THE COURT OF APPEAL

Record No: 168CJA/21

The President
Edwards J.
Donnelly J.

IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 2 OF THE CRIMINAL JUSTICE ACT, 1993

Between/

THE PEOPLE (AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS)

APPELLANT/RESPONDENT

-AND-

DEIRDRE BRADY

RESPONDENT/APPELLANT

JUDGMENT of the Court delivered on the 1st day of December, 2022 by Mr Justice Edwards.

Introduction

1. The respondent appeared before the Special Criminal Court for sentencing on the 30th of July 2021 following arraignment on the 13th of April 2021 at which she pleaded guilty to Count No. 33 on a sixty-eight count indictment on which she was co-accused with two others, and on which only certain counts related to the respondent. Count No. 33 was an offence of concealing or disguising the true nature or source of proceeds of criminal conduct contrary to s. 7(1)(a)(i) of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 ("the Act of 2010"). The respondent was further arraigned on the 14th of June at which she pleaded guilty to Counts No. 36, 37, 40, 41, 44, 45, 48, 49, 52, 53, 56, 57, 60, 61, 64, 65 and 68. These seventeen counts related to eight further offences of concealing or disguising the true nature or source of proceeds of criminal conduct contrary to s.7(1)(a)(i) of the Act of 2010, and nine offences of converting, transferring, handling, acquiring, possessing and using the proceeds of criminal conduct contrary to s.7(a)(ii) of the Act of 2010. The offences spanned a period of 5 years from 2012 to 2016 inclusive.

2. The respondent was sentenced to three years' imprisonment on all counts to run concurrently, the entirety of the which was fully suspended on conditions for a period of three years. The sentence was to date from the date of sentencing, i.e., the 30th of July 2021.

3. A *nolle prosequi* was entered in accordance with s. 12 of the Criminal Justice (Administration) Act 1924 in respect of the following further counts on the same indictment which also related to the respondent, namely Counts Nos. 34, 35, 38, 39, 42, 43, 46, 47, 50, 51, 54, 55, 58, 59, 62, 63, 66, and 67.

4. The applicant now seeks a review of the three year fully suspended sentences that were imposed, pursuant to s. 2 of the Criminal Justice Act 1993, claiming that they were unduly lenient.

Factual Background

5. The Special Criminal Court heard evidence from a Sergeant Anderson on the 14th of June 2021 who outlined the circumstances of the offences.

6. On the 24th of January 2017, following the receipt of specific confidential information, the Garda National Drugs and Organised Crime Bureau placed several individuals under surveillance. During this surveillance the individuals were seen entering and leaving a commercial premises at 52 Grant Drive, Greenogue Industrial Estate, Co Dublin. Following the interception of two men leaving the premises and the execution of a search warrant, a third person was located at the premises. All three were arrested and detained under s. 30 of the Offences Against the State Act 1939. One of the three persons concerned was the respondent's husband Declan Brady. However, the respondent was not one of the persons concerned.

7. During the search, Gardaí located 15 assorted firearms and ammunition comprising of a sub machine gun and silencer, a Kalashnikov assault rifle, revolvers and semi-automatic pistols. Also recovered was a device for creating vehicle registration plates, a stolen forklift and two vehicle tracking devices.

8. One of the three men arrested and detained under s. 30 of the Offences Against the State Act 1939 was Declan Brady, the husband of the respondent and following the obtaining of a warrant, the family home of Declan Brady and the respondent, at 19 The Park, Wolston's Abbey, Celbridge, Co. Kildare was searched. During the search of this premises at which the respondent was present, sums of cash were discovered in different denominations comprising €930, US$1,000 and Stg£220, along with documentation relating to Ulster Bank which showed a monthly transfer of €3000 from the respondent to two Spanish bank accounts. The respondent was the beneficiary of one of these accounts, while a named individual was the beneficiary of the other. The individual in question was said by the witness to be a senior figure in organised crime, who was (at the time of the respondent's sentence hearing) before the UK courts in relation to serious drugs charges. When asked about these accounts, the respondent claimed to have sole access to her accounts and to have had no knowledge of the transactions referred to.

