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THE COURT OF APPEAL

Record No: 50CJA/21

Edwards J.

McCarthy J.

Kennedy J.

IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 2 OF THE CRIMINAL JUSTICE ACT, 1993

Between/

THE PEOPLE (AT THE SUIT OF

THE DIRECTOR OF PUBLIC PROSECUTIONS)

Applicant

V

CHRISTOPHER JONES

Respondent

JUDGMENT of the Court delivered on the 23rd day of November 2021 by Mr Justice Edwards

Introduction

1. The respondent the subject of this appeal appeared before for sentencing in Cork Circuit Criminal Court on the 15th of February, 2021 on seven signed pleas of guilty from the 27th of October 2020, relating to one offence of aggravated burglary contrary to s. 13(1) of the Criminal Justice (Theft and Fraud Offences) Act, 2001, five counts of burglary contrary to s.12(1)(b) of the Criminal Justice (Theft and Fraud Offences) Act, 2001 and one count of impersonating a member of An Garda Síochána contrary to s. 60 of the Garda Síochána Act, 2005.

2. In April 2018 the respondent received a three-year sentence of imprisonment for an offence of robbery, the final 12 months of which was suspended for two years, from Cork Circuit Criminal Court. The further offending the subject matter of the sentencing by Cork Circuit Criminal Court on the 15th of February 2021 was committed during the currency of the said suspended period. In consequence of this the applicant had caused the robbery matter to be re-entered before Cork Circuit Criminal Court pursuant to section 99 of the Criminal Justice Act, 2006.

3. Upon learning that the respondent had further offended in breach of the terms on foot of which the sentence for the robbery had been partially suspended, the sentencing judge lifted the suspension of the final 12-months of the robbery sentence. However, he backdated the activated 12-month period then to be served to the 27th of October 2020 which was the date on which the respondent pleaded guilty to the further offences.

4. The respondent was then further sentenced to five years imprisonment, with the final year suspended, in respect of each of the seven offences for which he was then before the court for sentencing, which sentences were to run concurrently inter se but consecutive to the 12-month sentence activated on foot of the s.99 re-entry.

5. The applicant now seeks a review of the sentences imposed, pursuant to s. 2 of the Criminal Justice Act, 1993 (the Act of 1993), on the basis that those sentences were unduly lenient.

Factual Background

6. The court heard evidence from Detective Sergeant Young in which he outlined the circumstances of each offence.

7. The first offence occurred on the 9th of April 2020 when the respondent, who was carrying a baseball bat, and a co-accused entered the premises of Jonathan and Patrick Curtain on 7A Great William O’Brien Street at 4.20am. Jonathan Curtain was awoken by the sound of voices and saw a male enter his downstairs bedroom and take an empty wallet and his work pants which contained the keys to a car. On hearing Jonathan shout at him both intruders fled. Patrick Curtain who was awoken from his sleep in the upstairs bedroom chased the intruders from the house and was able to retrieve the wallet, the workpants and the car keys. The respondent and his co-accused escaped by rolling under a fence across from the Blackpool Credit Union on Watercourse Road.

8. The second offence occurred on the 17th of April 2020 at approximately 1.55am when the respondent and his co-accused entered the dwelling of a married couple at 26 High Street Cork. During the burglary, throughout which the married couple slept, the living room and sitting room were ransacked. Two bank cards were taken from a wallet and three bank cards were taken from a purse. One of the cards was successfully used at the Spar shop on Leitrim Street, Cork at 2.45 am.

9. The third offence occurred on the 17th of April 2020 at 3.54 am when the respondent and his co-accused entered the dwelling at No 1, Frankfield Villas, Cork which was occupied by a couple and their 15-month-old son. During the burglary, throughout which the couple and their son slept, €30 in coins was taken.

10. The fourth offence occurred on the 17th of April, 2020 when, immediately after leaving No 1 Frankfield Villas, the respondent and his co-accused entered the dwelling of Christopher Twomey next door at No 2, Frankfield Villas, Cork. Mr Twomey was awoken by the sound of a noise inside his house. While getting dressed so as to investigate the noise, a male entered his room holding a phone which was being used as a torch. When confronted by Mr Twomey as to what he was doing, the male (who was the respondent), ran from the bedroom and both he, and his co-accused who had been in the kitchen, then fled from Mr Twomey’s dwelling.

