



THE COURT OF APPEAL

[14/18]

The President

Whelan J.

McCarthy J.

BETWEEN

THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

AND

MICHAEL DOYLE

APPELLANT

AND

[50/18]

THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

AND

PATRICK DOYLE

APPELLANT

JUDGMENT (Ex tempore) of the Court delivered on the 25th day of March 2019 by Birmingham P.

1. The Court has been dealing with linked appeals against severity of sentences. The sentences in question were imposed in the Circuit Court in Clonmel on two separate occasions in 2017. The sentence hearings related to incidents that had occurred in Fethard, County Tipperary in late March/early April 2016.

2. So far as the appellant, Michael Doyle, is concerned, the position is that he had entered pleas of guilty in the Circuit Court to a number of counts. He had entered a plea of guilty to a burglary on 31st March 2016 which had occurred at a dwelling in Gort An Óir in Fethard, to burglary on 9th April 2016 that had occurred at a dwelling in Slievenamon Close in Fethard, to a s. 3 assault on one John Hickey on 31st March 2016, that s. 3 assault occurred in the context of the Gort An Óir burglary, to a s. 2 assault on Dara Bradshaw and that s. 2 assault occurred in the context of the Slievenamon Close burglary, also to three counts of theft, essentially shoplifting, which occurred on 8th April and on two occasions on 10th April at the Centra Store in Fethard.

3. The appellant was sentenced to an aggregate sentence of seven and a half years imprisonment with the final three years suspended. The aggregate sentence included a sentence of six months imprisonment for contempt of Court in relation to breach of an undertaking to the Court. The sentence was structured on the basis that a sentence of four years was imposed in respect of the Gort An Óir burglary. There was a consecutive sentence of three years in respect of the Slievenamon burglary and on Count 3, the s. 3 assault, there was a concurrent sentence of three and a half years imprisonment. As already indicated, there was a six-month sentence for the contempt of Court breach of undertaking.

Grounds of Appeal

4. The Grounds of Appeal that are advanced by Mr. Michael Doyle are that the Judge erred in failing to set a headline figure, that he was in error in placing the offences at the upper end of the middle range of gravity. It said, on behalf of Mr. Michael Doyle, that so far as Counts 1, 2, and 3 are concerned, that the appellant was not the primary actor. It is pointed out in relation to the assault on Mr. Hickey, that this incident was already underway when the appellant arrived. In the case of the Slievenamon incident, it is said that the Court paid undue weight to the effect of the incident on Mandy Allen, the owner of the house, and the impact on Alex Bradshaw, the younger brother of Dara Bradshaw. Ms. Allen and Alex Bradshaw were people who witnessed the incident. It is said that the Court did not have sufficient regard to the principles of totality, that this was not an appropriate case for consecutive sentences, and if there were to be consecutive sentences, that the aggregate sentence was excessive. It is pointed out that Patrick Doyle, the co-accused of the appellant, dealt with on another occasion, received a sentence of seven years with five years suspended, and on behalf of Mr. Michael Doyle, it is said that there is no justification for the divergence in approach between the two brothers.

5. In terms of Mr. Michael Doyle's personal circumstances, he was born on 17th December 1994. He is the father of two children and is engaged to be married. He has twenty previous convictions recorded and these include unauthorised taking, handling stolen property, s. 4 theft, and entering a building with intent.

6. Turning then to the position of Patrick Doyle, the sentences imposed on him were as follows:

Count 1: The Gort An Óir burglary, a sentence of three years

Count 2: The Slievenamon burglary, a sentence of two years consecutive to the sentence on Count 1 burglary

Count 8: Section 3 assault, two years imprisonment which was consecutive to Counts 1 and 2

Count 9: A Section 3 of the Non-Fatal Offences against the Person Act assault, three years imprisonment concurrent

Count 15: Section 2 of the Non-Fatal Offences against the Person Act, the Circuit Court purported to impose a concurrent sentence of two years imprisonment. A count of criminal damage was taken into consideration.

7. In terms of the background and personal circumstances of the accused, he came before the Court as a person without previous convictions. He was twenty years of age and eighteen years of age when the offences were committed. He was the father of a young son, born just months before the sentence hearing.

8. Just to say a little bit more about the facts of the case. The first incident, the Gort An Óir incident, appears to have its origin in a dispute between members of the Doyle family and other members of the Fethard community in relation to dogs owned by members of the Doyle family. The injured party in this case, Mr. John Hickey, explained that he had recorded a video on his mobile phone showing two dogs coming into his driveway on Thursday 31st March 2016. Mr. Hickey said, and reported this on social media, that he was unable to exit his house because of the position of the dogs in the driveway.

9. At approximately 1.00pm on 31st March 2016, Mr. Hickey, who was at home, heard the front door bell ring. He looked out the window and he saw Patrick Doyle and a female outside. Mr. Hickey answered the door, and, according to Mr. Hickey, he was asked by the female if he had put up a video of their dogs on Facebook. Mr. Hickey confirmed that he had, and at that stage, he was struck with a punch straight into the face by Patrick Doyle who shouted at him that he was a "dirty idiot". According to Mr. Hickey, Mr. [Patrick] Doyle punched him straight into the left eye with his fist. Mr. Hickey says that Mr. [Patrick] Doyle attempted to strike him again, that he sought to grab Mr. [Patrick] Doyle, but that Mr. [Patrick] Doyle went on hitting him. Mr. Hickey said that at that stage, he looked out and he saw the appellant, Michael Doyle, the older brother of Patrick Doyle, running up the driveway. Mr. Hickey says he pushed Mr. Patrick Doyle back as he continued to be struck with his fists and that he succeeded in pushing Mr. [Patrick] Doyle from his door. Mr. Hickey reports that Michael and Patrick Doyle burst in the front door and both of them punched him numerous times. He says that at least twenty punches were thrown, and, as he puts it, it was just "bang, bang, bang" from both of them. He describes the assault as occurring in his own hallway and that both men were in his hallway and were punching him as hard as they could. Mr. Hickey refers to Patrick Doyle delivering punches to him into his kidneys. He said he was receiving blows continuously to his head and upper body which caused him pain.

