



THE COURT OF APPEAL

Record Number: 296/18

Peart J.
McCarthy J.
Kennedy J.

BETWEEN/

THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

- AND -

KARL MCDERMOTT

APPELLANT

JUDGMENT of the Court (*ex tempore*) delivered on the 8th day of October, 2019 by Mr. Justice McCarthy

1. This appeal is one against a sentence of five and a half years' imprisonment, the last year of which was suspended on certain terms, including the entry into a bond by the appellant to keep the peace and be of good behaviour and to place himself under the supervision of the Probation and Welfare Service for given periods. In sentencing the accused, the Circuit Court judge took into account an offence of production of an article (a knife) in a manner likely to unlawfully intimidate another contrary to s.11 of the Firearms and Offensive Weapons Act, 1990. Sentence was imposed on the 7th November, 2018 and the appellant had pleaded guilty at the earliest available opportunity.
2. The offence occurred on the 25th May, 2018 at a branch of Dunnes Stores. A lady working at a checkout was approached by the appellant who threatened her with a knife and demanded that she open the till. The item was homemade but was described as having the character or appearance of a machete. She was shouted at repeatedly and threatened with the knife. She struggled to open the till because of the extent to which she was in fear. She ultimately did so and the appellant having taken some of the contents ran off but was apprehended a very short distance away. He was twenty-one years of age.
3. He had forty-five previous convictions. Whilst he had come before the Circuit Court on a large number of occasions it appears that he did so on only two occasions in respect of offences which were tried on indictment. On the 3rd February, 2016, in the Dublin Circuit Criminal Court, in respect of offences of handling stolen property, common assault and an offence under s.112 of the Road Traffic Act, a cumulative sentence of two years was imposed upon him, twelve months of which was suspended. On the 14th November, 2016 he was also before Dublin Circuit Criminal Court when he was sentenced to a term of imprisonment of three years, the last eighteen months of which was suspended on a count of robbery and possession of an article with intent to cause injury (as the offence is described in the transcript before us). The offences dealt with summarily included a number of offences under the Criminal Justice (Theft and Fraud Offences) Act involving an attempted robbery and possession of stolen property. They include also at least two offences for possession of knives contrary to the Firearms and Offensive Weapons Act,

offences contrary to the Misuse of Drugs Acts, the Road Traffic Act and the Criminal Justice (Public Order) Acts. Regrettably, the appellant's first convictions took place in the Children's Court and from an early age he became an abuser of controlled drugs and alcohol. He appears to have been under the influence of some form of drug at the time of the offences before us and after arrest it was not possible to interview him immediately for this reason.

4. When in custody for earlier offences he successfully tackled his abuse, underwent counselling, spent a considerable period in the Medical Unit in Mountjoy Prison and immediately upon his release he undertook residential treatment at the well-known Coolmine Institution. That therapeutic program was residential. He remained there from November 2017 to March 2018 but left some weeks ahead of the conclusion. For a period, he attended what is described as aftercare with an organisation called "Sankalpa" and cooperated with the Probation Service. However, at a given stage he began binge drinking and abusing drugs. He was described as being desirous of resuming efforts to combat his abuse of these substances.
5. In sentencing, the Circuit Court judge took the view that the appropriate starting point or so-called headline sentence should be one of seven years. It is not contended that this was outside the available range. It is submitted however, that the reduction from that sentence was insufficient in the particular circumstances of the case. The key points advanced here are that before this offence the appellant had made significant efforts to address his difficulties, that insufficient regard had been placed to the desideratum of rehabilitation and in particular that the sentence failed to afford a sufficient incentive for him to continue the efforts which he had already made.
6. We think that having regard to the seriousness of this offence involving as it did a frightening incident with the use of threats and a knife, the fact of numerous previous convictions including offences of robbery dealt with on indictment where every latitude and opportunity for rehabilitation was afforded, must call for a substantial custodial sentence. The learned Circuit Court Judge obviously made and considered in detail the factors relevant. She made provision for the appellant's reintroduction into the community and afforded an incentive to him to rehabilitate by virtue of suspending a portion of the sentence. Had she imposed a lesser term of imprisonment it would have involved a failure to give due weight to the place which punishment, retribution and deterrence must play in sentencing.
7. We can see no error of principle and accordingly we dismiss this appeal.