11. The fifth offence occurred at approximately 4 am on the 17th of April, 2020 at No 9, O’Connorville, Tower Street, Cork when the respondent and his co-accused entered the dwelling of Mark Dorning who was awoken when he heard noises coming from his spare bedroom. On switching on the light and rattling the door handle of his bedroom Mr Dorning heard the intruders running down the stairs and out the front door. Notwithstanding that, the burglars were found to have rummaged through a living room drawer and to have discarded an empty purse. Nothing was taken during this burglary.

12. The sixth and seventh offences occurred after the burglary of the dwelling of Mr Dorney some time after 4 am on the 17th of April, 2020. The respondent and his co-accused entered the dwelling of Mrs Eileen O’Brien at 34 Tyrone Place, Cork. Mrs O’Brien was an 83 year old pensioner who had been cocooning during the COVID 19 pandemic. Mrs O’Brien was awoken by a noise at her front door. Two men then entered her bedroom shining torches and they identified themselves as gardaí who were searching for burglars in the area. After being asked where she kept her money, and being afraid, Mrs O’Brien pointed to a shelf at the bottom of her bed. The two men then searched the shelf and took various cash sums comprising of €2,500, a further €200 from inside a confirmation card intended for Mrs O’Brien’s grandson, and £80 sterling.

13. The sentencing court received evidence of crime scene examinations which identified tool marks at the point of entry on the front doors of each of the six premises that were burgled.

14. Both the respondent and another male (who was later co-accused with the respondent) were arrested within 12 hours of the burglary at Mrs O’Brien’s dwelling, with €200 in cash and £40 sterling being recovered following a personal search of the co-accused.

15. A further €1,650 was recovered from the mother of the co-accused who had been given the money for safekeeping by her son and Christopher Jones on the 17th of April 2020.

16. The respondent was interviewed several times while in garda custody, and during a fifth such interview the respondent admitted to the burglary at Tyrone Place and stated that he wanted to apologise to Mrs O’Brien.

Impact on the victims

17. Victim impact statements were received from just two of the victims. The first of these was a victim impact statement from Fiona Walsh who lives at No 1, Frankfield Villas, Cork. Ms Walsh told the court:

“…[W]e did not see the accused, we were not conned or taken advantage of, we had very little taken and didn't even know there was someone in our house until a few hours after we got up. It could have been much worse, but it has changed the way we live our lives. We didn't sleep properly for days knowing that there were men inside our home while we slept, our 15 month old was asleep in the room beside us. It has gotten better but sudden noises will still wake us. We bought alarms for the front and back doors and even questioned the area we live in. On that night our cat woke me around the time of the burglary and I went downstairs to let him out. I wondered for weeks what could have happened, had I disturbed them. We got off easy but it has changed us, our behaviour and how we feel about living in the city. It has made us more cautious and has left us with a small bit of fear, that we had not felt before.”

18. The sentencing court also received a victim impact statement from Christopher Twomey who lived at No 2, Frankfield Villas, Cork. Mr Twomey stated:

“The break in in the early hours of April 17th has left immeasurable impact on my life. It left a remnant of fear and stress, in already a stressful and fearful time. For months I've had a compulsion to check every window and door in my home every night before bed. There is a fear that I will wake up once again with a complete stranger in my home. Since then, I've moved out of that house into a new home, avoiding another break in was definitely one of the factors in that decision.”

Personal circumstances of the respondent

19. The respondent is a 28 year old man who comes from a troubled family background and turbulent home environment. His father was estranged from a very young age and his two sisters and brother were placed in foster care.

20. The sentencing court heard that the respondent had 84 previous convictions, 21 of which were at Circuit Court level albeit as appeals from the District Court. Previous convictions included two for burglary, three for robbery, thirty-one for theft, nine for criminal damage, six for simple possession of drugs, four for possession of drugs for sale or supply and one for failing to appear. His last conviction for burglary was in respect of an offence committed on the 13th of September, 2012, and was recorded by Macroom Circuit Court on the 27th of July, 2015.

21. The respondent first came to the attention of the gardaí in 2004 at the age of 11 years and has served 17 custodial sentences in total.

