



**THE COURT OF APPEAL**

**Record Number: 181/19**

**McCarthy J.  
Kennedy J.  
Donnelly J.**

**BETWEEN/**

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

**RESPONDENT**

**- AND -**

**JOSEPH GRIFFITHS**

**APPELLANT**

**JUDGMENT of the Court delivered (ex tempore) on the 5th day of March 2021 by Ms. Justice Isobel Kennedy.**

1. This is an appeal against sentence. The appellant pleaded guilty to a count of making a threat with a syringe contrary to section 6 of the Non-Fatal Offences Against the Person Act, 1997. The appellant received a sentence of four years' imprisonment.

**Background**

2. On the evening of the 28th August 2013 the appellant and his partner were drinking on the platform of the Heuston Luas Stop. They were drunk and disturbing other people waiting on the platform. Two security guards approached them and the appellant was asked to move on at which point the appellant became abusive and approached one of the security guards in a threatening manner. The appellant took a syringe from his trouser pocket, pointed it at the two security guards and uttered words to the effect that he was HIV positive and that he would stab them in the neck. The two security guards, fearing for their safety, backed off. The appellant turned his back on them at which point they brought him to the ground where they restrained him until the arrival of Gardaí.

**Personal circumstances of the appellant**

3. At the time of sentence the appellant was 34 years old and living in homeless accommodation. He has a long history of drug abuse. He has previously self-detoxed from heroin and was being maintained on 100 mls of methadone.
4. The appellant has 18 previous convictions including a conviction for possession of knives and other articles from 2011.

5. A probation report was prepared for the sentencing court. The probation officer noted that the appellant had attended one appointment but had failed to keep a second appointment and that he had not been contactable thereafter. Her risk assessment placed the appellant at a high risk of reoffending. The probation officer expressed the view that the appellant's lack of engagement was concerning as maybe being suggestive of an unwillingness to engage with services to address the identified risk factors.

#### **The sentence imposed**

6. In sentencing the appellant the judge identified the aggravating factors as the seriousness of the offence in and of itself, the use of a syringe and the threat that he was HIV positive.
7. In terms of mitigating factors the judge identified the plea of guilty, the appellant's difficult social issues, his deep seated drug addiction, his express wish to rebuild his relationship with his three children, his self-detox from heroin, his past employment and his most recent uptake of methadone since incarceration.
8. The judge noted that the probation report placed the appellant at a high level of re-offending within the following twelve months and further noted the failure to engage with the probation service despite the Court's encouragement to do so.
9. In placing the offending in the mid-range she identified a headline sentence of five years' imprisonment. Taking into account mitigation, the sentence was reduced to four years.

#### **Submissions of the appellant**

10. It is said that the judge erred in failing to consider that no injuries were caused, that there was no actual violence and that the appellant was easily overpowered. The appellant further argues that the judge erred in stating that an aggravating factor was the use of a syringe when, in fact, this is a core ingredient of the offence. With the latter submission, we agree.
11. The appellant takes issue with the judge placing the offending in the mid-range. While it is fully accepted that this was a traumatic experience for everyone involved, it is submitted that this matter fell within the lower range.
12. The appellant refers to *The People (DPP) v. O'Brien* [2016] IECA 146 where the accused was sentenced to five years' imprisonment in respect of making threats with a syringe contrary to Section 6 (1)(b) of the 1997 Act. In *O'Brien* the accused entered a shop and began to behave aggressively. After being asked to leave the accused reacted aggressively. He was ejected from the premises. Later that day he entered a second shop, stole a chocolate bar and left the shop. Two employees followed him out and confronted him, asking him to return the stolen bar. He produced a syringe, threatened to kill both men and chased one of them along a nearby street. The appellant submits that the circumstances in the instant case can be distinguished from *O'Brien* in that the appellant did not instigate the confrontation and simply reacted to the approach of the two security guards.

### **Submissions of the respondent**

13. The respondent refers to the remarks of Edwards J. in *The People (DPP) v. O'Brien* [2016] IECA 146 wherein he stated that the main emphasis of section 6 of the 1997 Act was the victim's perception of the threat of infection and the resulting trauma.
14. Given the serious nature of the offence and the emphasis on the victim's perception of the threat of infection, the respondent submits that the judge's assessment that the offending behaviour in question fell within the mid-range of severity was a reasonable assessment, particularly as it was an entirely unprovoked and unwarranted attack on two men in the course of their employment.
15. The respondent argues that the judge correctly identified the mitigating factors and took full account of the appellant's personal circumstances. The principal mitigation available to the appellant was his plea of guilty. It is further submitted that the judge was entitled to take account of the circumstances in which the plea was made and in particular the strength of the evidence against the appellant.
16. It is submitted that the absence of a suspended portion of the sentence was the legitimate exercise of a judicial discretion by the judge and the appellant was given significant opportunity to engage with the probation service. He did not do so and he was assessed as unsuitable for probation supervision.

### **Discussion**

17. Firstly, this Court viewed the CCTV footage of this offence in the course of the hearing. The footage disclosed a frightening and volatile situation, where the appellant can be heard uttering that he would make sure the two security guards suffered for the rest of their lives and mentioned in terms of the syringe that he would put it straight into the jugular.
18. Mr Prenderville BL for the appellant argues that the judge erred in placing the offence on the mid-range. However, in the present case the nature of the threat is serious, there was an express threat that the victims would be infected with HIV. The argument is advanced that the victims were not vulnerable individuals, however, the security guards were attempting to carry out their job, in circumstances where there were a number of members of the public present at the Luas stop which is a factor to be considered. Moreover, both men were concerned for their safety and were described by Gardaí as looking visibly shaken on their arrival. We accept the Director's submission that this was an unwarranted and unprovoked attack on two men who were simply attempting to do their job. We are not persuaded that the judge erred in placing the offence in the mid-range and thus did not err in nominating a notional pre-mitigation sentence of five years' imprisonment. We say this notwithstanding that we are satisfied that the judge erred in identifying the use of the syringe as an aggravating factor, as this aspect is a constituent element of the offence contrary to s.6 of the 1997 Act however, we do not believe this is an error of substance justifying intervention in the headline figure nominated.
19. The second argument advanced concerns the weight permitted for the mitigating factors. Such factors were undoubtedly present, including the plea of guilty, the appellant's

addiction difficulties, his social issues, his efforts to become drug free and his past employment. In considering these factors the judge afforded a downward reduction of almost 25% which in the circumstances was entirely appropriate.

20. Insofar as the submission is made that the judge ought to have suspended a portion of the sentence, it is noted that the matter was adjourned from time to time to enable the appellant to engage with the probation service, which he failed to do save for one occasion. In those circumstances, it is difficult to see how suspending a portion of the sentence would have been appropriate in terms of incentivising his rehabilitation.
21. Accordingly, the appeal is dismissed.