9. On the 24th of January 2017 Gardaí executed another warrant and searched premises at The Dairy, Rathasker Road, Naas, Co. Kildare, the residence of Mr Brady's girlfriend Erika Lukacs and the location where he sometimes resided. Ms Lukacs is a Hungarian national and is the mother of a child with Mr Brady who was born in 2016. The court subsequently

heard that the respondent was, at the material time, unaware of her husband's relationship with Ms Lukacs or of the property in Naas.

10. During the search of this premises, sums of cash in denominations of €2,000, Stg£10,000, €62,230, €29,920, €41,600 and €135,190 were located at various locations throughout the residence. Also recovered during the search was an AIB bank statement in the name of Erika Lukacs which showed that she had had at one time a balance of €88,000, although at the time of the search the balance was only €1,000. However, further enquiries led the investigators to an additional personal bank account within AIB in the name of Erika Lukacs containing €95,000.

11. A full financial investigation ensued in relation to banking, Revenue and Social Welfare documentation pertaining to Mr Brady, the respondent and Ms Lukacs, and from which a forensic accountant was able to set out the financial positions of the accuseds as follows;

    - Between 1st January 2012 and 28th February 2017 Mr Brady had five bank accounts, three of which were held jointly with the respondent including a mortgage account and one loan account.

    - Mr Brady had a declared income for 2012 of €18,371.

    - Tax returns filed for 2013 to 2017 showed no gross income.

    - During this period Mr Brady was not in receipt of social welfare payments.

    - Cash payments to Mr Brady's accounts during that period totalled €47,799. However, when adjusted for possible cash recycling, cash for income purposes reduced to €33,864.

    - This amount exceeded the declared income for that period in the amount of €15,493.

    - The variance with declared income in 2015 was €8,680.

    - The variance with declared income in 2016 was €10,750.

12. The sentencing court heard evidence that the respondent was described as a housewife/homemaker on a number of the banking documents. During the period between the 1st of January 2012 and the 28th of February 2017 she had eight bank accounts, four of which were in the joint names of herself and her husband, Mr Brady. Records provided showed the respondent had no declared income during this period.

13. There was evidence that the respondent had a mortgage account jointly with Declan Brady and that that account had benefited from a total of €89,030 in cash lodgements in the three years between 2014 and 2016. There had been a total of 21 individual cash lodgements.

14. The court also heard that there were monthly cash lodgements of €3000 to an Ulster Bank account (with end digits 921), in the name of Deirdre Brady, which monies were then transferred to a Spanish bank account also in the name of Deirdre Brady. This has been alluded to already at paragraph 8 above in the context of describing documents found during the search of 19 The Park, Wolston's Abbey, Celbridge, Co. Kildare. Declan Brady was the end beneficiary of these international transfers as they were used to pay a mortgage on a Spanish property in his name. He benefited to a total of €138,948, which was the amount that was transferred to Spain from Deirdre Brady's said Ulster bank account.

15. There was also evidence of further monthly cash lodgements of €3,000 to the same Ulster Bank account in the name of Deirdre Brady, which sums were then subsequently transferred outside the state to a Spanish bank account in the name of a Mr T.K.. Again, this has been alluded to already at paragraph 8 above. There was evidence of 48 such individual transactions over a period of five years totalling €141,103.

16. The sentencing court further heard evidence that a close family member of Declan Brady got married at the Druid's Glen hotel and golf resort in May 2015. The wedding had cost €66,301. A substantial portion of the wedding bill was paid in cash, amounting to €27,265. The balance of €39,036 was paid from the respondent's Bank of Ireland account (with end digits111) between March and May 2015. The seed capital to support the payments was from cash lodgements prior to the transactions.

17. According to revenue records the sums paid were completely out of proportion to the respondent's declared income and expenditure.

18. Declan Brady was a co-accused with the respondent on the same indictment and pleaded guilty to money laundering offences, involving sums totalling €418,654. For completeness it should also be stated that Erika Lukacs was a second co-accused with the respondent on the same indictment and she pleaded guilty to money laundering offences amounting to €210,695.

