



THE COURT OF APPEAL

**Finlay Geoghegan J.
Peart J.
Mahon J.**

CCA 72/14

Between/

**The People at the Suit of the Director of Public Prosecutions
V
John Cully**

Appellant

Judgment of the Court (ex tempore) delivered on the 13th day of November 2014 by Mr. Justice Mahon

1. The appellant in this case seeks a reduction in sentences totalling eight years in prison, (with the final two years suspended on certain conditions) arising from the commission of two very serious offences involving large vehicles being driven by him in a very dangerous manner and which resulted in the appellant facing two separate charges under s. 13 of the Non Fatal Offences Against the Person Act 1997 in relation to two separate incidents which occurred less than eight months apart.

2. The first of these occurred on the 31st October 2011 at Blackditch Road, Ballyfermot when the appellant drove a large jeep directly at a garda car causing a very violent collision, after which he sped away, only to lose control of his vehicle and crashing it into a gate pillar, whereupon he was arrested following a violent struggle. The two occupants of the garda car were injured, with one off work for thirty one days and the other is still off work over two years later. The appellant was duly charged under s. 13 of the Non Fatal Offences Against the Person Act 1997. He was sentenced to four years imprisonment on 11th March 2014.

3. The second offence occurred on 17th June 2012, while the appellant was on bail in relation to the earlier offence. This offence also involved the very dangerous driving of a heavy, and on this occasion stolen, jeep which turned on its side and crashed after being pursued by a garda car. In the course of that pursuit other road users had to take evasive action to avoid being struck head on by the jeep as it travelled at enormously fast speeds. In respect of this offence the appellant was also charged under s. 13 of the Non Fatal Offences Against the Person Act 1997, and he was sentenced to four years on 11th March 2014.

4. The learned Trial Judge directed that the four year sentences be consecutive, a total of eight years, and also directed that the last two years of the total be suspended on certain conditions. The total period of actual imprisonment was therefore six years. The appellant pleaded guilty to both offences, as well as other associated, but less serious offences.

5. The appellant maintains that the overall sentence of eight years, less two years suspended, is excessive having regard to, in particular, his pleas of guilty and his expressions of apology and remorse, and also his difficult personal circumstances and background including serious health problems. The appellants first partner died tragically, and he has had a baby son with his second partner who is herself seriously disabled from injuries sustained in a road traffic accident. The appellant also pointed to the lesser sentence of three years handed down to his co-accused (in the second incident) in written submissions provided to the court, but this aspect was not pursued by Mr. Rea in his oral submissions. However, the co-accused's involvement was in respect of the second incident only, and he was a passenger in the vehicle, whereas the appellant was the driver. While the appellant's pleas of guilty, albeit somewhat late in the day, were undoubtedly mitigating factors, it is never the less the case that in both instances the appellant was, in effect, caught red-handed and would almost certainly have been convicted by a jury had he contested the charges.

6. There were a number of very serious aggravating factors present in the case including the extremely dangerous and reckless driving of very vehicles at high speed and in complete disregard for the safety of other road users in respect of both incidences, the deliberate action in the first incident of crashing into a smaller garda vehicle and which resulted in two Gardai being injured, the attempts to escape arrest in the first incident, the fact that the second offence was committed while on bail in relation to the first offence and which was largely a similar type of offence, the forty one previous convictions, including two where prisons terms were served. It is quite clear that the learned Trial Judge carefully considered these and all the relevant factors prior to imposing sentence. She had to provide for the fact that the second offence was committed while the appellant was on bail in relation to the first offence and direct that the sentences for each be served consecutively. The provision for the suspension of the final two years of the total term of imprisonment was reasonable and appropriate having regard to the overall circumstances.

7. In relation to Mr. Rea's submission that the court did not adequately consider whether the appellant should be given a "last chance", there was no evidence before the trial, or indeed before this court, to justify such an approach having regard to, in particular, the general negative tone of the probation reports which were prepared in early 2014.

8. There were no errors of principle identified in this case. It is the view of this court that the sentences in their totality and including the provision for a final two years suspended period were reasonable, appropriate and proportionate, and were not in conflict with the totality principle as set out in Gilligan and Gilligan [2013] IESC45.

9. The decision of the court is that the Appeal is dismissed.