



## THE COURT OF APPEAL

Birmingham J.  
Mahon J.  
Edwards J.

Record No: CA26/15

The People at the Suit of the Director of Public Prosecutions

Respondent

v  
Paul Norton

Appellant

**Judgment of the Court (ex tempore) delivered on the 3rd day of December, 2015 by Mr. Justice Edwards**

### **Background to the Appeal :**

1. In this case the appellant appeals against a sentence of seven years imprisonment, with the final two years thereof suspended, imposed upon him by the Dublin Circuit Criminal Court on the 30<sup>th</sup> of January 2015 following his plea to a count of robbery, contrary to s. 14 of the Criminal Justice (Theft and Fraud Offences) Act, 2001.
2. The facts of the case were that on the 21<sup>st</sup> June 2012, two Group 4 Securicor personnel who were in charge of security van were delivering money to a number of premises within the Northside Shopping Centre, Coolock, Dublin 5. Mr. Derek May an employee of Group 4 Securicor made his first delivery to Superquinn and was in the process of making his second delivery to the Educational Building Society (EBS). Having taken a cash box out of the security van he was making his way back into the shopping centre when he noticed a motorbike pulled up near the main entrance to the shopping centre. He saw two persons on the motorbike. As he was about to re-enter the shopping centre, a person ran up from behind him and grabbed the cash box out of his hand. Mr May received some minor injuries. The person that grabbed the cash box, who was one of the two men on the motorbike but not the appellant, tried to run away but was apprehended by security staff belonging to the shopping centre. The appellant was the driver of the motor bike which was the intended getaway vehicle. When the Gardaí who happened to be nearby received a call indicating that a robbery was in progress, they responded immediately and proceeded to the location and observed the appellant on the motorbike waiting in an underpass on Oscar Traynor Road. The appellant, on seeing the gardaí took off at high speed along the pedestrian footpath. The Gardaí activated the siren and blue lights on their patrol car and they attempted to block the appellant's path at the exit from the pedestrian underpass leading on to Cromcastle Road. A patrol car was pulled across his path in front of some bollards, and a Garda McGrath stepped out of a patrol car in an attempt to block the remaining small gap with his person. The appellant drove the motor bike towards or straight at Garda McGrath, but fortunately Garda McGrath managed to get out of the way in time and the motorbike did not collide with him. In the course of being further pursued by gardaí, the appellant drove at high speed on the wrong side of the road, then overtook a line of traffic that was stopped at a red light, and drove through the red light but was presented with a JCB in possession of the junction that was blocking his path. In an seeking to avoid colliding with the JCB he lost control of the motorcycle and crashed, following which he was apprehended.
3. The sentencing judge heard that the appellant was not immediately co-operative and made no admissions in the course of being interviewed. When asked to account for his presence in the underpass he stated:  
"Somebody asked me for a lift, I wasn't aware of any robbery or intention to do anything of the sort. I gave that person a lift and I waited in the underpass because I had no tax or insurance and I wasn't aware that it was a garda car because it wasn't marked and I didn't hear the sirens because of the noise of the bike."
4. While the appellant did ultimately plead guilty on the date of his trial, it was only on the morning of his third trial date. On the first trial date the trial had had to be adjourned because the appellant had become involved in an incident in which he was shot in the leg. On the second trial date the trial had had to be adjourned because the appellant failed to turn up in circumstances where he claims to have been involved in a road traffic accident on his way to court, and to have been hospitalised with injuries. He had been travelling in a taxi that was rear ended.
5. The appellant was in custody from the 1<sup>st</sup> of July 2012 until granted bail by the High Court on the 2<sup>nd</sup> of January 2013, which he took up on the 3<sup>rd</sup> of February 2013. However he failed to sign on as required and on the 27<sup>th</sup> of November 2014 his bail was revoked. He then remained in custody until his trial. In total he spent nine months in custody on this matter before being sentenced.
6. The sentencing judge heard that the appellant had eighty previous convictions. Seventy one of these related to road traffic matters, two related to public order offences, one to a drugs offence, two related to handling offences, and two related to custody of a false instrument. In addition he had circuit court convictions in respect of two offences similar to the present one where he received a sentence of 3 years imprisonment for an offence of attempted robbery and a sentence of 5 years for robbery. The attempted robbery was in respect B & Q Airside, and the robbery was in respect of Ladbrooks bookmakers shop in Swords.
7. At the time of the offence the appellant was disqualified from driving and had no insurance. Indeed, he had been disqualified on eleven different occasions in the past.
8. The sentencing court was told that the appellant was 26 years of age, that he had worked as a apprentice painter and decorator in the past but had not completed his apprenticeship and was unemployed as of the date of sentencing. A letter from a previous employer was put before the Court testifying that he had been a good worker. The appellant claimed to have gone off the rails after the death of his father, and his uncle to whom he had also been close, within a short time of each other. He expressed a desire to turn his life around, and the court was told that he was getting on well in prison.
9. The appellant's accomplice, identified following his apprehension as a Mr Geraghty, pleaded guilty at an early stage and received a sentence of three years imprisonment with the final year thereof suspended from a different judge. He had been fully co-operative and had made admissions. He had twelve previous convictions, two of which had been recorded in the Circuit Court. One was for violent disorder, and the other was for robbery, both having been committed on the same day.