19. Analysis of all of the respondent's bank accounts, excluding the joint accounts, showed lodgements totalling €690,150, of which €655,688 was in cash, €23,215 was in cheques and €11,202 was in Bank Drafts. The Court heard that once the lodgements are adjusted for cash recycling, the totalled lodgements for income purposes comes to €573,893. These were all undeclared income.

20. The respondent was arrested on the 1st of August 2018 at 10.03am by gardaí from Leixlip Garda Station for the offence of money laundering contrary to s. 7 of the Criminal Justice (Money Laundering) Act 2010 and was detained under the provisions of s. 4 of the Criminal Justice Act. Nothing of evidential value was generated during her three interviews with the gardaí.

21. The sums involved, totalling €770,499, distributed across the respondent's various accounts as described in the evidence, were reflected in the following individual counts on the indictment to which she pleaded guilty:

Joint PTSB account (end digits 408):	2014 - €10,000	- Count 33
	2015 - €40,000	– Count 35
	2016 - €44,000	- Count 37
Ulster Bank account (end digits 921):	2012 - €10,610	- Count 40
	2013 - €70,833	- Count 41
	2014 - €81,665	- Count 44
	2015 - €80,890	- Count 45
	2016 - €105,650	- Count 48
AIB account (end digits 091):	2012 - €15,325	- Count 49
	2013 - €28,700	- Count 52
	2014 - €25,890	- Count 53
	2015 - €65,230	- Count 56
	2016 - €68,990	- Count 57
BOI account (end digits 111):	2012 - €18,250	- Count 60
	2013 - €1,100	- Count 61
	2014 - € 0	- Count 64
	2015 - €64,330	- Count 65
Druids Glen payment:	2015 - €39,036	- Count 68

22. The respondent indicated that she would not oppose any police property application in relation to forfeiture of cash seized in connection with the investigation.

23. At the time of the investigation the following real property assets were legally and/or beneficially owned by the respondent and her husband Declan Brady.

    a. Family home at 19 The Park, St Wolstans Abbey, Celbridge, Co Kildare.

    b. Former family home at 39 Glencarrick Drive, Firhouse, Dublin.

c. Apartment in Tavira, Portugal.

d. Property at Cala D'Or, Mallorca.

24. The respondent and her husband Declan Brady were jointly assessed for income tax purposes. Their joint income tax liabilities for the years 2010 to 2016 as assessed by, and subsequently agreed with, Revenue/ The Criminal Assets Bureau (CAB), cumulatively amounted to €622,929 of which €449,279.75 had been paid by the date of sentencing, leaving an outstanding balance of €173,649.25.

25. Income tax payments were made from the proceeds of the sale of 19 The Park, St Wolstans Abbey, Celbridge; 39 Glencarrick Drive, Firhouse, Dublin; and the Apartment in Tavira, Portugal. The sentencing court heard evidence that the property at Cala d'Or in Mallorca was in practical terms unrealisable as the mortgage on the property had not been paid for some time and it was most likely going to be repossessed by the Spanish bank concerned.

26. In the course of the joint sentencing of all three accused, counsel on behalf of Declan Brady indicated to the court that while the respondent and Ms Lukacs had also been charged and had each respectively offered pleas of guilty, his client wished to take responsibility for having involved them and to impress upon the court an acceptance on his part that but for his actions they would not be before the court. Further, it was accepted by the prosecution's witness under cross-examination by counsel for the respondent, that she was acting under the instruction and direction of her husband in terms of the holding and movement of funds, and that she had not been involved in the generation or sourcing of the funds at issue.

Personal Circumstances of the Respondent (not already mentioned)

27. The respondent was born on the 21st of April 1967 and has three siblings.

28. At the age of 20 years the respondent married the co-accused Declan Brady in 1987 and shortly thereafter the couple purchased a property at 39 Glencarrick Drive as their first family home. It was financed by means of a gift from the respondent's father of IR£10,000, and a mortgage of IR£17,000. The family had lived there for more than 15 years before moving to 19 The Park, St Wolstans Abbey, Celbridge. The mortgage on 39 Glencarrick Drive had been fully paid off by means of legitimate funds long before the CAB settlement. It was argued in mitigation on behalf of the respondent that she (and her husband) had lost the entire benefit of the value of that property, including the proportion attributable to her father's gift, in the context of having to sell it to part pay the aforementioned tax liabilities.

