



**THE COURT OF APPEAL**

**Record Number: 102/20**

**The President  
Kennedy J.  
Donnelly J.**

**BETWEEN/**

**THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS**

**RESPONDENT/**

**- AND -**

**STEPHEN DALY**

**APPELLANT**

**Judgment of the Court delivered (ex tempore) on the 8th November 2021 by Ms. Justice Isobel Kennedy**

1. This is an appeal against severity of sentence. On the 15th of May 2020 Mr Daly was sentenced on three bills of indictment. This appeal concerns one of those bills relating to a count of burglary and a count of false imprisonment. A nine year sentence was imposed for the offence of false imprisonment contrary to Section 15 of the Non-Fatal Offences Against the Person Act, 1997, with the final year suspended on terms. The appellant also received a concurrent sentence of seven years for the offence of burglary contrary to Section 12(1)(b) and (3) of the Criminal Justice (Theft and Fraud Offences) Act, 2001. By way of completeness, it should be stated that on the same day, he was sentenced in respect of a theft offence which involved the stealing of a bag containing approximately €7,000 from a young woman on a bus, which offence occurred on the 26th February 2019. In addition before the Court were charges of burglary and criminal damage relating to the appellant's assault of his then partner's mother in her home on the 22nd March 2019.

**Background**

2. So far as the offences which are the specific subject of this appeal, these relate to event of the 29th April 2019, when the appellant and another individual, who it is said was younger, broke into a residence in Drogheda. The family au pair, who was in her late 20s,

was in the house at the time. It should be said that the evidence initially placed her age at approximately 20 years old, her date of birth was later given in evidence which placed her in her late 20s. However, we do not believe this is of any moment. She had just returned from English classes when she heard noise from the back of the house and went to investigate. She met the two men on the landing. Upon encountering her, the two men brought her into a spare room. €800, \$100 and a Garda National Immigration Bureau card were taken from her. They initially took her phone, watch and jewellery, but returned these when she informed them that the items were of sentimental value. It appears that the younger of the two men, not this appellant, returned the items to her.

3. She was then held in a hot-press, the door of which was blocked by furniture to prevent her from escaping while the two men searched and ransacked the house. No property was stolen other than that taken from the au pair. She managed to free herself from the hot-press at one point, but was put back into the hot-press by the appellant, who tied her hands and knees with straps taken from her backpack. In addition, his demeanour towards her was described as sinister and 'creepy'; calling her 'sweetie', saying that he liked her and would like to marry her. At a later point, he appeared to become angry and called her a prostitute when he tied her up. She escaped again after their departure from the house, at which point she sought help using her phone. The incident lasted approximately one hour. The appellant is a man with 69 previous convictions, which included 6 previous convictions for burglary. These are relevant convictions and as such amount to an aggravating factor.

#### **Personal circumstances of the appellant**

4. In terms of the appellant's background, he is 28 years old. At the time of the offence, he was experiencing homelessness, drug addiction and mental health issues. His addiction issues exacerbated certain mental health issues. He is a member of the travelling community. The court heard that he had a difficult upbringing. A psychiatric report was furnished to the court which included that he has suffered abuse as a child. He spent many of his teenage years alternating between young offender institutions and mental health facilities in the United Kingdom. The appellant has also suffered a number of bereavements, including the death of his brother in 2019 while he was in custody. This is said to have had a severe impact on him and he continues to suffer with self-harm and mental health issues.
5. The appellant penned a letter of apology and indicated remorse, which were accepted by the court as being genuine. Letters were furnished from the Navan Traveller's workshop regarding his background and family.

#### **The sentence imposed**

6. In imposing sentence, the sentencing judge noted as aggravating factors; the duration of the incident and the fact that the victim was confined twice in a hot press with restraints on her hands and knees, that there was an element of pre-planning, that the house was occupied, the patio door was smashed to gain access, and there was a confrontation. The appellant's previous convictions were also noted, as was the fact that he was the older of the two men in this instance. The judge also took into consideration the element

of planning; noting where the appellant's vehicle was parked, the wearing of gloves and the fact that the house was in a cul de sac. Moreover, the house was ransacked, which added to the seriousness of the offence.

7. A headline sentence of 10 years' imprisonment was identified on the count of burglary, and a headline sentence of 12 years' imprisonment was identified in respect of the false imprisonment. In terms of mitigation, the judge noted the appellant's early guilty plea, the appellant's mental health difficulties as described in a psychiatric report by Dr. Benjamin O'Keeffe, which she observed did not take away from the appellant's capacity to distinguish right from wrong, his remorse, apology, addiction issues. Accordingly, the nominated sentences were reduced to seven years' imprisonment and nine years' imprisonment respectively. In order to incentivise his rehabilitation the final 12 months of the 9 year sentence was suspended.

