



THE COURT OF APPEAL

[278/2017]

Birmingham P.
Edwards J.
McCarthy J.

BETWEEN

THE PEOPLE (AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS)

RESPONDENT

- AND -

GLEN EGAN

APPELLANT

Judgment of the Court (ex tempore) delivered on the 8th day of February, 2019 by Mr Justice McCarthy

1. This is an appeal against severity of three sentences of four and a half years for three offences of robbery, the same to be served concurrently, and imposed on the 27th of November 2017. The first was committed on the 7th of August 2016. The appellant entered a supermarket on James' street, Dublin 8 just after 10 a.m., wearing a top with the hood pulled up over his head. He left the shop without purchasing anything and then returned accompanied by a woman. They went to the till where a Mr Calik was working and placed an item on the counter but when payment was proffered by the appellant's accomplice and Mr Calik opened the till accordingly, the appellant reached over the counter and attempted to take money from it. He managed to take €10 from the till while holding up a small pointed item towards Mr Calik. He stated, "Do you know what it is? I can hurt you with this." Understandably, Mr Calik was put in fear.
2. The second occurred at approximately 7.00 a.m. on the 24th of December of the same year; the appellant was seen at the old Montrose hotel on Stillorgan road when he and another got out of a car and approached a man who was withdrawing money from an ATM. The appellant held his fist to the injured party while his accomplice held a car-jack to his back. The injured party was man-handled, held down and searched. His car keys were taken and offered back to him for €20 but he refused to pay. The appellant and his co-accused were captured on CCTV footage and the incident was witnessed by a number of people.
3. On the same day, in a Vape shop on Thomas street, where a young secondary school student was on work experience, the appellant entered, slammed the door, demanded money, and pointed a blade at the victim, which put him in great fear. The appellant got away with €220 and was later identified on CCTV footage.
4. The appellant was arrested on the 10th of February 2017 and interviewed the following day. He made full admission in respect of the first and second offences and identified himself in the CCTV footage.
5. The judge said that the three robberies carried out by the appellant were serious. The robberies involved threats and put the injured parties in fear. He gave credit for the appellant's guilty plea, his co-operation and admissions. The appellant had a significant number of previous convictions, one of which was for robbery; the sentence there was one of three years the last nine months of which was suspended. The judge stated that the appellant was "*blighted*" with drug addiction problems, and that it seems the appellant had ambitions for reform.
6. The appellant was thirty-six years of age at the time of sentencing. He had worked as a painter/decorator for a time. He completed a FÁS course in engineering. He has had problems with addiction to crack cocaine. He did not have secure accommodation for some time but has the support of his uncle who will give him a home if he deals with his drug addiction. A report was available from Merchants Quay Ireland Homeless and Drugs Services who provide what are described as addiction services at Mountjoy prison. He was assessed by an addiction counsellor on the 26th October 2017 and is described in the report as someone who presented as motivated to address his addiction issues and eager to avail of the necessary support needed to maintain a good recovery in prison and to ensure this is sustained upon his release. The report goes on to say that appellant had "fully engaged in all of his counselling sessions (21 in all), had shown what was described as a good insight into his addiction issues and behaviour, was reflective in his approach towards developing a solid recovery plan, and moving forward with his life. He indicated a strong interest in the Drug Treatment Programme in the prison. The scope or prospect of rehabilitation was pressed before the sentencing judge. He was described in a prison governor's report as being someone of generally good behaviour, and did not represent any great difficulties for the authorities. At the time of that report (24th November 2017) he had been of good behaviour. There was a urinalysis report before the judge which are negative for controlled drugs.
7. The appellant submits that the sentences were unduly severe given the reports to hand and the wish of the appellant to seek treatment for his addiction, if needs be in a residential treatment centre. The appeal proceeded on the basis that there was an error in principle on the part of the judge in failing to suspend a portion of the sentence in order to encourage rehabilitation, a prospect based upon his attempts to cope with his addiction problems and his ambitions for the future to resolve them, in circumstances where his offending was directly related to such addiction. The respondent emphasised the seriousness of the offences and submitted that the judge's decision to refuse to suspend any portion of the sentence was within his margin of discretion.
8. Whilst a wide margin of discretion is afforded to trial judges, and in particular, when dealing with serious offences, there can be, in general, no objection to a judge refusing to suspend any portion of the sentence. There may on occasion be an error of principle in failing to do so, in order to give effect to the rehabilitation of the offender. We think that because of the evidence which was before him, the judge failed to have sufficient regard to that prospect in the present case. We think that in order to fulfil this desideratum, a portion of the sentence ought to have been suspended. Accordingly, in the circumstances, we quash the sentence of the court below and proceed to the sentence.
9. We think, however, that in the ordinary course, a period of incarceration of 4½ years, in of itself, cannot be regarded as severe.

We consider that the gravity of the offence merits a sentence of five years' imprisonment. However, to reflect the mitigating circumstances in the case, to reward progress to date (and we have up-to-date reports to that effect) and to incentivise continued progress we will suspend the final 15 months. The public interest is also best served by a structured release of the appellant into the community under the supervision of the Probation and Welfare Service. We will hear counsel as to the terms of the suspension.