29. The respondent does not believe that her husband was involved in criminality at the time of their marriage. He worked in the early years thereafter as a warehouseman and HGV driver, and eventually started a windows and glazing business of his own. Regrettably, this did not survive an economic downturn in the late 1990's. The respondent and her husband have three children, ranging in age from mid-twenties to early thirties, and

seven grandchildren. Her three children have all suffered from mental health difficulties requiring in-patient psychiatric treatment at different stages of their lives.

30. At the time of the trial one of the respondent's children and two of her grandchildren were residing with her.

31. In so far as possibly benefitting from the property in Spain was concerned, the evidence was that the respondent visited it for one week every year. It was suggested that such visits were not for holiday purposes, and that often there was no electricity, and Sgt. Anderson appeared to accept that. It was further accepted that there was no evidence of more extensive personal travel by her. While it was put to Sgt. Anderson that there was no further evidence that the respondent had been living an ostentatious lifestyle, and on the contrary was living a modest lifestyle as a housewife committed to her family and their upbringing, he confined himself to stating that the evidence being offered of personal financial benefit in the case of the respondent was that mortgages on properties in which she had an interest, both in Ireland and abroad (including her main residence), were being paid through undeclared and unaccounted for cash lodgements.

32. Evidence was also given that at the direction of her husband she was paying the rent on premises in which, unbeknownst to the respondent, her husband's girlfriend, Erika Lukacs, resided with their daughter.

33. It was accepted that the respondent had been co-operative and had engaged appropriately with the Criminal Assets Bureau and the Revenue Commissioners. Her co-operation had been particularly valuable in terms of the sale of the property in Tavira, Portugal which was outside of the jurisdictional remit of CAB, and ensuring the proceeds were remitted and applied to her revenue debts.

34. It was confirmed that the respondent has no previous convictions.

Sentences imposed on the Co-accused

35. Although it is only of peripheral relevance in the context of the present review, we should indicate for completeness that the co-accused Declan Brady was sentenced to 8 years and 3 months imprisonment, on each of the offences to which he pleaded guilty, with the last year of each sentence suspended on conditions that he would enter into a bond in the sum of €100 and keep the peace and be of good behaviour, all sentences to run concurrently; while the co-accused Erika Lukacs received in effect the same sentence as the respondent, in that she was also sentenced to 3 years imprisonment, on each of the offences to which she had pleaded guilty, which sentences were wholly suspended on conditions that she would enter into a bond in the sum of €100 and keep the peace and be of good behaviour, all sentences to run concurrently. The individual circumstances of each accused were different, and in the context of the present review we have not considered it necessary to review in detail the individual circumstances of each of the co-accused. However, in saying that, it is important to acknowledge that the respondent has sought to make the point in submissions, and we will return to this, that the sentencing court may be inferred as having treated the culpability of the respondent and of Ms

Lukacs as being in effect equivalent, by virtue of the following remark made by the presiding judge (immediately after the sentencing of the respondent) in the context of the sentencing of Ms Lukacs:

> *JUDGE: "In the circumstances, not making fish of one and fowl of the other, we will therefore impose a similar concurrent sentence in relation to the counts relevant to Ms Lukacs of three years imprisonment suspended for three years on an identical bond as previously."*

We are told that the applicant has not sought a review of the sentences imposed on Ms Lukacs.

The Presiding Sentencing Judge's remarks concerning the respondent

36. When discussing culpability with counsel during the plea offered in mitigation on behalf of the respondent, the presiding judge asked:

> *"Where did she think this manna from heaven was coming from?"*

37. In response counsel suggested that her sin had been one of omission rather than one of commission, in that she had been in a very difficult position by virtue of her marriage.

