



THE COURT OF APPEAL

**Sheehan J.
Mahon J.
Edwards J.
217/14**

The People at the Suit of the Director of Public Prosecutions

Respondent

V

Jamie O'Donovan

Appellant

Judgment of the Court (ex tempore) delivered on the 9th day of November 2015 by Mr. Justice Sheehan

1. At Cork Circuit Court on the 4th November, 2014, Jamie O'Donovan was convicted of robbing a mobile phone from Mehdi Ziaina at North Main Street, Cork shortly after midnight on the 28th April, 2014 contrary to Section 14 of the Criminal Justice (Theft and Fraud Offences) Act 2001.
2. In the course of this robbery the injured party was punched, kneed and kicked by the appellant and his brother.
3. Shortly afterwards the appellant was involved in an attempted robbery at Pope's Quay where he attempted to rob a phone from a man who was on the phone at the time. This particular man was pushed and kicked as he struggled to hold on to his phone. When the appellant left the scene the injured party went to the gardaí to report the matter.
4. The appellant was arrested shortly afterwards and made admissions in respect of these two offences to which he subsequently pleaded guilty at Cork Circuit Criminal Court in November 2014.
5. He was on bail at the time in respect of another offence which resulted in a nine month sentence being imposed by Cork Circuit Court arising out of a District Court appeal hearing and this particular sentence left him with a release date in respect of that offence as being the 21st February, 2015.
6. The learned sentencing judge imposed a sentence of three years imprisonment for the robbery charge consecutive to this particular offence which meant that this sentence commenced on the 21st February, 2015. The final twelve months of that three year sentence were suspended on the basis that the appellant be subject to the Probation Service for that period. A concurrent sentence of eighteen months imprisonment was imposed in respect of the attempted robbery.
7. The court was told that the appellant had 33 previous convictions, 25 for public order offences, 1 for burglary, 3 for criminal damage, 1 for assault, 1 for assault causing harm and 1 for the obstruction of a peace officer.
8. The appellant appeals against the severity of the sentence and contends that the sentencing judge erred on three separate grounds:
 - (a) That the sentence was disproportionate in all the circumstances of the case.
 - (b) That the appellant's personal circumstances were not properly taken into consideration by the learned trial judge.
 - (c) That insufficient weight was given to the fact that the appellant was eighteen years old at the time of sentence.
9. In the course of his plea in mitigation, counsel for the appellant told the court that the appellant had done well at school having sat his leaving certificate and had also been a successful sportsman. The court was told that he had gone off the rails in the previous year as a result of the consumption of alcohol and drugs, but was now doing well in prison and participating in rehabilitative programmes there.
10. Counsel for the appellant very properly acknowledged that a prison sentence was likely but asked the sentencing judge to incorporate a period of supervision under the Probation Service to assist in his client's reintegration into the community following his release from prison. This the trial judge did.
11. The question that arises for this Court is to consider whether the sentence imposed was proportionate to the seriousness of the offence and the personal circumstances of the offender and whether or not there was any error in the judge's approach to sentence.
12. This Court has summarised the violent attack and robbery on the injured party, a person who happens to be a French visitor to Cork City. It seems to us that in locating the gravity of the offence at three years imprisonment, the sentencing judge cannot be faulted.
13. We are satisfied that he was fully aware of the appellant's age when imposing sentence and that his remarks post sentence to the effect that in certain cases like this, youth should in fact be an aggravating factor must be seen in the context of the case.
14. Not only were these remarks made post the imposition of the three year sentence, but it is also the court's view that the comment was made in the context of a serious robbery by a young man who had previously been dealt with leniently on a number of previous occasions by the District Court. Of course it is not a correct statement of the law to say that youth should in any case be an aggravating factor, but again it is this Court's view that this comment was made in a particular context and certainly cannot be relied on by the appellant to ground a suggestion that the learned sentencing judge erred in principle simply because he made this remark post sentence.

15. The trial judge incorporated the penal aim of rehabilitation in the suspended part of the sentence and acknowledged the plea of guilty when he stated that had the appellant contested the allegation, he would have faced a longer sentence.

16. We are satisfied that no error of principle is disclosed in the sentencing judge's approach to sentence in this case and we are further satisfied that the sentence imposed was not excessive and that the totality principle was properly respected. Accordingly, the appeal against sentence is dismissed.