22. He started using drugs at the age of 14 years and heroin from his early teens and continues to suffer from drug addictions.

23. A Mrs Jones, who is a foster parent of one of the respondent’s siblings, stated in a note to the court that the respondent’s siblings have become very responsible adults and suggested that the lack of stability in the respondent’s life may have contributed to how he has turned out.

24. Evidence of the respondent’s chaotic past was documented in a Probation report, relating to a previous conviction, provided to the sentencing judge. The report stated that the respondent effectively became homeless when his mother was arrested in connection with the murder of his uncle.

25. Despite attempting to engage with addiction services in February 2020 and obtaining a bed in St Vincent’s Hostel, he overdosed and was admitted to the Mercy Hospital Cork for medical assistance. The offences the subject of this appeal occurred in April, 2020 during the time when the respondent was homeless.

26. The respondent was deemed by the Probation Service in the said Probation report as being “*a high-risk reoffender with very high needs*”. It further noted that the respondent has a moderate learning disability, requires medication and had made limited progress (in terms of responding to interventions).

27. The court also noted that the respondent’s co-accused is 20 years his senior. The transcript of the sentencing was silent, and the Court of Appeal was not informed, as to what sentence was imposed on the co-accused.

Remarks of the sentencing judge

28. The sentencing judge began his remarks by acknowledging the guilty pleas in relation to the aggravated burglary on the 9th of April 2020 and the series of burglaries which occurred on the 17th of April 2020.

29. He then outlined that the burglaries had each involved violence in terms of the breaking of a lock, or of a door, to get into the premises. All of the premises had been occupied dwellings. Further, there had been entry at night, and there had been confrontation with some of the occupiers, especially with the 83-year-old pensioner Mrs O’Brien, where the respondent had impersonated a garda and had taken money she had saved, including money intended as a gift for her grandson’s confirmation. These were all aggravating factors but the sentencing judge singled out the confrontation of people in their own home at night as being in his view a significant fact.

30. The sentencing judge continued:

“I accept that there was no actual violence shown to anybody and that in the main, the perpetrators left quickly or left immediately, save and except for Tyrone Place, where no violence was shown or visited on anybody. It is also significant that, notwithstanding the drug addiction, notwithstanding the level of chaos in this man's life, they were both of presence of mind that they could get the 1,600 to a safe place with somebody's mother, so that it was out of the immediate grasp of the guards, if and when they were arrested. So that is a significant factor.

It is hard, given the repetitive nature of the burglaries and the fact that a spree was involved, it is hard to disagree with the DPP, but I am at a loss to find any real level of pre-planning, given the chaos involved and the limited preparation. They have pleaded, though with the aggravating factors I would think a sentence of seven years with a plea -- with the aggravating factors is appropriate. Now, this man has already been sentenced, he has had a 12 month sentence backdated to October, he has had that visited on him, so given that this sentence has to be consecutive, the question of proportionality comes in to play. He is described by the guard as a career criminal, an habitual reoffender, and given the fact that he has 84 previous convictions, a number for burglary and robbery and a significant number for theft, it is difficult to disagree with that.

I have from a previous robbery conviction, a comprehensive probation report on Mr Jones from a Ms Ahern, and it's explanatory about his background, the chaos of his upbringing, the intensity of his addiction and his up to then all but complete failure to engage with the Probation Service, with Blarney, with addiction services. It's -- he was then correctly deemed by the Probation Service, as being a high risk reoffender with very high needs. He also had a moderate learning disability and his ability to respond to interventions appears to have been less than optimum. There was a requirement to take medication, he showed some progress, but as history of the case indicated, the progress was very limited. He is a man who undoubtedly will need a structure. He came forward … on a signed plea …, so there has to be a discount from a signed plea, so I would discount for the signed plea and the level of co-operation, a discount to five years and the fact that it is consecutive I will discount a further 12 months, on the basis that on his release he will, for a period of 12 months, be under the care of the Probation Service and obey all their directions.

Grounds upon which the applicant seeks a review.

