



THE COURT OF APPEAL

[28/2020]

**Birmingham P.
McCarthy J.
Kennedy J.**

BETWEEN

THE PEOPLE [AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS]

APPLICANT

AND

RYAN COMPTON

RESPONDENT

JUDGMENT (*ex tempore*) of the Court delivered on the 9th day of October 2020 by Mr Justice McCarthy

1. This is an application by the Director of Public Prosecutions under s.2 of the Criminal Justice Act, 1993 seeking to review a sentence imposed on the respondent on the basis that it is unduly lenient. After entering a plea of guilty to the sole count on an indictment at the earliest possible opportunity namely, assault causing serious harm contrary to s.4 of the Non-Fatal Offences Against the Person Act, 1997, the respondent was sentenced on the 11th of February 2020 at Cork Circuit Criminal Court to four years' imprisonment with the final two years suspended for a period of two years. The offence occurred on the 22nd of March 2019 and the victim was one Nigel Walsh. It occurred at Parnell place, in Cork city centre.
2. The respondent and the injured party were known to each other. Approximately nine months before the assault, the injured party had a falling out with a friend of the respondent. As a result, he began sending hostile messages to respondent, over a period of nine months prior to this incident. On the day of the incident there was an initial contact between the injured party and the respondent, about midday on Grand Parade, also in the city centre. The respondent was alone, and Mr Walsh was in the company of his girlfriend. There was some sort of altercation between them and Mr Walsh made a gesture as if he was going to punch the respondent. Mr Walsh left, but then walked back towards the respondent who went into 'Dealz' shop on Grand Parade. The respondent purchased a pair of scissors from the shop: it was a sharply pointed embroidery 4.5-inch scissors. Mr Walsh had gone about his business.
3. Later, at approximately 3.40 p.m., the two men coincidentally met each other again. This is corroborated by phone messages; by which we understand to mean that on analysis there were no communications between them during the relevant time. Mr Walsh was going to the bus station to be collected by his girlfriend. The respondent was there to meet a friend. Mr Walsh saw the respondent across the road and approached him. Mr

Walsh punched the respondent in the face, and a scuffle arose. This conduct by Mr. Walsh is the subject of a charge pursuant to section 2 of the Non-Fatal Offences against the Person Act 1997 (common assault). The respondent then took the scissors from his pocket and stabbed Mr Walsh a number of times into his body. The event lasted for about 30 seconds. The respondent went into the bus station and dumped the scissors in a bin. Mr Walsh was collected by his girlfriend outside the bus station. Gardaí were alerted and attended the scene. However, Mr Walsh had left the scene prior to their arrival but the respondent was still there. He had a number of lacerations to his left hand and he was subsequently taken to Cork University Hospital. He was later discharged with a diagnosis of superficial hand injuries that required stitches. At approximately 4:18p.m that day, Gardaí were informed that Mr Walsh had presented at the Mercy Hospital Cork with multiple stab wounds. His injuries were described at the time as life threatening. The scene was preserved at the bus station and the scissors were recovered by Gardaí examining the scene. Extensive CCTV footage from around the city was available showing all relevant events.

