THE COURT OF APPEAL

Sheehan J.
Mahon J.
Edwards J.

263/15

THE PEOPLE AT THE SUIT OF THE

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

V

RICHARD MOLLOY

Appellant

Judgment of the Court delivered on the 28th day of July 2016 by Mr. Justice Edwards.

1. In this case the appellant was facing trial before Dublin Circuit Criminal Court upon a two count indictment, charging in Count No 1 the offence of delivery of counterfeit currency, contrary to s.34 (1)(b) and (3) of the Criminal Justice (Theft and Fraud Offences) Act, 2001, and in Count No 2 the offence of having custody or control of materials or implements for the purpose of counterfeiting currency, contrary to s.36 (1) and (3) of the Criminal Justice (Theft and Fraud Offences) Act, 2001. The trial was scheduled to commence on the 7th of July 2015.

2. On the 7th of July 2015 the appellant pleaded guilty to Count No 2, following an indication that he was disposed to having the circumstances of Count No 1 taken into consideration in his sentencing on Count No 2. This plea was deemed acceptable by the respondent and accordingly the trial did not proceed.

3. On the 6th of November 2015 the appellant was duly sentenced to six years imprisonment on Count No 2, with Count No 1 being taken into consideration

4. The appellant appeals against the severity of his said sentence.

The facts as established in evidence.
5. The sentencing court heard evidence from Detective Superintendent Thomas Maguire concerning the circumstances of the crime.

6. The court was told that on the 2nd of February 2014 the Special Detective Unit of An Garda Siochána was engaged in an intelligence led operation, in the course of which they were monitoring the activities of suspected members of the IRA in Dublin.

7. Two men, who were not before the court, were the particular subject of that surveillance. They were believed to be members of the IRA. These men were observed arriving outside of a public house in the Phibsboro area of Dublin. One of these two men entered the public house and was observed to sit down at a table opposite the bar. The other remained outside in the car in which they had arrived with the engine running.

8. Some time later the appellant was observed entering the public house through a side door. He walked straight towards the man seated at the table opposite the bar, and was observed placing a package down on a chair beside that man. The man at the table was then observed placing the package in his right hand pocket. The appellant then picked up a different package, which the man at the table had placed on the seat beside him and on top of which he had placed a newspaper. The appellant put that package in his pocket.

9. The said exchange having taken place, the man at the table got up and left the public house. He was observed getting into the passenger side of the car in which he had earlier arrived. The associate who had remained outside was in the drivers seat. At this point the Gardai intervened. The man in the passenger seat was searched, and the package that he had placed in his right hand pocket was retrieved and was found to contain 400 counterfeit €50 notes, in two separately wrapped bundles, amounting to a purported €20,000 in total.

10. At the same time the appellant was separately intercepted within the public house and he was also searched. He was found to be in possession of a package containing legitimate cash in the sum of €2,234.38. The appellant was arrested and detained under s. 30 of the Offences Against the State Act 1939 as amended, initially on suspicion of being a member of an unlawful organization. That was subsequently changed to suspicion of providing assistance to an unlawful organization. The appellant in the course of his detention but maintained his right to silence throughout.

11. During a search of the appellant's person he was also found to be in possession of a set of keys. Gardaí determined that these keys related to a unit in Barstown Commerical Park, in Dunboyne, Co Meath, which had been leased to the appellant. The Gardai subsequently searched this premises utilising a search warrant obtained under s. 29 of the Offences Against the State Act 1939 as amended. The premises was found to contain two Heidelberg colour off set printers, which are substantial printing machines, and other ancillary equipment and materials including various powders, guillotines, other digital printers, and paper. In addition, the Gardai found a further quantity of completed counterfeit €50 notes, amounting to a purported €189,000 and an additional quantity of only partly completed counterfeit €50 notes, amounting to a purported sum of €2,000,000 (two million euro) approximately.

12. The partly completed counterfeit notes were at various stages of production.

13. Some, though not all, of the counterfeit notes were considered to of very good quality, particularly those that had been exchanged in the public house. Samples were produced to the sentencing judge for his inspection.

