



## THE COURT OF APPEAL

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

**141/14**

**The People at the Suit of the Director of Public Prosecutions**

**Respondent**

**V**

**C.I.**

**Appellant**

**JUDGMENT of the Court (ex tempore) delivered on the 28th day of July 2016 by**

**Mr. Justice Sheehan**

1. This is an appeal against sentence.
2. The appellant pleaded guilty to assault causing harm to her daughter and to three counts of ill treating and neglecting three of her children aged two, four and eight between February, 2012 and August, 2012. The appellant received a sentence of four years imprisonment which was fully suspended, but subject to a number of conditions.
3. Detective Garda Kearney gave evidence at the sentence hearing and told the Court the following:-

"On the 1st August, 2012, I arrived at the home of the appellant and noticed that she was extremely intoxicated. I was concerned immediately because I could not see any of the children. I noticed that the house was in a state of filth. I asked if I could inspect the upstairs area where the children were. I did, I went upstairs accompanied by another member of the An Garda Síochána and two social workers and what I found was the three children lying in a double bed in what can only be described as shocking conditions. The mattress was soaked in urine. The children were wearing nappies that were soiled and had not been changed. The three of them were lying in the bed as I said in a lethargic state. I found it to be strange given that it was only 5.00 in the evening. I went downstairs and I inspected the living quarters. I found some powdered milk that had been out of date for a number of months. There was no fresh fruit in the house. The basic sanitary conditions were extremely poor. The children were unkempt it was clear that they had not been washed in quite a considerable period of time. The four year old it appeared to me, that was not speaking and I took the decision to invoke s. 12 of the Childcare Act."

4. The social worker who had accompanied Detective Garda Kearney stated:-

"It was quite shocking as a social work professional to witness such shocking neglect. It is my opinion that this case is one of the most horrific incidents I have witnessed in ten years experience in this field".

5. With regard to the affect on the children, the Court heard from the foster carer, who had taken the three children into her own home. Her evidence is at p. 6 and 7 of the transcript and she also stated in a further report that was submitted to the Court the following:-

"In August 2012, M, MI and Z came to live with my family. Three children arrived with a social worker early in the evening in a very dishevelled state. The boys wore only a soiled vest, nappies and no shoes. M presented as a very timid quiet child and the boys very nervous. Within a short period of time we established that the children had no day time night time routine whatsoever. All three were used to sleeping in the one bed together, so initially we pushed the beds together and gradually over the course of weeks they got used to sleeping in their own beds. M initially wet the bed saying at home she could not get out of bed to go to the toilet. She was unable to clean herself after using the toilet. These problems were solved within a week or two when she realised it was ok to use the toilet when she wanted. All three children would lie in bed at night for hours and not even attempt to get out of bed. It took many weeks before we got a good bed time routine established. M has had a lot of problems dealing with emotion and expressing her anger at what happened to her. She spoke a lot of being hit and expecting the same thing to happen here and it has taken a lot of love and reassurance to get her to understand that this does not happen in all families and that she is safe here."

6. She goes on then to describe how the four year old boy who spoke only two words when he arrived to her home was underweight and was a very nervous child.

"He would scream and scream at the slightest thing. I quickly understood it was the only way he had to express himself. It has been a very long and slow progress to get him to communicate. He seemed to live in fear. He slowly began to talk and the screaming lessened. It took a considerable amount of time to toilet train him as he had a big fear of toilets and would refuse to go to the toilet and medical help was sought on his behalf."

7. The foster carer concluded by saying that after eighteen months with her family: "M, MI and Z are a joy to have in our family and have integrated very well making many friends in the community. It has been great to see such fearful children turn the corner into confident happy children and I hope they are given every opportunity to stay this way".

8. The personal circumstances of the appellant are that she is originally from Nigeria and according to the probation report is

described as having had a difficult life in Africa, although she advises she came from a well to do family. She says that she was the fifth child born to her father who had twelve wives and a total of 39 children. She spoke very fondly of her father and indicated she had a close relationship with him. But she also disclosed that her mother had been physically violent to her as a child and it was only recently that she had come to understand this. She attended school up to the equivalent of junior certificate and also disclosed that she had been sexually assaulted as a young person and that this had had an effect on her. She stated that at the age of fifteen, she left school and secured a place at a commercial school. When she was eighteen she emigrated to Holland where she met her husband. They now have five children ranging in age between the three children who are the subject of the charges in this case and two older children aged eighteen and nineteen and they both seem to be getting on very well.

9. There was also evidence before the sentencing judge at the time of sentence that between the time that her children were taken into care and the time that she appeared for sentence, the appellant had made great strides in dealing with a very severe alcohol problem.

10. The appellant's principal ground of complaint is that the sentencing judge should have chosen a lower headline sentence than one of four years imprisonment and further that he erred in failing to identify how he factored into the sentence the undoubted mitigating factors that were before him. These related not only to the efforts that the appellant had made with her alcohol problem, but also her commitment to other programmes which had been offered to her by the Probation Service.

11. This was a difficult case for the sentencing judge. He was faced with the situation where the appellant had, since her arrest, taken important rehabilitative steps and at the same time he had to bear in mind the fact that the three children, who were the subject of neglect were still in care, had made important progress with their foster parents and needed the continuing protection of the Court.

12. Counsel for the appellant submits that the comparators relied on by counsel for the Director of Public Prosecutions referred to cases where the neglect occurred over a much longer period than in the present case. While we have not had sight of those particular judgments we accept what is contained in the submissions of the appellant concerning the facts in those cases. We note in one case the imposition of a four year sentence with the final two and a half years of that sentence to be suspended.

13. We hold that the appellant has not demonstrated to us that the sentence in this case was significantly out of line with those comparators. We find that the sentencing judge carefully applied the principle of proportionality by holding that the offending behaviour was in the mid range. The maximum sentence for neglect is seven years imprisonment. The sentencing judge also incentivised the appellant's future behaviour in the conditions he attached to the suspended sentence. Finally he factored all the mitigating factors into account by suspending the total sentence, even if he did not go through each mitigating factor in his sentencing remarks. We find no error in the judge's approach to sentence or in the sentence actually imposed by the Court and we dismiss the appeal.