



THE COURT OF APPEAL

Record No: 148/2020

**Edwards J.
McCarthy J.
Kennedy 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

V

EMMA FEHILY

RESPONDENT

JUDGMENT of the Court (*ex tempore*) delivered on 26th day of July, 2021 by Mr Justice Edwards.

Introduction

1. This is an undue leniency review on the application of the Director of Public Prosecutions in respect of concurrent sentences of 12 months' imprisonment, suspended in their entirety, which were imposed on the respondent at Cork Circuit Criminal Court on the 18th of June, 2020, in respect of two counts of forgery contrary to s.25 of the Criminal Justice (Theft and Fraud Offences) Act 2001, and two counts of attempting to pervert the course of justice contrary to common law.

The Circumstances of the Case

2. The respondent appeared before Cork Circuit Criminal Court on the 15th June 2020 and affirmed pleas of guilty to two counts of forgery contrary to s.25 of the Criminal Justice (Theft and Fraud Offences) Act 2001 and two counts of attempting to pervert the course of justice contrary to common law, which she had previously signed in the District Court. The matter came on for sentence on the 18th of June, 2020.
3. The circumstances in which the offences were committed were that the respondent had previously appeared before Cork Circuit Criminal Court on the 16th of November, 2018, for sentence in respect of 40 counts of theft and one count of attempted theft. During the course of that sentencing hearing two documents were produced to the sentencing court by way of testimonials. The first document purported to confirm that the respondent had been in full-time employment with a company called Rockwell Automation from December of 2016 onwards, and bore a signature purporting to be that of Trish Kelly, Human

Resources Manager at Rockwell Automation. The second document purported to be a very positive character reference concerning the respondent from Rockwell Automation and, again, bore a signature purporting to be that of Trish Kelly, Human Resources Manager.

4. The respondent received a 30-month sentence for these 41 theft/attempted theft offences on the 16th of November, 2018. However, the court was told at the later sentencing on the 18th of June, 2020, that while she had commenced the 30-month sentence on the date of her sentencing she served only 5 months of that before being released by the executive.
5. Subsequent to the respondent's said sentencing on the 16th of November, 2018, members of An Garda Síochána had cause to visit Rockwell Automation in circumstances in which the said company had reported that it been the victim of numerous thefts. The respondent was suspected of these thefts, and she was subsequently charged and was later convicted of them. However, in the course of their visit to Rockwell Automation on this occasion, the investigating gardai, who were aware that documents purportedly issued by a representative of Rockwell Automation had been produced by the respondent, and had been tendered to the Court on the 16th of November, 2018, as evidence of mitigating circumstances, sought to verify that those documents were in fact genuine. Arising from those enquiries the Gardaí were informed by the aforementioned Trish Kelly, Human Resources Manager at Rockwell Automation, that she had not created the documents which had been produced to the sentencing court nor had she given her permission for their creation. She further stated that she had not signed the said documents nor given permission for any person to sign in her stead.
6. The documents produced to the sentencing court were retrieved from the respondent's solicitor's office and the respondent was arrested and detained for the investigation of offences of suspected forgery and of attempting to pervert the course of justice. The respondent initially denied any involvement in forging documents and attempting to pervert the course of justice when interviewed by gardai, but eventually resiled from those denials and confirmed that the documents were not genuine and that she had composed them herself and used computer-lifted signatures. She was later charged with the four offences, the sentences for which are the subject matter of the present review.
7. Before dealing with those sentences it is important to record that in the intervening period, and arising out of the previously mentioned garda investigation into alleged thefts from Rockwell Automation, the respondent was charged on indictment with 67 counts of theft from that company, and 2 counts of deception also dating from her time working there, and she subsequently pleaded guilty to these offences. She was before Cork Circuit Criminal Court for sentencing in respect of those matters on the 6th of February, 2020, and received a sentence of 3 years' imprisonment with the final 18 months suspended. However, the court was told at the later sentencing on the 18th of June 2020 in respect of the forgery and attempted perversion of the course of justice offences, that she served only one month of the sentence imposed on her on the 6th of February, 2020, before being again released early by the executive.

