



THE COURT OF APPEAL

Record No. 227/15

**Sheehan J.
Mahon J.
Edwards J.**

Between/

The Director of Public Prosecutions

Respondent

- and -

Leonard Dumbrell

Appellant

Judgment (ex tempore) of the Court delivered on the 28th day of July 2016 by Mr. Justice Mahon

1. The appellant pleaded guilty and was convicted of three counts namely:-

Count No. 1: taking a vehicle without authority contrary to s. 112 of the Road Traffic Act 1961 (as amended by s. 65 of the Road Traffic Act 1968 and as amended by s. 18 of the Road Traffic Act 2006).

Count No. 2: Dangerous driving contrary to s. 53(1) of the Road Traffic Act 1961 (as substituted by s. 4 of the Road Traffic (No. 2) Act 2011).

Count No. 4: Dangerous driving contrary to s. 53(1) of the Road Traffic Act 1961 (as substituted by s. 4 of the Road Traffic (No. 2) Act 2011).

2. The appellant was sentenced at Dublin Circuit Criminal Court on 30th July 2015, in respect of Count No. 1, to a term of imprisonment of three years. In respect of Counts Nos. 2 and 4, he was sentenced to a term of imprisonment of five months on each. Sentences were ordered to be served concurrently and with credit for time already spent in custody. The appellant was also disqualified from driving in relation to Court No. 4, for a period of five years.

3. On 2nd January 2013 the owner of a vehicle left the car momentarily with the engine running, and the keys in the ignition. During this short period of time, the appellant got into the car and drove away. There was no confrontation with the car owner.

4. Shortly afterwards, the stolen vehicle was spotted by Gda. Wogan driving near Ringsend. He switched on his siren and lights, whereupon the stolen vehicle drove off across the city. Gda. Wogan gave chase, and in the course of the journey noted that the stolen vehicle broke a red light, made illegal right hand turns, weaved dangerously through traffic, mounted a pedestrian median on O'Connell Bridge narrowly missing a number of pedestrians, and ultimately crashed near Temple Bar Square. The appellant ran from the vehicle, but was arrested a short distance away.

5. The appellant has one hundred and eight previous convictions of which twelve were for offences contrary to s. 112 of the Road Traffic Act 1961. He has four previous convictions for dangerous driving and a further four for driving without insurance. He has other previous convictions for assault, violent disorder, theft and criminal damage.

The grounds of appeal

6. Eight grounds of appeal were submitted on behalf of the appellant. They are:-

(i) Failure to have adequate regard to the probation report prepared for the appellant and the possibilities of community based sanctions.

(ii) Giving undue weight to the aggravating factors in relation to the offence.

(iii) Failing to give adequate weight to the mitigating factors.

(iv) Failing to have adequate regard to the principle of rehabilitation.

(v) Failing to have adequate regard to the many rehabilitative efforts the appellant had made to tackle his drug addiction problems.

(vi) Failing to have adequate regard to the efforts made by the appellant to rehabilitate himself while in custody.

(vii) Failing to recognise that the appellant had successfully completed a drug treatment program while on bail awaiting sentence for this offence.

(viii) Rejecting the possibility of a community based sanction or a partially suspended sentence due to the appellant's failure to complete drug rehabilitation when giving the opportunity and for failing to appear in court on two occasions.

7. In his oral submissions made to the court today, counsel for the appellant has emphasised that the 'core' aspect of this appeal is concerned with the issue of rehabilitation, and the contention that the learned sentencing judge failed to adequately structure the sentence to provide for same.

8. The respondent submitted that the sentences imposed were appropriate having regard to the seriousness of the offences and the appellant's conduct of the case; in particular his breach of bail terms necessitating the issue of bench warrants on two occasions.

The probation report

9. A Probation Service prepared a report on the appellant dated 16th March 2015. It provided details of the appellant's difficult background including issues relating to domestic violence, criminality, unemployment and drug addiction. It refers to a four weeks residential rehabilitation course completed by the appellant at Aiseiri centre in Co. Wexford between October and November 2014. The probation report assessed the appellant as being at a high risk of re-offending within twelve months. It noted the appellant's major issues to relate to his drug addiction and lack of employment.

