



THE COURT OF APPEAL

Unapproved

Neutral Citation: [2024] IECA 99

Record Number: 153/23

Bill Numbers: DUDP 606/22; DUDP 839/22

Birmingham P.

McCarthy J.

Ní Raifeartaigh J.

BETWEEN/

THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC
PROSECUTIONS

RESPONDENT

-AND-

SAMMY TAIB

APPELLANT

JUDGMENT of the Court delivered on the 23rd day of April 2024 by Ms. Justice Ní

Raifeartaigh

Introduction

1. This is an appeal in respect of severity of sentence in a case in which the sentencing judge imposed consecutive sentences of three years and two years imprisonment on two bills of indictment with the final 12 months suspended on conditions. The appellant contends that this sentence was unduly severe in all of the circumstances and in particular having regard to the offender's young age and mental health difficulties.

2. The case was somewhat unusual insofar as the two bills of indictment concerned two entirely different categories of offending. The first indictment contained counts of assault causing harm and coercive control in the context of intimate partner violence. The second indictment contained a variety of road traffic offences in the context of a twenty-minute episode of dangerous driving by the appellant. The evidence in respect of each was as follows.

Evidence at the sentence hearing

Bill 839/22 – The coercive control/assault offences

3. There were six counts on this indictment. The complainant had been in a relationship with the appellant at the time of the offences. He pleaded guilty to counts 1, 4, and 6 on a “full facts” basis with the remaining counts taken into consideration. Their relationship had started when the appellant was 17 years of age and the complainant was 19 years of age.

4. Count 1 was one of assault causing harm contrary to Section 3 of the Non-Fatal Offences Against the Person Act 1997 between 9th May 2018 and 30th September 2018 at Wharton Terrace in Harolds Cross. The details were described by the investigating Garda as follows;

“...Then they moved in together in October 2018. And she said -- she described it as being a room in his mother's house, is that correct?”

A. Yes, Judge.

Q. She described herself as feeling isolated at that property. She said that they had many fights when they were living there. He choked her many times. She said she was forced to be quiet while she was being choked so that she wouldn't disturb his parents. Is that correct?”

A. That's correct, Judge, yes.

Q. She also says that on one of those occasions she passed out. She told you that her mother was in hospital in December and she used that as an excuse to go home. She said she was going to go for a few days but I think her intention at that time was not to come back to the property, is that correct?”

A. Yes, Judge.”

5. Count 4 was one of assault causing harm between 1st April 2019 and 31st May 2019 at 14 Liffey Dale, Lucan and the evidence was as follows:-

“...She said, he was supposed to be in work at 6 o'clock on a particular day. It was around 2 o'clock, so they were going out. He called his place of work and in fact found out he was due to be in work at 3 o'clock rather than 6 o'clock. She said, she was going to meet her friends because the weather was good. He said, "where the [expletive] do you think you're going?" and dragged her away from the door. She said, "I'm leaving, I don't want to be with you like this." The accused man then dragged her to the ground by her hair, pulled her hair and punched her to the head. His mother then came upon

them and she told him to stop. And he did stop at that point. I think she then went to the bathroom and locked herself in. He banged on the door for her to open the door and he washed his hands and called her "a f[...] idiot."

....

She said, they were shouting at each other and that his parents came to stop them. And she said at that point then there was an altercation between the accused man and his step father and on foot of that, both herself and the accused's mother had both locked themselves in the bathroom until the fighting had stopped."

6. Count 6 was one of coercive control contrary to Section 39(1) and (3) of the Domestic Violence Act 2018 during the period 9 May 2018 to 19 June 2019 . The evidence in relation to the various assaults described in counts 1 to 5 formed part of the evidence in relation to this count. The following evidence was also given;

"...[the complainant] told [gardaí] that she'd been in a relationship with the accused man since May 2018. She described it as being a scary relationship but they had some good times but it was scary. And after the relationship she was just confused. She doesn't know how to talk or how to behave or what to do. She described him as being very controlling and described herself as still being very scared of the way he is and that she doesn't want to see him anymore. She said that, "we had many fights, I can't recall them all." These fights have been both verbal and physical. Approximately two months into the relationship the two of them were in the accused's car, just relaxing and talking, when out of nowhere the accused man grabbed her by the hair, held her down and punched her into the back of her head. I think around that time by coincidence, her mother contacted her by telephone and she told the accused man that she had to leave

...