4. In terms of Mr Walsh's injuries, there was a 10-15 cm long and 5/10 cm deep cut to the front of his right chest/arm pit. There were two sharp cuts to the back of the arm/elbow, a small cut to his right shoulder blade and a sharp cut to the back of his right scalp. He had bilateral collapsed lungs due to the chest stabbing, a 15 cm long wide anterior axillary wall incision (a slash) a right medial scapular incision (a stab wound penetrating the chest wall) a right occipital scalp wound and left arm incisions. He was treated as a resuscitation case. Later that evening the wounds were explored, cleaned and stitched and closed under a general anaesthetic and a chest drain was placed on the left-side. He spent some days in the intensive care unit, he recovered well and he left the hospital against medical advice on the 25th March 2019. The principal treating doctor, a Dr O'Sullivan, was of the view that the injuries created transient but substantial risk of death and would consequently in his opinion constitute "serious harm". There was no up-to-date information about the victim or a Victim Impact Statement, but it appears that he has recovered.
5. On the 9th of April 2019, the respondent was arrested and detained at Bridewell Garda Station under s.4 of the Criminal Justice Act, 1984. He was interviewed three times during his detention. He cooperated fully with the investigation. He made admissions, including that he had bought the scissors used in the offence. He said during the interview that the reason he did what he did was out of fear as a result of ongoing threats. He believed that Mr Walsh was going to harm him and that is what he put his actions down to.
6. The respondent was 31 years old at the time of sentencing. He has no previous convictions. He is originally from London and has been in Ireland since 2017 where he lived with his grandmother in Cork. He acted as a full-time carer for her. The Court received a number of references stating his good character, including a letter from his grandmother, who explains that Mr Compton has been a great help to her. He has a real

prospect of employment on his release from prison. There does not appear to be any question of a fear of future offending.

7. Reference was made at the hearing both to *DPP v Fitzgibbon* [2014] 2 ILRM 116 and *The People (DPP) v O'Sullivan* [2019] IECA 250 to both of which we refer again below, and on the basis of those authorities it was submitted on behalf of the Director that the offence fell within the higher end of the middle range of penalties for offences such as the present and, more specifically, on this appeal it has been submitted that this would mean that the appropriate headline sentence would lie somewhere between eight and nine years. When sentencing, having referred to O'Sullivan, the judge proceeded as follows: -

"An offence in the mid-range of section 4 offences even with a plea letting the defendant open to a possible sentence of between four and a half and 10 years. Now, the background is complicated and there is no doubt about it that the victim was at times more of an aggressor and at times he was a person looking for a fight and there was a bad relationship between the parties and it is potentially true that the accused was afraid of the victim. There were a series of interactions between them on the day of the offence and all of those interactions notwithstanding the aggression of Nigel Walsh mounted no more than mouthing, fronting up and blows. Walsh never went for anything. There may have been a previous history of threats. I'm not aware that they were reported anywhere other than inter-familial. But, a seriously aggravating factor in this case is that this young man went prior to the incident and bought an implement of aggression, a scissors with no purpose to him or use by him other than to do damage. He had that on his person, and he brought it with him and then unfortunately there was a coming together between him and the victim later on in the vicinity of the bus. Now, during that -- and I'm not saying that in the instigation of that that the accused was the aggressor but during that coming together or confrontation the accused did produce and did use this scissors. And he stabbed this man on a number of occasions as I understand it to the chest, to the arm and to the back. So, there is nothing particularly defensive about that. It is all aggression. Aggression with a deadly weapon. Save and except but for the surgical skill of Eva O'Sullivan Walsh could have died. Now, thankfully Mr Walsh has made a full recovery, but this is an assault with a deadly weapon and as I say properly within the mid-range of the section 4 assaults. I'll take into account that the accused has no previous convictions. He has character references. I have no reason on any of the evidence I heard from the guard to think that he's an addict needing of any supervision, prone to any as I say addiction whether drink or drugs or that he's at any risk in the future. So, what I'll do is I'll estimate a sentence of - a headline sentence of four years from today's date and I will suspend the final two years on condition that on his release he will keep the peace and be of good behaviour for a period of two years."

Grounds of appeal

8. The sole ground of appeal is that the headline sentence identified by the learned trial judge of four years imprisonment fails to reflect the gravity of the offence.