The appellant's personal circumstances
14. The appellant was born on the 14th of March 1972 and accordingly was 43 years of age at the date of his sentencing.

15. The sentencing court heard that the appellant was married, but separated, and that he has one daughter, who was then aged 14. The court was told that he was in a second relationship, but that unfortunately his then partner was seriously ill with lung and bone cancer. This Court was informed at the appeal hearing that the lady in question has since passed away. The Detective Superintendent accepted in cross examination that the appellant was providing assistance to his sister who has a severely disabled adult child.

16. The sentencing court was told that the appellant did have some minor previous convictions involving a road traffic matter and an instance of being found on a licensed premises after hours, but the Detective Superintendent very fairly accepted that he had no previous convictions of relevance, and that, in effect, it would be appropriate to treat him as a person of previous good character.

17. The sentencing court was further told that the appellant had been involved in the printing trade for a number of years, and had operated various businesses in that sphere in the course of which he had acquired the machinery found in the course of the s.29 search. The sentencing court heard that, with his background, he had the technical knowledge and expertise, along with the equipment, to produce the counterfeit currency that was found. Under cross examination, the Detective Superintendent accepted that the appellant was experiencing financial difficulty in his printing business at the time of the offences, and that he would have been under financial pressure.

18. The Detective Superintendent accepted that the appellant himself was not a member of the IRA, but contended that the appellant was aware that the persons for whom he was producing the counterfeit currency were members of, or involved with, the IRA. It was further accepted that he had become involved with the other two men as a result of knowing one of them socially.

19. The Detective Superintendent further stated that he was aware that the appellant had some issues with alcohol at the time of the commission of the offences. Under cross-examination he went further and accepted that the appellant had a significant problem with alcohol, and that he was a man who had made very poor decisions as a result of using and abusing alcohol over a period.

The circumstances of the plea
20. It was accepted that notwithstanding that the appellant's plea, which was entered on the morning that his trial was scheduled to begin, had come at a very late stage, there had been sufficient advance indication to allow for the cancellation of travel plans by a witness who was due to give evidence in the case and who was based abroad at the time.

Reports and Testimonials
21. The sentencing court had the benefit of a probation report in respect of the appellant. The report indicated, *inter alia*, that the appellant "*denied having any knowledge of the counterfeit money being utilised by an illegal organised crime element. He added that his involvement was upon request to perfect the counterfeit process and that there were no further instructions regarding future orders. He acknowledged that he did not consider what he was involving himself in at the time and did not consider any consequences for his actions.*"

22. The appellant was assessed as being at moderate risk of re-offending "*unless he seriously addresses the following areas; that he considers treatment options in relation to alcohol misuse; that he constructively address his future education and employment opportunities; that he addresses his issue of financial mismanagement; that he seek assistance in addressing some fundamental emotional and personal difficulties; and that he finally consider addressing the victim issues of these offences*".

23. Under the heading of "Addictions" the probation report stated:

> *"Richard Molloy outlined the history of alcohol use from the age of 1b years old. he acknowledged that this became a problem for him in his late 20s/early 30s whereby he was drinking too much and suffering from blackouts. He described that on occasion he consumed approximately 16 pints of alcohol in any one sitting.*
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> *Mr Molloy claims that he has only recently stopped drinking since the 14th of August 2015 and is currently been prescribed Librium from his GP. He stated that he was drinking heavily at the time of commissioning these offences, however, does not proportion his alcohol use for committing the offences."*

24. Finally, in the conclusion to his report the Probation Officer stated (inter alia):

> *" … he has attended for all appointments and has fully cooperated with the Probation Service. Mr Molloy has admitted that he knew what he was doing was illegal and, upon discussion about the seriousness and consequences of the offences, he stated that he is beginning to recognise the impact on potential victims of these types of offences.*
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> *However, there is still scope for significant work to be undertaken with Mr Molloy to fully realise the implications of his offending and to seriously address the fundamental issues that allowed him to engage in a very serious type of crime."*

