



**THE COURT OF APPEAL**

**[175CJA/18]**

**The President  
Irvine J.  
Donnelly 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**

**KK**

**RESPONDENT**

**JUDGMENT (Ex tempore) of the Court delivered on the 15th day of July 2019 by Birmingham P.**

1. This is an application brought by the Director of Public Prosecutions pursuant to s. 2 of the Criminal Justice Act 1993, seeking to review certain sentences on grounds of undue leniency. The sentences in question were imposed in the Circuit Criminal Court in Ennis on 21st May 2018, and were imposed in respect of four counts of child cruelty. The counts related to four children of the respondent and the offending occurred between 1st October 2012 and 24th April 2015 at the family home in Munster where she resided with her children. The children were C, who was between 15 and 18 years at the time of the offending behaviour, A, who was between 9 and 11 and a half years, L, between 7 and nine and a half years and T, between 18 months and four years.
2. Matters came to light when C, the eldest child, shortly before his 18th birthday, disclosed what was happening in the home to the school guidance counsellor and his school Principal.
3. The sentence hearing, which took place following the pleas of guilty, was a very detailed one and the proposed evidence of three of the children, C, A and L, was put before the Court very fully. Victim impact evidence was provided to the Court by C and by the father of the three youngest children.
4. The proposed evidence of C, the eldest of the children, was summarised for the Court, and in it, he gave instances of abuse, violence and neglect as against himself and as against his siblings. In relation to his own situation, he recalled being beaten by the respondent with a boat paddle when he was ten years old, as a punishment, being beaten with a boat paddle on another occasion when it broke, being struck by the respondent

with a shoe resulting in a wound to the head. He recalled an incident around November/December 2013 when the respondent was socialising at a friend's house and she had brought the children with her. The respondent was intoxicated and the children were asleep at various locations around the house, the respondent made C drive them home, and then later, in a drunken state, she assaulted C by punching him, causing him a split lip. He referred to the fact that the respondent would not get out of bed in the morning to get them ready for school and that he and his elder brother would look after lunches, school uniforms and laundry. C, it should be explained, and his elder brother, are the children of the respondent and a former partner of hers. C referred to the fact that the house was filthy dirty, that it was vermin infested and in summertime, covered in flies and bugs. He recalled a lack of food and having to go to school with nothing to eat on occasions, and going without so that younger ones might have something to eat. He recalled an occasion when he broke his arm in 2013. The respondent did not react to a school notification of the injury and did not visit him in hospital. While recovering, and while still in a cast, the respondent made him do a handstand, and when he initially refused to do that, she threatened him with an electric cable from a kettle and subsequently hit him with it. Eventually, C, under pressure, agreed to do the handstand, and in doing so, experienced severe pain. He referred to the fact that he was not brought to appointments or check-ups for his arm injury and that he eventually had to remove the cast himself, and then following removal, the respondent made him move heavy furniture around which caused extreme pain. He referred to incidents of abuse, violence and neglect directed at his siblings. He recalled the respondent slapping, pinching and pulling his sister, A's hair, he recalls the respondent throwing a Yankee candle at A when she was around 13 years of age, which struck her in the face causing a cut to the forehead and a huge swelling. He referred to the fact that L was singled out for particularly bad treatment because of the affection that he held for his father. He recalls him being slapped, punched and kicked by the respondent and being struck with clothes hangers. He recalls the respondent throwing objects at L, L being force fed by the respondent when she would grab him by the fringe or by his nose and jam food into his mouth. In relation to T, he recalls the respondent slapping T very hard on the face and body and forcing him into the pillow when he was slow to settle. Again, T was force fed by the respondent. He referred to an incident in 2015 when the respondent was driving around intoxicated with the three younger children in tow.

5. Again, the proposed evidence of A and L was summarised for the Court and was to like effect. There was also reference at the sentence hearing to the evidence that was given by the father of the youngest children, he was of the view that the respondent was addicted to alcohol and prescription drugs and was suffering from depression and he described her as violent and bad. Their marriage broke down and he subsequently left the house. There was reference to the fact that there was other evidence corroborative of the accounts of the children from school friends and from friends of the respondent who socialised with her. One friend of the respondent who socialised with her on a regular basis commented that regardless of how intoxicated K would be, whether with alcohol or other substances, she was still able to function, but whether drunk or sober, her treatment of the children rarely differed. She referred to the fact that this was what

frightened her most, that K could be as cruel to the children when she was sober as she was when she was intoxicated.

