstances where the appellant was a passenger, and not the driver of the vehicle.

(iv) The learned sentencing judge erroneously treated the appellant's claim that he told the driver of the vehicle, his co-accused, to slow down to be inconsistent with his attempt to escape from the vehicle when it was cornered by gardaí.

(v) The learned sentencing judge unreasonably regarded the appellant's previous convictions as "*appalling*".

(vi) There was an unfair disparity of sentence as between the appellant and his co-accused. The co-accused received the same sentence but had the final year of that sentence suspended. The appellant contends that he had less previous convictions than his co-accused, and the co-accused was more culpable than he was, in that he was the driver of the vehicle.

(vii) The learned sentencing judge unfairly exercised his discretion to impose the sentence of two years and six months consecutive to a sentence imposed in the District Court in June 2015.

7. Central to the appellant's appeal is his contention that the learned sentencing judge appeared to have treated the appellant as the car driver, or at least to have borne some responsibility for the manner in which the car was driven, whereas in fact he had pleaded guilty to being carried as a passenger in the vehicle. In fact, the learned sentencing judge expressly noted that the appellant was not the driver and was, it would appear, sentenced on that basis.

8. It must be said, however, that in the circumstances of this offence the appellant cannot escape some degree of responsibility for the manner in which the vehicle was driven. It is not the case that the appellant was an innocent passenger in a vehicle which happened to have been stolen, and then driven dangerously. By all accounts this was a situation where two or three men, including the appellant, used a vehicle to go to great and dangerous lengths to avoid arrest.

9. The appellant's co-accused was sentenced some six months or so earlier by the same judge, and also to a term of imprisonment of

two years and six months but, importantly, with the final year of that sentence suspended for a period of two years.

10. At the outset, it should be said that in the view of this Court the headline sentences of two years and six months in both cases appears to have been reasonable and proportionate. Insofar as differences exist as between the two cases, they relate to the apologies tendered, the previous convictions, and the general personal backgrounds of each of the accused. In the appellant's case, the learned sentencing judge was less than fulsome in his praise of the apology, expressing his *considerable reservations* about it. In the case of the co-accused, the learned sentencing judge appears to have treated it as being more genuine. As for previous convictions, both men had a number, but in the co-accused's case the previous convictions were more numerous and more serious than those of the appellant. In relation to the men's personal backgrounds, the learned sentencing judge remarked on the strong family support available to the co-accused, while in the appellant's case, he referred to his *very chaotic life* and a difficult childhood, and his consequential *enormous difficulties*.

11. The co-accused received an effective discount of the final twelve months of his two years and six months sentence because of mitigating factors. This was altogether appropriate and properly reflected the need to incentivise rehabilitation. While it can rarely, if ever, be the case that an accused person has an absolute entitlement to have his sentence reduced simply on the basis that a lesser sentence has been imposed on a co-accused; on the other hand a disparity in sentencing as between accused persons should be avoided, or be at least minimal, where aggravating and mitigating factors are broadly similar in respect of each. That does appear to have been the case as between the appellant and his co-accused.

12. For this reason the Court is satisfied that the learned sentencing judge erred in principle in failing to suspend a significant portion of the two years six month sentence.

13. This Court must now re-sentence the appellant as of today, and in so doing takes into account his impressive letter written to the Court. That sentence will be two years six months imprisonment with the final twelve months suspended for two years on his entering into a bond in the sum of €100 to keep the peace and to be of good behaviour. This sentence will commence from the expiry of the eight month sentence imposed at Portlaoise District Court on 26th June 2015, as in this Court's view the learned sentencing judge was entitled to exercise his discretion to so order.