8. Counsel for the applicant accepted a suggestion from our bench that, although it involves speculation, it was likely, given the chronology, that her release so early into the sentence may have been connected with the onset of the first wave of the COVID-19 public health crisis, when there was much concern about the risk of the virus becoming established in residential settings, including prisons, in consequence of which some prisoners who were deemed suitable were released perhaps earlier than they might otherwise have been. The formal mechanism by means of which a release in such circumstances can be facilitated is under what is known as the Community Return Program which is a scheme whereby offenders complete community service as an alternative to remaining in custody.

9. At the sentencing hearing on the 18th of June, 2020, the court received evidence that the respondent was 36 years of age, was unemployed and was living with her sister and her family. She had at that stage 116 previous convictions, 109 of which were for theft, 2 of which were for deception, 1 for attempted theft, 1 for unlawful use of a computer and 3 for road traffic offences. The sentencing court was told by counsel, although there was no evidence of it before the court below, either in the form of a medical report or otherwise, that the respondent has a history of depression and of self-harming, and that she has attempted suicide in the past on two occasions. There was a reference in the plea in mitigation to the respondent being under the care of a GP for mental health issues, and written submissions filed on her behalf in the Court of Appeal referred to her involvement with a Dr Fidelma Corcoran, Consultant Psychiatrist. However, reports were neither provided to the court below from either of those medical professionals, nor did the respondent give evidence herself concerning the mental health difficulties asserted by her counsel. The court was also told, although again there was no evidence of it, that the respondent has had some tragedy in her life in that when she was nine years old she lost a sister in a road traffic accident, and was profoundly affected by it. It was also asserted in the plea in mitigation that the respondent had had a difficult childhood – again this was mere assertion by counsel and there was no evidence whatever adduced to support it.

Remarks of the Sentencing Judge

10. In sentencing the respondent, the sentencing judge remarked:

"...so what am I going to do? I mean, this lady did wreck financially, absolute wreck, she deserved every day of the sentence she got and it is just incomprehensible the manner in which she was dealt with by the Prison Service, because I agree with the guard, I saw no genuine remorse in her at any stage, and the exacerbation in this case of the repeat offences and the inability to pay back was just enormous and how it could be -- I mean there is much made of white collar crime and how the State or how the courts don't take it seriously. I don't agree with that. I took this case very seriously and everybody else should as well. Releasing her in this manner is not in any way taking this case seriously. However, given what the State has done with her incarceration, there is no point in me following it. So I think the appropriate sentence in that the matter has to be disposed of is 12 months suspended on each count."

Grounds of Application

11. The application for a review is advanced on three grounds:
 - 1) The sentencing judge failed to reflect his appreciation of the gravity of the offences as committed by the offender in an appropriate sentence.
 - 2) The sentencing judge failed to impose a sentence which correctly reflected the level of seriousness attributed by the judge to the crime as committed by the offender.
 - 3) The sentencing judge departed in a significant way from the norm that would reasonably be expected in a case of this nature.

Submissions.

12. It was submitted by the applicant that there was an incongruity between the sentencing judge's professed view of the gravity of the offending and the sentence ultimately imposed. Moreover, it was submitted that the sentencing judge allowed himself to be influenced by the fact that the respondent had achieved early release on two previous occasions. He had observed during an exchange with counsel:

"So, what's the point? I mean Limerick don't seem to take any notice of the sentence of the court. The first time she was kept in for five months and the second time for one month, is it?"

