



THE COURT OF APPEAL

**Birmingham J.
Sheehan J.
Edwards J.
Record Nos: CCA 31/16 & 157/16**

THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

V

MICHAEL CRINNION

Appellant

Judgment of the Court (ex tempore) delivered on the 16th day of December 2016, by Mr. Justice Edwards

Introduction

1. This judgment is concerned with appeals by the appellant against the severity of the sentences imposed upon him by Cork Circuit Criminal Court in two matters following pleas of guilty entered by him upon arraignment.

2. The first matter, on Bill No CKPD 0359/2015, involved three counts of possession of drugs for the purposes of sale or otherwise supplying them to another, contrary to section 15 of the Misuse of Drugs Act, 1977, being counts no's 2, 4 and 6 respectively on the indictment, the dates of the offences being firstly the 25th February 2015 at Bishop Lucey Park in the City of Cork, secondly the 10th March 2015 at Togher Road in the City of Cork and lastly the 11th May 2015 at Noonan's Road, in the City of Cork.

3. On the 1st of February 2016 the appellant, having entered his pleas on the same date, received a sentence of 4 years imprisonment in respect of counts 2 and 4 to be served concurrently and a further sentence of 2 years imprisonment on count 6 which was made consecutive to the 4 year sentence imposed on counts 2 and 4, but which was suspended in its entirety on the appellant entering into a bond to keep the peace and be of good behaviour for a period of 2 years following his release from custody and further, that he would be under the care of the Probation and Welfare Service for the same period of time and required to obey all of their lawful directions.

4. The second matter, on Bill no CKDP0084/2016, involved a single count of assault causing harm which occurred on the 28th of November 2015 at the Deanrock Estate, Togher in the City of Cork, on one Garda Joseph Halpin contrary to Section 3 of the Non-Fatal Offences against the Person Act, 1997.

5. On the 11th of May 2016 the appellant, having entered his plea on the 18th of April 2016, received a sentence of three years imprisonment in respect of this matter, the said sentence to run consecutively to the sentence of four years imprisonment which the appellant was serving and which had been imposed upon him at Cork Circuit Criminal Court on the 1st of February 2016 on Bill No CKPD 0359/2015. However, the last twelve months of this three year sentence was suspended on the appellant entering into a bond to keep the peace and be of good behaviour for a period of two years following his release from custody and for the same period to come under the care of the Probation Service and to obey all of their lawful directions.

Bill No CKPD 0359/2015 :The circumstances of the case

6. The sentencing court heard evidence that the Gardaí were conducting what might be described as an "undercover operation", that a particular mobile phone number was called and that the appellant came to Bishop Lucey Park and sold a bag of heroin to an undercover Garda for €30. The evidence was, that on this first occasion, the undercover operation being carried out by the Gardaí was not in fact targeting the appellant.

7. The next offence was on the 10th March 2015 at Togher Road in the City of Cork when a similar situation arose, and again heroin to the value of €30 was sold to the appellant to the same under cover Garda.

8. The last incident occurred on the 11th May 2015 at Noonan's Road in the City of Cork when again the same under cover Garda contacted the appellant who on this occasion supplied €50 worth of heroin.