The sentencing judgment

10. In the concluding paragraphs of her sentencing judgment, the learned sentencing judge stated the following:-

"I have to have regard to the nature of the offence. He is a man who has a number of convictions of that type under the Road Traffic Acts. I have to have regard in reviewing the matters that it was an opportunistic crime, he had't any interaction with the driver and he just jumped into the vehicle and in effect took off. However, when caught by gardaí he put himself, the gardaí and innocent members of the public at risk by the dangerous driving in his attempts to avoid the gardaí and it was't through his own actions that he surrendered, it was because the vehicle eventually crashed and the gardaí apprehended him. So those are matters I have to take into consideration. I can't overlook his significant numbers of previous convictions though. I am aware that many under the Road Traffic Acts can disproportionately extend the previous convictions and I give him credit for the work he has done and accept the whole process of drug rehabilitation can be an arduous and difficult path and hopefully with the assistance of Pat Brennan and others he will be able to come to grips in a long term way with his drug addiction."

11. The learned sentencing judge also referred to the appellant's difficult background and his attempts to deal with his long standing drug addiction problem.

12. In submissions made to this court, the appellant refers to an extract from the judgment in *DPP v. McCormack* [2000] 4 I.R. 356 at p. 359:-

"Each case must depend upon its special circumstances. The appropriate sentence depends not only upon its own facts but also upon the personal circumstances of the accused. The sentence to be imposed is not the appropriate sentence for the crime but the appropriate sentence for the crime because it has been committed by that accused. The range of possible penalties is dependent upon those two factors."

13. As for the crime in this case it undoubtedly involved criminal behaviour of a most serious type, and it is simply nothing short of good fortune that no-one was killed or seriously injured. It is the view of this court that, particularly having regard to the lengthy list of especially relevant previous convictions, albeit committed by the appellant when very young, a sentence of three years was a lenient sentence.

14. Insofar as the sentence being appropriate for the appellant, it is submitted that the failure of the learned sentencing judge to suspend a portion of the three year term to facilitate and incentive rehabilitation constitutes an error of principle. However, it is very clear from the moment this case came before the learned sentencing judge, rehabilitation was foremost in her mind. When he pleaded guilty, sentencing was adjourned for one month to enable the appellant attend Victory Outreach. He did for a number of weeks. When the matter returned to court in May 2014, sentencing was again adjourned until July 2014. Unfortunately, within this period, the appellant got himself into trouble and in June 2014 he was remanded in custody pending sentencing, having breached his bail.

15. The learned sentencing judge went to the trouble of explaining her reasons for her decision not to structure the sentence in a manner that might avoid the imposition of a fully custodial sentence. She stated (at p. 5 of the transcript for 30th July 2015) as follows:-

"..I looked at all options and as I say, in terms of structuring the sentence that would be more feasible, if, as I say, I had better hope in relation to a supervised period in the community. But the way he dealt with the court prior to this sentence didn't give any hope for a structured sentence. Remember, there was a probation report ordered in this case; he was allowed, despite objections, to stay in the community to work with the Aiseiri; he failed to appear in April of this year and a bench warrant issued; he didn't come back to seek to cancel that bench warrant, the bench warrant had to be excuted. Those are matters which would have, if they had been dealt with in a more co-operative fashion, giving this court some greater scope for building into a sentence a structure but in effect I don't feel that that is appropriate in this case."

16. The court is therefore satisfied that the suggested error of principle did not occur. The custodial sentence of three years was a sentence which was within the discretion of the learned sentencing judge to impose in all the circumstances. Its leniency more than adequately reflects the mitigating factors present in the case. It represents a relatively short custodial term having due regard to the gravity of the offences, and it provides the opportunity for the appellant to acquire useful skills and education while in prison. The positive reports from the Deputy Supervising Teacher in the Education Unit of Midlands Prison is testament to how well the appellant rehabilitation is already underway.

17. The appeal is dismissed.