THE COURT OF APPEAL

[194/21]

The President
Kennedy J.
Ní Raifeartaigh J.

BETWEEN

THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS

(DPP)

RESPONDENT

AND

KARL DALTON

APPELLANT

JUDGMENT of the Court (*ex tempore*) delivered on the 24th day of February 2023 by Birmingham P.

Introduction

1. This is an appeal against severity of sentence. The sentence under appeal is one of six years imprisonment, with the final eighteen months suspended, that was imposed in respect of an offence of robbery, contrary to s. 14 of the Criminal Justice (Theft and Fraud Offences) Act 2001, on 21st October 2021.

Background

2. The background to the sentence hearing is to be found in events that occurred on 16th February 2019 at Griffeen Glen Avenue, Lucan, County Dublin. On that occasion, the injured party, Mr. Muhammad Furqan, was the victim of a robbery. To put the events of 16th February 2019 in context, it should be explained that, in December 2018, the injured party had opened a business in the city centre, which involved repairing mobile phones and selling accessories. In January 2019, the injured party came into the possession of a sum of money in the order of €11,200, and he decided to invest those funds in his business. He purchased a number of phones which were described by him as "high-quality iPhones and Samsungs" and he received the delivery of this order shortly before the robbery. He had the phones in two boxes, and, at one point, had those boxes in the boot of his car, and then on the evening of 16th February, he was going about the task of taking the phones out of his car and into his dwelling. The boxes contained some 20 phones and Gardaí confirmed that they were high-end phones and that their value was in the bracket between €11,000 and €12,000.

3. As he was engaged in the task of taking the phones from his car and into his dwelling, the injured party saw a car driving very quickly towards where he was standing. He noted that although it was dark at that stage, the car had no lights on. The injured party heard the occupants of the car shouting: one said, "give me the phones", another said, "shoot him", and another said, "I'll kill you". The injured party was aware of the fact that there were three individuals involved. One of the three took a large knife out of his jacket, and the injured party said that that one tried to hit him or stab him three times. The injured party was struck on his back but was not cut. Another individual held a wheel brace and the injured party was struck on his leg with this. In the course of the sentence hearing, counsel for the appellant put it to Garda Hugh O'Carroll that the appellant was not one of those in possession of a weapon during the incident, and Garda O'Carroll responded saying, "[n]o, I'm not disputing that fact."

4. In the course of the incident, the injured party told the robbers to take the boxes of the phones but not to kill him. Taken in the robbery were those some 20 phones of high-end value, valued between €11,000 and €12,000. Even during this incident, which was a traumatic one, the injured party had remained observant, and he had noticed that one of the robbers had put his hand on the bonnet of the car – that is to say on the injured party's car. The injured party noted where on the car the hand had been placed. The vehicle was then subject to a crime scene examination and palm prints were lifted from the location identified by the injured party. Gardaí from the fingerprints section of the Garda Technical Bureau were involved, and they reported that the prints matched that of the appellant as his prints were on file.

5. We have already referred to the fact that the stolen items had a value of €11,000 and €12,000, but what is of note is that the loss on this occasion was borne by the injured party personally, as the phones had been taken from his private dwelling, as distinct from his business premises, and insurance cover was not in force.

Personal Circumstances of the Appellant

6. In terms of the appellant's background and personal circumstances, he was born in 1991. He is a single man and the father to a six-year-old daughter. 43 previous convictions were recorded, almost all of which were dealt with in the District Court. What is to be noted is that four of these previous convictions were under s. 15 of the Misuse of Drugs Act 1977, as amended, and eight under s. 3 of that Act. The most significant was an offence that took place in March 2010 for which the appellant received a five-year sentence which was suspended. It is to be noted that none of the recorded convictions relate to crimes of violence. The Court heard that the appellant had become addicted to heroin at aged 18 years, but that he had availed of the opportunity that was given to him by way of the suspended sentence to which there has been reference. However, the situation is that some three years before the sentence hearing that is at issue today, the appellant found himself out of work. He told the Court that while he was unemployed, he had begun to associate with a negative peer group. However, the Court also learned that by the time of the sentence hearing, he had secured employment by installing refrigeration units. At the adjourned sentence hearing, the appellant brought a sum of €2,000 which he had assembled between the two court hearings.

The Judge's Approach to Sentencing

7. The judge's approach to sentencing was, first of all, having heard the initial evidence, to put the matter back for the preparation of a probation report. She remanded the accused in custody, making it clear that a significant custodial sentence was inevitable. Then, when it came to the imposition of sentence, she approached her task firstly by identifying a headline or pre-mitigation sentence of eight years, but then, having regard to the mitigating factors that she had identified, said that she would impose a sentence of six years but would suspend eighteen months of that sentence.

The Appeal

8. In written and very focused oral submissions on behalf of the appellant, it was made clear that no issue was taken with the headline sentence of eight years or the sentence arrived at of six years, but rather the criticism related to the fact that an insufficient amount of the sentence was suspended. In this Court's view, the offending was of very significant seriousness. This was a robbery that involved actual violence, as well as threats to kill, threats which would seem to have been taken seriously by the injured party. This was a robbery in which a significant amount was stolen, and the significance of the amount stolen is increased by the fact that the loss fell directly upon the injured party. It was an offence that involved premeditation and it was an offence that involved significant pre-planning.

9. It is the case that there were, as the judge explicitly recognised, factors present by way of mitigation, and these included: the plea, which was an early one; the fact that there was a positive, yet understandably, slightly cautious, probation report; the fact that there were indications of steps being taken towards rehabilitation; the fact that there was very positive family support for the appellant, as well as engagement with his family and his role within his family; the fact that employment had been secured; and, the fact that compensation had been addressed, albeit in a very limited way.

10. The factors that we have just referred to that were present by way of mitigation were addressed by the judge, who sought to reflect on those matters by reducing the headline sentence of eight years first to six years, and then with a part-suspended portion of eighteen months.

Decision

11. In this Court we have often made the point that we will intervene only in particular circumstances in relation to a sentence. For us to intervene it would need to be established that something in the nature of an error in principle exists. It is not enough that the Court, or even individual members of the Court, if called on to sentence at first instance, might have imposed a different sentence. The appellant has to establish that the sentence fell outside the available range.

12. In this case, the appellant has not succeeded in that regard; rather, it is our view that the sentence clearly fell within the available range, and in those circumstances, we must dismiss the appeal.