



**THE COURT OF APPEAL**

**Court of Appeal Record Number: 256/20**

**Edwards J.  
McCarthy J.  
Kennedy J.**

**BETWEEN/**

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

**- AND -**

**CHAD REDMOND.**

**APPELLANT**

**JUDGMENT of the Court delivered (ex tempore) on the 16th day of November 2021 by Ms. Justice Kennedy.**

1. This is an appeal against severity of sentence. The appellant pleaded guilty to burglary contrary to s. 12(1)(b) and (3) of the Criminal Justice (Theft and Fraud) Act 2001. A sentence of three-and-a-half years, the last nine months of which was suspended for a period of two years on terms, was imposed on the 11th December 2020 with a count of criminal damage contrary to s. 2 of the Criminal Damage Act 1991 and a count of assault contrary to s. 2 of the Non-Fatal Offences Against the Person Act 1997 taken into consideration.

**Background**

2. On the 24th February 2019, the injured party was at her home with her friend and her child. The appellant is the child's father. Earlier in the day the appellant had called to the apartment, and it seems he had been reminded by the Gardaí that he was not permitted to see his child. At approximately 18.00, the injured party heard a knock on the front door. It transpired to be the appellant again seeking to see his child. He started banging on the door and eventually kicked it in. He gained access to the property by force and without permission. The injured party asked her friend to call 999, which she did. Hearing this, the appellant began to call the injured party a 'rat' and attacked her. Her friend, who was holding the child, tried to calm the situation by stepping between the appellant and the injured party. The appellant responded by telling the friend that if she got involved he would smash up her home.
3. Upon entry to the house, he grabbed the injured party by the throat, dragging her into the bedroom where he slung her around the room. In response to her protests regarding

calling the Gardaí; he would kill her "stone dead and burn the place to the ground". The injured party ran from the bedroom and tried to take her daughter from her friend. The appellant then grabbed the injured party by her hair while she held her daughter despite her friend's intercession. The injured party told the appellant that the Gardaí were on their way and he backed away and attempted to fix the apartment's front door. He then began attacking the injured party again, grabbing her hand, twisting it and threatening her. The injured party went to the apartment intercom and pretended to let Gardaí in through the building door. At this point, the appellant fled. However, after leaving the building, he realised that the Gardaí were not present and tried to regain entrance to the building. He was unsuccessful.

4. The appellant was on bail when he committed these offences.
5. The sentencing judge heard evidence that, at the time of sentencing, the appellant had 26 previous convictions for offences under the Criminal Justice (Theft and Fraud Offences) Act 2001 of which six were for burglary. He has five previous convictions for criminal damage, 20 for public order offences, six for failure to appear and other offences contrary to the Road Traffic Act.

#### **Personal Circumstances of the Appellant**

6. The appellant was born in 1993. He has one child from his former relationship with the injured party in this case. It is said he has a positive relationship with the child. His father passed away in 2018. His mother has recently received a terminal diagnosis. He started using drugs as a juvenile, and was taking cocaine until he went into custody. A letter from the Deputy Governor of Mountjoy Prison was furnished to the court, in which it is confirmed that Mr. Redmond is an enhanced prisoner, that he is employed on the Industrial Cleaning COVID-19 response team in the Prison and that he attends the Adult Education Centre regularly.

#### **The sentence imposed**

7. In terms of aggravating factors, the sentencing judge took into consideration the seriousness of the offending, that the accused was on bail; some of his previous convictions, including those for theft-related matters, burglary and criminal damage; the fact that the offending occurred in the family home in the presence of a very young child; and with violence.
8. In mitigating, the judge identified the plea of guilty, the appellant's desire to engage with his child, his parents' ill health, his conduct in custody and his efforts to address his drug addiction difficulties together with his expression of remorse.
9. A headline sentence of four and a half years was identified which was reduced to three and a half years to reflect the mitigating factors.. A letter written by the injured party was furnished to the Court in which she said that she will have to co-parent with the appellant for years to come. It was for this reason, as well as the appellant's efforts to rehabilitate, that the judge suspended the final nine months of the sentence for a period of two years on the condition that the accused remain under the supervision of the Probation Services.

### **Grounds of Appeal**

10. The appellant appeals the severity of his sentence on the following grounds:
- (1) The Learned Sentencing Judge erred in law and in fact in attributing excessive weight to the aggravating factors as outlined during the course of the Appellant's sentencing hearing;
  - (2) The Learned Sentencing Judge erred in law and in fact in determining the headline sentence to be one of 4 ½ years before mitigation was considered;
  - (3) The Learned Sentencing Judge erred in law and in fact in determining that the Appellant had similar convictions for theft related matters. While the Appellant had previous convictions for theft related matters, these offences were of a different nature;
  - (4) The Learned Sentencing Judge erred in law and in fact in not placing appropriate weight on the mitigating factors as outlined during the course of the Appellant's sentencing hearing;
  - (5) The sentence imposed by the Learned Sentencing Judge was excessive and oppressive in all the circumstances.

