



**THE COURT OF APPEAL**

**Record Number: 148CJA/2024**

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

**GERALD MCQUILLAN.**

**RESPONDENT**

**JUDGMENT of the Court delivered (ex tempore) on the 11th day of October 2024 by Ms. Justice Isobel Kennedy.**

1. This is an application brought by the Director of Public Prosecutions pursuant to s. 2 of the Criminal Justice Act, 1993 seeking a review on grounds of undue leniency of a sentence imposed on the respondent on the 30th of April 2024 in the Circuit Criminal Court.
2. On the 7th of July 2023, the respondent pleaded guilty to count 1, Criminal Damage contrary to s. 2(1) of the Criminal Damage Act 1991, count 2, Endangerment contrary to s. 13 of the Non-Fatal Offences Against the Person Act 1997, count 3, Assault contrary to s. 2 of the Non-Fatal Offences Against the Person Act 1997, and count 4, Trespass contrary to s. 13(1) and s. 13(3) of the Criminal Justice (Public Order) Act 1994.

3. The order of the court indicates a sentence of 18 months imposed on count 2 with the balance of the counts taken into consideration with credit for time served. However, there is an indication in the transcript of a sentence of one year imposed. Whether the sentence was one of 18 months with credit for time served or 1 year, the Director argues that the sentence is unduly lenient. The sentence was imposed consecutive to a sentence of 3 years and 6 months imposed on the 13th September 2022, where the final 6 months of that sentence were suspended.

### **Factual Background**

4. The victim and the respondent had been in a relationship when, in September 2020, the respondent left the victim's home. That came about as a result of an incident which led to a conviction for assault causing harm and two counts of criminal damage, where the aforementioned 3 year and 6 months sentence was imposed on the 13th of September 2022.
5. While on bail and staying with the victim and her daughter in January 2021, the offences the subject of this application occurred, specifically, on the 5th of January 2021, during an argument in the victim's car, the respondent punched the visor and windscreen causing damage to the car valued at €1,676, constituting the criminal damage count. He was asked to leave the vehicle, he refused, and the victim indicated she would drive to Coolock Garda station. As she began to do so the respondent pulled the steering wheel, resulting in the car spinning across lanes of traffic, ultimately blocking two lanes. The victim was terrified and again asked him to leave the car.
6. An ambulance in transit noticed the vehicle blocking two lanes of traffic and stopped. The paramedics rang the gardaí, at which point the respondent fled the scene. The victim declined medical assistance as she needed to go home to her daughter because she was concerned the respondent would go there.
7. When she arrived home, she locked the windows and doors and texted the respondent asking him not to return. However, the respondent arrived at her front door, he was denied entry and proceeded to jump over the wall of the property, pulling the kitchen window out and entering through the window, the subject of count 4.
8. The respondent grabbed the victim by the side of the face and pushed her to the ground, he then grabbed her hair and repeatedly hit her head into the ground. Her young daughter entered the room, and the respondent stopped his attack. He then verbally abused the victim in graphic terms. The respondent said the attack was her fault as she had changed the password on her phone, making him paranoid. This incident constituted the conduct impugned under count 3.
9. The respondent remained at the property for a further two days, until the victim was able to lock him out of the property once again. She reported the incident, and the respondent was arrested on the 9th of February 2021. Nothing of evidential value arose during his detention.

10. A trial date was fixed for the 27th of April 2022; however, it did not proceed as the respondent dispensed with his legal team on the morning of the trial. The same occurred again on the second trial date, which was set for the 27th of June 2023. A third trial date was set for the 10th of July 2023, which did not go ahead in circumstances where the respondent entered guilty pleas on the 7th of July.
11. At the sentence hearing the victim requested that her victim impact statement be read in court. Having already attended court to give evidence in a previous trial of the respondent, she did not wish to attend again. The impact of the offending was severe with the victim attending counselling once a week with a psychotherapist and suffers from PTSD, panic attacks and stress induced alopecia. She described living in constant fear, and has ceased social activities. She described experiencing trouble sleeping and has installed security cameras.

### **Personal Circumstances of the Respondent**

12. The respondent was 36 years of age at the time of sentence. He has 79 previous convictions, 76 of which are road traffic related, and 3 of which relate to offences committed against the victim in this review in September 2020.
13. The respondent has a good employment history as an apprentice plumber and as a bartender. He has three children, one aged 16 from a previous relationship, and two aged 5 and 6 from a different relationship.
14. The psychological report, ordered by the sentencing judge of his own volition, details childhood trauma and issues of trust within relationships. He had progressed well while in custody, particularly from an educational perspective.

### **Sentencing Remarks**

15. The sentencing judge considered as aggravating factors the fact that the offence was committed while on bail for a previous assault and the fact that the assault was on a person that the respondent was in a relationship with, the latter being an aggravating factor under s. 40 of the Domestic Violence Act 2018.
16. In mitigation, the judge took account of the respondent's apparent remorse, his good behaviour in prison, good work ethic and relationship with his children, and his background and difficult early home life.

