THE COURT OF APPEAL

Record No. 44/2017

Peart J.
Birmingham J.
Mahon J.

BETWEEN/

THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

- AND–

MATTHEW CONNICK

APPELLANT

JUDGMENT (ex tempore) of the Court delivered on the 23rd day of October 2017 by Mr. Justice Mahon

1. The appellant pleaded guilty and was convicted on the 19th July 2016 at Wexford Circuit Criminal Court in respect of a number of offences. They were:-

- Count No. 1: Attempted robbery contrary to common law.
- Count No. 2: Theft contrary to s. 4 of the Criminal Justice (Theft and Fraud Offences) Act 2001.
- Count No. 3: Possession of an article in a public place with the intention unlawfully to cause injury to, incapacitate or intimidate any person either in a particular eventuality, or otherwise, contrary to s. 9(5) of the Firearms and Offensive Weapons Act 1990.
- Count No. 4: Attempted robbery, contrary to common law.
- Count No. 5: Possession of a syringe contrary to s. 7(1)(a) of the Non Fatal Offences Against the Person Act 1997.
- Count No. 6: Criminal damage contrary to s. 2(1) of the Criminal Damage Act 1991.

2. The appellant was sentenced on the 24th November 2016. In respect of counts 1 and 4 he was sentenced to six years imprisonment to date from the 6th June 2016, with the final two years suspended (on conditions) for a period of five years. Count no. 2 was taken into consideration while counts 3 and 5 resulted each in sentences of three years imprisonment. A sentence of six months imprisonment was imposed in respect of count 6. All sentences were directed to be served concurrently. The appellant has appealed against the severity of sentence.

3. On the 19th January 2016 the appellant attempted to rob the Mace supermarket in Ferns, Co. Wexford, while in possession of a knife. On the 23rd January 2016 the appellant attempted to rob Davitts Music Store at Ferns, Co. Wexford, while armed with a syringe. On the 22nd January 2016 the appellant broke a window to the value of €200 at the parochial house in Ferns, Co. Wexford. When he entered the Mace supermarket on the 19th January 2016 the appellant was in possession of a knife and wore a balaclava. He demanded money and pointed the knife at the chest of a staff member. When challenged he left the premises and stole a chocolate bar as he did so. In the course of the attempted robbery at Davitts music store the appellant held part of a syringe up to a staff member's face and demanded money before leaving empty handed having been confronted by the owner. The damage to the window at the parochial house was caused by it being smashed with a rock. No physical injuries were caused to any person in the course of these crimes, but the first two incidents were particularly traumatic for a number of persons.

4. The appellant was later identified from CCTV footage, was arrested, made admissions and expressed remorse. He remained in custody from the 6th June 2016 and did not at any time seek bail. He pleaded guilty at his first appearance at Wexford Circuit Court on the 19th July 2016. Garda Cleary accepted that the robberies were 'spur of the moment' decisions by the appellant.

Grounds of appeal
5. Four grounds of appeal have been argued on behalf of the appellant. They are:-

1. The learned trial judge recognised mitigating factors, but erred in failing to allow the appellant adequate credit for his plea of guilty, early and fulsome admissions and his genuine remorse.

2. The learned trial judge erred in attaching too much weight to the appellant's previous convictions all of which were summary convictions.

3. The learned trial judge erred in not attaching enough weight to the co-operation from the appellant with the gardaí and their investigation.

4. The learned trial judge erred in failing to identify an appropriate and proportionate pre mitigation starting point in sentencing the appellant.

6. The appellant has forty eight previous convictions including one for possession of a knife. They also include motoring offences, drugs offences and theft dating back to 2010. He has served periods of imprisonment and has been fined and ordered to do community service in respect of some of these convictions.

7. The appellant has addiction problems going back into his teens. He has had a difficult relationship with his family. In an effort to become drug free, he has had treatment and counselling, but has generally been unsuccessful in these efforts. He dropped out of

school following his junior certificate and worked with his father, who was a carpenter, for about two years thereafter. Since that time he has a poor employment record. He has two young sons and has had a difficult six year relationship with the mother of his children.

8. In the course of his sentencing judgment, the learned sentencing judge referred to the *terrifying ordeal* to which a number of innocent individuals were subjected to in the course of the commission of these crimes. In imposing the various sentences on the appellant, the learned sentencing judge stated:

> *"I am structuring the sentence in such a way, Mr. Connick, as to try and motivate you to get yourself off heroin and to make yourself a useful member of society.."*

9. The learned sentencing judge expressly referred to mitigating factors, although he did not specify them in detail, other than a reference to the appellant's youth, his heroin addiction and his acceptance of responsibility. He also noticed the less than positive probation report and the high risk of reoffending.

10. While it is difficult, if indeed possible at all, to find close comparators with the nature and type of offending with which this case is concerned, the respondent has suggested that a recent decision of this Court is relevant. In *DPP v. Riordan* [2017] IECA 45 the appellant, who had twenty five previous convictions, received a sentence of five years with the final twelve months suspended in respect of robbery while armed with a knife. In that case this Court deemed a headline sentence *"in the high single digit range"* to be appropriate. As in the instant case, there was no physical injury caused to the victim of the crime, but, unlike the instant case, *Riordan* was concerned with just a single incident.

11. It is unfortunate that the learned sentencing judge did not provide an explanation as to how he arrived at the six year term before discounting by two years. To have done so would provide a greater understanding to all concerned, including the appellant as to how the sentence was arrived at. Attempting, as it were, to in reverse analyse the learned sentencing judge's thinking it is reasonable to suggest that he had in mind a headline sentence of seven or eight years imprisonment. In any event, this Court is required to consider the sentence actually imposed in order to determine if, in all the circumstances, the nett four year term was an appropriate sentence for the offences as a whole. The fact that the learned sentencing judgment did not follow best practice by nominating a headline sentence cannot form the basis for any ground of appeal.

12. A particular and aggravating aspect of this case is the fact that there were two robberies and each involved the use of a weapon, albeit in the second incident the relatively harmless portion of a syringe was used. However the victim in that instance would probably not have appreciated that fact, at least initially.

13. Knife crime has become a dreadful surge in our society. Knives seem to be commonly used these days in circumstances where their use would have been relatively rare up to twenty or thirty years ago. The Courts have, in the public interest, an obligation to ensure that sentences imposed for knife crime adequately reflect the extremely serious nature of this type of offending, and also act as a significant deterrent to others tempted to carry or use knives.

14. In these circumstances, a net custodial term of four years for the offences committed by the appellant is not, when objectively assessed, unduly harsh. Indeed, some might regard such a sentence for the commission of six offences, two of which involved the threatening use of weapons to be lenient. In the Court's view, the sentences were reasonable and proportionate, and on that basis it will dismiss the appeal.