But another time they were back in the accused man's house and they were talking to his sister.

... They were arguing. She went into the kitchen for a drink. He followed her into the kitchen and slammed the door. He grabbed her and asked, "who the f[...] do you think you are, walking away from me?" and he bit her lip and he bit a piece of her lip off..... It wasn't very deep she told you but it was bleeding. She said she described herself as being on the floor crying and bleeding. She showed him the blood on her hands and said, "look what you did." She described him as not caring. He said, "good enough. I'll bite your whole lip off..." -- and she described that event as being during the night and it was too late for her to go home so she just went to bed. She said, "he stayed in the kitchen for a while and then he came to bed."

" [After the assault on 9th May 2019 (count 5 on the indictment)] he left the area. And I think he may have been involved in a road traffic accident himself at that point. She doesn't know where he went. But a few hours later she called her friend and they met up and the accused man was there. He once again apologised to her and he promised to change. She accepted the apology and they were back together and they've had some arguments since then "

"And I think on the day that she gave you her statement [20th June 2019] they had plans to go to Liffey Valley with her sister. She thought that the accused man seemed off and that he was walking very slowly. They were joking around and she asked him was he paying for something in a particular shop and describes this question as putting him into a bad mood. They went off and they bought her sister some clothes.

Then they went for some food. When they were having that food he appeared to be in a mood as he wanted to go to a different restaurant.”

“She described then as soon as they finished their food, they walked out and he demanded a cigarette. She said no because of the way he had been behaving. And he said, "you don't know how to act, fix yourself up." They had a fight and he said, "to find your own way home." He was texting her and finally she went to the car. They all got into the car and there was another fight. I think she noticed the reaction on her sister's face and she said to the accused, "look at what you're doing ..." -- and both her and her sister got out of the car at that point.”

“He then got out of the car after her and he pulled her by the hair and he eventually let go and she took her sister and they left. And at that point they got a taxi and went home.”

“She concluded in her statement to [the Gardaí] as stating that, "all of these incidents have made her feel very scared for her own safety ..." -- she's still in fear that he would attack her and her family for reporting this.”

7. Counts 2, 3 and 5 were taken into consideration by the sentencing judge. They were each in respect of assault causing harm contrary to Section 3 of the Non-Fatal Offences Against the Person Act 1997.

Count 2, assault causing harm at Liffey Dale between 9th May 2018 and 19th June 2019;

“Immediately after that then the accused man apologised to the complainant. She gave him a chance and they stayed together. Just before she moved in with him in September 2018, they were in her own house and they were arguing. She can't

remember what it was about. She got up and went to the toilet. He then followed her into the bathroom. He grabbed her by the neck and began to choke her. She passed out. She woke up with him shaking her and he was apologising. And he told her that she had banged her head on the radiator.

...She described herself as having a pain and could feel a lump in the back of her head. She was crying. She got up and washed her face and carried on. She said she felt intimidated like she couldn't throw him out and that forced her to accept his apology?

That's correct, Judge, yes."

Count 3, assault causing harm at Wharton Terrace on 24th April 2019;

"I think on the 24th of April 2019, she was able to tell you that they were shouting in each other faces. She describes him as putting her on the bed, flipping her and punching her in the left eye and described herself as receiving "a black eye and bruising from this." And she described that as being the biggest fight in the house,...."

Count 5, assault causing harm at Tandy's Lane on 9th May 2019

"She describes him as buying a particular car. She said they were supposed to meet some friends and go to a local pub for his birthday. She said that he became jealous over other people knowing her in the pub and they began fighting. She got out of his car. He was following her in the car telling her to get back into the car. She said she had the keys of another car and he got out to get the keys from her. She then walked off. He drove up behind her and told her to get in multiple times. She said no. He then hit her with the car and ran over her right leg.

At that point then he got out of the car and told her to get up. Some people tried to help but he told them to f[...] off. The gardaí came, "and he told me to get up. I said I can't ..." -- she said she couldn't because she'd hurt her leg

And I think at that point, he stood on her leg?

The gardaí came over and spoke with her. There was some conversation about procedural matters with the accused. She describes the gardaí as dropping her home. Her ankle and leg were bruised and sore after this incident and her knees were sore too."

8. During the cross examination, Garda Geoghegan acknowledged that the appellant had accepted that he caused the injuries and that the relationship would have been scary for her and that he was controlling.

