



## THE COURT OF APPEAL

**Ryan P.  
Sheehan J  
Mahon J.**

**Appeal Number : 6/2013**

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

**- and -**

**Douglas Ward**

**Appellant**

### **Judgment of the Court delivered on the 19th January 2015 by Mr. Justice Mahon**

1. This is an appeal against the severity of a sentence of sixteen years (with the final three years suspended) for manslaughter, imposed by the Central Criminal Court on 21st December 2012.
2. The appellant was originally charged with murder, but pleaded guilty to manslaughter on 30th October 2012. This plea was accepted by the respondent.
3. The victim of the crime was Mr. Niall Dorr. He died from his injuries on the day following the date of the assault on him by the appellant.
4. The assault on Mr. Dorr took place at Castle Road, Dundalk on 13th October 2010, in the course of a fight between two groups of people, one group comprising two men and two women, (one of whom was the applicant), and the other group comprising three men, (one of whom was the deceased). The two groups of people, but excluding the appellant, had been involved in a fracas on the previous day. The appellant was drinking heavily on the day of the assault.
5. In the course of the incident, the appellant and Mr. Dorr became separated from their associates, whereupon and by all accounts, the appellant proceeded to viciously assault Mr. Dorr, in the course of which Mr. Dorr was punched to the ground, and there violently kicked and punched in the head and body, as well as being dragged along the ground. Both the accounts of witnesses, and the post mortem results, vividly illustrate the very violent and persistent nature of the attack. The post mortem revealed the existence of eighteen injuries to the head and neck, fifteen injuries to the limbs, two injuries to the front of the trunk, and numerous bruises and grazes. Two of the injuries to the head, in particular, caused or contributed to a haemorrhage into the skull cavity and, ultimately, Mr. Dorr's death.
6. Both these, and the other head injuries, were more consistent with being kicked rather than hard contact being made with the ground. There was no evidence of defence type injuries on Mr. Dorr's body. It was also noted that while Mr. Dorr had a particularly thin skull, the force necessary to fracture it would have been considerable.
7. The violence perpetuated in this case was of the most severe kind, and was, by all accounts, perpetrated over a prolonged period of time on an almost lifeless individual, certainly a person who was non-reactive in the course of the assault. Furthermore, there was no evidence to suggest that the deceased himself had been involved in fighting with the appellant, or that he had provoked the appellant into attacking him. The deceased was entirely innocent.
8. The appellant was arrested four days after the assault following a garda investigation, including the use of CCTV images. He denied the assault, or that he was even at the scene of the assault. He was released, but following DNA results was rearrested on 18th April 2011. He again denied any involvement in the incident, or any contact with the deceased prior to the assault. He was duly charged with murder, and as already indicated, later pleaded guilty to manslaughter.
9. The appellant has twelve previous convictions, all relating to relatively minor matters, and mostly involving road traffic and public order offences. He was on bail at the time of this offence.
10. The appellant is now thirty eight years old and has four children. He is poorly educated, unemployed and has a serious alcohol and drug problem. Prior to being taken into custody on 30th October 2012 the appellant had begun to deal with his alcohol and drug problem with assistance from a counsellor and his own G.P.
11. The appellant has expressed remorse for his involvement in this incident, and for causing Mr. Dorr's death. It would also appear to be the case that this crime was not premeditated.
12. In his sentencing judgment, the learned trial judge referred to the appellant's plea of guilty (but which he did not rate highly because of the denial of his involvement until shortly prior to his trial date), and his lack of serious or relevant previous convictions. He also provided for what he termed "*a tunnel of hope and rehabilitation for the future*". In relation to these matters, the learned trial judge directed that the final three years of the sixteen year sentence be suspended on conditions.
13. It was submitted on behalf of the appellant that the learned trial judge erred in principle in failing to take account of the appellant's efforts to address his addiction problems, or the absence of premeditation, and that he had insufficient regard for the appellants lack of serious previous convictions, or his remorse, or for his apology to the deceased's family.
14. It was submitted in particular that a factor not given sufficient weight by the learned trial judge was the appellant's addiction problem, and that this should be treated as a mitigating factor – the position being different to that where a crime is committed merely while drunk. In particular, reliance was placed on the fact that the appellant sought treatment for his alcoholism, albeit after the date of the offence. It is, of course, the case, that self induced drunkenness can never be an excuse for the commission of a crime.

15. Each case is unique, and every violent death is a tragedy, particularly to the family of the victim. Manslaughter cases involve significant variations in terms of their circumstances and their gravity. The existence or lack of premeditation is an important factor, as was identified in *DPP v. Kelly* [2005] 2IR and *DPP v. McAuley* [2001] 4IR160. Equally the extent and nature of the violence used, and the degree to which the victim contributed to, or participated in, a row which resulted in his death are relevant factors. In this particular case, the fight between the appellant and the deceased was a one sided affair, was not prompted by any violent action on the part of the deceased, and was quite brutal in its nature.

16. A number of instances of manslaughter sentences, some imposed by the learned trial judge in this case, were highlighted by the appellants in their written submissions. These indicate a significant variation of sentences, albeit each with regard to their own facts. For example in *DPP v. AF* [2011] IECC3, the sentence was twelve years and involved an assault, which, on its face, appeared to have been even more vicious than in this case, and it was premeditated, and involved the use of a weapon.

17. It is the sheer viciousness of the attack on the deceased which rightly places the case high on the gravity scale in manslaughter cases, and rightly should attract a lengthy prison sentence. It is however the view of this court that the sentence of sixteen years (with the final three years suspended) was excessive, and that the learned trial judge did not, in particular, sufficiently take account of the lack of premeditation, the absence of serious previous convictions and the very positive signs for rehabilitation in relation to the appellant's efforts to deal with his addiction problems, when formulating the sentence.

18. The court will therefore set aside the sentence of sixteen years (with the final three years suspended), and substitute in its place a sentence of thirteen years (with the final three years suspended).

19. The court has taken account of the new material referred to it this morning by Mr. O'Carroll and remains satisfied that the reduced sentence, as indicated above, remains the appropriate sentence.