25. He subsequently added:

> *"In discussion with Mr Molloy I have clearly outlined the potential options open to the Court's when sentencing on these types of crimes. He acknowledged his wrongdoing and stated that he is prepared for every possible eventuality upon sentencing. Should the court be considering a custodial sentence as part of any sanction then it would be important for Richard Molloy to address the above issues with the relevant services in a custodial setting.*
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> *In the event of the court considering a non-custodial option, and should probation supervision be considered by the court in any part of sentencing, then Richard Molloy is deemed a suitable candidate for probation intervention. Whereby, should the court deem it appropriate to invoke any part of a non-custodial option in the sentencing process, then it would be beneficial to guide such an order with specific conditions. These conditions are as follows:*
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> - *That Richard Molloy engages in treatment assessment with a view to attending for appropriate treatment*

regarding his substance misuse.

• That he engages with Training and Employment Officer in order to constructively and legitimately address future career options.

• That he complete a 12 week offending behaviour modular-based program to address his offending and victim issues."

26. In addition, the sentencing court was provided with written testimonials from two siblings of the appellant, one of whom was the sister previously referred to, and also one from his then partner, expressing support for the appellant and testifying concerning his positive contributions to their lives and to his wider family and community. The court also received a testimonial from a friend of the appellant who had successfully raised a substantial sum for a particular charity, and whom the appellant had assisted by providing printing services for free.

The sentencing judge's remarks.
27. In the course of sentencing the appellant, the sentencing judge made the following remarks:

"All right. Well, count number 2 carries a penalty of 10 years imprisonment and count number 1 to be taken into consideration. Count number 2 is custody or control of materials or implements for the purposes of counterfeiting currency and this occurred at an industrial estate in Dunboyne, the 2nd of February of 2014. And count number 1 to be taken into consideration, which is delivery of the counterfeit currency, at Clarke's Pub, Monck Place in Phibsborough on the 2nd of February 2014; is that correct? And the Court heard the circumstances as regard count 1, which delivery of a package by Mr Molloy to a second man and that then the man gave him I think it was €2,234. Then the set of keys were found on his person to the premises at Dunboyne where a substantial printing machine and other equipment was found and there was 189,000 worth of fake €50 notes plus two million worth of €50 notes in various stages of completion; isn't that correct? And the premises were leased by Mr Molloy and he has a background in trade printing and would have accumulated some machinery for that business. His date of birth is the 14th of March 1972 and at that time he resided in a flat in the Phibsborough area. And he has one daughter, he is no longer living with that -- with his partner, the mother of that daughter and her particular difficulties, medical conditions have been outlined to the Court. He's no previous convictions except for minor road traffic matters. He was aware that he was working with the Irish Republican Army but he was not otherwise involved with them. He had issues as regards alcohol abuse at the time.

The aggravating factors appear to the Court are the serious nature of the charge and the amount of custody or control of materials or implements, the amount involved, the type involved. It was planned, premeditated and the equipment and the notes were of good quality. The plea of guilty, the value of the plea of guilty, no previous convictions of note and hasn't come to adverse garda attention since and his expression of remorse. The Court has also two letters and testimonials handed in and was asked to have regard to the hardship that a custodial sentence would have on his family given the state of health of his former partner. The Court also has the benefit of a probation and welfare service report and the Court has taken into account the contents of that report.

The Court has carefully considered the matter and on count number 2, taking into consideration and taking into account the level of the custody or control of the implements and the amounts involved, taking into account the aggravating factors and the mitigating factors, marking the seriousness of the offence but also taking into account his personal circumstances, the Court will impose a prison sentence of six years' imprisonment on count number 2, count number 1 taken into consideration."

28. The sentencing judge was then asked by defence counsel if she would consider suspending any portion of that sentence. The judge responded:

"I've carefully considered the matter and I've carefully considered the probation report. I've carefully considered what was opened to me on the last occasion as regards his alleged alcohol abuse and I gave an opportunity for the probation and welfare service to address the matter and also gave him time because of the young lady, his daughter, that he has custody of. And given all the factors - the contents of the report, the seriousness of the charge, I'm not minded to suspend any part of that sentence."