10. In the aftermath of this incident, Mr. Hickey says that he had been boxed into the face and to the ribs. He describes, this is his phrase, his forehead "being split open" and that there was bruising to his eye and face and he says that he was in pain for nearly a month.

11. In relation to the Slievenamon incident, on 9th April 2016, Gardaí were called to the Slievenamon Close area and when they got there, they observed a large group of people gathered on the street and they noticed that there was damage to the front door of No. 17 Slievenamon Close, which was the premises referred to in the burglary count, where three panes of glass were smashed on the front door. So far as the glass breakage is concerned, it appears that both Patrick and Michael Doyle had used their elbows to break the glass.

12. The injured party in the assault aspect of this incident was Dara Bradshaw who said that he had been chatting to his friend outside his house when a man, not either of the men before the Court, came up and at that point, Michael Doyle then turned up at Slievenamon Close and that Michael Doyle shouted at young Mr. Bradshaw "what are you fucking looking at?" Mr. Bradshaw says that Mr. [Michael] Doyle came into his garden and Mr. Bradshaw says that he was afraid of Mr. [Michael] Doyle and believed that he was going to be assaulted. He was very conscious of the fact that his little brother, his girlfriend, and his mother were in the house and closed the door behind him. Dara Bradshaw says that he engaged in self-defence, but that Patrick Doyle approached and at that stage, effectively, it was two against one. He says that Patrick Doyle managed to bite him in the neck during the course of the fight.

13. In the case of Patrick Doyle, there is a third incident where the injured party is a Mr. Tommy Sheehan. Mr. Sheehan explains that he had seen the video of the dogs that had been posted on Facebook by Mr. Hickey and it seems that he put up a comment to which objection was taken by the Doyles and to which offence was taken. On the day of the incident, 11th April, 2016, Mr. Sheehan had some contact with Patrick Doyle and that ended with Mr. Doyle saying "I'll catch you later, I'll catch you later, I'll catch you later". Later that evening, Mr. Sheehan was travelling in a car in the area with his father and they saw Patrick Doyle. They decided to stop the car and find out what Mr. Doyle had wanted earlier. According to Mr. Sheehan, Mr. Doyle walked towards him. According to Mr. Sheehan, Mr. Doyle was "saying stuff under his breath", but Mr. Sheehan could not hear what he was saying. As the distance between the two closed, Mr. Patrick Doyle, without warning, "swung a belt with his fist" – this is the description given by Mr. Sheehan – and hit Mr. Sheehan on the side of the face in the temple area. The force of the punch knocked Mr. Sheehan flat onto his back. Mr. Sheehan, it seems, has been terrified since the incident to the extent that he has not stayed in Father Terry Park where he had been residing, but instead has been staying with his parents. Mr. Sheehan was not a person who enjoyed good health. He is of small stature, apparently, and he has long suffered from Crohn's Disease.

14. The summary that has been provided of the incidents leave no room for doubt but that these were incidents of the utmost seriousness. The point is made that these were not 'classic' burglaries, in the sense of premises entered by people intent on theft, and that is true, but they were incidents that involved the entry of a dwelling for the purpose of inflicting violence and that is clearly a matter of very real seriousness indeed and one that has to be regarded as such by any Court. The point is made by Mr. Michael Doyle that the divergence in sentence is unjustified, but this is a case where a divergence was always to be expected. It was the situation that Patrick Doyle came before the Court as somebody without previous convictions, and while there certainly was no basis for saying that his role in the offending was lesser, it is the case that he was significantly younger and that in his case, the offending occurred when he was eighteen years of age.

15. In relation to the breach of the undertaking aspect, which resulted in an additional six months sentence for Michael Doyle, the point is made that the evidential substratum for concluding that an undertaking was properly entered into and then not honoured was not there. It is said that there was no evidence which would justify a conclusion that in breach of the terms of a Court order, that Mr. Michael Doyle had entered Fethard. The Judge had approached that on the basis of saying to get to where he was located, one would have had to go through Fethard, but it is said that that form of reasoning, the drawing of inference, was impermissible. Likewise, it is said that the evidence that he was in breach of a curfew was inadequate. The evidence was that the Gardaí called in

the early hours of the morning to the caravan where Mr. Doyle was resident. Mr. Doyle did not come out to them, but it is said it is a step too far to draw from that the conclusion that Mr. Doyle was not there. It seems to the Court that the Judge was entitled to operate on the basis that the evidence that he had heard satisfied him on both of these aspects and it is also the case that when the matter was listed for trial, that Mr. Michael Doyle failed to present himself.

16. The question that the Court has to ask itself is whether the sentences imposed fell outside the available range. Clearly, what was involved was a series of significant offending, the offending was quite intense, occurring over a fairly limited time period, and the impact that it had on the victims who have been referred to, but no doubt on the wider community in Fethard, must have been very considerable indeed. The Court has to ask itself whether the sentences imposed fell outside the available range. The Court, having asked itself that question, has concluded that both sentences that were imposed by the Judge, in fact, fell within the available range and were sentences that were within his margin of appreciation.

17. In those circumstances, the Court will dismiss both appeals. In the case of the appellant, Patrick Doyle, the sentence that was imposed in respect of the s. 2 was excessive, in the sense that it exceeded the statutory maximum of six months, so the Court will substitute a sentence of six months for the two years that was imposed in the Circuit Court. Other than that, the sentences will not be interfered with.