38. When at a later point in the plea, counsel pressed the point that the respondent had not benefitted financially, save to the extent that mortgage payments had been discharged from what he characterised as *"ill-gotten gains"*, this led to the following further observations by the presiding judge:

> *"JUDGE – Yes. No, there are nuances in it, Mr Bowman. I mean, look, let's put it this way, if you have somebody who is clearly in a situation where there's funds which don't appear to be grounded in any real or legitimate source and where they take all the benefits of the lifestyle, this, that and the other, the custody threshold is well passed with somebody like that, you know. So, where it is a question of, you know, figuring out in which pigeon hole every individual case is…"*

39. Counsel responded that that was why he had been at pains to make the point that his client was not living an ostentatious lifestyle, and that even in terms of the payments in respect of the two properties abroad, they were in the names of other persons who benefitted from them, prompting the presiding judge to further observe:

> *"JUDGE: But let's not gloss over that, Mr Bowman. What did she think she was at when she was doing that?*

40. Counsel responded by saying that she had, at least in some respects, been *"acting on instructions in the blind"*, and that now, at a point in her life where she should be able to relax and enjoy her family around her, found herself standing on the precipice of a custodial sanction, leading the presiding judge to remark:

> *"That's why we can't gloss over anything. We have to try and you know, look at every point."*

41. The sentencing court gave careful consideration to everything that had been urged upon it. Having heard the evidence, it put the matter back for a fortnight to reflect on it. In communicating the court's sentence, the presiding judge noted that the respondent's involvement in the offences was in terms of having joint accounts with her husband through which significant sums of money, totalling €770,000, travelled in the years in question. He stated that having regard to the amount of money involved, *"certainly a custodial sentence would have to be in the forefront of the mind, but it must be borne in mind that there are other relevant factors pointing in the opposite direction."*

42. In taking an overall view of the respondent's conduct he noted the absence of previous convictions and her non-participation in the generation of the sums in question, notwithstanding that it must have been obvious to her that 1) there was a disconnect between any legitimate activities of her husband and the sums of money going through the accounts and, 2) that there was equally such a disconnect in where the funding for the family wedding had come from.

43. He went on to say, *"[b]ut nonetheless there will be cases where somebody who takes the benefit of criminally generated money over a long period of time will have to pay the ultimate penalty in terms of going to prison."*

44. He continued by acknowledging that the respondent was under the instruction of her husband and that she appeared before the court as a mother and grandmother of otherwise blameless character. She had lost the benefit of a legitimately acquired asset and where she had acted recklessly in transferring money, she didn't know the full circumstances of who the beneficiaries were at the other end of the transfers, e.g., Ms Lukacs. This demonstrated a recklessness rather than an intentional approach to the matters involved.

45. He concluded by stating;

> *"So this has been and is a finely balance case, but, having regard to the absence of previous convictions, and having regard to the plea of guilty, and taking an overall stance in relation to the matter, allowing for the plea of guilty, allowing for the absence of previous convictions, and allowing for the circumstances of Mrs Brady, we have taken the view that at this stage we should impose an immediate custodial sentence. To reflect all of these matters in a global sense we therefore propose imposing a sentence of three years' imprisonment on all of the counts concurrently, and that has been reduced down to take account of the plea of guilty from a higher headline sentence, and the balance of the matters are taken into account in relation to the decision to suspend that sentence. But she should understand that it's a very close run thing from her point of view. So she can enter the bond. It's for the period of the sentence, three years."*

Grounds of Application

46. The appellant seeks a review of the wholly suspended three-year sentence imposed by the Special Criminal Court, contending that it was unduly lenient on the following grounds:

    1. The judges of the Special Criminal Court erred in principle in imposing an unduly lenient sentence in all the circumstances, being a sentence of 3 years imprisonment, suspended on her entering into a bond in the amount of €100 to keep the peace and be of good behaviour for a period of 3 years on each count.

    2. The sentencing judges erred in principle in failing to identify a headline sentence in the matter.

    3. The sentencing judges erred in principle in according undue and excessive weight to the mitigating factors in the case and in particular to the personal factors relating to the respondent.