9. There was a victim impact statement from the injured party She said that the appellant had her "closed off to everyone for years" and that she struggled with anxiety and depression both then and now. She said that he made her "feel like nothing" and "controlled my life: from what I was doing each minute of the day and night to literally having the decision whether I would live or die". She described him as manipulative and unpredictable. Among her physical injuries, she said, were "black eyes and bust lips and bruises to an injury that left my right foot permanently damaged and twisted after he drove over me with a car." As to psychological injury, she said "I am always anxious, and I feel hopeless and depressed. I was a happy communicative person before and now I feel like I'm always angry and closed off. I definitely developed PTSD, I have many flashbacks and still have countless nightmares about incidents that happened all these years ago...Any little possibility of happiness in my life I shut it out as I don't trust anyone anymore. He ruined my life and he ruined the life of everyone I care about...".

Bill 606/22 – The driving offences

10. There were 24 counts on the indictment in the driving case against the appellant. All related to the same incident which took place over a period of approximately 20 minutes on the 13th October 2019. The appellant plead guilty to counts 2, 3, 4 and 24 on a “full facts” basis with the remaining counts taken into consideration. Counts 2 and 24 were counts of endangerment, count 3 was one of driving without insurance, and count 4 was one of driving without a driving license. The Circuit Court viewed CCTV footage from a Garda helicopter and Detective Garda David Jennings, who had been present on the day of the incident, gave evidence as follows.

11. At 3.10pm on that date, he was on his routine patrol in Tallaght when he observed a black Volvo S40 car stopped at a junction on the Cheeverstown Road. He drove past the car and noticed the driver immediately turn his head in the opposite direction. At that point, the traffic lights turned green for the car to go through the lights and gardaí followed the car. The Volvo S40 turned right onto the Fettercairn Ring Road and appeared to pull into the left. Gardaí pulled alongside the vehicle at which point it took off at speed.

12. The gardaí pursued the Volvo S40, which drove at speed straight through stop signs and a red traffic light. As the vehicle turned right onto the Fettercairn Ring Road in Tallaght towards Cheeverstown Road, he was travelling in excess of 80 kilometres an hour in a 50 kilometre zone on the wrong side of the road, forcing oncoming cars to brake and mount the footpath in order to avoid a collision.

13. The driving continued in a similar fashion, the gardaí observing at one point that they were driving at 150 kilometres per hour in a 100 kilometre zone. Gardaí then saw the car approach the turn into Rathcoole. The vehicle approached the roundabout; went the wrong

way around the roundabout, past the Avoca restaurant at high speed, again on the wrong side of the road, causing oncoming cars to brake hard again to avoid a further collision. At another roundabout, the car then went around the wrong way, over the flyover heading towards the direction of Newcastle, again at high speed and again overtaking vehicles on the wrong side of the road. The gardaí observed that they were travelling in excess of 140 kilometres per hour in an 80 kilometre zone.

14. The car ultimately crashed into a roundabout and the appellant abandoned the vehicle. The appellant was arrested at the scene and immediately told gardaí that he had no insurance to drive the vehicle.

15. There was evidence that the appellant had multiple previous convictions (approximately 20) for road traffic offences (mostly no insurance or licence), and two for breach of barring orders obtained by the injured party in the coercive control case.

The factors urged in mitigation

16. Counsel on behalf of the appellant drew the court's attention to three reports concerning the psychiatric condition of the appellant and said that he was asking the court to take into account both his young age and that the appellant appeared to have had certain psychological issues at least from childhood, and that shortly after these incidents he was diagnosed with a serious psychiatric condition. He suggested that the court could properly infer that this condition may have been at the very least a contributing factor to his offending, which consisted of dangerous and erratic behaviour.

17. Detective Garda Jennings acknowledged that looking back with the benefit of the information now available, it was fair to say that there was something 'amiss' with the appellant on the day of the driving offences. Similarly, Garda Geoghegan gave evidence that

in his interview with the appellant on the 16th of July 2019, he similarly thought the appellant was “off”.

The psychiatric reports

18. The three reports provided to the sentencing judge (and to this Court) assist not only with an understanding of the appellant’s mental state but also with assembling a chronology of relevant events relating to the appellant’s behaviour and mental state in recent years.