Bill No CKDP0084/2016 :The circumstances of the case

9. In this instance the sentencing court heard evidence that at 9 pm on the 19th of November 2015, Garda Halpin and Garda O'Leary commenced duty at Togher Garda Station. They were tasked with checking the curfew of the appellant, Michael Crinnion. The appellant had entered into a recognisance in Cork District Court on the 5th of November 2015, and part of the conditions of that recognisance was that he was to observe a curfew between 10 pm and 8 am. Gardaí checked him at 11.30 pm on the 19th and found him to be home. Some two hours later, on the 20th of November, they were again passing Dean Rock Estate, and they observed Michael Crinnion standing on the public roadway engaged in conversation with the occupants of a parked vehicle. The patrol car came to a halt, Garda Halpin exited the patrol car and instructed Michael Crinnion to stay where he was. Michael Crinnion immediately fled the scene, shouting obscenities at Garda Halpin. Garda Halpin gave chase immediately and observed Michael Crinnion jump over the back walls of houses adjacent to where he lives at 1 Blackwater Grove. Garda Halpin jumped onto the wall himself and gave chase. Garda Halpin eventually observed the appellant in the rear garden of a house at Argideen Lawn, which backs onto Blackwater Grove. Garda Halpin approached the appellant and informed him that he was under arrest. The appellant immediately became violent and aggressive, causing Garda Halpin to place handcuffs on him. Garda Halpin's colleague, Garda O'Leary, subsequently came to the house and lended assistance. Michael Crinnion was removed from the house and brought out to the patrol car, all the time being aggressive towards Garda Halpin and Garda O'Leary. He was placed into the rear of the patrol car and Garda O'Leary then drove out of the Dean Rock Estate. During this time, Michael Crinnion was aggressive and violent in the rear of the patrol car. He lashed out several times to Garda Halpin, kicking him in the head, dazing Garda Halpin. Garda Halpin instructed him to desist in his actions which he failed to do, and again the appellant struck out and again kicked Garda Halpin in the head, dazing him, at which point the appellant then bit down on Garda Halpin's left forearm, breaking the skin. Gardaí then arrived at Togher Station where the appellant was transferred into a garda personnel carrier for safety reasons, and then transferred into the Bridewell Garda Station, where he remained in custody and was charged that night.

The impact on the victim.

10. The injured party gave victim impact evidence and read into the record a victim impact statement that he had made. In it he had stated:

"My name is Joseph Halpin and I'm a member of An Garda Síochána attached to Togher Garda Station. On the 20/11/2015, following on from an incident where I arrested Michael Crinnion, he violently assaulted me in the patrol car. During this assault, Michael Crinnion brought his legs up and began to lash out at me with his feet, attacking me. He kicked my head with considerable violence, causing immediate pain, and my head was violently jarred off to the right. He kicked me multiple times to the head and pinned my head with his feet against the roof of the car. He kneed me several times to my chest. Again he used such violence and force that I was pinned against the interior of the vehicle. As we proceeded, Crinnion bit me. His first bites were to my left forearm, breaking the skin. I struggled away and he continued to follow after me, attempting to secure a latching bite. He was not able to lock onto me. However, as I attempted to protect myself, my right ankle was strained and he latched a bite onto my left upper arm. On arrival at the station I had to take a step back to recover from the violence of the attack. It took me a while before I was able to continue. As a result of the injuries that I suffered during the assaults on me by Michael Crinnion, I attended at my GP at 1030 hours on the 20/11/2015. I was in considerable pain and I required medication to treat the pain. As a result of the contamination risk of the bite injury, I had a blood sample taken and was prescribed other medications. On the 23rd of November 2015 my GP contacted me and informed me the blood sample taken from Crinnion indicated that he was HIV positive. This news struck me a blow, and I suffered considerable anguish and stress. It was not an issue which I had prepared myself for and it weighed heavily on me, causing me to be angered and outraged by his attempt -- by the attempts he made during the assault to cause me more substantial injuries by biting me. The nature of the incident and the fact that Crinnion is HIV positive has also caused considerable anguish and stress for my wife. We were both physically sickened by the news and I was informed that the risk of being infected was not an impossibility. This aspect caused me psychological torment until I had a follow-up test three months later. The follow-up test indicated I had not been infected. The physical injuries which I suffered during the assault caused me considerable difficulties. I suffered from considerable pain as a result to the injuries to my head, neck and torso and I had to take a substantial amount of medication to overcome the pain I was suffering. I was unable to attend work for a month and I had to attend at a physiotherapist to treat the injuries and I'm still attending to deal with the residual effects. I also had an injury to my ankle which caused me particular difficulties for several weeks in my ordinary day-to-day life."

The appellant's personal circumstances.