13. It was submitted that the sentencing judge imposed a sentence without any custodial element on the basis that the respondent was unlikely to serve any significant period in prison regardless of any sentence he might impose. The applicant says that the imposition of a fully suspended sentence on that basis constituted an error which rendered the sentence unduly lenient.
14. It was submitted that the sentencing Judge also fell into error in having regard to matters exclusively within the competence of the executive branch of government. It was submitted that, in imposing sentence based on the likely duration of the respondent's stay in prison, the sentencing judge had regard to matters irrelevant to the judicial function. The sentencing judge, whilst correctly expressing the opinion that the offending at issue in the case was of significant gravity, failed to impose a sentence which adequately reflected the said gravity.
15. Responding to this, it was submitted by the respondent that the sentencing judge's reference to the early release from a previous matter did not per se amount to an error of principle. We were referred to O'Malley on *Sentencing Law and Practice*, 3rd ed (Dublin: Thompson Reuters Ireland) at para 5-16 where the respected author states:

"A reference by a sentencing Judge to the possibility of future parole or early release does not, of itself, invalidate the sentence or amount to an error of principle, provided the Judge did not take account of the likely release date when determining the sentence itself."

16. The respondent says that the criticism levied by the sentencing judge related to the early release of the respondent in respect of the sentences previously imposed. These comments were therefore confined to those sentences and were not relevant to any sentence then under consideration.
17. Returning to the applicant's submissions, the point was made that both offences were serious offences. The maximum sentence for forgery is imprisonment for 10 years, while the court was at large in respect of the common law offence of attempting to pervert the course of justice. Moreover, there is a significant public interest in punishing, and in seeking to deter both generally and specifically, the commission of offences affecting the administration of justice.
18. It was submitted that in this case the only significant mitigating circumstance was the fact that the respondent signed pleas of guilty in the District Court. However, she was not fully co-operative, had exhibited no remorse, and had a bad previous record, including numerous convictions for crimes of dishonesty. There was therefore no evidential basis for imposing entirely suspended prison sentences.
19. The respondent, however, points to circumstances representing what her counsel characterised at the oral hearing as amounting to "substantial mitigation". These are listed in the respondent's written submissions as follows:
 - (i) The respondent came forward on signed plea of guilty.
 - (ii) She made admissions on arrest.
 - (iii) The incident occurred in the context of an inevitable custodial sentence and was carried out in a reckless and fraudulent way to ameliorate her situation, in circumstances that there was an inevitability of being detected.
 - (iv) The documents forged did not result in a material gain to the respondent nor a loss to the injured party.
 - (v) A probation report was available which highlighted gambling issues and requirement for gambling support and addiction services.
 - (vi) The respondent has underlying mental health issues and had come under the care of a Psychiatrist, Dr. Fidelma Corcoran, from 2005 – 2006.
 - (vii) The respondent engaged very well with Churchfield Community Trust.
 - (viii) The respondent has a background of depression and self harm with two suicide attempts.
 - (ix) The respondent had tragic family history having lost a sister in a road traffic accident and her mother in 2015.
 - (x) The majority of offending occurred after this time.