### **The sentencing judge's remarks:**

10. The sentencing judge made the following remarks in sentencing the appellant. He said:

*"JUDGE: Well, the accused man has pleaded guilty and I have to deal with him on the single offence of robbery on the basis that full facts of the case would be given. He was the driver of the motorbike, an essential part to play in the crime. He wasn't the man who grabbed the cash box. It has to be said the whole thing was somewhat ham-fisted but a very sinister picture emerges from Mr Norton's record and that is that he firstly has a previous conviction for robbery.*

*He served a lengthy sentence for it, although was given considerable leniency by the Court in terms of the suspended portion, and he comes before the Court with an incredible record in respect of his driving of motor vehicles without insurance. Looking at it he has been disqualified in a short period of time it has to be said from 2009 to date on 11 separate occasions, in fact they're all virtually within the 2009 period in fact and relate to offences going back to 2008. But he has been disqualified as long as 35 years, 30 years on another and varying counts periods. He should not have been on a motorbike on this day or any vehicle and had raises in my mind the question why does a person persist using vehicles without insurance with utter and total disregard to any order of the Court and it shows, to my mind, a determination in terms of cohere on the part of the accused and an utter disregard by him also of the law. It means he has no regard whatsoever of what's going on around him. He is fortunate to some extent that his co-accused has met the case earlier but I am not bound in any way absolutely by the sentence imposed on Mr Geraghty, nor do I intend to be. Mr Norton, to my mind, has put himself in a more difficult position. He gets little or no credit from this court on the basis that he was the man on the motorbike. He made a very desperate and determined effort to get away and was fortunate that he was -- or we are fortunate that he was pursued by determined members of An Garda Síochána who put him under such pressure, like Garda Divilly, that he lost control of the bike close-by on the Kilbarron Road. Though apprehended in those circumstances he is clever enough to put together an explanation that is artful, to say the least of it, didn't know what was going on, hid under the underpass because he didn't have licence and insurance, didn't hear the siren because of the noise of his bike and didn't understand it was a police car because it was unmarked. All of that just, as I say, shows a very devious and artful mind.*

*I'm not at all convinced by anything that's in front of me that Mr Norton is someone who the Court can have competence in that he has learned the lessons or the errors of his way. I now know that this case came to trial on three occasions before ultimately he took the very good advice of his lawyers and sought to minimise his exposure to sentence by pleading guilty. He strung it out his best he could and even to the point where he was in custody. One would have thought at that point, having lost his bail, by reason again of disregard to authority and order of the Court refusing or failing to sign on, he wouldn't have contacted his lawyers and said look I've nowhere to turn or run to now, I'll bring this case forward and let's deal with it in the same way and hope run the same way as Mr Geraghty did. He waited till his trial day. He has pleaded guilty, I'll give him that, and I can't I suppose throw the keys away completely. The Courts talk about light at the end of some tunnel. This is his second conviction. He got five years the last time. He must get a longer sentence this time and that sentence will be seven years' imprisonment. The prosecution accept the proposition that he has a measure of nine months due to him by reason of the time spent in remand, I'll allow him that, and I'll also direct that the last two years of the sentence be suspended in his entering a bond now in the sum of €100 before this court that he be of good behaviour for a period of two years post release and be subject to the supervision of the probation service during that time. If Mr Norton is serious about his future and the fact that he wants to get back to honest work well then let him prove that. He, in effect, is serving a sentence at the moment of five years for this offence. I can differentiate him from Mr Geraghty because of his record and his approach to the case, the late plea and his attitude to the gardaí when challenged on arrest. So he is, in effect, been given a sentence commensurate with the last sentence he served for the similar offence. He has also been given measure for the nine months in custody which, in effect, is another year off the sentence. That's there because Mr Norton must be brought to learn the errors of his ways. If he has, and on release he behaves himself and takes the advice and direction of the probation service, well then he won't have to serve anything further but if he doesn't and if he drifts back into his old ways and is brought back before me he'll serve the two years that I'm otherwise suspending as well. Do you understand? Enter the bond in respect of those two years now. I'm further directing that you be disqualified from driving, lest there be any doubt about your position in the future, for life. You should never, ever be seen behind the wheel of any kind of a vehicle in the future and the gardaí will now know that if ever you are you're to be apprehended and stopped."*

