



THE COURT OF APPEAL

Record No: 110CJA/19

**Birmingham P.
Edwards J.
Kennedy J.**

BETWEEN/

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

APPLICANT

AND

TOM REILLY

RESPONDENT

JUDGMENT (ex tempore) of the Court delivered on 2nd of March 2020 by Mr Justice Edwards.

Introduction

1. In this case the appellant appeals against the severity of a sentence of eight years imprisonment with the final two years thereof suspended, imposed upon him by Leitrim Circuit Criminal Court on 14 May, 2019, in respect of four counts of handling stolen property contrary to section 17 of the Criminal Justice (Theft and Fraud Offences) Act, 2001, to which the appellant had pleaded guilty. The indictment in the case had preferred a total of eleven counts against the appellant. However, the appellant's offer to plead to just four of those was acceptable to the respondent on the understanding that evidence would be led at the sentencing hearing on a full facts basis.

The circumstances of the crimes

2. The charges to which the appellant pleaded guilty arise out of a professional and commercial transnational criminal conspiracy to clone motor vans stolen in the United Kingdom and sell them on in Ireland. The basic modus operandi involved motor vans being stolen and then being modified so as to change their chassis numbers and other identification numbers to match those of similar vehicles which had not been stolen, and copies of whose registration documents had been obtained by deception. This enabled the vehicles to be sold on with ostensibly valid documentation to unsuspecting purchasers in Ireland. The value of eight of the eleven motor vans in question ranged between Stg£9500 and Stg£18,864. There was no value available for three of the eleven motor vans.
3. As a result of an intelligence led Garda operation the appellant was identified as being a significant participant in the aforementioned conspiracy. He represented the Irish end of the operation. He recruited persons, and in particular Mr and Mrs McLoughlin, to travel to the United Kingdom to collect the cloned motor vans and to transport them by car ferry from Holyhead to Ireland. The appellant would then arrange for the sale of the cloned

motor vans in Ireland, frequently using the online website 'Done-Deal'. On the 13th of December, 2011, the appellant was intercepted entering the country on the Ulysses car ferry from Holyhead to Dublin while driving a camper van. He was arrested at 1.05am on that date, under section 71 of the Criminal Justice Act, 2006, for conspiracy to commit a serious offence. He was taken to Store Street Garda station where he was detained and questioned. He was uncooperative and responded to all questions asked of him with "no comment". Subsequently a file was sent to the Director of Public Prosecutions who directed that he be prosecuted for the offences the subject matter of the present indictment.

4. The effect of these crimes was to cause distress and to inconvenience the original owners of the motor vans in question, and to cause financial loss to their insurers. In addition, following the detection of these crimes, and the repossession of the motor vans in question from those to whom they had been sold, the unwitting purchasers also suffered financial loss as well as being put to trouble and inconvenience. The court was told that the total losses suffered by the insurers of the original owners of the motor vans was Stg£103,809, and that the losses suffered by customers in Ireland amounted to €50,150.

The appellant's personal circumstances

5. The sentencing court was told that the appellant is a married man who has a number of children and grandchildren. His wife does not enjoy good health and he is her carer. He has previously worked as a van salesman in the United Kingdom. He was understood to be residing part of the time in Carrick on Shannon and part of the time in the United Kingdom. The appellant was said to have received limited education and much of his life has been spent working at menial jobs in the black economy – as it was euphemistically put, "*he's never really been on the books*". There was reference to him having been a handyman on a halting site at one point.
6. The sentencing court heard evidence that the appellant has fourteen previous convictions. These include convictions for disorderly conduct in a public place, intoxication in a public place, using threatening and abusive and insulting behaviour contrary to the Criminal Justice (Public Order) Act, 1994; criminal damage, section 2 assault, production of an article in the course of a dispute, affray, theft, failing to surrender to custody, conspiracy to defraud, and attempting to obtain property by deception. While the sentences for most of these offences were noncustodial he did receive a prison sentence of fifteen months for the offence of conspiracy to defraud which was recorded by Isleworth Crown Court. It is understood that this was sometime in the mid-1990s.
7. It is accepted by the prosecution that the appellant's plea was a valuable one. Although it was not a particularly early plea it was not one that was left until the last minute. The nature of this case was such that it would have involved numerous witnesses travelling from England if it had gone ahead. His pleas enabled these witnesses to be called off, albeit at short notice and in circumstances where in some cases travel arrangements had been made.