- (xi) The respondent had a difficult childhood.
20. Apropos this list, we have already made the point that several items on it were unsupported by any evidence before the court below.
21. Returning to the applicant's submissions, it was submitted on her behalf, with reference to two comparators (which could hardly be regarded as a meaningful sample) proffered with respect to the forgery offences, that the sentences actually imposed in the present case were outside the norm in terms of what might be expected. It was contended in response on behalf of the respondent that the cases alluded to were readily distinguishable on their facts as being cases in which financial loss/direct prejudice was caused to the injured party whereas none was caused here.
22. The first case to which we were referred was *The People (Director of Public Prosecutions) v Jones* [2019] IECA 51, in which the appellant forged her landlord's signature on a Rent Supplement Review Form. There was a concurrent charge of criminal damage to the rented property amounting to approximately €10,000. There was an early plea and the appellant had 20 previous convictions amongst which was one for a crime of dishonesty. Consecutive sentences of two years' imprisonment and three years' imprisonment were imposed at first instance. These were reduced on appeal to one year's imprisonment (for the forgery) and two years' imprisonment with the final six months suspended (for the criminal damage), to be served concurrently.
23. The second case to which we were referred was *The People (Director of Public Prosecutions) v Boyle* [2019] IECA 160, which involved an undue leniency review in respect of a sentence of two years imprisonment, which was suspended in its entirety, imposed on a school principal for, inter alia, the forgery of documents submitted in support of claims for refunds from the Department of Social Protection under the School Meals Scheme. The indictment contained twenty-three counts in all, and the respondent had entered pleas of guilty to five counts of theft and two counts of forgery on a representative basis. The respondent had pleaded guilty at an early stage. The total of the theft and fraud activity committed by the respondent amounted €204,118, of which €73,300 was attributable to forgery activity. The Court of Appeal found the sentence to have been unduly lenient. Although the Court of Appeal felt that a starting point of five or six years would have been appropriate, in circumstances where the DPP had not sought to quibble with the starting point of three years and six months adopted by the sentencing judge at first instance and her argument was focussed instead on the decision to wholly suspend the sentence, the Court again nominated a headline sentence of three years and six months and reduced that to fifteen months imprisonment. Unhelpfully in the present context, the Court of Appeal sentenced globally in that case and did not differentiate between the theft and forgery.
24. On the respondent's side we were referred to the cases of *The People (Director of Public Prosecutions) v Hehir* [2018] IECA 244; *The People (Director of Public Prosecutions) v Lynch* [2018] IECA 1; *The People (Director of Public Prosecutions) v Durcan* [2017] IECA 3 and *The People (Director of Public Prosecutions) v Byrne* [1995] ILRM 279, all of which

we are familiar with, and most if not all of which were reviewed in this Court's informal guideline judgment on sentencing for what might loosely be described as "white collar crime" in *The People (Director of Public Prosecutions) v Maguire* [2018] IECA 310.

25. While on the subject of possible comparators, while neither side referred us to any caselaw concerning sentencing for attempting to pervert the course of justice (and we accept that such cases are not very common), we note that Mr Thomas O'Malley has this to say in *Sentencing Law and Practice*, 3rd ed (Dublin: Thompson Reuters Ireland) at para 31-41:

"Making a false statement or tendering a forged document to secure mitigation may amount to contempt of court or perverting the course of justice. In *R v Livesley* [2013] 1 Cr. App. R. (S) 27 the defendant, on being sentenced for social welfare fraud, submitted references from senior army officers stating that he had a long and distinguished army career which included an award for bravery in the Falklands war. This was untrue, although the referees had submitted their reports in good faith, having relied on information supplied by the defendant. He was given a prison sentence for the fraud offences but it was suspended on account of his army record. Several years later, when it emerged that this record was almost entirely false, he was convicted of perverting the course of justice and jailed for three years. The Court of Appeal upheld this sentence, saying that it was of the utmost importance that sentencing judges should be able to rely on character references. In *R v Bailey* [2006] Cr. App. R. (S) 47 a man who placed entirely false evidence before a court to secure a more lenient sentence was sentenced to thirty months imprisonment for perverting the course of justice and this was upheld on appeal."

Hearing of the present undue leniency review on the 24th of June 2021

Invitation to submit material on a contingent basis

26. Following a hearing of this undue leniency review on the 24th of June 2021, we adopted our usual practice of inviting both sides to submit on a contingent basis any material that they would wish to have taken into account in the event of the Court deciding that it needed to quash the sentence imposed in the Court below and proceed to a resentencing.
27. We received the following additional material from counsel for the respondent.

Probation Reports

28. We were furnished with a letter from the respondent's Probation Officer dated the 23rd of June 2021. There was also a Probation Report dated the 6th of February, 2020, from the earlier sentencing in respect of the theft and deception offences committed at Rockwell Automation. Counsel had invited the sentencing judge in the present matter to read this earlier report but he had declined to do so.
29. In the updating letter from the respondent's Probation Officer dated the 23rd of June, 2021, she refers to the fact that the respondent was released from prison on the 5th of March, 2020 under the Community Return Program. The respondent was placed with Churchfield Community Trust and completed the programme on the 10th of June, 2020

without issue. The respondent's sentence had included a two year post release Supervision Order and the probation officer reported that she had been fully compliant with that and had made considerable progress in the past fifteen months. She had participated in a Community Employment Scheme and had also attended Arbour House to address a (gambling) addiction problem. She was also said to have attended private counselling to manage personal traumatic issues.