19. A report by Forensic Psychological Services (F.P.S.) was the earliest report in time and was based on assessments of the appellant carried out in January and February 2020. This was at a time after he had been charged with the driving offences (which took place in October 2019) but had not yet been charged with the assault/coercion offences. It was commissioned by the appellant’s solicitor.

20. The report said that the appellant “evidenced severe thought disorder in terms of content, in that he seems to have been experiencing persistent delusions for some time, but did not display any distortion in the form of his cognitive processes” and that “he has reportedly been suffering from ideas of reference, delusions of thought broadcasting and pronounced paranoia since mid-2019”. With regard to his relationship with the injured party, he “reported that the relationship...ended in June 2019 after an argument” and “noted that he was very upset in the proceeding weeks, that he would stay at home and felt that everyone was scrutinising his behaviour” and that “ he felt he was experiencing the karmic response to the poor way he had treated [the injured party] in the wake of the break up as acquaintances of his would assault him on the street”. He reported that he had smoked cannabis “daily” since first exposure to it in his mid-teens. He also reported watching significant amounts of pornography from the age of twelve, that this had become daily by

the age of sixteen, and that “that he had built up various unhealthy expectations of women and relationships” as a result of this. He reported that he was often insulted as a child for being of non-Irish descent and that he often felt different and alienated from his peers due to his heritage, and that after he retreated within himself at the age of ten years, he began feeling more and more detached from his peers, failed to share their sense of humour and often felt that he was in another world.

21. With regard to his thoughts more recently, he reported that he began to suspect that others could hear his thoughts when he was thirsty at work and one of his colleagues suggested that he should drink. He stated that every time he has a weird thought, people around him give him a signal and that even animals respond to his thoughts. He noted that he felt that others always know what he is thinking and can even see through his eyes or feel what he is feeling. He said that he would try to play memories of video games in his mind so that others could not glean information about his thoughts. He said the whole world seems to be sending him personal messages and he described instances of noticing patterns in seemingly random events.

22. The appellant’s parents had separated when he was young and his father reported that he had received multiple letters from the primary school about his son’s conduct, recommending that he should see a psychologist, but that he did not want to accept that his son suffered from mental ill health and so he allowed the child to ignore these recommendations. He reported that the appellant was restless at night, had reported intrusive thoughts and that he believed that others could hear his thoughts, avoided people, rarely left the house, had mood swings, and could quickly become agitated, irritable and hostile.

23. The conclusions in this report included the following:

“Mr Taib has had issues socialising since childhood and was referred to a psychologist (which he declined to attend) by his school at a young age due to behavioural issues. Mr Taib's father noted that he has always been headstrong, reporting that he bought his own car before he got his licence, was stopped by the Gardaí several times and as a result received a driving ban. Mr Taib began using pornography at the onset of his adolescence which could have impacted how he perceives women and romantic relationships. ...

Mr Taib began using cannabis daily at the age of 16 years which may have precipitated his predisposition for psychosis. Mr Taib's father reported that [two other male relatives] presented in a manner similar to Mr Taib suggesting a hereditary predisposition.

Mr Taib has reportedly been suffering with delusions of thought broadcasting and ideas of reference (he believed that others could read his mind and that secret messages just meant for him were being communicated through his environment) since the summer of 2019. He is currently still suffering with these delusions as well as the delusion that foreign thoughts are being planted in his mind.”

24. As appears from the two reports (below) prepared later in time, shortly after the above report, the appellant left Ireland and went to Scotland. This was in late February 2020. While in Scotland, he was imprisoned and detained in a psychiatric hospital where a formal diagnosis of paranoid schizophrenia was made. This arose out of events on the 13th April 2020 when he assaulted a security guard in a shop with a brick and afterwards lay down on railway tracks in the path of an oncoming train, but emerged unscathed. He was arrested and assaulted the police officers during the arrest. Subsequently he was admitted to Rowanbank Clinic, a medium secure forensic hospital in Glasgow, where the diagnosis of schizophrenia

was made for the first time. It seems he was in this clinic from September 2020 to April 2022. His discharge medications were the oral antipsychotic medication olanzapine 20mg nightly, which is apparently the maximum recommended dose. Apparently, upon moving to Scotland in February 2020, the appellant had increased his intake of cannabis to two grams daily.

25. He was subsequently returned to Ireland on a European Arrest Warrant and detained in Cloverhill prison upon his return from 14th April 2022. Various psychiatric assessments were carried out over the ensuing months.