## **The grounds of appeal**

11. The appeal is advanced on three main grounds:

- (i) The sentencing judge erred in law and in fact in the manner in which he approached the issue of parity in sentence between co-defendants;
- (ii) The sentencing judge erred in failing to allow the appellant any or any adequate credit for his plea of guilty;
- (iii) The sentencing judge erred in finding that, having regard to a previous sentence of five years imprisonment imposed upon the appellant, that the instant sentence must be longer than that.

## **The parity issue**

12. The appellant has drawn the Court's attention to various authorities, with which the Court was already familiar and which it agrees are apposite. These included *The People (DPP) –v- Poyning* [1972] IR 402; *The People (DPP) –v- Conroy* (No 2) [1989] IR 160 and *The People (DPP) –v- Duffy & O'Toole* [2003] 2 IR 192. These establish that all things being equal, co-offenders should, in general, receive comparable sentences. However this Court is satisfied that all things were not equal in the present case. In fairness, counsel for the appellant has not sought to suggest that they were equal but he has contended that any distinction to be drawn between the appellant and his co-offender had to be proportionate, rational and grounded in the evidence. Counsel submitted that in this case the basis for differentiating between them was not so great as to have justified a net sentence that was 250% greater than the net sentence imposed on the co-offender, Mr Geraghty.

13. This Court does not agree. We are satisfied that the appellant was very significantly more culpable than Mr Geraghty having regard to the significant aggravating circumstances associated with his flight, his reckless disregard for the threat to life and limb that he posed to third parties in the course of his flight, and his deliberate driving of the motorcycle at a member of An Garda Síochána.

14. There was much less mitigation in his case than in the case of his co-offender. His criminal record was significantly worse than that of his accomplice. In addition, Mr Geraghty had been co-operative, whereas the appellant had not, and Mr Geraghty had pleaded guilty at an early stage whereas the appellant had not done so until the morning of his trial.

15. We are satisfied in all the circumstances that the sentencing judge's distinction was in fact proportionate, rational and grounded in the evidence, and we reject the ground of appeal based upon lack of parity.

## **Alleged insufficient credit for the plea of guilty.**

16. The second ground of appeal contends that insufficient credit was given for the plea of guilty. The plea of guilty was really the only major mitigating circumstance to be taken into account. While there was evidence that the appellant had faced certain adversities in his previous life history the weight to be attached to these, in the circumstances of the case, in assessing the appropriate discount for mitigation would have been slight. Accordingly the lion's share of the discount of two years, implemented by

means of a suspension of the final two years of the headline sentence, must be attributed to the plea. This, in proportionate terms, represented a discount of just under a third of the headline sentence. In the Court's view this was an appropriate discount having regard to the lateness of the plea, and the fact that the appellant was effectively caught red handed. Accordingly, we also reject the second ground of appeal.

**The issue concerning the sentencing judge's discretion**

17. In relation to the third ground of appeal we are satisfied that the sentencing judge did not in fact regard his discretion as being fettered in the manner suggested by the appellant's counsel in his submissions to this Court. Though he may have expressed himself inelegantly, we are satisfied that the sentencing judge was merely taking account of the fact that a previous sentence of five years for a similar offence had not served to deter the appellant from committing another such offence. The fact that the present crime had been committed on a recidivist basis increased the appellant's culpability and he was entitled to take that into account in fixing the headline sentence. The Court is satisfied that there was no error of principle in his doing so.

**Conclusion**

18. In circumstances where the Court has not seen fit to uphold any of the grounds of appeal advanced by the appellant, the appeal is dismissed.