30. The probation officer's letter further states that the respondent has used the skills she gained in her time with the Churchfield Community Trust to find employment for herself. She is now employed as a manager of a food stall in a popular local market. We should state that this is independently confirmed by a positive written testimonial from a Director of Young Plant Superfoods, the company for whom she is working, which has also been submitted on a contingent basis.
31. Returning to the probation officer's letter, we were told that the respondent continues to address her risk factors for future offending. She was said to have developed significant insights into the reasons for her offending and her risk of re-offending has significantly reduced. She will remain under post release supervision until the 5th of March, 2022 under the present order.
32. Having retired to deliberate following the submission of this material, we then returned to court and informed the parties that we were satisfied that the sentences imposed on the 18th of June, 2020 had been unduly lenient, in the sense of representing a significant departure from the norm.
33. However, we indicated that we were not prepared to proceed immediately to a re-sentencing in circumstances where matters of serious import had been relied upon in a plea in mitigation presented to the court below, and which were ostensibly still being relied upon, in circumstances where no evidence had been presented to support them.
34. The Court stated that if, on a re-sentencing, the court was to consider matters such as alleged mental health difficulties, previous attempts at suicides, claims of tragedy in the respondent's life, efforts undertaken to address a gambling addiction, and employment history, it would need to have evidence of these matters. While some documents had been proffered in evidence at that point on a contingent basis, including some testimonials, the Probation Report of the 6th of February, 2020, an updating letter from the Probation Officer, and confirmation of the respondent's present employment status, there was nothing offered in respect of the most potentially significant matters, namely the claimed mental health difficulties, and the history asserted on her behalf of self-harming behaviour and attempts at suicide. This was so despite reference in counsel's plea in mitigation to the fact that she was under the care of a G.P., and of a named psychiatrist from 2005 to 2008, in respect of such difficulties; and the re-iteration in the written submissions to this Court, of the fact that she was under the care of the same named psychiatrist, although this time it was stated to be from 2005 to 2006.

35. The Court stated that it wished to have a report from the G.P. at the very least, and ideally a report from the psychiatrist, before proceeding to re-sentence. We stated that in the circumstances we would adjourn re-sentencing until the 26th of July, 2021 to enable the required report(s) to be obtained.

Subsequent developments

36. On the 19th of July, 2021 the members of this Court received from the respondent's solicitor, via the Court's registrar, a booklet of Reports and Documents intended to be relied upon by the respondent at her re-sentencing.

37. The reports and documents contained in that booklet included the following:

1. Report of Dr Claire McCarthy dated the 2nd of July, 2021 (received 16th of July 2021);
2. Letter from Sheila Murphy;
3. Letter from Edel Fehily;
4. E-mail from Caroline Fehily;
5. Letter from Emma Fehily;
6. Letter from Breda Moylan, Probation Officer;
7. Work reference from Young Plant Superfoods;
8. Letter from Churchfield Community Trust dated the 9th of June, 2020;
9. Probation Report dated the 6th of February, 2020;
10. Letter from Churchfield Community Trust dated the 29th of October, 2019;
11. Letter from Dr Claire McCarthy dated the 7th of May, 2018;
12. letter from Bridgewater Counselling dated the 7th of June, 2018.

38. However, three days later, on the 21st of July 2021, the Court received a further communication from the respondent's solicitor, stating:

"We wish to notify you that we will not be relying on the report from Ms. Martina Brett of Bridgewater Counselling & Therapy Centre dated the 7th June 2018 as it has now come to our attention that this is a false document."