26. The above events were described in the report of Dr. Damian Smith, Consultant Forensic Psychiatrist at the Central Mental Hospital, who prepared a report dated 15th June 2022 for the purpose of assessing the appellant's fitness to plead to the assault/coercive control offences with which the appellant was charged upon his return.

27. Dr. Smith set out, as is normal in such reports, detailed information about the appellant's personal background, childhood, teenage years, education, medical history and so on. He concluded that he was fit to plead but said that he had a background of paranoid schizophrenia complicated by cannabis abuse, which diagnosis had been made following his admission to Rowanbank Clinic, a medium secure forensic hospital in Scotland, on 2nd September 2020. This had been his first psychiatric admission. The appellant's condition had been characterised by persecutory delusional beliefs, delusions of reference, delusions of thought control and auditory hallucinations.

28. At the time of Dr. Smith's first assessment on 4th May 2022, the appellant was reporting auditory hallucinations and ideas of reference following a reported period of non-adherence with anti-psychotic medication of six days duration. At the time of subsequent assessments his mental state had improved such that he no longer presented with any acute

mood or psychotic symptoms. However, he demonstrated poor insight into the nature of his mental illness and the need for long term anti-psychotic medication. Nonetheless, Dr. Smith did not consider that his condition necessitated psychiatric hospitalisation at that time.

29. The last report had been prepared by Dr. Sally Linehan, consultant psychiatrist attached to the Central Mental Hospital, and was dated the 11th November 2022. This was prepared specifically for the sentencing judge. Additional pieces of information provided by her included that on the 3rd November 2019, the appellant had attended his GP along with his father with complaints of "low mood, acute anxiety, not sleeping". The doctor noted that the appellant presented with poor communication and eye contact and described him as "hypothyroid" (low in mood) but that he denied suicidal thoughts. The impression was noted as "needs follow up, acute anxiety, depression disorder". The doctor did not make any reference to psychotic symptoms such as delusions or hallucinations. Counselling was recommended and Xanax was prescribed as an anti-anxiety medication. Follow-up was recommended.

30. Dr. Linehan then described subsequent events, including events in Scotland, and events and assessments since his return to Ireland on the EAW. She said the appellant had had an adequate therapeutic response to antipsychotic medication. At the time of her most recent interview with him on 26th October 2022 he did not present with ongoing active symptoms of schizophrenia such as delusions or hallucinations. However, his insight into the enduring nature of his mental illness and the benefits of long-term treatment with medication remained limited, and it was her opinion there was a significant risk of poor compliance with antipsychotic medication. He did not meet the criteria for psychiatric hospitalisation at that time.

31. As to the risk of re-offending, she observed that any future substance misuse was likely to act as a disinhibiting factor that could increase his risk of offending behaviour. Future use of illicit substances including cannabis was also likely to lead to deterioration in his mental state. She recommended that he would engage with the prison addiction service. She said that in the event that the court were considering a part non-custodial element to his sentencing she would suggest that conditions be imposed so that he would engage with his community mental health team; that he abstain from alcohol and illicit drugs; and that he engage with an addiction counselling service in the community.

The sentencing judge's remarks

32. Her Honour Judge Elma Sheahan imposed sentence on the 20th January 2023. She noted that the court had the opportunity to view the CCTV footage of the driving which led to those particular offences and described the incident in the following terms:

“...the Court found the offending to be extremely frightening in terms of the utter lack of care for the other road users, owing to the duration of the offending, the built-up areas involved, the speed and the nature of the driving, along with the country roads which were travelled. It is almost miraculous that no innocent road user was seriously injured owing to the actions of the accused on the day in question.”

33. In considering the aggravating factors in relation to the driving offences, the judge noted the seriousness of the offending, and the similar previous offending in terms of road traffic offences.

34. With regard to the coercive control case, the judge noted that she had taken account of the victim impact statement and the *“great upset and trauma arising from the assaults which were perpetrated upon her, and psychological injury of the accused's offending,*

which quite clearly ... is ongoing at this time". In considering the aggravating factors in relation to the coercive control and assault charges, the judge noted the seriousness of the offending, and a breach of the barring order relating to the injured party prior to the appellant leaving the jurisdiction and going to Scotland.

35. The judge took the view that, given the distinct and separate nature of the bills in question and the level of offending, it was appropriate for her to impose consecutive sentences as between the two bills of indictment.