The grounds of appeal
29. It is contended on behalf of the appellant that the sentence imposed by the court below was unduly severe. In particular it is contended that the sentence imposed was disproportionate, and that insufficient allowance had been made for all the mitigating factors in the case especially the plea of guilty, the absence of any relevant previous convictions making it appropriate that the appellant should be treated as being of previous good character, his ostensible remorse, and his personal circumstances including his need to foster and maintain his relationship with his daughter who is in her formative years and the many adversities in his life such as his alcohol abuse problem, the illness of his partner, his financial difficulties, and his emotional and personal difficulties.

Discussion
30. This is yet another case where this Court finds itself dealing with a severity of sentence appeal in circumstances where a sentencing judge has not indicated his/her starting point, or indeed what allowance he/she was prepared to make for relevant mitigation.

31. In *The People (Director of Public Prosecutions) v. Fitzgibbon* [2014] IECCA 12 (unreported, Court of Criminal Appeal, Clarke J, 17th July, 2014) the need for clarity in the manner in which a sentence has been arrived at was articulated:

"It does also need to be emphasised that a sentencing judge should set out clearly the factors which have been taken into account in arriving at an appropriate sentence and specify the approach adopted in coming to a conclusion as to the appropriate sentence having regard to all of those factors. The Constitution and the law provides both for sentencing by trial judges and an appeal against sentence available to both prosecution and defence. In the case of serious offences tried on indictment that appeal is to this Court. In order for this Court to exercise its proper constitutional role in reviewing sentences which are challenged, this Court does need the maximum possible clarity as to how the sentencing judge reached a conclusion as to the appropriate sentence to be imposed in all the circumstances of the case. There is no one way in which this needs necessarily to be done. There is no requirement for a sentencing judge to stick slavishly to any particular method or formula. It is, however, important that this Court, when asked to

review a sentence, is not left to guess or infer, to any impermissible extent, what the reasoning of the sentencing judge was. "

32. Further, in this Court's judgment in *The People (Director of Public Prosecutions) v. Davin Flynn* [2015] IECA 290 (Court of Appeal, Edwards J, *ex tempore*, 4th December 2015) we stated (at para 14):

> *"There is a strong line of authority starting with The People (Director of Public Prosecutions) v M [1994] 3 I.R. 306 ; and continuing through The People (Director of Public Prosecutions) v Renald (unreported, Court of Criminal Appeal, 23rd November 2001); The People (Director of Public Prosecutions) v Kelly [2005] 2 I.R. 321; and The People (Director of Public Prosecutions) v Farrell [2010] IECCA 116, amongst other cases, indicating that best practice involves in the first instance identifying the appropriate headline sentence having regard to the available range, based on an assessment of the seriousness of the offence taking into account aggravating factors (where seriousness is measured with reference to the offender's moral culpability and the harm done), and then in the second instance taking account of mitigating factors so as to ultimately arrive at the proportionate sentence which is mandated by the Constitution as was emphasised in The People (Director of Public Prosecutions) v McCormack [2000] 4 I.R. 356."*

33. We then added (at paras 18 and 19):

> *"18. Since its establishment this Court has repeatedly and consistently sought to emphasise that this approach is regarded by it as best practice and we have sought to commend to trial judges that they explain the rationale for their sentences in that structured way, not least because a sentence is much more likely to be upheld if the rationale behind it is properly explained. Equally if this Court when asked to review a sentence cannot readily discern the trial judge's rationale or how he or she ended up where they did having regard to accepted principles of sentencing such as proportionality, the affording of due mitigation, totality and the need to incentivise rehabilitation in an appropriate case, it may not be possible to uphold the sentence under review even though the trial judge may have had perfectly good, but unspoken reasons, for imposing the sentence in question.*
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> *19. However, the mere fact that best practice has not been followed in terms of adequately stating the rationale behind the sentence does not necessarily imply an error of principle. At the end of the day if the final sentence imposed was correct and there was no obvious error of principle the sentence may be upheld. …"*

34. It is clear that in the present case best practice was not followed. The failure to do so has presented a number of difficulties for this Court in reviewing the sentence imposed.