### **Director's Submissions**

17. The Director contends that the sentencing judge erred in principle in failing to set a headline sentence and in failing to set a sentence appropriate to the gravity of the offences and the culpability of the respondent.
18. The Director also contends that the sentence did not adequately reflect several aggravating factors: the nature of the relationship between the respondent and the victim, who is a relevant person under s. 40 of the Domestic Violence Act; the fact that the respondent committed the offences whilst on bail for similar offences committed against the same victim; the risk posed to the public by the pulling of the steering wheel

while in traffic; the fact that the victim's daughter witnessed and attempted to intervene in the assault; and the psychological, emotional, and pecuniary effects on the victim.

19. The Director submits that the sentencing judge erred in affording disproportionate weight to the mitigating factors: that there was a guilty plea offered at a late stage; remorse expressed by the respondent; and childhood trauma experienced by the respondent. It is contended that the value of a guilty plea is reduced in circumstances where the guilty plea was entered shortly before the third trial date, where the disposal of legal teams by the respondent had caused the trial to be delayed in two previous instances.
20. The Director also submits that the trial judge, having ordered a psychological report of his own volition, conflated the trauma suffered by the respondent as a child with his offending behaviour, contributing to the imposition of an unduly lenient sentence.

### **Respondent's Submissions**

21. The respondent submits that there has been no real error of principle identified in the present case and submits that the sentencing judge effectively imposed a 6 month sentence for the assault consecutive to the 1 year sentence for endangerment.
22. Moreover, that both incidents occurred immediately after the other on the same day and involved the same parties. Relying on the case of *DPP v F.E.* [2021] 1 IR 217, the respondent argues that the sentencing judge was under no obligation to impose a consecutive sentence in these circumstances. However, we refer again to the rule of court which points to the assault, trespass and criminal damage taken into consideration. The point is made that the judge indicated that 6 months was appropriate for the assault count, being the maximum penalty permitted by law. In stating that an 18 month sentence was imposed, it is argued that the sentence could have been reduced to reflect the totality principle.
23. The respondent emphasises the mitigating factors in the case including the guilty plea, the fact the respondent himself was a victim of domestic abuse as a child, the respondent's strong work history, and that the respondent is a "model prisoner".
24. Reliance is placed upon *People (DPP) v Konar* [2023] IECA 145 in arguing that a failure of the sentencing judge to impose a headline sentence is not necessarily an error of principle.
25. The respondent submits that the most serious wrongdoing in the case was the assault, for which the trial judge imposed the maximum sentence.
26. The respondent submits "it was certainly not open to the sentencing judge to apply an artificially high sentence for the car incident as a means of getting around or escaping the maximum sentence available in respect of the assault incident".

### **Discussion and Determination**

27. The principles applicable to applications of this nature are well settled, commencing with the decision in *People (DPP) v Byrne* [1995] 1 ILRM 279 and in *People (DPP) v Stronge* [2011] IECCA 79, where McKechnie J. synopsised the applicable principles.
28. The starting point for our consideration is that the onus is on the Director to establish that this sentence was unduly lenient so that the divergence between the sentence imposed and that which ought to have been imposed leads to an error of principle before this Court may justifiably intervene.
29. When we examine the circumstances of the endangerment offence, it is clear that this was of a serious order. The respondent not only put the victim in the vehicle at risk, but a further aggravating factor was the risk presented to the public at large. Taken with the fact that this offence was committed on bail, the other aggravating factors, and that the balance of the counts were taken into consideration, we find that the sentence is simply too low, and in our view constitutes a substantial departure from what would be the appropriate sentence in the circumstances. We therefore quash the sentence imposed and proceed to re-sentence de novo as of today's date.

**Re- Sentence**

30. The endangerment count taken alone is a serious offence, with a maximum penalty of 7 years imprisonment. The respondent placed his former partner, and other road users, at risk. The impact on the victim is clear from her victim impact statement, she was quite clearly very frightened and continues to have flashbacks to this incident when she is driving. It is appropriate in our view to impose a sentence on a global basis and so in considering the headline sentence for the endangerment count, we also take account of the conduct before, being the criminal damage, and thereafter, being the assault and the trespass count. We are cognisant that s.40 of the Domestic Violence Act 2018 applies to the s.2 assault. That section also has application to the endangerment count, thus aggravating the offending.
31. We therefore nominate a headline sentence of 5 years imprisonment on count 2. Taking account of the mitigating factors present at the time of sentence, including that the respondent pleaded guilty, albeit at a very late stage, his apology and work record, we reduce that sentence to one of 4 years imprisonment.
32. The sentence must be imposed on a consecutive basis, that is consecutive to the 3 ½ years where the final 6 months were suspended which was imposed for the earlier offending.
33. We now look to the principle of totality to ensure that a proportionate sentence is imposed and to give effect to that principle, we reduce the sentence of 4 years to one of 3 ½ years.
34. We are aware of the respondent's efforts in custody to educate himself and consider it is appropriate to suspend an element of the sentence in order to further incentivise his rehabilitation. Therefore, we will suspend the final 12 months of the sentence on the

condition that he attend the probation service for a period of one year and comply with all directions from that service.

35. Therefore, the sentence is now one of 3 ½ years with the final 12 months suspended consecutive to the sentence previously imposed.