36. The judge noted that she had had regard to the decision of Edwards J. in *DPP v M.R.* [2022] IECA 192. She took account of the medical reports which had been handed into the court, noting that he suffered from a "major and serious and enduring mental illness in the form of paranoid schizophrenia". She said that while the diagnosis of paranoid schizophrenia was made after the alleged offences occurred, the reports indicated that there had been psychological issues which arose in the appellant's early teens. She also took account of the appellant's age at the time of offending.

37. She noted that the accused had a conviction for the possession of drugs while in Scotland, and commented that "it is unknown to what extent his drug taking has affected the presentation of this major psychiatric illness" but noted that the reports referred to the accused "smoking weed" from his mid-teens and that Dr. Linhehan referred to the presence of that major and enduring psychiatric illness being complicated by his drug intake. She observed that he was assessed four times by a forensic psychologist in Cloverhill in 2019, and subsequently diagnosed while an in-patient in Scotland in September 2020. She noted that the accused himself stated that in June 2019, after the breakup of his relationship with the injured party, he himself noticed strange things happening, which were described by Dr. Linehan as auditory hallucinations.

38. She said that from the Court's own knowledge, a major psychiatric illness could be latent for some time before it was diagnosed, and that this was “something that is to be considered in all the circumstances given the proximity of the description of auditory hallucinations in the aftermath of the breakdown of the relationship”. She said it was unclear to the Court exactly when his mental illness first presented, but there were in her view similarities, if less pronounced, during the currency of that offending, to symptoms which subsequently were present when he was actually diagnosed and which he described in the aftermath of the breakdown of the relationship. She referred to para 95 of *M.R.* She concluded that in view of all of these matters the culpability of the appellant must be regarded as having been reduced owing to the diagnosis of paranoid schizophrenia in the aftermath of these offences.

39. She then enumerated the mitigating factors: (i) the accused's pleas of guilty particularly having regard to the fact that it meant that the injured party in the assault case would not have to give evidence and relive the trauma of her experiences; (ii) the appellant's cooperation with gardaí in the course of the interviews, his apology and his acknowledgement of his wrongdoing; (iii) the fact of his psychological difficulties as a child, that he left school in his teens, that he had a productive history in terms of employment, notwithstanding his youth; (iv) his youth at the time of this offending; (v) “the fact that the accused was intoxicated at the time of the driving and the endangerment offences, and that he was abusing drugs during the currency of his relationship with the injured party, against a background of psychological or psychiatric illness, at the early stages at that time”; (vi) the fact that he enjoys the support of his family, in particular that of his father, and that he has permission to return to live with his father on release from custody; (vii) the contents of the prison governor's report; (viii) the fact that this would be the accused's first custodial sentence in this jurisdiction, noting that time spent in custody in Scotland was largely spent

as an inpatient in a clinic while there; (ix) that the accused is now taking olanzapine for his condition or his illness and that he is complying with his medical directions; and (x) that he would be serving the custodial sentence while suffering from this enduring and major psychiatric illness; (x) that the appellant was not aware at the time that drug-taking was affecting his own mental health in a manner different from anyone else.

40. The trial judge said that she would approach sentencing in a “global” manner, having regard to all the offending and all of the circumstances. She nominated a headline sentence of four years for the coercive control (taking into account the assaults). This headline sentence was, she said, reduced from five years to four years owing to the impact of his diagnosis. On the other bill she sentenced in respect of count 2 and chose a headline sentence of three years, again taking account of the appellant’s diagnosis (without which, she said, the headline would be four years, to represent “mid-level offending”). She said that given the distinct nature of the offending and the difference in timeline between the offences, she deemed it appropriate to mark the seriousness of the offending with consecutive sentences.

41. She then took account of the mitigating factors, and reduced the two headline sentences to three years, and two years and three months respectively. Having regard to the principle of totality, she said, she would further reduce the latter sentence to two years. Then, given the need to encourage the accused to remain on his medication and comply with medical advice, she chose to suspend the final 12 months on one of the bills of indictment for a period of two years.