31. The applicant seeks a review of the sentences pursuant to s.2 of the Act of 1993 on the grounds that they were unduly lenient. It is complained in that respect that the sentencing judge erred in principle in setting the headline sentences for the burglary/aggravated burglary offences at seven years when it is suggested that, on the evidence, he should have located them at the upper end of the scale identified in *The People (Director of Public Prosecutions) -v- Casey and Casey* [2018] IECA 121, i.e. in the sub-range of offences attracting headline sentences of between nine to fourteen years.

Submissions of the applicant

32. It is submitted by the applicant that the sentencing judge erred in principle and acted in disregard of jurisprudence in failing to have any or adequate regard to the numerous and grave aggravating factors associated with the offending in the present case.

33. The applicant submits that in the offending at issue, factors bearing on intrinsic culpability that could elevate an offence of burglary from middle range to high end of middle range of gravity, as identified in the *Casey* jurisprudence, were present in this case. These were that:

a. the respondent acted in concert with his co-accused in engaging in a spree of burglaries;

b. the two accused targeted residential properties, albeit not in rural areas;

c. the victim of one of the burglaries was and elderly and vulnerable pensioner who was put in fear;

d. a sum of €2800 was taken from the victim during the final burglary, a substantial portion of which was never recovered.

34. In further reliance on the *Casey* jurisprudence the applicant submits that over and above that, aggravating factors existed which would have elevated the offending to a yet higher level of gravity, namely,

i. the living and sitting room of a married couple with a 15-month-old child were ransacked while they slept;

ii. the burglars used an implement in each case to effect forced entry resulting in damage to front doors;

iii. the burglars entered dwellings at night in circumstances where they knew or ought to have known that they were very likely occupied, and when they were in fact occupied. This was in circumstances where the burglaries were committed during the Covid 19 pandemic and at a time when public health restrictions mandated that people should remain at home save for essential purposes;

iv. although the victims did not experience personal physical violence, in the first burglary the occupiers were confronted with the accused wielding a baseball bat. Confrontations with the occupiers also occurred in respect of the fifth and sixth burglaries, with the victim in the latter case being placed in fear.

v. victim impact statements from two of the victims identified the distress and anxiety they experienced post the commission of these offences.

vi. the respondent had relevant previous convictions.

vii. the offending was committed during the currency of the suspended period of a previously part suspended sentence.

viii. the respondent had impersonated a garda during the final burglary.

35. It was submitted that in the circumstances the identified head line sentence was disproportionately and unduly lenient.

36. On the issue of whether the offences were pre-planned, the sentencing judge had remarked, “*It is hard, given the repetitive nature of the burglaries and the fact that a spree was involved, it is hard to disagree with the DPP, but I am at a loss to find any real level of pre-planning, given the chaos involved and the limited preparation*”. The applicant further complains that the sentencing judge’s rejection of the notion that the offences were pre-planned was an error. Counsel for the applicant submitted that there was clear evidence that the two co-accused had equipped themselves with a house breaking implement and had embarked on a spree of burglaries, some of which entailed confrontations, with the clear intent to take cash and valuables from the occupiers. Moreover, they had targeted a specific residential area, and having burgled the dwelling at 26 High Street, Cork on the 17th of April 2020 they had gone away only to return later to the general area to commit the burglaries at No’s 1 and 2 Frankfield Villas, at No 9 O’Connorville, and at No 34 Tyrone Place.

Submissions of the respondent

37. Counsel for the respondent submits that the sentence in the present case was one that involved an exercise in judgment and was a rational one for which there was evidential support.

38. We were referred to the by now well known and uncontroversial jurisprudence on the jurisdiction to review under s. 2 of the Act of 1993, including the cases of *The People (Director of Public Prosecutions) v. Redmond* [2001] 3 IR 390; *The People (Director of Public Prosecutions) v. Byrne* [1995] 1 ILRM 279 and *The People (Director of Public Prosecutions) v. Stronge* [2011] IECCA 79, counsel for the respondent particularly emphasising that great weight must be afforded to the reasons for the sentence provided by the sentencing judge at first instance.

39. It was submitted that the sentencing judge did not err in law in setting a headline sentence at seven years where in the present case:

a) the respondent appeared before the court on a affirmed signed plea;

b) the respondent admitted his involvement in the burglary at Tyrone Place and apologised to its occupier Mrs Eileen O’Brien;,

c) the respondent was homeless at the time of the offences and was leading a chaotic life;

d) the respondent’s previous relevant conviction related to a burglary conviction dated 27th July 2015, for an offence dated 13th September 2012,

e) the respondent fled from the properties when the occupiers made a noise,

f) the respondent did not use violence against any of the occupants,

g) there was no degree of pre-planning or pre-meditation involved in the commission of the offences.

