THE COURT OF APPEAL

[190/18]

The President

McGovern J.

Kennedy J.

BETWEEN

THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

AND

MICHAEL RAE

APPELLANT

JUDGMENT (Ex tempore) of the Court delivered on the 5th day of April 2019 by Birmingham P.

1. This is an appeal against severity of sentence. The sentence under appeal is one of five years imprisonment, with the final year of that sentence suspended, that was imposed in respect of an offence of criminal damage/arson on 14th June 2018 in the Dublin Circuit Criminal Court. The appellant had appeared for sentence on three counts, a count of criminal damage to the wall and sitting room window of a dwelling, a count of criminal damage to a motor vehicle, and a count of endangerment. The Circuit Court was invited by counsel for the prosecution to deal with the matter on the basis of imposing sentence in respect of one count, count number one of criminal damage, and to take the two other matters into consideration.

2. The background to the case is to be found in events that occurred on 26th May 2017 at Knockmore Park, Tallaght, County Dublin. On that occasion, Mr. Denis Brazil, the injured party, was in the house there, where he lived, with his son, Jordan, and two other people. In the early hours of 26th May 2017, Mr. Brazil was in bed watching television. His son, Jordan, came in to him and told him that he was wanted at the front door and indicated that it was Michael Rae who looking for him. Mr. Brazil looked out the bedroom window and saw the accused in the front driveway of the house. He observed the accused getting into a blue Subaru car and leaving the scene. Shortly afterwards, Jordan ran back into his father's room again and asked him to come down quickly. It seems that the Brazil family car, a silver 2004 Honda Civic, was on fire. The accused had set fire to the car and that fire had been started with a plastic petrol bottle. There was damage caused to the front of the dwelling. It seems that smoke had spread to the front of the house.

3. By way of background, it appears to be the case that there was some form of history between the family of the appellant and the Brazil family. In the course of the investigation, Gardaí sought out CCTV footage and the footage obtained showed the appellant filling up a brown-coloured plastic bottle with petrol at a nearby filling station. CCTV footage taken from a nearby house showed a male hiding there and that male was then observed setting alight a bottle, running across the road and throwing the bottle at No. 25, Knockmore Park, the home of the Brazil family. The CCTV footage showed, therefore, that this was in essence a petrol bombing.

4. In terms of the appellant's background and personal circumstances, the Court heard that he was born on 18th January 1980, he was originally from England, he left school at a relatively young age, but had spent a period at catering college in England. He returned to Ireland, and having returned, stayed on in Ireland with his partner and has three children who were aged twelve, eight, and two years at the time of the sentence hearing. The Court heard that while the appellant was intoxicated on the night of the event, that he does not have any general trouble with alcohol or drugs.

5. In terms of previous convictions, the appellant had twenty-nine previous convictions recorded against him, of which two were for non-arson criminal damage and fifteen were for offences contrary to the Road Traffic Acts. All of his previous convictions came from the District Court.

6. The Judge's approach to sentencing was to identify a headline or pre-mitigation sentence of seven years, then to reduce that to five years and then to go on to suspend the final year of that sentence. The Judge has been criticised in the course of the appeal hearing for failing to place the offence on the scale of gravity. However, in a situation where the Judge very carefully identified the factors that were present that gave the offence its gravity and went on to identify the headline or pre-mitigation sentence, we take the view that there is little substance in that complaint.

7. It is also said, though, that the headline sentence of seven years was inappropriate. It is said that it was right at the top of the scale, at the statutory maximum for the offence of endangerment. Counsel for the appellant before this Court stresses that he is not saying that because a count of endangerment appeared on the indictment that the effect of that was that the counts of arson that appeared were, as it were, capped out at that figure, but rather, the point that he is making is that it was the fact that the incident involved a degree of endangering that gave the criminal damage offences their seriousness, and that in those circumstances, that it was inappropriate that the sentence chosen by way of the pre-mitigation headline sentence should be the statutory maximum for endangerment.

8. A further point that is made by counsel is that the aggravating factors were applied on the double. This point is made in circumstances where the Judge, towards the end of her sentencing remarks, referred to the dangerous nature of the appellant's

conduct, the risk that his conduct gave rise to the occupants of the house and to neighbours, and referenced the fact that there was a degree of premeditation and planning, albeit planning without any particular professionalism. Having done that, the Judge then referred to the mitigating factors, instancing the plea, the absence of any relevant previous convictions, pointing out that there were no convictions for anything remotely similar, that she saw this as his first departure into serious criminality and referencing his family circumstances. However, having done that, the Judge then said that on the other side of the equation, there was the effect on the Brazil family. The appellant says that this was where the impermissible element of double aggravation emerges. Once more, the Court is not persuaded that this is a criticism of real substance. The Court would point out that having made the remarks criticised about the effect on the Brazil family, the Judge then once more referred to the fact that she was giving credit for the plea [along with other] matters identified by counsel for the accused and which had been referenced by her in the course of her remarks to that point.

9. Reading the sentencing remarks of the Judge in the Circuit Court as a whole, it is clear that the Judge was conscious of the factors that were present, which made this a very serious offence, but was also conscious of the factors that were present by way of mitigation and what she was doing was that she was making clear that she was determined to have full regard to both.

10. Standing back, as we do, to look at the sentence that was imposed, the Court has not been persuaded that it involved an error in principle and not persuaded that it fell outside the permissible range. In that regard, counsel who appeared at trial, who is not the same counsel as appeared before this Court today, began his plea in mitigation in the Circuit Court by saying "I should begin my plea in mitigation at the outset by making it clear to the Court that Mr. Rea is under no illusion that this Court is going to impose a custodial sentence and that it will be a very significant custodial sentence".

11. In the Court's view, the observation by counsel at trial was a very sensible and realistic one. In all the circumstances of the case, the Court has not been persuaded that the sentence imposed was an impermissible one, one that fell outside the available range, and in those circumstances, the Court dismisses the appeal.