42. The conditions were as follows: to keep the peace and be of good behaviour during custody and for a period of two years from his release from custody; not have any contact of any kind, by electronic or any other means, with the injured party, to include also via a third party; not to attend at or near her home or place of work for two years from the date of

his release; to continue to engage with his community mental health team with regard to alcohol and illicit drug use; to engage with an addiction counselling service in the community; to give consent to the probation service to allow them to link in with his mental health team to see if he was complying with his mental health treatment, and to comply with all of the directions of the probation service. He gave an undertaking and consent in court to facilitate those conditions.

The Appeal

43. In the appeal against severity of sentence, counsel made clear that the appeal was being advanced solely on the basis of the appellant's youth and mental health issues, and with regard to the headline sentence selected by the sentencing judge.

44. Counsel for the appellant, who advanced the appeal with skill and admirable concision, pointed to the appellant's young age at the time of the offending. He relied on the psychiatric reports described above and argued that the appellant must have been subject to at least some degree of psychological pressure at the time of the offending, even though the precise connection between his mental illness and the offending could not be precisely ascertained due to the fact that he was undiagnosed until later. Counsel suggested that the chaotic and dangerous nature of the driving offences in particular suggested a connection between his state of mind and the offending. He pointed out that as a child, the appellant had been recommended for psychological intervention but, through no fault of his own (given that he was a minor at the time), this had not been facilitated by his parent(s). One of the consequences of his mental illness having gone undiagnosed until after the offences in question was that he was not only struggling to deal with his mental health issues but also had no reason to know that taking drugs such as cannabis would have a particular impact on

his mental state. Thus, it could not be said that he knowingly aggravated or contributed to his own mental state/condition.

45. The Director opposed the appeal on the basis that the sentencing judge had carefully taken all relevant matters into account, including the appellant's youth and mental illness, and had arrived at a sentence which was proportionate to the offending and the offender in all of the circumstances. In particular, the headline sentence was not excessive.

The Court's view

46. In *DPP v M.R.* [2022] IECA 192, the Court (judgment delivered by Edwards J.) carefully examined a number of authorities and guidelines from other jurisdictions and, having entered some caveats as to the applicability of principles emerging from those materials in this jurisdiction, said that there was much in the material which was of general assistance. In addition to particular passages from those materials which were set out in this regard, Edwards J described in detail at para 95 a three-stage approach involving: (a) The selection of a provisional headline sentence *without* regard to the mental condition in question; (b) The adjustment of the provisionally selected headline sentence to take account of a cognitive or mental health issue; and (c) Arrival at a final post-mitigation sentence by adjusting the headline from (b) for mitigating factors. With regard to the second stage, he said that the sentencing judge should consider to what extent there may need to be an adjustment to culpability as provisionally assessed in stage (a) in order to arrive at the headline sentence in the particular case. The judge would have to carefully examine *the extent to which* culpability was diminished by the mental condition. This assessment might be complicated by the overlay of additional factors, such as self-induced intoxication or a failure to take prescribed medication. In those cases, the judge should consider the extent to which the offender had an awareness of the dangers associated with becoming intoxicated

in his/her situation and/or failing to take prescribed medication. He observed that at the third stage in addition to the usual mitigating factors, account should also be taken of whether it may be more onerous for such a person to have to spend time in custody because of their mental impairment or disorder or whether it might actually worsen the person's mental condition.

47. In the present case, the appellant does not complain about the overall manner in which the sentencing judge approached the task of sentencing. Indeed, it is clear that she did so in a structured manner entirely consistent with the guidance given in *M.R.* First, she identified a headline sentence; secondly, she reduced the headline with what she considered to be an appropriate reduction to take account of the appellant's age and mental condition at the time; and thirdly, she reduced it further to take account of mitigating factors. She expressly said that she accepted that the appellant's culpability was diminished at the time of the offending even though the diagnosis did not come until later. She observed that such a serious mental illness can be latent, and that while it was unclear when his mental illness first presented, there were symptoms during the currency of his offending which were subsequently found present when he was actually diagnosed. She noted the proximity in time of the diagnosis by F.P.S. to the second set of offences. When it came to mitigating factors, she was careful to observe that the appellant's mental condition might make serving a term of imprisonment more onerous. Accordingly, there is no doubt at all that the sentencing judge made significant reductions by reason of diminished responsibility due to mental disorder.

48. The sole complaint in reality is as to the *amount* of the deduction that the sentencing judge chose to apply as between the first and second stages. The appellant contends that a reduction of one year in respect of each of the sentences (from five to four, and from four to

three years respectively) did not represent a sufficient reduction for the mental disorder in this particular case.