11. The appellant was born on the 1st of October 1991 and was 24 years of age when being sentenced in both matters. According to a report from the Probation Service Mr Crinnion was raised in Togher by his mother. His father was shot dead in 1993 outside a pub in Barracks Street and his maternal uncle was fatally shot in 2001. He is the second youngest of four. Two of his brothers are currently serving sentences for the manslaughter of two men from their area. His sister lives in Cork and has a young family. Mr Crinnion was raised in an environment where criminality and the resultant consequences are normalised. He got involved in drugs at a young age. Prior to his imprisonment he lived with his mother. He has one daughter aged two years. He is no longer in a relationship with the mother and currently does not see the child.

12. The appellant has very limited educational attainments and has no employment history. He has long standing substance abuse issues involving alcohol and drugs which has seriously negatively impacted on his decision making and lifestyle choices. He was smoking 3 or 4 bags of heroin a day and latterly had been funding his drug habit by criminal means. He is also understood to be HIV positive, though he claims to have been unaware of this at the time that he attacked Garda Halpin.

13. The appellant has a record of 45 previous convictions (excluding any convictions the subject matter of these appeals), 31 of which are for road traffic matters including insurance; unauthorised taking; and drink driving. The remainder include three convictions for public order offences; three convictions for offences involving possession of a knife; two convictions under the Firearms and Offensive Weapons Act for unlawful possession of ammunition; one conviction for criminal damage; and one conviction for theft.

14. After going into custody the appellant was given a three week methadone detoxification. The Probation Service has reported that while the appellant has accepted responsibility for his crimes, he has not taken steps to address his offending risk factors. He has limited victim empathy. He is said to be a young man who is deeply entrenched in a criminal lifestyle where he chooses crime, violence and substance misuse to manage his life. The Probation Service say that he will need to engage in intensive offence focused work if he is to reduce his risk of re offending and his risk of harm to others.

The sentencing judge's remarks

15. In sentencing the appellant on Bill No: CKPD 0359/2015 the sentencing judge made the following remarks:

"JUDGE: Very good. This man was a young, active and knowing drug dealer. He may himself have had some habit of taking drugs. The extent of that I don't know but I think the guards are to be commended for this type of operation. Anything that can be done to root out the scourge of drug dealing and to identify drug dealers is to be commended. It's undoubtedly an extremely difficult operation to detect. You have small amounts and it is noticeable the evidence in this case how the accused had separated himself from any stash and the small amounts that were on sale were individually provided to the location after the phone call. To me, that is evidence of a deep involvement by the accused, a knowing involvement in the trade. This went on over a continuous period from February to May of 2015 and undoubtedly would have continued even further only for he being detected. I won't place much attention to what is alleged to have been said to the guard that he could supply any amount. That may only have been bravado and I will have to deal with it on the basis that he knowingly and consistently dealt with drugs and on the occasions of his dealing there is no evidence that he was an addict. He may need help from services when he comes out of prison to readjust. So, the manner in which I'll deal with it, the first two offences I will deal with together and I will impose a four year sentence from 20/11/15, and the last sentence I will impose a consecutive two year sentence, which I will suspend in its entirety on condition that on his release he will remain under the Probation Service for two years and obey all their directions. I think that accounts for whatever he may need to re assimilate himself into the world."

16. In sentencing the appellant on Bill no CKDP0084/2016 the sentencing judge (who was a different judge to the judge that had sentenced him on Bill No: CKPD 0359/2015) made the following remarks:

"JUDGE: In determining the appropriate sentence which I am bound to impose, I have heard and considered the evidence as outlined by the witnesses and adduced by counsel for the prosecution and the defendant. It is my duty in that context to have regard to the principles enunciated by the superior courts which I, as a judge, must consider prior

to passing sentence and which now form the central plank of our criminal jurisprudence.

Mr Crinnion is a 24-year-old single man with one child, coming before the Court with 48 previous convictions, the most significant one, in the mind of this Court, being other assaults on members of An Garda Síochána. It is acknowledged by all that Mr Crinnion comes from a family deeply entrenched in criminality and tragic circumstances.