The sentencing of other participants

8. The sentencing judge was informed that Mr and Mrs McLoughlin had already been dealt with by the courts and had received suspended sentences for their part in this criminal conspiracy. In particular the court was told that both McLoughlins received sentences of four years imprisonment suspended for five years.

The sentencing judge's remarks

9. In sentencing the appellant the judge in the court below said the following:

"JUDGE: On the 5th of February 2019, the accused pleaded guilty to four counts of handling stolen vehicles on a full facts basis on an indictment which contained 11 counts of such handling. There is no evidence that the accused was involved in stealing the vehicles in the United Kingdom. They were commercial vans ranging in value between £9,500 sterling and £18,864 sterling, insofar as evidence was given to me in relation to UK values in relation to, I think, eight of the vehicles of the 11 vehicles. There was no evidence of original value of three of the vehicles. The total value of the eight vehicles in relation to which figures were given was £103,809 sterling when they were stolen. That was the loss to the UK insurers who paid out to the owners of those eight vehicles.

In the course of the investigation, there were 70 vehicles seized, and the accused was identified as a suspect. However, he is only charged in relation to 11 particular vehicles. It's clear from the evidence that this was a sophisticated and organised operation whereby the tax books or vehicle registration documents of similar vehicles to the ones which had been stolen were acquired fraudulently. The stolen vehicles or vehicle was then cloned to appear as the vehicle described in the fraudulently acquired vehicle registration certificate by physically removing the vehicle identification numbers from the stolen vehicles, their engines, their chassis, their windows, and their any other marks that were on them, and replacing them with the numbers appearing on the fraudulently acquired registration certificates. Whether or not the accused was involved in this process is unclear. However, knowing that the vehicles were stolen, he acquired them and exported them from the UK to Ireland, where they were sold at very considerable discount. They were sold for between three and a half thousand euro and €10,000, insofar as there is evidence as to the sales figures for eight of the 11 vehicles, the subject matter of the charges. So, the total sum realised for those eight vehicles by the accused was €50,150, seven and a half thousand of which was in the form of a BMW motor car taken in as a trade in by the accused in lieu of cash. Accordingly, the loss to the Irish purchasers amounted to that sum of €50,150, none of which was recoverable by them. The offences, the subject of the indictment, are alleged to have occurred on dates between the 1st of August 2009 and the 25th of June 2010.

So, it appears from all of that that the aggravating features in the case are: that the accused was engaged in a highly organised, premeditated, and sophisticated handling operation, handling of stolen vehicles over an extended period of time; that it was done for the purpose of very significant profit to the accused; and it

gave raise to very significant losses for the unwitting Irish purchasers and the vehicle insures in the United Kingdom.

The handling of stolen vehicles is a very serious offence because without such handlers as the accused there would be far fewer thieves. Those aggravating features of the case place the offences in the upper end of the scale of such offences of handling stolen goods, and before taking into consideration any mitigating features in the case, they merit a sentence of eight years' imprisonment on each count.

I have evidence that two of his accomplices, a Mr and Mrs McLoughlin, I think they were, who acted as his agents in Ireland, and advertised the vehicles for him and sold the vehicle for him, mainly on DoneDeal, it seems, that they received sentences of four years' imprisonment, which were suspended in their entirety by, I think, my colleague Judge O'Hagan, who dealt with those matters. However, their roles in the offences are very clearly distinguishable and very much they appear to have been very much lesser agents of the accused, who is clearly the organiser and the profiteer in relation to the handling operation.

The mitigating circumstances which have been identified in the case are that the accused has pleaded guilty, albeit only immediately prior to the commencement of his trial, flights having been purchased for the many witnesses who would have had to come for the trial from the United Kingdom. However, because it would have been such an unwieldy trial, not if only because many witnesses had to be brought in from the UK, the plea is nevertheless considered to be valuable. While he has previous convictions, including convictions for theft, conspiracy to defraud, and attempting to obtain property by deception in the UK, and various offences of violence, most of which are relatively minor in comparison to these offences, except, perhaps, for the conspiracy to defraud in the UK, for which he obtained a sentence of 15 months' imprisonment in 1995, it is nevertheless noteworthy that since the detection of these offences and his arrest in 2011, he has not acquired any other convictions over the last eight years, a very significant lapse of time.