    4. The sentencing judges erred in failing to attach appropriate weight to the aggravating factors in the case in particular but not limited to the extent of the funds involved, the destinations for the funds, the period of times and the number of accounts involved.

Submissions on behalf of the Applicant

47. The applicant contends that the sentencing court erred in principle in failing to have any, or any adequate, regard to the gravity of the offences in the instant case. It was submitted that the presiding judge erred in characterising and confining the respondent's culpability to being that of a woman under the instruction of her husband and further it was submitted that she was clearly aware that the very significant amounts of money which were passing through her bank accounts were not derived from a lawful source.

48. It was submitted that the sentence imposed was, in all the circumstances, unduly lenient and represented a substantial departure from what would be regarded as the appropriate sentence in all the circumstances of the case, particularly having regard to the guidance offered by this Court in its judgment in *The People (DPP) v. Sinnott, Long and Joyce* [2021] IECA 42. Counsel for the applicant has submitted that given that the maximum sentence available in respect of money laundering is 14 years imprisonment, the sentence of 3 years imprisonment wholly suspended did not adequately reflect the gravity of the offences to which the respondent had pleaded and that it was *"out of kilter"* with the norm.

49. It was submitted that the sentencing court had erred in failing to identify a headline sentence and in then proceeding to impose a suspended term of imprisonment of 3 years. Relying on *The People (DPP) v. Kelly* [2005] 2 I.R. 321; *DPP v Fitzgibbon* [2014] 1 IR 627 and *DPP v. M* [1994] 3 I.R. 306, it is said that it was incumbent on the sentencing court to take the two tier approach to sentencing which this Court has in numerous cases commended as being best practice, and that by not doing so the trial judges failed to have regard to the indicia of the seriousness of the respondent's offending conduct and to

properly assess where the offences lay on the scale of gravity. Counsel submitted that given the extent of the funds and the period covered by the offending, the offences lay in the upper echelons of the scale. It is submitted that, notwithstanding the acknowledgment by the court of very, very significant sums involved, because of the failure to nominate a specific headline sentence, it is not apparent where the sentencing court placed the offending on the overall scale before discounting for mitigation.

50. Counsel for the applicant commends to us the following quotation from Murray C.J., in *The People (DPP) v. Cullen* [2013] IECCA 47 as being apposite to the present case also:

> *"…the Court reiterates the dicta which have often been made by this Court when reviewing sentences of a sentencing court and which are reflected in the dictum of Kearns, J. in DPP v. McC [2008] 2 I.R. 92 at 105 to the following effect:*
>
> > *'That is not to say that every step in the sentencing process has to be particularised in some formalistic or rigid way by the trial judge,* ***but rather that the basis for the sentence imposed should be both apparent and consistent with these principles****.'"* [emphasis added]

51. While the sentencing court regarded the amounts of money involved as being very significant, it was submitted that it nonetheless erred in principle in failing to have any, or any sufficient, regard to the desiderata of ensuring deterrence and just retribution in such a case. In terms of deterrence, there was, it was said, a failure to seek to subjectively deter the defendant from future offending, as well as a failure to seek to provide general deterrence to others who might be inclined to similarly offend in the future. Further, it was said, the sentence imposed failed to adequately punish and censure the respondent for her criminal conduct, and to reflect the extent to which society deprecates such conduct. Although no objection was taken by the respondent at the review hearing, we feel we should make the point that these specific complaints are not articulated in any of the four grounds of application pleaded, and ideally should have been. Stretching a point on this occasion in the absence of objection, and because of the quality of the legal submissions, both written and oral, which were made on both sides, we will treat these complaints (which were addressed in submissions) as an aspect of the complaint pleaded in very general terms in Ground of Application No. 1 that the sentence was simply unduly lenient, and the further complaint pleaded in general terms at Ground of Appeal No. 4 that the sentencing court failed to attach appropriate weight to the aggravating factors in the case, but in doing so we are not to be taken as having created a precedent. For the future, a respondent is entitled to know from the grounds of application pleaded, the exact nature of complaints concerning alleged errors of approach by a sentencing court relied upon by the Director of Public Prosecutions to contend for undue leniency. Accordingly, such complaints should be pleaded with specificity and particularity.