39. On the same day, the Court received an updated probation report, dated the 15th of July 2021, concerning the respondent. This report again confirmed that the respondent had completed her placement at Churchfield Community Trust without issue and in difficult circumstances as a result of the COVID-19 pandemic. She was stated to have made considerable progress in the past 16 months. She had attended Arbor house to address

her gambling addiction and she was also stated to have attended private counselling. It is unclear as to whether or not the Probation Officer sought to independently verify the claim of attendance at private counselling, or if she merely accepted the respondent's assertion in that regard. Absent such information we are uncertain as to the weight we can attach to the claim that the respondent attended private counselling in circumstances where the letter provided from Bridgewater Counselling has been established as being a forgery, and there being no other counsellor mentioned or identified as having been availed of. At any rate, the Probation Officer goes on to again re-iterate that the respondent has used the skills she gained in her time with Churchfield Community Trust to find employment for herself, and she states that the respondent is in private rented accommodation close to her sister, whom she helps in providing care for her son who has special needs.

40. The Probation Officer reports that the respondent continues to address the risk factors that brought her into the criminal justice system and states that she has developed significant insights into the reasons for offending. She reports that the respondent has always expressed her regret, remorse and feelings of shame in relation to her past criminal behaviour and had asserted at interview that she wants to move forward in her life. Finally, the Probation Officer stated that local Gardaí had informed her that the respondent had not come to their attention since 2018.

Resumed hearing on the 26th of July 2021

41. At the commencement of the resumed hearing on today's date, the 26th of July 2021, counsel for the respondent informed the Court that regrettably she had to inform us that a second document in the booklet of reports and documents submitted to us on the 19th of July, 2021, regrettably transpired to be false. This was the purported report of Dr Claire McCarthy dated the 7th of June 2018, being item 11. However, the report from Dr McCarthy at item 1 was genuine. Counsel explained that following the court's criticism on the 24th of June, 2021 concerning the absence of medical reports or indeed any evidence concerning the respondent's claimed mental health difficulties and suicide attempts, her instructing solicitor, who was in possession of some reports from 2018 furnished to him by his client, had set about in good faith compiling a booklet of reports and documents in time for the resumed hearing. He had had no reason to suspect that the reports furnished to him from 2018 were anything other than legitimate, and indeed had requested up to date reports from the persons who had purportedly provided the 2018 reports. It was due to him requesting those updated reports that it had emerged that the 2018 reports were false.
42. Counsel has also asked us to accept, which we do without hesitation, that while no medical evidence was placed before the court at the sentencing hearing on the 18th of June, 2020, this was not because none was available or that the issue of seeking to adduce evidence was not considered. She stated that she was in possession of the purported GP's report dated the 7th of May, 2018, (believing at that time, as did her solicitor, that it was genuine), as part of the papers that had been briefed to her, but that she elected not to press the court to receive it in the belief that the Circuit Judge was

unwilling to receive any further documentation, in circumstances where he had already declined to read the Probation Report of the 6th of February, 2020.

Analysis and Decision

43. We view this as a most serious case. Quite apart from the recent attempts to mislead this Court it was clear to us from an early stage of this review that the sentences imposed at first instance for these four offences were unduly lenient. The appellant's record was very bad, she was significantly culpable in her attempts to mislead the Circuit Court, and in our view there was an insufficient basis, on any view of the case, for the imposition of wholly suspended sentences. A Court must be seen to protect its own process and where there has been a flagrant misleading of the court and a blatant attempt to pervert the course of justice, it requires the imposition of a significant custodial sentence unless circumstances exist which would tend to substantially mitigate the offender's culpability. There were no such circumstances here. We consider that the sentences imposed by the Court below were seriously outside the norm.
44. In the circumstances we will quash the sentences imposed by the Court below and proceed to re-sentence the respondent.
45. In doing so, we have carefully considered how we should treat the fact that there has been a further attempt by the respondent to mislead this Court. We note that the false documents date from 2018 and were not produced specifically for a re-sentencing by this Court. Nevertheless, they were knowingly provided by the respondent to her solicitor at some point prior to the sentencing hearing on the 18th of June, 2018. She knew that he was in possession of them, and that he, believing them to be legitimate, might seek to use them for her benefit. Despite this she did not apprise him that they were false and indeed forgeries. On the contrary, she stood by while he submitted them in good faith to this court and sought to have them updated by their ostensible authors, only to discover to his embarrassment that they were false.
46. The forgery of a medical report on a doctor's letterhead is particularly to be deprecated in circumstances where unauthorised access to, or forged reproduction of, a doctor's letterhead could be used by unscrupulous persons to illegally obtain prescription medicines. That has not happened here, but the mechanism by which the forged report was produced is nonetheless very concerning.
47. We have decided that the respondent's failure in advance of this undue leniency review to advise her solicitor of the fact that she had previously furnished him with false and indeed forged documentation is indicative of little or no remorse on her part, or willingness on her part to reform and desist from this type of crime, despite her assertions to the contrary to her Probation Officer, repeated to us in testimonials submitted on her behalf and indeed by the respondent herself in her letter to this Court. We accept that in reporting the respondent's claim to be genuinely remorseful, the Probation Officer was wholly unaware that the respondent made these claims in the full knowledge that she had placed her solicitor in an invidious position by previously furnishing false and forged documents to him; and had allowed him, in the belief that those documents were