40. The respondent contends that taking account of the above, the sentencing judge was correct in seeking to place the offences in the mid range on the scale as set out in the Casey jurisprudence. It was submitted that in the present case there was no pre-meditation involved in the burglaries. It was submitted that while the properties may have been proximate in geographical terms there had been no systematic targeting of the properties. There was also no evidence as to the nature of the tool alleged to have been used to gain entry to the dwellings, and it was only the opinion of Detective Sergeant Young that a tool or implement had been used.

41. Counsel for the respondent referred us to *The People (Director of Public Prosecutions) v. Babayev [2010] IECA 247*; *The People (Director of Public Prosecutions) v. Freeman* [2018] IECA 312; *The People (Director of Public Prosecutions) v. O’ Hare* [2019] IECA 135, and *The People (Director of Public Prosecutions) v. Conroy* [2019] IECA 251, as comparators to suggest that the sentencing judge did not exceed his discretion in assessing a headline sentence of seven years for the offences.

42. It was submitted in relation to mitigation that the sentencing judge had been correct to take account of the affirmed signed pleas. In terms of proportionality, the sentencing judge had noted, correctly it was suggested, that the respondent was the subject of a reactivation of a twelve month sentence, was leading a chaotic life, was homeless, was at risk of reoffending having very high needs, had a moderate learning disability and had made limited progress in terms of responding to interventions.

43. Counsel for the respondent contended that the scale in *The People (Director of Public Prosecutions) v. Casey and Casey* was intended to assist the court in determining the correct band and where to begin to determine the headline sentence for burglary offences. It was further submitted that the particulars identified in that case were not an exhaustive list and that it was in the judge’s discretion to appraise the circumstances as locating the offences in the mid-range, particularly where there was no violence or threats made against any person, where the level of ransacking was minimal, where the respondent had not targeted properties in the knowledge that the occupants were vulnerable, and where no significant injury was caused to any of the victims.

Analysis and Decision

44. While there was no sophisticated pre-planning, and we think the trial judge was right in her view on that aspect of the case, we cannot accept that the offences were committed in a wholly opportunistic way. All the offences were committed in a specific geographical area, and a tool was used for breaking in. There may not have been sophisticated advance planning, but the offences were premeditated even if the decision to commit them may have been made late in the day. This was not a situation of the appellant and his co-accused taking advantage of an open door or window casually encountered, and entering a premises on the spur of the moment. There were a series of burglaries here and they involved breaking and entering, with a tool or implement being used to effect entry.

45. However, what is of greatest concern to us is that the sentencing judge did not seek to differentiate between the seven offences for which he was required to impose sentence. This case represents yet another example of the difficulties associated with sentencing for multiple offences. While there were some similar features between the various burglary type offences committed in this case they varied in gravity, with some exhibiting greater culpability and causing greater harm than others.

46. The offence committed on the 9th of April 2020 was one of aggravated burglary, a form of offending recognised by the Oireachtas as being a cardinally more serious offence than ordinary burglary and, unlike ordinary burglary the maximum sentence for which is twelve years’ imprisonment, aggravated burglary carries up to life imprisonment. It was therefore a qualitatively different offence from the other burglaries, with a higher level of intrinsic culpability. That having been said, although a weapon was carried during this aggravated burglary, the weapon was not used to perpetrate any actual violence.

47. The first to fourth burglaries committed on the 17th of April 2020 bore the greatest level of similarity and could legitimately be said to have a substantial degree of relatedness.

48. However, the fifth burglary committed on the 17th of April 2020, being the burglary at the home of Mrs O’Brien at 34 Tyrone Place, was qualitatively much more serious than the other burglaries committed on that night. The offender’s culpability was very significantly aggravated by the confrontation which ensued during which Mrs O’Brien was placed in fear, by the impersonation of a garda by the respondent, by the degree of trauma and psychological harm caused, and by the level of material loss also suffered by the victim. In that instance the victim was elderly and vulnerable, and one can only imagine how frightening it must have been for a lady in her eighty’s and living alone, to be subject to such a despicable and disgraceful intrusion and violation of her home in the middle of the night.