I note that he is a family man running a business, selling vehicles in the United Kingdom. Unfortunately, his wife is in ill health, and he is registered as the main carer for her. I also note the contents of the reference of one Mr Kelsey, who describes the accused as a good tenant over many years, and, as far as he is concerned, a trusted individual. I am informed by counsel that he is remorseful, and that I should interpret his plea of guilty as demonstrating such remorse. I must also note that he, through counsel, has offered his bail monies, which amount to €10,000, in compensation and that he seeks an adjournment so that he can pay a further €5,000 in compensation. I will interpret those offers as a token of remorse. However, I regret that having regard to the losses involved, I must view these figures as too insignificant as offers of compensation, having regard to the very significant losses involved. I also take the view that the case is far too serious

to be dealt with on a noncustodial basis, notwithstanding that offer of some small compensation.

So, having regard to those mitigating features in the case, and in particular the fact, that the accused has remained out of trouble for approximately nine years since the commission of these offences, and his plea of guilty, I will reduce the sentence to one of six years' imprisonment on each count, to run concurrently from today's date."

The grounds of appeal

10. The grounds of appeal on which the appellant relies list seven discrete grounds, namely that:

- 1) the sentencing judge erred in principle by stating that the appellant was involved in a sophisticated handling operation involving the importation of stolen vehicles from England when there was no evidence presented to that effect;
- 2) the sentencing judge erred in principle by taking into account the manner in which the vehicles were illegally obtained and the subsequent illegal alterations made to the said vehicles when no related charges to these acts were before the court, nor was there any evidence before the court of the appellant's involvement in these acts;
- 3) the sentencing judge erred in principle by drawing attention to an inference that this offence was connected to a larger operation relating to approximately seventy vehicles when these matters were not before the court;
- 4) the sentencing judge erred in principle by stating that these offences resulted in a considerable profit for the appellant;
- 5) the sentencing judge failed to take into account relevant matters which he showed, namely that a period of almost 9 years had elapsed between the last in time of the offences before the court and the date of sentence. And that in this time the appellant had received no convictions;
- 6) the sentence of imprisonment passed on the appellant was wrong in principle in that the appellant had relatively minor previous convictions of a similar nature and these were of some antiquity and an alternative method of sentencing was available and appropriate having regard to all the circumstances of the case and in particular having regard to the fact, that:
 - i. the appellant is no longer resident in this country and cares for his wife in the UK;
 - ii. the appellant had made a substantial offer of compensation to the court and undertook to make further payment of compensation given time;
 - iii. it was open to the sentencing judge on the basis of the submissions made in mitigation to impose a suspended sentence in whole or in part;

- 7) the sentence of imprisonment passed on the appellant was manifestly excessive and/or unduly severe and/or disproportionate having regard to all the circumstances of the case and in particular the following facts:
- i. the appellant had a period of almost 9 years between the last in time of the offences and the sentence date, during which he was not convicted of any crimes;
 - ii. the sentencing judge attached insufficient weight to the offer of compensation made to the court (€15,000) and the show of remorse which this displayed;
 - iii. the sentencing judge gave insufficient regard to the appellant's plea of guilty and the burden this removed from the prosecution. The case involved seventy witnesses, many of whom would be required to travel from outside of the jurisdiction;
 - iv. the sentencing judge gave insufficient regard to the fact that the appellant acts as a carer for his wife, who is unwell, and the disproportionate effect this would have upon him and his family;
 - v. the sentencing judge gave insufficient regard to the role of two accomplices identified by the state as being related to these offences, by categorizing them as lesser agents and both of whom were handed down a four year sentence suspended in its entirety;
 - vi. the sentencing judge paid insufficient regard to the matters advanced in mitigation.

