



THE COURT OF APPEAL

Record No. 153/2016

Birmingham J.
Mahon J.
Hedigan J.

BETWEEN/

THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

- AND -

JOSEPH DALY

APPELLANT

JUDGMENT (ex tempore) of the Court delivered on the 28th April 2017 by Mr. Justice Mahon

1. The appellant pleaded guilty and was convicted at Limerick Circuit Criminal Court on the 12th April 2016 to one count of robbery contrary to s. 14 of the Criminal Justice (Theft and Fraud Offences) Act 2001. On the 11th May 2016 he was sentenced to imprisonment for three years and six months, with the final one year of that term suspended for a period of three and a half years. The appellant has appealed his sentence.

2. On the 4th March 2015 at approximately 8.25 p.m. in the evening at Ellen Street in Limerick, the complainant was speaking on his nokia mobile phone when approached by the appellant and his co-accused. They asked the complainant for a cigarette. They then aggressively raised their fists to the complainant and grabbed his mobile phone. The appellant was arrested almost four months later on the 14th July 2015. He immediately admitted his involvement in the robbery.

3. The grounds of appeal on which the appellant relies are as follows:-

- (i) Placing the offence too high on the sentencing scale.
- (ii) Paying insufficient regard to the mitigating circumstances.
- (iii) Taking a speculative approach in relation to the aggravating circumstances.
- (iv) Failure to have sufficient regard to the genuine desire to reform and rehabilitate.

4. The appellant's personal circumstances are difficult. He is thirty two years old and prior to being sentenced lived part time with his partner and their four young children aged between twelve years and two years in Limerick. He had a good employment record in the construction industry until the economic recession of some years ago. He had long struggled with alcohol and heroin addiction. He surrendered his bail on the 21st April 2016 (nearly one month before sentencing) to facilitate his entry into a detox programme in prison in an effort to address his addiction issues.

5. The appellant has a number of previous convictions, but none for robbery. He has a previous conviction in 2011 for theft and criminal damage for which he received a six month sentence.

6. In the course of his sentencing judgement, the learned sentencing judge correctly described the offence as being a *very frightening experience for the victim*. He considered this to be an aggravating factor, as he did also the previous convictions while accepting that there were none for the type of offence with which he was charged on this occasion. He identified a number of mitigating factors including the appellant's voluntary attendance at the garda station in July 2015, his early admissions, his early plea of guilty, the lack of violence in the robbery, the appellant's contrition and remorse and his acceptance of full responsibility for the incident. The learned sentencing judge also specifically referred to the efforts being made by the appellant to address his addiction issues while in custody and the fact that he had surrendered his bail to facilitate that rehabilitation.

7. The learned sentencing judge did not specifically rank the offence in terms of its gravity, but stated that he believed the appropriate tariff to be a prison sentence of three and a half years. He proceeded to impose that sentence, but suspended the final twelve months, for a period of three and a half years.

8. Undoubtedly this was a serious offence. The complainant was confronted in an aggressive and threatening manner by the appellant and his co-accused and his mobile phone was forcibly taken from him. It was by any account a particularly frightening incident and it is understandable that the complainant was in fear of being physically assaulted. Fortunately no physical assault took place and no physical injuries were sustained by the appellant. He elected not to make a victim impact statement possibly because of fear.

9. The learned sentencing judge specifically referred to the prevalence of this type of crime in Limerick and the fact that it targets vulnerable members of the public and considered this to be an aggravating factor. That observation was indeed appropriate, save to observe that it is not a problem confined to the city of Limerick. Opportunistic street robbery is a particular serious menace in all our large towns and cities.

10. A custodial sentence was undoubtedly deserved in this case having regard not only to the particular circumstances of the case, and in particular the threat of violence to the victim by the raising of fists, but also the fact that the appellant has a number of previous convictions, albeit mostly for relatively minor offences.

11. The learned sentencing judge determined the appropriate headline sentence to be one of three and a half years. This, in the court's view was somewhat excessive, and ought to have been less than three years, possibly no more than two and a half years. Even if a sentence of in excess of three years was justified, the mitigating factors, and in particular, the very positive steps taken by

the appellant to deal with his addiction issues, required a significantly longer suspended element than twelve months. It is also a factor of some relevance that the suspended portion of the sentence will continue to hang over the appellant for three and a half years, itself a significant punishment for a person with his difficult background and propensity to offend.

12. The appellant's decision to voluntarily surrender bail and enter custody to avail of a detox programme some weeks in advance of his sentencing date was very positive proof of both a desire and a willingness to acknowledge his addiction difficulties and embark on the road to rehabilitation. The assistant prison governor's letter of the 18th June 2016 confirms that the appellant completed the detox programme. The court is satisfied that the learned sentencing judge did not adequately reflect this important aspect of rehabilitation in the sentence imposed.

13. In these circumstances, the court will set aside the sentence imposed in the court below and will sentence the appellant afresh as of today. In so doing, it again reiterates the strong mitigating factors that exist, including and especially, the impressive efforts at rehabilitation. The court has also taken account of the appellant's good behaviour while in custody as evident by the fact that he is currently resident in an open prison.

14. The sentence of this court is one of two years imprisonment, with the final eight months suspended for the same period and on the same conditions as directed in the Circuit Court.