35. The first difficulty is that the sentencing judge provides no indication of how she approached the assessment of the gravity of the case beyond noting that the maximum penalty in respect of Count No 2 was ten years imprisonment, beyond alluding to "*the serious nature of the charge"*, and beyond stating that she was taking into account certain aggravating factors which she identified as "*the amount of custody or control of materials or implements, the amount involved, the type involved*" and the fact that the offence "*was planned, premeditated and the equipment and the notes were of good quality*."

36. We have little doubt but that the sentencing judge must have formed a view as to where on the range or spectrum of available penalties, running from various forms of non-custodial disposition to imprisonment for a maximum period of ten years, the case was to be located in the first instance, before discounting for mitigation. Regrettably, however, she provides no insight as to what was her view concerning the appropriate headline sentence, or as to the rigour and depth of her analysis. The only information we have is as to the ultimate sentence imposed, namely one of six years after discounting for mitigation.

37. We have stated in *The People (Director of Public Prosecutions) v. Davin Flynn* that even if best practice has not been followed "if the final sentence imposed was correct and there was no obvious error of principle the sentence may be upheld" In considering whether the present sentence may be upheld the Court is obliged, due to the deficit of reasons given by the sentencing judge, to engage in a process of reverse engineering.

38. The starting point in that process is a consideration of the gravity of the offence. This is to be measured on the scale of available penalties taking into account culpability and harm done. As was pointed out in *The People (Director of Public Prosecutions) v. Shaun Kelly* [2016] IECA 204 (unreported, Court of Appeal, Edwards J, 7th July 2016) while it is obviously necessary in performing this assessment to take into account the general circumstances of the crime, it is also necessary to take into account any particular circumstances, bearing on moral culpability, that are personal or particular to the offender. These can be either aggravating or mitigating factors. Mitigating factors that do not bear on culpability such as a plea, previous good character, remorse, co-operation and so on are not for consideration at this stage as the Court is, for the moment, only concerned with fixing a headline sentence.

39. In this instance the offence was committed with positive mens rea (i.e., intentionally as opposed to recklessly or criminally negligently). Moreover, and as the sentencing judge rightly pointed out, it was committed with planning and premeditation. It was also committed for profit and financial gain. In terms of the harm done, counterfeiting is a particularly egregious crime in its potential effects in that the circulation of forged currency tends to undermine and devalue the legitimate currency of a state, and if conducted on a large scale is capable of macro-economic effects. In this particular instance the quantity involved was almost certainly not sufficient to give rise to noticeable macro-economic effects but it was nonetheless an activity tending to undermine the Euro as a currency, thereby interfering with and disrespecting, not just the sovereignty of this State, but the sovereignty of all of the states in the Euro zone, which reserve unto themselves the sole right to issue and circulate the Euro as a currency. In addition, innocent persons such as retailers who might unwittingly receive counterfeit currency are placed at risk of embarrassment and loss.

40. A further aggravating factor in this case was the fact that the offence was committed in association with persons dedicated to the overthrow of this state, namely members of the IRA, in circumstances where the appellant acknowledges that he was aware that those with whom he was dealing were such persons.

41. In these circumstances the offence was properly to be located towards the upper end of the range of available penalties, though not perhaps deserving of the maximum penalty. A headline sentence in the seven to nine year range would have been with the margin of appreciation to be afforded to the sentencing judge.

42. It was then necessary for the sentencing judge to discount against the headline sentence such allowance as she was prepared to make for mitigating factors not already taken into account – in this instance there were none bearing on culpability and so nothing would have been already taken into account.

43. Once again, however, we are in the dilemma that the sentencing judge regrettably fails to state how much allowance, even in terms of a percentage discount, she was giving for mitigation. Her ultimate sentence was one of six years imprisonment. If the headline sentence had been one of nine years imprisonment an ultimate sentence of six years implies a discount of just over 33%, whereas if it had been eight years it implies a discount of 25% and if it had been seven years it implies a discount of just over 14%. Unfortunately, we are not told, and there is no means of working out from the judgment, what level of discount was in fact afforded.

44. Approaching the matter yet again on the basis of reverse engineering, the only thing this Court can do is assess for itself, allowing for an appropriate margin of appreciation, how much discount might have been afforded for the mitigating factors in this case.