genuine, to brief counsel with them for the hearing of this matter before the Circuit Court (albeit that they were not actually submitted in evidence on that occasion); and then to forward them to the Court of Appeal on her behalf in connection with the present undue leniency review; without apprising him (or counsel) of the fact that they were false and forged.

48. We consider that a headline sentence of five years is appropriate for each of the offences before us. This is in circumstances where the respondent has a very bad previous record for crimes of dishonesty including convictions for deception. The appellant is entitled to credit for her mitigating circumstances. Principally these are the fact that she pleaded guilty at an early stage, and indeed had signed pleas in the District Court. Further, we take account of her history of suffering from a generalised anxiety disorder for which she receives medication as confirmed in the report of Dr McCarthy dated the 2nd of July, 2021; the fact that she has a gambling addiction as reported by the Probation Officer; and the fact that she completed her placement with Churchfield Community Trust without issue. We also take into account her difficult family circumstances and background as set out in the Probation report and the GP's report, including that she has experienced some tragedy in her life. Taking all of this into account we will discount by 18 months from the headline sentence.
49. We appreciate that it will be difficult for the appellant to have to go to prison at this stage after receiving wholly suspended sentences at first instance; and having completed her earlier sentences through the Community Return Program. However, we are in doubt that a custodial sentence is required in the circumstances of this case, to punish and deprecate what has occurred but also to deter this type of conduct both generally and specifically.
50. All of that having been said, what we are prepared to do, in the somewhat exceptional circumstances of this case, is suspend the final 18 months of the sentence of three years and six months we are imposing today, as an incentive to the respondent to reform her life following her release from prison and to promote desistance by her from this type of offending in the future. We do so on the basis that notwithstanding her absence of true remorse there have been some positive aspects to her life following her completion of the program with Churchfield Community Trust. We commend the fact that she obtained employment and is spoken highly of by her present employer, who will no doubt be disappointed with the fact that she is now to be imprisoned. We are further encouraged by the fact that she has not come to Garda notice since 2018. We hope that when she is eventually released she will be able to return to gainful employment, and we encourage her to avail of any supports provided to her by the Probation Service to assist her in that regard. However, the respondent should appreciate that if she fails on this occasion to avail of the leniency being shown to her by the partial suspension of the sentence being imposed upon her today, and if she gets into trouble again, or breaches the conditions attaching to the part suspension of her sentence, she can have no expectation of being shown further leniency; and, moreover, she will very likely be required to serve the suspended portion of the sentence imposed today in addition to any new penalty imposed upon her.

51. The conditions on which the sentence is being part suspended are that the respondent should enter into her own bond in the sum of €100 to keep the peace and be of good behaviour for the period of imprisonment that she is required to serve and further for a period of two years from her release from prison. Further, she is to be subject to supervision by the Probation Service for two years following her release, during which time she is to engage fully with them and abide by their directions and follow their recommendations.