The sentence must be proportionate to the crime within the context of the maximum sentence prescribed by statute. The gravity of the offence must be viewed as being at the upper middle range of this type of offence, the maximum sentence being five years, and in my view this attracts a penalty of four years. Aggravating and mitigating factors must form of the deliberations of the imposition of the sentence, as must the circumstances of the accused person. The most aggravating elements of the offence are (a) it was an assault on a guard; (b) it occurred while on bail, in the context of Garda Halpin exercising his duties as a member of An Garda Síochána and supervising that curfew.

I've already dealt with the issue of the very difficult circumstances of Mr Crinnion which, as I say, have been acknowledged by all. What also needs to be considered is whether or not the accused has shown remorse and displayed appreciation for the wrongdoing or the offence. Regrettably, the probation report is not favourable in respect of Mr Crinnion on a number of grounds. He accepts responsibility for his actions. The report states that he has never attempted to address his addiction difficulties or indeed his offending risk factors. He is also reported to have limited victim empathy, and that his concentration tended to be on his own needs rather than the effect his actions had on the victim and related and associated persons. The previous criminal record and the likelihood by the accused of reoffending must be considered - 48 previous convictions speak for themselves. The probation report unfortunately assesses Mr Crinnion as being of very high risk of reoffending, and states that he seems to be beginning to have insight into the impact of his violent offending on others. He has gained some insight, according to the report, in relation to the pattern of chaos and its effect on his own life. Cooperation with the gardaí during the investigation of the offence must be considered. He volunteered to give a blood sample, which is indeed to his credit; he need not have complied with that request. The results of that sample have caused him great distress because of the positive results of that test, and indeed that stress was visited upon Garda Halpin and indeed his wife. The effect or consequence of the offence or wrongdoing on the victim must be considered. The effect of this offence upon the victim and his wife has been severe. An apology has been offered by counsel on his behalf. Garda Halpin gave the Court a very valuable insight into the effect of this offence upon him and his wife. Due regard must also be had for the content of any reports, either probation or psychiatric or others. I have carefully considered the report from the Probation Service. It is to Mr Crinnion's credit that he has remained drug-free since he entered the prison and perhaps this might indicate that there is perhaps a light at the end of the tunnel for him. I do not propose to recite the difficult family history of Mr Crinnion or add further to his difficulties. It has already been stated that his family are deeply entrenched in criminality and violence. It is from this context of chaos that Mr Crinnion finds himself before the Court.

I would echo the sentiments expressed in the probation report and say that Mr Crinnion needs to engage in offence-focused work of an intensive nature whilst in prison. I would also, without making any orders - I don't believe I have authority to do so - but I believe that Mr Crinnion should engage with psychiatric and psychological services to attempt to come to terms with the difficulties which no doubt have contributed to the very difficult life and the inevitable consequences of a life of chaos. In light of the somewhat advent of some insight, I believe an appropriate sentence is one of three years' imprisonment. Thank you very much."

17. The sentencing judge in this case went on to say that as the offence had committed while the appellant was on bail it would have to be consecutive to the sentences that the appellant was then serving, i.e. those imposed on Bill No: CKPD 0359/2015. The sentence judge was then prevailed upon to suspend the final year of the three year sentence he had imposed.

The grounds on which both matters are appealed

18. It was submitted on behalf of the appellant in the drugs matter that:

- (a) the sentencing judge failed to give sufficient weight and balance to the evidence adduced in mitigation of sentence.
- (b) the sentencing judge failed to place the offences on the scale of offending behaviour with the consequence that there was no starting point indicated by the sentencing judge in terms of penalty to which the mitigating factors could thereafter be applied.
- (c) the sentencing judge imposed consecutive sentences in circumstances whereby same was inappropriate and having done so, failed to apply the totality principle to the overall sentence imposed.