45. In the first instance there was the plea of guilty. A plea of guilty will usually attract a significant discount in and of itself, because it is always valuable though in some cases it may be more valuable than in other cases. It represents a taking of responsibility, it is often an earnest of remorse, it saves time and scarce resources, it provides certainty of outcome and in many cases the victim or victims of the crime are spared the ordeal of having to give evidence. In general, although there may be exceptions, a plea will be rewarded by a discount of between 15% and 30% of the headline sentence depending on the circumstances. Clearly the earlier the plea is offered, the greater will be the discount. Equally, the greater the utility of the plea, the greater will be the discount. Conversely a plea will be regarded as less valuable where the accused has been caught red handed, and where the evidence against the accused was very strong, or if there is reason to believe that the motivation for it is self serving rather than on account of remorse.

46. In the present case, while there was strong evidence against the appellant, and the plea was entered relatively late in the day, it was still of value in that what was likely to have been a reasonably lengthy trial did not have to proceed, with consequent savings to the state in terms of court time and use of scarce resources. Moreover, the witness based abroad was successfully called off in time so that he or she did not have a wasted journey. In addition, the plea secured certainty of outcome, and is relied upon by the appellant as being indicative of his remorse and willingness on his part, albeit manifested late in the day, to take responsibility for his actions. In our judgment the appellant would, in the circumstances of this case, have been entitled to a discount for the plea alone in the 15% to 20% range.

47. There was also then the fact that the appellant was essentially of previous good character, with no relevant previous convictions, and indeed was entitled to be treated for all intents and purposes as being a first offender. It has long been accepted that first time offender should, in general, be treated with leniency and particularly, to quote Thomas O'Malley in Sentencing , 2nd edition, at 6-45, *"if they have lived a good part of their lives without obtaining a criminal conviction"*. That is all true in this case. O'Malley further comments, at para 6-46:

> *"All the available evidence about the experience of imprisonment, its stigmatising quality and its impact on the future prospects of offenders, points to the wisdom of community-based measures for first-time offenders whenever possible. The absence of previous convictions may also indicate that the instant offence was out of character and unlikely to be repeated [footnoted: The People (Director of Public Prosecutions) v. Lynch (Court of Criminal Appeal, ex tempore, 29th May 1995]. It has also been said that for a person of previous good character, the experience of imprisonment is likely to be more severe than for a hardened offender, even when suffered for the second time.[footnoted: R v. McDonald (1994) 120 A.L.R.629; R v. Sargeant (1974) 60 Cr. App.R. 74 at 77] Under a "totality of hardship" approach, a first-time offender should therefore receive a lighter prison sentence than would be appropriate for a more seasoned criminal. Despite all of this, if a first offence is a particularly serious one, imprisonment for some length of time may be inevitable."*

48. The present case is so serious that there could be no question of a non-custodial disposal. Nevertheless, the appellant was entitled to mitigation on account of his previous good character and the fact that he was effectively a first time offender, and it was appropriate that that mitigation should be substantial so as to ensure that he would end up with a meaningfully lighter prison sentence than would be appropriate for a more seasoned criminal. Again, considered on its own, this factor would in the circumstances of this case have justified a discount of between 10% and 15%

49. In addition, the accused was also entitled to have taken into account his other personal circumstances and the adversities in his life. Much was made of his alcohol dependency. While alcohol had nothing directly to do with his commission of the offences to which he has pleaded guilty, in that they were neither committed to fulfil an addiction need, nor were they committed under the disinhibiting influence of alcohol, we nevertheless accept that the appellant is an alcoholic and that, as the Detective Superintendent was prepared to accept, he has a history of making very poor decisions as a result of use and abuse of alcohol over the years. His alcoholism is an adversity in his life and account requires to be taken of it.

50. Account also requires to be taken of the fact that, at the time that he was being sentenced, his partner was seriously ill and, as has since unfortunately proved to be the case, terminally ill. He was also clearly a man with emotional and personal difficulties. In addition, and against that background, he found himself under financial pressure and with business worries.