49. There were a number of different ways in which the sentencing judge could have approached the sentencing in this case. He opted for imposing individual sentences to be served concurrently, a course of action legitimately open to him. He could also have opted for consecutive sentencing, or more realistically perhaps a mix of concurrent and consecutive sentences. He could also have sentenced globally by imposing a single sentence on the most serious or gauge offence, sufficient to reflect overall culpability and the harm done, while taking the remaining sentences into consideration. However, we do not recommend sentencing globally in this way due to potential difficulties that might arise. An offender should, ideally, receive an individual punishment for each offence he/she has committed. See, *The People (Director of Public Prosecutions) v Higgins* (Unreported, Supreme Court, 22nd of November 1985) where Finlay C.J., in his judgment (with which Walsh J, Henchy J, Griffin J, and McCarthy J concurred) observed:

‘…the learned trial judge imposed upon him a sentence in respect of one count only and took the other counts into consideration. Having regard to the possibility that always exists of a court of appeal setting aside on some technical or other ground the conviction on a particular count, but leaving undisturbed the convictions reached on other counts on the same indictment, even though they arise out of the same incident, this would appear to be an undesirable and unsatisfactory procedure. Appropriate sentence should, in my view, be imposed on all counts in respect of which an accused person is convicted by the jury.’

50. While the law doesn’t expressly prohibit sentencing for a single offence, or a representative selection of offences, on a global basis with other offences on a multi-count indictment that have been pleaded to, or of which the offender has been convicted, being taken into consideration, doubts have been expressed as to whether it represents good practice. See the remarks of Birmingham J. concerning the difficulties which taking into consideration can present in *The People (DPP) v Casey and Casey* [2018] IECA 121. Amongst the reasons for regarding the practice with some circumspection are, firstly, the difficulty identified by Finlay C.J.. in *The People (Director of Public Prosecutions) v Higgins*; secondly, because unless the sentencing judgment concerned is closely reasoned and specifies the exact impact on the sentences actually being imposed of the other sentences being taken into consideration, the process may lack transparency; thirdly, because it may be insensitive to victims of the crimes for which the offender is not to receive a specific sentence, with the risk that they may perceive that the offender is getting “a free ride”; fourthly, because while there is a statutory power under s. 8 of the Criminal Justice Act 1951 to take uncharged offences into consideration thereby allowing an offender to “clear the slate”, there is no corresponding statutory power to do so in respect of offences of which an accused was actually charged and to which he/she either pleaded guilty or was convicted at trial. However, notwithstanding a lack of statutory authorisation, many sentencing judges have shown willingness to take charged offences to which an offender has either pleaded or in respect of which they been convicted into consideration when sentencing for another (usually more serious) offence, on the basis that the accused is specifically before the court for sentencing on those matters having been convicted of them or having pleaded to them, and the sentencing judge may be assumed to be at large in that respect. While there is little room for doubting that the practice is legally permissible in many instances, it may not be in every instance. For example, although it doesn’t arise in this case, we would query obiter dictum whether it is permissible to take a significant more serious offence into consideration when imposing a sentence for a less serious offence.

51. At any rate, the sentencing judge in this case opted to impose individual sentences in respect of all of the offences then before him and directed that they should be concurrent inter se but consecutive to the previously suspended 12 month period for the earlier robbery offence that was now required to be served with effect from the 27th of October 2020. In doing so, he nominated imprisonment for seven years as being the appropriate headline sentence for each offence, with no differentiation between them, and then discounted by two years in each case to reflect mitigation, while suspending the last year in application of the totality principle and in the interests of ensuring an overall sentence that was proportionate.

52. The difficulty as we see it is that the seven year headline sentences might on one view be said to have been high for the first to fourth burglary offences committed on the 17th of April 2020 considered individually (but of course they were committed as part of a spree); a headline sentence would have been about right for the single aggravated burglary, and a seven year headline sentence was clearly too little for the fifth burglary committed on the 17th of April 2020 given the egregious aggravating circumstances associated with it.

