



THE COURT OF APPEAL

Record Number: 164/2023

Birmingham P.

Kennedy J.

Burns J.

IN THE MATTER OF SECTION 2 OF THE CRIMINAL JUSTICE ACT 1993

BETWEEN/

THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS

APPLICANT

- AND -

I.A.

RESPONDENT

JUDGMENT of the Court delivered on the 14th day of May, 2024 by Ms. Justice Tara Burns.

1. This is an application pursuant to s. 2 of the Criminal Justice Act 1993 ("the 1993 Act") seeking a review of the sentence imposed on the respondent on grounds of undue leniency.
2. A trial took place before the Central Criminal Court between 11 January and 26 January 2023. The respondent was charged with 13 alleged offences. The jury found the respondent guilty of counts 2-5 on the indictment. They disagreed in respect of counts 1, 9, 10, 12 and 13 and returned a not guilty verdict in respect of counts 6, 7, 8 and 11.
3. Count 2 related to assault causing harm contrary to s. 3 of the Non-Fatal Offences Against the Person Act 1997; count 3 related to production of an article capable of inflicting serious injury contrary to s. 11 of the Firearms and Offensive Weapons Act 1990; count 4 related to making a threat to kill or cause serious harm contrary to s. 5 of the Non-Fatal Offences Against the Person Act 1997; and count 5 related to false imprisonment contrary to s. 15 of the Non-Fatal Offences Against the Person Act 1997. All of these offences occurred on the 13 February 2019.
4. A sentencing hearing was held on 8 May 2023. On 15 May 2023, the sentencing judge pronounced the sentence imposed on the respondent. She found that a headline sentence of 3 years imprisonment was appropriate in respect of the assault charge with all other offences being taken

into account. Having regard to mitigatory factors present in the case, she imposed a term of imprisonment of two and a half years with the final six months suspended for 18 months upon conditions which included that the respondent attend all appointments as directed by the Probation Service; attend a therapeutic program if deemed suitable or necessary; and engage fully in offence-focused interventions to challenge his attitudes and limited accountability for his offending behaviour.

Background

5. The respondent and the injured party had been in a relationship together from 2010 to 2014 and have two children. They were not in a relationship when the offending behaviour took place but still had ongoing contact.
6. On 13 February 2019, the respondent picked up the injured party by arrangement and brought her to his home address. This arrangement had been made to facilitate the injured party attending an appointment close to the respondent's address the next day.
7. In the course of having something to eat, the respondent accused the injured party of having an affair. The discussions became heated resulting in a physical altercation during which the respondent punched her in the face and head; kicked her; smashed a glass bottle off a table, held the broken bottle to her neck and threatened to kill her.
8. The injured party attempted to escape into an adjoining room but the respondent pursued her. He pulled her by the hair; hit her head against the door; and punched her in the stomach. The respondent went to get the broken bottle, but the injured party ran upstairs in an attempt to escape out the main front door. As the injured party opened the front door, the respondent grabbed her by her cardigan and pulled her backward. The respondent then blocked the front door, preventing the injured party from leaving. He continued to punch and strangle her. The respondent was kneeling over the injured party's head in doing so. The injured party saw the respondent's mobile phone in his back pocket, and she managed to remove it and dial '999'.
9. The '999' call lasted for over 2 minutes, during which the injured party can be heard screaming and looking for help. The injured party could not talk directly to the operators as she did not want to alert the respondent to the fact that she had made the '999' call. The emergency call taker initiated a trace of the location of the phone, which led to the respondent's home address.
10. When Gardaí arrived at the scene they heard a female crying inside the premises. After Gardaí knocked on the door, the respondent answered with the injured party appearing seconds behind him. Gardaí noted the injured party was in a state of distress and could be seen crying, trembling and breathing frantically. The respondent invited the guards into the house where they questioned

both parties. The injured party was removed from the scene by ambulance and upon examination was found to have a concussion and had suffered damage to her nasal bones. She also had significant swelling over her nasal bones, with tenderness along the nasal bridge and under both eyes.

11. The respondent was arrested and interviewed as a result of the offending behaviour. Nothing of evidential value flowed from the interviews.

