



THE COURT OF APPEAL

Court of Appeal Record No: 132/2019

**President
Edwards J.
Donnelly J.**

BETWEEN/

**THE PEOPLE (AT THE SUIT OF THE
DIRECTOR OF PUBLIC PROSECUTIONS)**

RESPONDENT

-AND-

JOSIP STANIC

APPELLANT

**Judgment of the Court (*ex tempore*) delivered on the 5th December, 2019 by Ms.
Justice Donnelly**

Background

1. The appellant pleaded guilty on the 7th May, 2019 at Cork Circuit Court to the following offences:
 - (a) Assault causing harm at Cathedral Road in the City of Cork, contrary to s.3 of the Non Fatal Offences Against the Person Act, 1997.
 - (b) Threat to kill at Cathedral Road in the City of Cork, contrary to s.5 of the Non Fatal Offences Against the Person Act, 1997.
 - (c) Assault at McSwiney Villas, Gurrabraher, in the City of Cork, contrary to s. 2 of the Non Fatal Offences Against the Person Act 1997.
 - (d) Production of an article capable of inflicting serious injury, at McSwiney Villas, Gurrabraher, in the City of Cork, contrary to s. 11 of the Firearms & Offensive Weapons Act, 1990.

Sentence

2. The appellant was sentenced on the 28th May, 2019 for the offence of threatening to kill, to a period of four years' imprisonment with the final year suspended on condition that the appellant leaves Ireland within 48 hours upon his release from custody, remain under the care of the Probation Services and remain away from the Injured Party. The sentencing judge took the other offences into consideration. The appellant entered into a bond for the period of four years. The sentence took account of time already served in custody in relation to these offences.

Evidence

3. The appellant and the victim are both Croatian nationals and shared accommodation in Gurrabraher, Co. Cork. On the 7th December, 2018, the appellant grabbed a hold of the victim in their accommodation, pushed her against the counter, wrapped his rolled up T-shirt around her neck. He produced a knife during the assault. He said he had taken heroin and he later told gardaí he wanted to kill himself.

4. That incident came to an end when another housemate appeared and the appellant got upset and he rang the gardaí himself. The victim left the house and went into new accommodation.
5. On the 7th January, 2019, the victim was assaulted again. The appellant had been outside her house shouting for some time. She had been out at a friend's house and on her return, he punched her in the face, knocked her to the ground, beat and kicked her continuously.
6. The appellant said to the victim that he had been following her for five days and said "*I'm going to kill you. If I don't kill you now, I will kill you in ten years' time.*" She had bruising and swelling to her face and a cut to the bridge of her nose. She had pain in her neck and body as a result of this assault.
7. She gave a Victim Impact Report saying she did not want to come to court as she did not want to see him. She said that she had tried to help the appellant when she discovered he was using heroin. She believed she was going to die on the night of the assault. The fear has not left her. Even when he was in prison she did not sleep for two weeks. She had to go to the High Court in Dublin. She moved house again when he got bail. His apology brings her no comfort.
8. The appellant has no previous convictions. He was co-operative with the gardaí after his arrest on the 7th December, 2018 (having been taken for psychiatric assessment). On the 7th January, 2019 he said "*I'm sorry*" on arrest. He co-operated with the gardaí again and made full admissions.
9. He was addicted to heroin and was on a list for treatment. This addiction seems to have changed his personality.
10. The trial judge identified that this was stalking behavior.
11. The trial judge was told that the appellant plans to leave the country on completion of some form of custodial sentence that he understood he was likely to face.

Grounds of Appeal and Submissions

12. At the hearing of the appeal, counsel for the appellant confined her submissions to two matters:
 - (a) That he had been mandated to leave the country within 48 hours as part of the suspended sentence; and
 - (b) that in light of his lack of previous convictions and other mitigation the sentence was disproportionate.
13. In respect of the suspended sentence, counsel for the appellant accepted that at the sentencing hearing it had been stated to the trial judge that the appellant recognised that he was facing some form of custodial sentence and that on completion, he intended to

leave the State thereafter and reside in Germany. His family had resettled there and he planned to join them and start a new life there. She asked the court for leniency.

14. This was an indirect invitation to the trial judge to suspend the sentence on the basis he was leaving the country. The trial judge did so. At the hearing of the appeal, counsel confirmed that the appellant's main objection was to the time allowed for him to leave the State on release from custody although in written submissions there was an objection in principle to this form of suspension.
15. Even if there had been no concession that the judge had a discretion to suspend the sentence on the grounds that he would leave the jurisdiction, we are satisfied that there was no error in principle in so suspending the sentence on that basis where the appellant had only lived in Ireland for two years and was indicating that he was going to leave the country upon release in the context of asking for leniency. On the other hand, we can understand the difficulty in asking this particular accused to leave the jurisdiction within 48 hours of his release. He has restricted financial means and faces problems of organising matters from custody. As he has been made subject to a probation bond he is anxious not to jeopardise that by a risk of not being able to organise his departure from the State in time. We are therefore of the view that the bond should be amended to allow him 14 days to leave the State instead of 48 hours to leave the State.
16. In respect of the submission that the sentence was disproportionate in light of his lack of previous convictions and his remorse, the DPP submitted that the sentence of imprisonment actually imposed was measured, proportionate and in accordance with the jurisprudence of the Superior Courts.
17. This Court is of the view that having regard to the violence of the assaults perpetrated, the injuries inflicted, the fact that a weapon was produced during the course of one of them, the fact that there were two separate assaults some four weeks apart, the element of stalking whereby the appellant forced the injured party to change address on two occasions and the gravity of the threat to kill which was calculated to leave the injured party in fear, not just for the immediate period following the assaults, but for years to come, and the fact that a weapon was produced in the course of the assault, we are not of the view that even with his lack of previous convictions that the sentence was anything other than proportionate.
18. We note with respect to the issue of remorse that after the first assault he expressed remorse but it did not stop him from committing the second even more serious assault against the victim. In respect of his expressed remorse on being questioned in respect of the second offence, the victim was still required to travel to Dublin and give evidence at a bail hearing. Given the nature of the violence and, in particular, the threat to kill in this case, for remorse to have any real meaning it required a more concrete expression than simply the use of words.
19. Accordingly, this Court will dismiss the appeal save for the element that I have indicated.