



THE COURT OF APPEAL

[70/19]

**The President
McCarthy J.
Kennedy J.**

BETWEEN

THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

AND

MARTIN HANLEY

APPELLANT

JUDGMENT (Ex tempore) of the Court delivered on the 14th day of November 2019 by Birmingham P.

1. This is an appeal against severity of sentence. The sentence under appeal is one of five years imprisonment with the final two years of the sentence suspended that was imposed in the Dublin Circuit Criminal Court on 29th March 2019 in respect of a count of robbery. On that occasion, a s. 3 assault charge was taken into consideration.
2. The sentencing Court was concerned with events that occurred on 23rd November 2017. On that occasion, the injured party, a 65-year old man, had visited a bookies shop on Parnell Street, Dublin, in order to collect winnings. He travelled in the direction of Mountjoy Square and was attacked at Gardiner Lane. He was punched to the face and knocked to the ground. During the course of the robbery, the appellant threatened him, saying he had a knife, and restrained him by standing on his leg. The injured party sustained a broken leg which required surgery, there were some complications thereafter and physiotherapy was required. It was accepted that the appellant had not set out to break the leg of his victim. The victim also suffered a broken tooth and cuts, grazes and bruises to the face. A sum of approximately €400 was stolen.
3. The appellant was identified from CCTV footage and subsequently arrested, interviewed and eventually charged. He entered a plea of guilty at the first mention date, it was therefore an early plea and required to be treated as such.
4. In terms of the appellant's background and personal circumstances, he was 54 years of age at the time of the sentence hearing. He experienced significant health issues. He was suffering from lung cancer and treatment to date had involved chemotherapy and the removal of the lung. While the appellant had previous convictions, all had been dealt with summarily and none involved violence. In all, 22 previous convictions were recorded, of

which six were for theft. The appellant brought a sum of €2,000 to Court to offer to the injured party, but that was not an offer of interest to the injured party.

5. The judge's approach to sentence was to identify a headline sentence of eight years. Having regard to the mitigating factors present, she reduced that sentence by three years and therefore imposed a sentence of five years imprisonment, but then a further two years of that sentence were then suspended owing to the serious health issues faced by the appellant.
6. On behalf of the appellant, it is said that the judge erred in nominating a headline sentence at the midrange and further erred by failing to adequately allow for the significant mitigating and extenuating personal circumstances advanced on behalf of the appellant. It is fair to say that the emphasis has been very much on the criticisms of the headline sentence.
7. In the Court's view, the headline sentence of eight years could be regarded as having been at the higher end of the available range, but whatever about that, the ultimate sentence of three years to be served could not be seen as severe, indeed, quite the contrary. This was a case where violence was deployed and injuries inflicted.
8. In those circumstances, had a somewhat more severe sentence been imposed, we might well have been prepared to uphold it. We are quite satisfied that the sentence could not be regarded as so excessively severe as to amount to an error in principle. We must, therefore, dismiss the appeal.