53. The sentencing judge’s approach was to attribute such a degree of relatedness to each offence as to justify treating them all in the same way. We consider that this was an error of principle. We accept that the view is widely held that in the case of multiple offences the total sentence should, in general, be greater than the proportionate sentence for any one of the offences, and that there is a logic to this on the basis that offending on multiple occasions usually implies greater culpability on the part of the offender than the commission of a single offence and is therefore justly deserving of more punishment. Moreover, even if by virtue of a high degree of relatedness between the offences overall culpability is not increased, the commission of multiple offences still increases the harm component in the legal evaluation of the behaviour, rendering that behaviour arguably deserving of at least some more punishment. However, acceptance of this proposition does not imply that offences of differing gravity on the same indictment can justifiably be treated as meriting the imposition of identical sentences.

54. In that regard we wish to say something about the “same transaction” principle, to which recourse is sometimes had as a theoretical framework for the sentencing of an offender for multiple offences, and to which we infer the sentencing judge in this case sought to have regard. Such a framework consists of dimensions of relatedness, particularly with respect to commonality of victims (or lack of same), commonality of modus operandi (e.g. in case of a spree of offending)/similarity of conduct (or lack of same), causality, and temporal contiguity. These may be relied on as justification for treating some offending conduct as being in effect part of a continuum of such conduct; or to put it another way as being part of the same transaction in offending terms (the so-called “one-transaction” principle), leading to concurrent sentencing inter se. Alternatively, the lack of apparent relatedness may be relied on as justification for treating them as separate transactions deserving of discrete and individual punishment; sometimes, but not always, leading to consecutive sentencing or a mix of concurrent and consecutive sentencing *inter se*.

55. The point we wish to make is that even where a significant degree of relatedness exists, it does not mean that every instance of related offending must necessarily receive the same penalty. If, notwithstanding the relatedness, there are differences between individual instances of the offending conduct, a sentencing judge must strive to impose an appropriately proportionate sentence for each individual offence, regardless of how the overall sentencing package is to be structured. However, as the Supreme Court has made clear in *The People (DPP) v F.E* [2019] IESC 85 in making that assessment the sentencing court, if it is opting for concurrent sentencing, must consider the interrelatedness of the offences, and ensure that whatever penalty is set for the most serious offence appropriately reflects the totality of the offending conduct and its overall impact on victims.

56. Ultimately, notwithstanding issues we may have concerning the manner in which this sentencing was approached and structured, this is an undue leniency appeal and we would only be justified in interfering if we were of the view that the sentences imposed, or any of them, were substantially outside the norm and unduly lenient on that account. In our view the sentence for the burglary of Mrs O’Brien’s dwelling at 34 Tyrone Place was substantially outside the norm and unduly lenient, but consider that we would not be similarly justified in interfering with the other sentences. If the other sentences were lenient, they were not outside the norm so as to be unduly lenient.

57. It was committed as part of a spree and involved multiple very serious aggravating factors to which we have already alluded. In our view the main source of error was the adoption in that instance of a headline sentence that was too low. We agree with counsel for the applicant that the appropriate headline sentence in respect of that offence should have been located in the upper range. We would locate it at nine years rather than seven years. The incorrect selection of a headline sentence led to an incorrect post-mitigation sentence that was outside the norm and unduly lenient. We will therefore quash the sentence on the relevant count, that being Count No 2.

58. In re-sentencing on Count No 2 we will nominate a headline sentence of 9 years imprisonment. We will discount from that by 3 years to reflect mitigation and to incentivise rehabilitation. This 6 year sentence is again to be served concurrently with the sentences of 5 years (with one year suspended) imposed by the court below on the remaining counts on this indictment, being Bill No CKDP0110/2020. Further, it is to be served consecutively to the reactivated 12-month period that remains to be served from the 27th of October 2020 in respect of the previous conviction for robbery. In circumstances where there is to be this consecutive element, we will do as the court below did and suspend the final twelve months of the 6 year sentence now substituted in respect of Count No 2, and will do so for the same period and on the same terms as in the court below.

59. We find it unnecessary to interfere with the sentences on the remaining counts on the indictment, not being persuaded, notwithstanding the arguments advanced by counsel for the applicant, that they were outside the norm and unduly lenient on that account.