### **Submissions of the Appellant**

11. The appellant submits that the sentencing judge erred in her identification of the headline sentence, assessing gravity at too high a level. While it is conceded by the appellant that a court is entitled to take into account the accused's previous convictions for burglary, it is submitted that the Court failed to take into account of the absence of previous convictions for assault or offences under the domestic violence act. The appellant argues that the accused's prior convictions for theft *simpliciter* are not particularly relevant to the facts of this case.
12. It is further submitted by the appellant that the court placed insufficient emphasis on the significance of a guilty plea, particularly in the circumstances of the case, where the injured party in her victim impact report expressed her desire that this matter not proceed. The appellant argues that the guilty plea entered by the appellant – in full knowledge that the injured party was seeking to withdraw the complaint – was of assistance to all parties. Complaint is made that had the matter proceeded to trial, the prosecution may have faced certain difficulties in this respect, and as such the sentencing judge should have given regard to the real value of the guilty plea in these circumstances.

### **Submissions of the Respondent**

13. The Director submits that the sentencing judge did not err in assessing the appellant's culpability in this case and in concluding that his offending was at the lower end of the mid-range of such offending. It is noted in particular that the burglary was the appellant's second attendance at the injured party's dwelling in which Gardaí were called that day. He targeted her dwelling, entered knowing it was occupied, confronted the injured party, did

violence to her and caused damage to the dwelling. The appellant's previous convictions for criminal damage and burglary are also highlighted in the respondent's submissions.

14. It is also submitted by the Director in her submissions that the headline sentence imposed, being at the lower end of the generally appropriate range of headline sentences for mid-range burglaries identified by the Court of Appeal in *DPP v Casey & Casey* [2018] IECA 121, was appropriate and within the discretion of the sentencing judge. The Director notes that the offending in this case carries a maximum sentence of 14 years' imprisonment. It has in the past been held that the generally appropriate headline sentence in respect of mid-range burglaries is four to 9 years' imprisonment, a sentencing range that falls mostly outside of the range of possible sentences that may be imposed in respect of assaults causing harm.
15. Regarding the appellant's previous convictions, it is submitted by the Director that the sentencing judge was correct in considering them relevant aggravating factors. The Director submits that the distinctions outlined by the appellant between the offending the subject of this appeal and his other burglaries are those without a difference. It is argued that although these burglaries involved commercial premises, when considered alongside his convictions for other theft-related offences and criminal damage, they demonstrate an utter disregard for others and their property. It is submitted that the appellant's culpability may be viewed as greater for the disregard shown to the injured party and her property in this case.
16. The Director also argues that in reducing the headline sentence and suspending part of the sentence imposed, the sentencing judge gave sufficient weight to the mitigating factors in this case.
17. Finally, the Director submits that it is clear from comments made by the sentencing judge that she considered the appellant's plea of guilty to be a mitigating factor, and that she accepted the appellant's belated remorse as being genuine. The Director rejects the appellant's argument that the judge did not place sufficient emphasis on the significance of the guilty plea. It is argued that the plea was entered on a second trial date which, notwithstanding the service of additional evidence, can only be considered a late plea. It is said that this limits the credit to which the appellant is entitled for the plea.

### **Discussion**

18. It is argued on behalf of the appellant that the headline sentence nominated by the judge was simply too high. Moreover, that the discount afforded for mitigation was inadequate in terms of the appellant's personal circumstances. We will address the latter proposition in the first instance. The nominated headline sentence was that of 4 ½ years' imprisonment. The pre-mitigation sentence was reduced to one of 3 ½ years' imprisonment to reflect the mitigation present. The mitigating factors included a late plea of guilty where two trial dates were taken by the appellant, thus limiting the mitigation to be afforded for this particular factor. Moreover, we must also bear in mind that this is a man with a considerable number of previous convictions which give rise to a progressive loss of mitigation. The judge suspended nine months of that sentence, acknowledging the

necessity to coparent a young child and also to incentivise rehabilitation. In our view, this permitted a generous discount from the headline sentence and no error lies in this respect.

19. Insofar as the headline sentence is concerned, it is difficult to see how the judge fell into error. She identified the aggravating factors, which of course included the fact that the offending took place in the family home and in the presence of a very young child where threats were made to the injured party. It must also be recalled that whilst the appellant entered a plea of guilty to the offence of burglary, he did so on a full-facts basis. Therefore the judge was obliged to take account of the assault offence and the criminal damage offence.
20. The judge, in our view, properly identified the aggravating factors to include the appellant's previous convictions. Whilst the previous convictions for theft are not specifically aggravating of the offending conduct in the present case, it remains our view in light of the overall offending that the headline sentence nominated by the judge fell within her margin of appreciation.
21. Accordingly, the appeal is dismissed.