#### **Submissions of the appellant**

8. Mr Clarke SC, makes succinct submissions in addition to relying on the written submissions. He says that the 12 year headline sentence nominated for the count of false imprisonment was too high *inter alia* due to the absence of evidence of pre-meditation by the appellant. It is said that no aggression was shown by the appellant toward the victim, and the fact that her phone was given back to her allowed her to raise the alarm once the burglars had left.
9. Secondly, complaint is made regarding the reduction from the headline sentence afforded for mitigation, given the early guilty plea and the appellant's co-operation with Gardai during the investigation. It is said that further consideration ought to have been given to the difficult personal circumstances of the appellant.
10. The appellant further submits that a shorter custodial sentence or longer period of suspension would be more appropriate in these circumstances, particularly due to the possible provision of rehabilitation and mental health treatment through the probation services.
11. It is submitted on behalf of the appellant that he has expressed remorse for his actions through a letter of contrition which was put before the Court on his behalf and accepted as genuine by the judge. The appellant's submissions emphasised the difficult circumstances of his upbringing and his ongoing mental health difficulties.

#### **Submissions of the respondent**

12. It is submitted by the Director that the appellant appears to have been unmoved by the earlier offending the subject matter of the two preceding Bills. It is said that little credit should be given for the appellant's return of sentimental property to the victim, as it is clarified by the Director that it was in fact the other man, and not the appellant, who gave the items back to her.
13. Moreover, it is said that while no "gratuitous violence resulting in physical harm" was perpetrated on the victim, the action of confining her in the hot press, and subsequently restraining her by her hands and knees to prevent her escape, was an aggravating factor.

It is also submitted that the offending appears to have upset the owners of the house; they have since erected security measures to prevent an incident like this from happening again. The victim has since left her job.

14. The Director highlights that the offending represents the third of three offences committed involving the persons of others in a short period and argues that this in itself should be considered an aggravating factor. The Director submits that the appellant's relevant previous convictions should also be considered as aggravating the offence.
15. Reference is made to this Court's judgment in *DPP v Casey and Casey* [2018] IECA 121, which involved an aggravated burglary, and in which the ransacking of the house, the number of previous convictions and a confrontation with an occupant of the house were all considered aggravating factors, thus elevating the gravity of the offending.
16. The Director submits that this case merited the incorporation of general and specific deterrence.

### **Discussion**

17. At the outset of this hearing, we indicated that we viewed this matter as very serious, and that remains our view. The aggravating factors are set out above, and include breaking into a residence, confronting the occupant, placing her in the hot press, confining her there, which confinement was further compounded by confining her for a second occasion after she managed to break free. The appellant then restrained her using ties and undoubtedly frightened her by the use of language with sinister undertones, calling her sweetie, telling her he wanted to marry her etc. This must have been very frightening for a young woman, alone in a house with two intruders. The incident lasted for approximately one hour. He has 6 previous convictions for burglary, which aggravate this offence. We are entirely satisfied that the judge did not err in nominating a headline sentence of 12 years. The real issue, insofar as this court is concerned is whether the headline sentence is too low.
18. We now move to consider the mitigation present. Firstly, we say that the fact the appellant was not armed is not a mitigating factor, it simply means that an aggravating factor is absent, and of course, if it was present, this would serve to increase the gravity of the offence.

There are certainly mitigating factors, the plea of guilty, his deprived and difficult background and his mental health issues and his family circumstances. Mr Clarke highlights that some of her property was returned to her, while Mr Seagrave for the respondent, in turn says that this was done by the younger man. The appellant wrote a letter of apology and expressed remorse, of which the judge took account.

19. We cannot identify an error on the part of the judge in the court below. It must be acknowledged that this was one a set of three bills of indictment which were before the court, which was a relevant consideration in the imposition of sentence on these matters.

20. The sentence which the judge ultimately imposed was that of 7 years and 9 years with one year suspended, providing for a period of incarceration of 8 years. We do not find fault with the discount afforded for mitigation and the suspension of a year of the 9 year sentence to incentivise rehabilitation. While, we were minded to intervene in the sentence, and by that we mean with a view to increasing the sentence, we have decided on careful reflection, to confine ourselves to simply to dismiss the appeal.

**Decision**

21. Accordingly the appeal is dismissed.