49. At the hearing of the appeal, the Court probed *the extent* of the link between the mental disorder that was later diagnosed and the offending which took place before the diagnosis, insofar as this issue was addressed by the expert reports. Counsel accepted that the issue was addressed in the reports only to a limited extent, but he referred to the appellant's personal history including the fact that he had been identified while at school as being in need of psychological intervention at a young age, the nature of the offending (in particular the highly reckless driving), and the self-reported onset of symptoms such as auditory hallucinations for some time prior to his having left for Scotland. He urged the Court to conclude that the appellant must have been under a considerable degree of psychological pressure at the time of the offending, which significantly affected his responsibility, a point which had been accepted by the sentencing judge. Counsel also drew attention to the fact that, in the absence of a diagnosis and medical advice, the appellant would not have known that he was more vulnerable to the effects of drug-taking by reason of his condition. The Court accepts the latter proposition and will treat the case as one where there was no awareness of the potential for drug-taking to influence his mental condition beyond that of the average person.

50. We have carefully considered the appellant's history, the precise nature of the offending, and the contents of the expert reports in respect of the appellant. The net issue in the case is simply whether the sentencing judge *sufficiently* reduced the headline sentence to take account of the likely impact of his mental disorder on his mental state at the time of the relevant offending in circumstances where she undoubtedly gave *some* reduction.

51. It is difficult in some cases to quantify the degree to which the offender’s mental disorder contributed to the offending behaviour. As Edwards J. pointed out in *M.R.*, the burden of proof lies on the appellant to adduce proof of the link:

“The primary responsibility for adducing required evidence will always rest on the party asserting the proposition in controversy. Thus, it will be for the accused who seeks to establish either absence of culpability or diminished culpability to produce prima facie evidence, including expert opinion evidence, at his/her sentencing in support of that contention.”

This comment applies not merely to proving the existence of the mental disorder but also to proving the extent to which the disorder caused or contributed to the offending.

52. The reports in this case clearly indicate that the appellant’s mental disorder was likely to have been brewing for some time before the formal diagnosis, and that he was likely to have been under some degree of psychological pressure at the time of the offending. However, the reports did not engage any more precisely with the extent of the causal link between his likely psychological state at the time and what can only be described as his brutal treatment of the injured party, even if one accepts that the highly reckless nature of the driving which led to the second set of charges may suggest a stronger link in respect of his condition and that particular behaviour.

53. One cannot lose sight of the extremely serious nature of the offences in this case. The sentencing judge reduced the headline sentence from five years to four years (in the coercive control case) and from four years to three years (in the driving case) owing to the impact of his diagnosis. Leaving aside the further reductions for mitigating factors (which included

reductions in time and the introduction of a suspensory element), we are of the view that these headline sentences were not outside the range of her discretion. The first indictment spanned a period of approximately four months during which the appellant regularly inflicted very serious violence and humiliation upon the injured party. Were he not a young person with a mental disorder, a headline sentence considerably greater than five years might well have been selected through the use of consecutive sentences as between different assaults, before the judge even got to the second bill of indictment. It should be borne in mind that the assaults included incidents of choking as well as punching, dragging by the hair, biting the injured party's lip and driving over her leg followed by kicking it. Further, the emotional or psychological impact on the injured party, sadly typical of the effects of a relationship of coercive control, was severe. The sentencing judge's initial identification of a five year notional headline sentence, reduced by 20% to four years by reason of his age and mental disorder, could not be said to be unfair or disproportionate, particularly in the absence of more specific links between the violent behaviour and his mental illness being made by the experts.

54. Similarly, the driving offences were of an extremely serious nature and as the sentencing judge observed, it was almost miraculous that no one was injured or even killed in the circumstances. Again, the nomination of a four year sentence, reduced to three by reason of his youth and mental condition, was not disproportionate. The entirely different nature of the two forms of offending as well as their difference in time merited being marked with consecutive sentences on the two bills, as the sentencing judge did. The sentencing judge then very fairly made further reductions, so that the sum total of imprisonment was ultimately one of five years with one suspended i.e. a total of four years of actual carceral time. In the circumstances of this case, given the nature and extent of the offending, we

cannot conclude that this was unduly severe, whether in terms of the headline sentences or the ultimate result, notwithstanding the youth and mental condition of the appellant.

55. Accordingly, we dismiss the appeal.