52. We were referred to *The People (Director of Public Prosecutions) v. M.S.* [2000] 2 I.R. 592, in which Denham J. (as she then was) had referred to sentencing as *"involving aspects of retribution, deterrence, protection of society, reparation and rehabilitation"*, in support of the argument that the sentencing judges did not adequately consider and

balance all of those (admittedly sometimes conflicting) objectives, and had inadequate regard to the need to punish and deter. Pointing to remarks of *Kearns J. in People (DPP) v. James O'Reilly* [2008] 3 I.R 632 (where a sentence for dangerous driving causing death was found to be unduly lenient) concerning the need in certain cases, as a matter of sentencing policy, for a sentence to satisfy the requirement for general deterrence; and also pointing to general observations by Prof. O'Malley concerning deterrence as a sentencing objective in *Sentencing Law and Practice*, (2nd Ed) at para 2-11; counsel for the applicant submitted that given the huge sums of money involved in the present case, the different number of bank accounts used, the considerable period of time over which the offences occurred and the facilitation of a lavish family wedding, a stronger deterrent message should have been set out.

53. Citing *The People (DPP) v. Morley* [2011] IECCA 19 counsel contended that the failure to address the principle of general deterrence is an error in principle of itself.

54. It was further contended that the sentencing judges afforded undue weight to the mitigating factors of the respondent's guilty plea, personal circumstances and the fact that she had no previous convictions. Counsel submits that there was a disproportionate emphasis on the fact that the respondent was not involved in the activities of the criminal gang that generated the sums, thus tending to inappropriately minimise her culpability in relation to what was a very serious offence. The sentencing judges had adopted a view that the respondent's actions were reckless as opposed to intentional in circumstances where, given the prolonged period of time over which the offences occurred, it must have been obvious to her that there was a disconnect between her husband's legitimate activities and the sums going through her account. It is submitted that although this was acknowledged by the court the overall gravity of her offending, after taking appropriate account of mitigation, was not reflected in the fully suspended sentence imposed.

Submissions on behalf of the Respondent

55. At the outset we were reminded by counsel for the respondent of the by now well-established principles governing an application for review of sentence on the basis of alleged undue leniency. Counsel sought to emphasise that the test is whether there is a *"substantial departure"* from what would have been the appropriate sentence. It was submitted that the test is not whether the sentence was *"out of kilter"* with the norm.

56. We were also asked to note that it has been judicially recognised at appellate level that a sentencing court is entitled to *"go the extra mile"* in extending leniency in an exceptional case where it is proportionate to do so (and we would add where there is an evidential basis providing justification for doing so), and the case of *The People (DPP) v. Kavanagh* [2020] IECA 13 was proffered as an example.

57. The point is made, for what is worth, that the sentencing court had ostensibly treated the culpability of the respondent and of Ms Lukacs as being equivalent, and yet the applicant has not sought a review of the sentence imposed on Ms Lukacs.

58. We were asked to note that in the case of *The People (DPP) v. Sinnott, Long and Joyce* [2021] IECA 42 this court had upheld a wholly suspended sentence of 12 months imprisonment in the case of Ms Sinnott on the basis that it was *"within the appropriate range of the trial judge's discretion."* While counsel for the respondent accepts that the circumstances of Ms Sinnott were of a different nature to those of the respondent, and that perhaps the argument for a wholly suspended sentence was more compelling in Ms Sinnott's case, the case in question does establish that it is within a sentencing court's discretion to impose a wholly suspended sentence where the circumstances of the case are exceptional.

59. Emphasis was placed on the experience of the members of the Special Criminal Court in the respondent's case, and it was submitted that that court was entitled to consider that the interests of justice would not be served *"by imposing on the romantic partners of persons involved in serious criminality, who became involved by reason of that relationship and who would not otherwise have become involved in criminality, immediate custodial sentences."*

60. It was submitted that, save in the case of murder, there is no offence or category of offences where a wholly suspended sentence is excluded.

61. It was suggested that the applicant had failed to establish an error of principle and we were referred to *The People (DPP) v. Bale* [2016] IECA 209 in support of the need to do so.