6. In terms of the respondent's background and personal circumstances, she is an American citizen, born in October 1970, who moved to Ireland in 2000 with her then partner and two sons, one of whom was C, the eldest injured party in the case. In 2003, she married, her husband was a local farmer and they had three children together, the three youngest injured parties in the case. The present situation is that C has now gone to live in the United States with his father and his elder brother and the three younger children are living in Ireland with their father.
7. The respondent's childhood own was a very difficult one. She lived on the streets for a period, she was placed with foster families for a period and spent a period in Juvenile Hall, where, it seems, that she did very well. In Ireland, drink and prescribed drugs were part of her daily life. She separated from her husband in January 2012 and that accelerated the slide. When she was interviewed by Gardaí, she did not confirm every detail of what her children had reported, in some cases, this may have been down to a lack of memory, perhaps because of intoxication, but confirmed the broad thrust of what they had to say. When she was asked how she was, as a mother, she commented that she was a mother that was cruel, violent, pathetic, unhappy and unloving.
8. It appears that being contacted by the Gardaí had a dramatic effect on her and on how she organised her life and lived her life. It is said that she has not touched alcohol since that day of first contact, that since then, she has undergone intensive counselling, including taking a number of parenting courses and has found fulltime responsible employment in the hotel sector. In responding to the Director's application to review on grounds of undue leniency, it is said on her behalf that were it not for the extensive efforts at rehabilitation which were well underway by the time of the sentence hearing in the Circuit Court, that this is not a case where a non-custodial disposal could have been considered.
9. There is no real dispute between the parties about the legal principles applicable when an appellate Court is considering an application to review a sentence on grounds of undue leniency. Indeed, those principles have not really been in any dispute since the first such case to come before the courts, that of DPP v. Byrne.
10. In the course of his sentencing remarks, the Judge referred to the gravity of the offences before him, the consequences that the respondent's actions had on her children, which he said had to be reflected in the sentence to be imposed. The Judge did not see punishment as the main criteria for the sentencing on this occasion. He said that he had considered the case carefully and come to the conclusion that he could not see any benefit to society by imposing a custodial sentence in the particular case. He pointed out that the respondent had lost the respect of her children as a mother, that her marriage has irretrievably broken down and that she is now living alone. The Judge referred to the fact that she had shown genuine remorse and had availed of all relevant professional services in order to rehabilitate herself and commended her in that regard. He then indicated that

he saw the appropriate sentence as being one of three years imprisonment, but that in the particular circumstances of the case, he was disposed to suspend that sentence.

11. At the outset, it must be said that this was a case of extreme seriousness indeed. The transcript makes for really distressing reading. Reading the transcript, though, leaves no room for doubt about the care with which the sentencing Judge approached his task. Having put the matter back for consideration and, as it is clear, given the matter deep thought, he came to the view that incarceration at that time would not benefit society. The respondent is realistic enough to acknowledge that if was not for the strides taken towards rehabilitation by the time of the sentence hearing, it would not have been possible to contemplate a non-custodial disposal.
12. The offending was of such seriousness and was committed over such a prolonged period that many called on to sentence would have concluded that custody was inevitable and unavoidable. The Director, in the course of written and oral submissions, has referred to the need for "some element of custody". Had the sentencing hearing been taking place in close proximity to the offending, such a conclusion would have been inescapable. However, the Judge was sentencing three years on from the intervention by Gardai. During that period, the respondent had become and had remained sober. There had been extensive efforts at rehabilitation. She had been involved in addressing her alcohol problems through AA and Saoirse, she had been accessing mental health services via her local mental health service and WRAP, she had undergone very extensive counselling and therapy, she had pursued a number of different parenting classes and she had secured and was holding down fulltime and responsible employment.
13. In those circumstances, while other views could have been taken, and undoubtedly there would be others called on to sentence who would have gone down a different route, we do not believe that the view of the Judge that incarceration would not be of benefit to society was an impermissible one. It was, in our view, a conclusion that could have been conscientiously and responsibly arrived at. In those circumstances, we cannot say that the conclusion was an impermissible one so as to amount to an error in principle.
14. In the circumstances, we refuse the Director's application.