9. In the present case, the learned judge accepted that the offence fell within the mid-range, and he further accepted that that range as per *O'Sullivan* when read with *Fitzgibbon*, is somewhere between four and ten years. He did not, however, say where on the scale of gravity within the middle range the offence lay. However, he did fix the headline sentence at four years.
10. In *Fitzgibbon*, this Court had outlined the range of headline sentences for s.4 assaults. The lower range ran from two to four years, the mid-range from four to seven and a half years, and the high range from seven and a half to twelve and a half years. According to *Fitzgibbon*, there are a number of factors to be taken into account in determining where on the scale of offending a particular incident comes. These include the severity or viciousness of the assault, the injuries suffered, the degree of culpability, the general circumstances of the assault and the use of weapons or other objects likely to make injuries suffered more severe. In *O'Sullivan*, Birmingham P. for this Court, having considered *DPP v Fitzgibbon*, said that the sentence ranges applicable to s.4 assaults required refinement. Accordingly, mid-range offences should now have an upper limit of 10 years (previously it was seven and a half years), and that higher end offences should fall somewhere between 10 and 15 years with the consequence that the low range remained unaltered (2-4 years), and thus the mid-range runs from 4 to 10 years.
11. The Director submits that what he describes as the headline sentence identified of four years' imprisonment was far too low, given the severity of the offence: here, the respondent, following an earlier altercation with a man whom he was having an ongoing dispute over a number of months, had entered into a shop and bought a scissors, as stated by the learned judge "*with no purpose to him or use by him other than to do damage*". The respondent then having come across the injured party some three or four hours later, in the context of a fist fight between them, produced the scissors and stabbed the injured party five times in various parts of his body causing serious and life threatening injuries. The judge correctly summed up the facts in his sentencing remarks, he outlined the aggravating and mitigating factors, of which there were several, and gave a significant reduction in the headline sentence for the mitigating factors by way of suspending half, an approach which, it is submitted, is itself very lenient. While there were significant mitigating factors present the applicant does not contend that the extent of the suspension was excessive but that the judge erred by failing to place this offence in its proper place on the scale of offending and commenced the process at too low a place on the scale, in particular by fixing the headline sentence at four years.
12. The respondent contends that the judge was right in placing the offence in the mid-range. Thus the area of dispute between the parties is relatively narrow, viz – where on the mid-range does it lie? The respondent has emphasised, in support of his contention, the factual matrix: the respondent was fearful of the injured party due to the messages he had been receiving over several months, the hostile approach earlier in the day and perhaps of most significance the fact that the instigator of the conflict and aggressor was Mr Walsh, who struck first, having crossed the street. There is no suggestion that the respondent was "looking for trouble" so to speak or had armed himself for aggression

against Mr Walsh. In truth, however, what occurred was that he used what on any view was excessive force in self-defence and was in possession of what was potentially a lethal weapon, even if it was an embroidery scissors. It is also contended that in accordance with the jurisprudence of this Court applicable to appeals where the Director seeks a review of sentence, the criterion for intervention, namely, an error of principle resulting in substantial of departure from the norm in respect of offences of the type in question, has not been reached, the burden of proof being of course on the Director.

13. We think that there was no error. We take this view firstly because the learned trial judge placed the offence, on the scale of offending, at the correct level: because of the purchase and use of a weapon and the harm done he was right to place it within the mid-range – considerations of both general and specific deterrence are relevant when a weapon is acquired and used. We think, however, that the circumstances in which the offence occurred must be taken into account and in doing so he was right to conclude that the offence was at the lower end of the mid-range as he plainly did setting the headline figure at four years, then proceeding to deal with mitigating factors to which he referred. We think that the single most significant factor in this case is the fact that there was no sense in which the respondent was an aggressor and had not armed himself for the purpose of an aggressive approach or attacking the injured party but, rather, the injured party approached him in an aggressive way and he then used excessive force in self-defence. The judge was entitled to take the view that the appropriate reduction for mitigation was to be given by suspending the sentence in part. As to the burden of proof in respect of offences of this kind and in particular a substantial departure from the norm, there is a paucity of authorities in cases where there is a factual similarity and hence we approach the matter on the basis of first principles.
14. Accordingly, we are not satisfied that there was an error in principle nor that the standard of proof for intervention required of the Director has been attained.
15. We accordingly dismiss this appeal.