51. Moreover, although the appellant at the time of his sentencing faced an inevitable prison sentence, he was also entitled to have taken into account his need to foster and maintain his relationship with his daughter who is in her formative years.

52. We consider that a discount of 5% to 10% would have been appropriate to reflect mitigating influences attributable to his personal circumstances apart from the plea and his previous good character.

53. It is important to make the point that the appropriate overall discount for mitigation in any particular case will not necessarily be the strict arithmetical sum of its individual components. The mitigating influence of different factors will often overlap to a degree. It is important that an accused should be afforded all of the mitigation that he is due, but it is equally important that there should be no inadvertent double counting resulting in him receiving more than he is due. A sentencing court must arrive at a proportionate sentence and some leavening of the initial percentage figure in contemplation as being the appropriate overall discount to reflect mitigation may be therefore be required.

54. In this case a crude summation of the discounts appropriate to the main mitigating factors suggests that the appellant should have received an overall discount on the headline sentence located in the range from 35% to 50%. Adjusting that downwards somewhat to allow for the overlapping of mitigating influence or effect as between different factors, the appropriate overall discount should, we believe, have been located in the range from 30% to 45%.

55. On that basis the sentence imposed by the trial judge could only be regarded as justified if the view was taken that she had definitely started at nine years imprisonment and had then discounted a third. However, we are not prepared to infer that that must

have been her thinking in the circumstances of this case, given the paucity of explanation and analysis provided. The basis for the required inference is simply not there. To arrive at such a conclusion would be speculation, not justifiable inference. Regrettably we feel compelled to conclude that, in circumstances where the trial judge's reasons are insufficiently detailed, we cannot be satisfied that sufficient discount for mitigation was in fact afforded. We therefore find that the sentencing judge erred both in failing to record what actual discount she was applying for mitigation, thereby giving rise to a justifiable concern that she may have not have afforded sufficient discount for mitigation, and also in failing to give an adequate overall explanation of the rationale for the sentence she in fact imposed.

56. In the foregoing analysis we have performed the exercise of overtly weighing and assessing the discount appropriate to the main mitigating factors in the instant case in an attempt to illustrate the rigour with which the analysis should ideally be conducted. However, we are not to be taken as imposing a requirement on sentencing judges to identify expressly in their sentencing remarks what weighting they have afforded to individual mitigating factors. The usual current practice is for the judge to merely indicate the overall amount of discount he or she is prepared to allow, expressed either in terms of a percentage or by simply specifying a definite time period. We are not commending any change in that. That having been said, it is vital that at least the overall discount is clearly identified in every sentencing case. If a sentencing judge is happy to give some further breakdown, so much the better. However, further breakdown, although welcome, is not required.

57. In circumstances where we have found a significant error of principle we will proceed to quash the sentence of six years imprisonment imposed by the court below and proceed to re-sentence the appellant. In accordance with established jurisprudence counsel on both sides were invited to place before the Court any additional materials that they might wish to have taken into account in the event of the Court having to proceed to a re-sentencing.

58. That was done and in the appellant's case certain additional materials were placed before the Court, and in particular a letter from the industrial manager at the Midlands Prison confirming that the appellant's behaviour generally in the prison, and his level of engagement with various work and training programs within the prison, has been exemplary. In addition the letter confirms that he is addressing his alcohol addiction in a positive way, by attending sessions of Alcoholics Anonymous.

Re-sentencing
59. We would assess the gravity of this case as meriting a headline sentence of eight years imprisonment. Further, to reflect the mitigation to which we feel the appellant is entitled we will discount a period of 30 months from the headline sentence we have just nominated, leaving a net resulting sentence of five years and six months imprisonment.

60. In addition, in the light of the progress which the appellant has made towards his rehabilitation to date, and with a view to incentivising his continued progress in that regard, we will suspend a further 18 months of the said sentence, on condition that he enters into a bond in the sum of €100 to keep the peace and be of good behaviour for a period of two years following his release from prison. In deciding to do so, we have been considerably influenced by the letter from the industrial manager at the Midlands Prison.

61. Accordingly, the ultimate sentence is one of five years and six months imprisonment with the final 18 months thereof suspended.