



THE COURT OF APPEAL

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

216/15

The People at the Suit of the Director of Public Prosecutions

Respondent

And

Darren Canning

Appellant

JUDGMENT of the Court (ex tempore) delivered on the 26th day of May 2016 by

Mr. Justice Sheehan

1. This is an appeal against severity of sentence.

2. On the 12th June, 2015, at the Dublin Circuit Court the appellant pleaded guilty to burglary of an apartment in Dublin and was sentenced to three years imprisonment. Counsel for the appellant contends that the sentence was excessive and in breach of the principles of sentencing in that the sentencing judge failed to have adequate regard to any of the following matters:-

(a) the social and domestic circumstances of the appellant.

(b) the efforts made by the appellant to seek treatment for his long standing addiction to prohibitive substances.

(c) the successful efforts made by the appellant to reduce his methadone intake from the date of custody on the 1st March, 2015 to the date of sentence being the 27th July, 2015.

(d) the residential treatment course which was likely to be available for him at the Cluain Mhuire Drug Treatment Centre, Athy, provided by the Fr. Peter McVerry Trust on terms.

(e) the long term drug addiction of the appellant and his active efforts to seek effective treatment for same.

(f) the relationship of the offending on the 1st March, 2015.

(g) the recent relapse into heavy illicit drugs.

(h) the early admission of guilt.

3. In order to consider these grounds of appeal it is necessary to consider the background to the offence, the appellant's personal circumstances and the trial judge's sentencing remarks.

Background

4. The appellant was seen by a passing Luas driver smashing a ground floor window in an apartment block. The driver drew the attention of her control room to this and they began monitoring the appellant on their remote CCTV camera. The appellant was observed climbing through the window and the gardaí were contacted. On their arrival, the gardaí followed in through the broken window and became aware that the appellant was behind a closed door. They shouted warnings of armed gardaí and attempted to open the door, but were initially unable to do so. When they managed to open it sufficiently to insert a foot, the accused came through the doorway and rushed at the two gardaí present. They attempted to restrain him and a struggle took place which necessitated the use of pepper spray to subdue the appellant who had a scarf covering his face and was wearing gloves. On arrest he was found to be in possession of a camera, a mobile phone, two bags containing jewellery and two cans of beer. The damage to the window cost approximately €300 to repair.

Personal circumstances of the appellant

5. At the time of sentence the appellant was 34 years old and was living with his partner and their child. Their second child was due in November. The court was told that he had 67 previous convictions which included 18 previous convictions for burglary and had been prosecuted on indictment on four previous occasions. Counsel on behalf of the appellant submitted in mitigation that the appellant had a long standing drug problem which he needed to get under control. He handed in a letter from Merchants Quay Ireland, which indicated that the appellant had made contact with that service, first in 2010, but which also stated that he now displayed a high degree of motivation and focus.

6. Counsel also handed in a letter from the Fr. Peter McVerry Trust indicating that it would take the appellant at least a further two months before he would be ready for a twenty week residential programme.

Sentencing remarks of the trial judge

7. In the course of his sentencing remarks the sentencing judge stated:-

"He has pleaded guilty obviously that should be taken into account in mitigation. It seems that he has tried to deal with his underlying drug addiction problems and that has to be taken into account. But I also have to take into account his

record of convictions which is serious in number and serious in their type. Obviously the aggravating factor in this case is that Mr. Canning did resist arrest and was difficult for the guards, so I think the appropriate sentence taking all the factors into account is a term of imprisonment of three years backdated to the 1st of March, 2015.”

8. While it was clear to the sentencing judge that the appellant was beginning to engage with Merchant’s Quay Ireland and was also on a methadone programme, his rehabilitation given his long standing addiction was at a very early stage.

9. The trial judge correctly regarded the appellant’s resistance prior to his arrest as an aggravating factor and he was also bound to have regard to the previous convictions. On the other hand he noted the early plea of guilty and the efforts being made by the appellant to address his drug addiction. This was the core of the appeal. This Court recognises the important steps taken by the appellant to address his heroin addiction and notes his determination to be a good father.

10. However, we must also take into account that at the time of sentence in the Circuit Court this process was still at an early stage. While it might have been helpful if the sentencing judge had indicated where he located the offending behaviour on a scale of available penalties, we consider that the ultimate sentence of three years imprisonment could not be deemed to be excessive. In our view the sentence was proportionate and in the particular circumstances of this case the absence of a rehabilitative element in the sentence did not amount to an error. Accordingly we dismiss the appeal.