



THE COURT OF APPEAL

**Birmingham J.
Sheehan J.
Mahon J.**

45/14

47/14

46/14

The People at the Suit of the Director of Public Prosecutions

Respondent

V

Thomas Wall, James Cash and William Wall

Appellants

Judgment of the Court (ex tempore) delivered on the 9th day of June 2015 by

Mr. Justice Birmingham

1. In this case the three gentlemen before the court appeal against the severity of sentences that were imposed upon them in the Cork Circuit Court. So far as the appellants William Wall and James Cash are concerned, they appealed against their conviction and that appeal was dealt with by this Court and this Court delivered a lengthy written judgment on the 15th May, 2015, which set out the backgrounds facts and it is not necessary to repeat those at this stage. Suffice to say that the appellants were involved in one role or another in a number of burglaries that took place in the Cork City area.

2. In the nature of things those have to be regarded as serious offences. Any offence of burglary is by definition serious where it involves the violation of a dwelling. Indeed every offence of burglary has the potential to be a violent offence and that so, even in a situation where the dwelling entered is unoccupied at the time of entry, as was it must be said the situation in each of the burglaries with which the Circuit Court was dealing. Because even in such situation there is always the potential for the householder or somebody else to return and for matters to develop from there.

3. The court imposed sentences on each of the appellants of seven years imprisonment and in the case of James Cash, one year of that seven years was suspended and in the case of the other two appellants two years was suspended.

4. The situation is that William Wall, we will deal with him first, was 30 years of age at the time of the offence, when incarcerated following his conviction, it was his first time in custody. He had no previous convictions for anything of this nature before. His only convictions were three offences of a public order variety. He was married with two children.

5. In the case of Thomas Wall, again there were no significant previous convictions.

6. The situation in relation to James Cash was to a significant extent different. He came before the court as a person who had offended at the age of 27 years. He was married with three children and at the time his wife was pregnant and it was apparently a difficult pregnancy.

7. However, what differentiated him from his co-accused was the fact that he had 37 previous convictions and these were relevant previous convictions. They dated between 2005 to September 2013. It is true that all of them were dealt in the District Court, but they were relevant convictions, including offences for burglary and for possession of articles to be used in connection with the burglary. It appears he has not actually served a sentence, but that a number of sentences had been suspended.

8. The court took as its starting point a sentence of seven years imprisonment and in this Court's view while these were undoubtedly serious offences, the Circuit Court erred in taking that as the starting figure. This was a situation where all three were appearing in the Circuit Court for the first time and as has been said already in two out of the three cases there were no relevant previous convictions.

9. It was obvious that there was going to have to be a custodial sentence and a significant custodial sentence at that. But the court could have considered whether a sentence less than the one first selected was capable of impressing on these three offenders the seriousness of what they had done and the seriousness with which the court would approach any offence involving the entry of a dwelling.

10. In the court's view, the appropriate starting point would have been one of four years imprisonment. The question then is what if anything should be done in relation to suspending. In the case of the two appellants where initially two years of their sentence was suspended, the court, conscious of the fact that they were effectively first offenders were people who were going to be experiencing custody for the first time, will leave the provision that was in place for suspension at two years unaltered. Effectively in the case of those two appellants, the sentence will be now one of four year with two years suspended.

11. So far as the appellant James Cash is concerned, in the court's view, having regard to the significant previous record, albeit not a record that involved an appearance in the Circuit Court on indictment, that the trial judge was correct to take the view that it was necessary to differentiate his situation from the situation of the co-accused.

12. However, this court is called on to sentence as of today, and indeed in sentencing today, the court has regard to the material that has been put before the court on behalf of all three appellants.

13. In the case of Mr. Cash that included a letter, almost in the sense of a plea from a Mr. Martin Quigley. Mr. Quigley apparently is a shopkeeper and he also is a farmer and horses represent a significant part of the farm activity and in addition it appears during the summer months that he operates a horse and carriage business aimed at local tourists. The letter from Mr. Quigley is among the most powerful and impressive that the members of this Court have encountered and by reference to that, the court is of the view that a lesser differentiation can occur than would have been appropriate at the time of the original sentencing hearing. Nonetheless the court feels that there must be some differentiation reflecting the significantly different prior criminal records and in the circumstances, in the case of Mr. James Cash, the court will suspend the final 20 months of the sentence.

14. In summary then in the case of James Cash, the sentence imposed in the Circuit Court will be set aside and there will be substituted a sentence of four years imprisonment with 20 months suspended and in the case of the two Mr. Walls' the sentence in the Circuit Court will be set aside and there will be substituted sentences of four years with two years suspended in each case.