19. It was submitted on behalf of the appellant in the assault matter that:

- (a) the sentencing judge did not give sufficient weight and balance to the evidence adduced in mitigation of sentence.
- (b) the sentencing judge did not give sufficient weight and balance to the appellant's young age both at the time of the offence and at the date of the sentence hearing.
- (c) the sentencing judge failed to apply the appropriate weight to the very early plea of guilty entered by the appellant herein, the appellant having signed plea of guilty in the District Court and having affirmed same in the Circuit Criminal Court as soon as he possibly could.
- (d) the sentencing judge erred in placing this matter too high on the scale of offending by placing it on the upper middle range, and thereafter erred further in considering that the upper middle range applicable to the offence of assault causing harm was a starting point of 4 years imprisonment.
- (e) the sentencing judge erred in failing to properly or at all apply the totality principle.
- (f) the sentencing judge erred in failing to consider and build into the sentence an appropriate element of rehabilitation.
- (g) the sentencing judge erred in law and in fact in failing to take any or any adequate account of the medical situation of the appellant and in particular that he was facing himself into a lifelong illness which will require constant and permanent treatment for the rest of his life.

(h) the sentencing judge erred in law and in fact by failing to attach any or any appropriate weight to the fact that the appellant was an addict at the time that the event occurred but had taken steps to rehabilitate himself in that regard already by the time the matter came on for the sentence hearing.

The D.P.P.'s Response

20. Counsel for the respondent has submitted in substance that the sentences in both cases were proportionate and appropriate to the circumstances of the case. Moreover, appropriate credit was given for relevant mitigating factors in each instance and the combined or aggregate sentences do not offend against the totality principle.

Analysis and Decision.

21. While detailed written submissions were received in both cases in support of the grounds of appeal advanced we have not been persuaded by these, or by the oral submissions amplifying them, that any error of principle has been disclosed in the case of the sentence in the assault matter (ignoring for the moment the complaint based on the totality principle), and indeed counsel for the appellant was very frank in accepting that if the assault matter was to be considered in isolation he could have no real complaint about the sentence imposed.

22. In so far as the drugs matter is concerned, we are satisfied that in circumstances where the three incidents were close together in time, and were all concerned of the same type of offending, i.e., relatively low level drug dealing even if involving commercial sales for the direct personal benefit of the appellant, that consecutive sentencing was not required and it involved an error of principle. While there were also other grounds of appeal in respect of the drugs case we are not satisfied that the sentencing judge was in error in any other respect.

23. It is well established that recourse to consecutive sentencing should be availed of sparingly. There was insufficient to differentiate as between the incidents in this case so as to justify it, and the multiplicity of sales did not justify it in circumstances where commercial dealing was of the essence of the charges, and each sale separately charged had been close in time. Indeed, the fact that the Gardaí did not intervene to arrest the appellant after the first transaction, and that he was only arrested after the third transaction, resulting in three charges being preferred, suggests that the objective was to establish that the appellant was involved in a regular low level drug dealing, and not in a once off transaction, rather than that the offences being committed by the appellant were in some way particularly aggravated or egregious in their circumstances.

24. In circumstances where we have identified an error of principle in the drugs case it is now necessary for this Court to quash the original sentence imposed in that case and proceed to a resentencing of the appellant.

25. In accordance with established jurisprudence the Court invited the parties to submit to it on a contingent basis any materials that they might wish to have taken into account in the event of the court finding an error of principle and setting aside the sentence that was imposed by the sentencing judge.

26. In response to that counsel for the appellant has informed us that his client remains drug free in prison.

27. In proceeding at this point to resentence the appellant for the drugs offences we will impose concurrent sentences of four years on all three counts, but will suspend the final year of those sentences both to reflect the mitigating factors in the case and to incentivise the appellant to continue on the road that he commenced when he did his methadone detoxification programme on first entering custody. The conditions on which the final year is to be suspended are to be the same as those imposed by the sentencing judge when suspending the sentence originally imposed on count 6.

28. The sentence for the assault matter will remain unaffected and is to be served consecutive to the new sentences now being imposed for the drugs offences. We are satisfied in the circumstances of this case that the totality principle is not offended.

29. Accordingly, while we have allowed the appeal in the drugs case, we are not prepared to do so in the assault case. Rather, the appeal in that case must be dismissed.