Discussion and decision

11. At the outset it requires to be stated that we reject any suggestion that the sentencing judge inappropriately took into account matters that were not the subject of the immediate charges. The sentencing judge was entitled to have regard to the larger picture in assessing the role of the appellant and the extent of his culpability. To have done so was not to have sentenced the appellant for matters in respect of which he was not charged. The sentencing judge was entitled to have the offending presented in its proper context. It must be remembered that there had been agreement between the prosecution and the defence that the evidence at sentencing would be presented on a full facts basis. It would have been impossible to present the case without explaining to the court the modus operandi of those who provided the stolen vehicles to the appellant for sale. This was not a case of isolated incidents of handling. There was a conspiracy to clone large numbers of stolen vehicles and sell them onwards through Ireland. The appellant's handling of the vehicles in question took place in that context. It was entirely appropriate for the investigating officer to indicate the scale of the criminal enterprise the subject matter of the investigation and for him to state that some seventy vehicles had been detected in Ireland as having been cloned in the fashion described. That evidence was given in circumstances where it was made abundantly clear both by prosecuting counsel, and also by the sentencing judge, that the appellant was being made criminally accountable for having handled no more than eleven vehicles, and would have just four convictions actually recorded against him. We are satisfied from a careful perusal of the

transcript that the sentencing judge did not hold the appellant accountable for handling seventy vehicles.

12. We are completely satisfied that the headline sentence nominated by the sentencing judge was an appropriate one having regard to the professional and commercial nature of the criminal conduct in which the appellant was engaged. Moreover, there was significant harm done, both financially and in terms of causing distress, trouble and inconvenience, not just to those from whom the vehicles were originally stolen, and to their insurers, but also to those persons who had unwittingly purchased the stolen vehicles in Ireland in good faith but in circumstances where the appellant as vendor had no title to pass to them.
13. The range of potential penalties extended from non-custodial options up to imprisonment for a term not exceeding ten years. The sentencing judge characterized the offending in this instance as being "*highly organized, premeditated and sophisticated*". Moreover he noted that it had extended over a period of time and that it was done for the purpose of profit. He was correct in all of that and was justified in placing the offending conduct towards the upper end of the scale or spectrum of available penalties. He nominated a headline sentence of eight years, and we find no error in that having regard to the overall circumstances.
14. There is a further complaint that the sentencing judge insufficiently discounted for mitigation. Once again we reject that complaint. It is true that the appellant pleaded guilty and that his plea was to be regarded as valuable, but apart from the plea, the weight to be attached to the other matters put forward in mitigation was relatively slight. The sentencing judge took into account his wife's ill health and the fact, that he is her carer. He took into account the testimonials that had been put forward, as well as the offer of compensation and the appellant's ostensible remorse. However he commented that "*having regard to the losses involved, I must view these figures as too insignificant as offers of compensation.*" This was a view that was legitimately open to him on the evidence. He considered that the case was far too serious to be dealt with on a noncustodial basis and again that was a decision that was legitimately open to him on the evidence. We find no error of principle on either account and we find no evidence of inadequate discounting for mitigation. The appellant was afforded a 25% discount on the headline sentence and it seems to us that this was within the margin of appreciation available to the sentencing judge on the evidence before him.
15. The court was referred to several cases by way of comparators. These included *The People (Director of Public Prosecutions) v. Gannon* (Court of Criminal Appeal, *ex tempore*, Fennelly J, 28 April 2008); *The People (Director of Public Prosecutions) v. Floyd* [2014] IECA 39; *The People (Director of Public Prosecutions) v. Kilian* [2019] IECA 47 and *The People (Director of Public Prosecutions) v. Mongan* [2016] IECA 81.
16. We have considered these and consider that each of them is readily distinguishable from the circumstances of the present case and that they have little value as comparators. As we have stated many times comparators should comprise a representative sample of

broadly similar cases which indicate a distinctive trend in sentencing. We would, for example, have been interested to learn of any discernible trend concerning how "handling" offences committed with planning, premeditation and professionalism and in the context of a larger criminal operation are sentenced, if a representative sample of such cases was available. However, we do not consider that the cases that were put forward succeed in doing that.

17. We find no basis for a complaint that there was a lack of parity between how the McLoughlins were treated and how this appellant was treated. Their roles were very different. This appellant was much more centrally involved than they were. Indeed, it was this appellant who recruited and gave instructions and directions to the McLoughlins. Given their differing roles, and the appellant's position of control, there was no basis on which the appellant could reasonably have expected to receive the same sentence as they received.
18. In conclusion we are satisfied to uphold the sentence imposed by the court below. Although it was possibly at the severe end of the range of sentences that might legitimately have been imposed by the sentencing judge, it was comfortably within his margin of appreciation. We find no error of principle and the appeal is accordingly dismissed.