Personal Circumstances

12. The respondent was 35 when sentenced. He is a single man, with two children to whom he has regular access. He pays maintenance weekly in respect of his children. He has no previous convictions and a good work history. By the time of the sentence hearing, the respondent continued to deny these offences but accepted the verdict. A Probation Report in respect of the respondent confirmed that the respondent was attempting to minimise his personal responsibility for his offending behaviour. It placed him at a moderate risk of committing further intimate partner violence.

Sentencing Determination

13. The sentencing judge sentenced the respondent in respect of the assault and took the other offences into consideration. She determined that s. 40 of the Domestic Violence Act 2018 ("the 2018 Act") was applicable and that these offences were indicative of serious domestic violent behaviour. She assessed a headline sentence of 3 years imprisonment. With respect to mitigation, she noted that while the respondent accepted the verdict, he had not apologised to the victim. He did not have previous convictions, was co-operative with the investigation, was employed and had regular access to his children. Having regard to those mitigatory factors, she imposed a term of imprisonment of two and a half years imprisonment of which she suspended the final six months for an 18 month period on certain conditions.

Grounds of Appeal

14. By notice of appeal dated 2 June 2023, the applicant appealed the sentence imposed on the grounds of undue leniency on the following single ground:-

"The learned sentencing Judge erred when assessing the headline sentence in respect of the false imprisonment count as one of 3 years, thereby imposing an ultimate sentence which was substantially outside the norm given all the facts of the case."

Submissions of the Parties

15. The applicant submits that the nomination of a three year headline sentence was an error in principle: that it simply was too low having regard to the seriousness of the incident which occurred. The respondent submits that the sentencing judge was best placed to assess the offending which had occurred, being the trial judge in the matter; and that the headline sentence was not so

dissimilar to other headline sentences imposed in cases of this nature such that it should be interfered with on the grounds of undue leniency.

Discussion and Determination

16. The principles for determining undue leniency are well established and are set out in *The People (DPP) v. Stronge* [2011] IECCA 79 which this Court adopts. In essence, the applicant must prove that the sentence imposed constitutes a substantial or gross departure from the appropriate sentence such that an error of principle is established before this Court will intervene.
17. Firstly, we do not accept the submission which has been made by Counsel on behalf of the applicant that the sentencing judge determined that a headline sentence of 3 years was appropriate in respect of the false imprisonment count. We are of the view that the sentencing judge was quite clear in determining that she was imposing a sentence in respect of the s. 3 assault count taking into consideration the other offences which the respondent had been found guilty of.
18. Sentencing on a global basis was an avenue open to the sentencing judge. However, once adopting that course of action, it was incumbent on the sentencing judge to properly reflect the aggravated nature of the false imprisonment offending when imposing sentence on the assault count.
19. The question which therefore arises for the Court is whether the nomination of a 3 year headline sentence in respect of the assault count aggravated by the false imprisonment was unduly lenient with the meaning of the 1993 Act.
20. This was offending of a very serious nature, the facts of which have already been set out. Furthermore, the sentencing judge was mandated to consider the fact that this assault occurred within a domestic setting as an aggravating feature pursuant to s. 40 of the 2018 Act.
21. We are of the view that the headline sentence identified by the sentencing judge was an error in principle as it failed to appropriately reflect these aggravating features and was unduly lenient within the meaning of the 1993 Act.
22. We therefore will quash the sentence imposed by the sentencing judge and proceed to re-sentence the respondent de novo.

Re-Sentence

23. We are of the view, having regard to two recent decisions of this Court, namely *The People (DPP) v. Keogh* (Unreported, 30 January 2024) and *The People (DPP) v. Curtis* [2024] IECA 99, and the comparator cases cited within those judgments, that the appropriate headline sentence in respect of the s. 3 assault offence, having regard to s. 40 of the 2018 Act and the serious nature of the

offending, which was aggravated by the false imprisonment of the injured party, to be 4 years imprisonment.

24. We agree with the sentencing judge in relation to the mitigatory factors present which have already been set out and we will reduce the headline sentence by 6 months to impose a term of imprisonment of three and a half years. We will also suspend the final 6 months of the term of imprisonment imposed for a period of 18 months on the same terms and conditions as the lower court to incentivise the respondent in his rehabilitation, noting that he has undertaken relevant courses in prison.