62. It was submitted that the sentencing court had expressly referenced this Court's decision in *The People (DPP) v. Sinnott, Long and Joyce* (which was true to say, albeit that it was in the context of the sentencing of Declan Brady during the same hearing), and that it may therefore be taken that the sentencing court was cognisant of, and had sought to apply, the relevant principles as set out therein.

63. The case of *The People (DPP) v. McAuley* [2016] IECA 173 was referenced in support of the proposition that even an undoubtedly lenient sentence will not be an error of principle if the sentencing court has recognised and taken into account all relevant factors. It must be more than that. It must be unduly lenient in the sense explained in *The People (DPP) v. O'Reilly* [2008] 3 I.R. 632, namely it must represent a substantial departure from what would be the appropriate sentence in the circumstances of the case.

64. It is said that the sentencing court correctly identified that there was a significant goal in culpability between that of the respondent's husband and that of the respondent. It had gone so far as to say that were it not for her marriage to Declan Brady there was nothing to indicate that she would be otherwise involved in criminality. It was submitted that that was a conclusion that the sentencing court was entitled to come to. Moreover, it was one which could be given substantial weight and which justified the dramatic difference between the sentences imposed on the respondent and on her husband.

65. In regard to the complaint in Ground of Application No. 2, namely that the sentencing judge had failed to nominate a headline sentence, the point is made that a headline sentence of 11 years was nominated in the case of Declan Brady. While no specific headline sentence was identified in the case of the respondent, it was clear from the judgment that the sentencing court regarded her culpability as being significantly less than that of Declan Brady. The post mitigation (but pre-suspension) sentence determined upon was one of three years. It was said to be clear from the judgment that the only discount afforded for mitigation leading to that three-year sentence was the plea of guilty. Moreover, the court had set out when dealing with the case of Declan Brady, that it considered that the guilty pleas in this case (in which all three accused were being sentenced at the same time) justified a discount of 25%. All other mitigating circumstances found reflection in the decision to suspend the three-year term. Accordingly, while no specific headline sentence was identified, the approach of the sentencing judges was nonetheless clear, and it exhibited no error of principle.

66. Emphasis was placed on the fact that all three co-accused were sentenced at the same time, and the court was invited to consider the totality of the Special Criminal Court's sentencing remarks in considering its approach to the sentencing of this respondent. The point was made that the first of the co-accused to be sentenced was Declan Brady, and the certain remarks made in the context of the sentencing of Mr Brady were also intended to apply, or to have a relevance by way of contrast, in the subsequent sentencings of the respondent and Ms Lukacs. In that respect the written submissions filed on behalf of the respondent asks us to have regard to the following reasonably lengthy quotation from the court's sentencing remarks in the context of the sentencing of Declan Brady. The presiding judge said:

> *"In determining the sentence to be imposed on Mr Brady we are required by law to construct a proportionate sentence which synthesises the gravity of the crime committed by the accused and his relevant personal circumstances. This involves following the usual two-stage process. Firstly, the Court must decide what the appropriate starting or headline sentence should be for the relevant offence, having regard to the gravity of the offence, and the range of penalties available. Secondly, the Court must consider whether it is appropriate to adjust the starting or headline sentence to take account of mitigating or excusing circumstances for which credit ought to be given and/or to incentivise rehabilitation, and, if so, to determine how any such adjustment might be structured. This approach reflects that rationale that each case involves an individual offence and offender, and that a sentence in each case must be tailored to the specific facts and circumstances insofar as this is possible. The object of the exercise therefore is not to impose a sentence that is appropriate for the crime but rather to impose an appropriate sentence for the crime because it has been committed by the particular accused person.*
>
> *The first stage of the analysis involves assessing the gravity of the offence with reference to factors affecting the culpability of the accused. These factors may be both mitigating or aggravating. Relevant considerations in this regard include the*

harm done or intended to be done and the state of mind of the offender in relation to the offence. Culpability is affected by whether the conduct in question was intentional, reckless or merely negligent. The harm done or intended by the accused is also relevant to the assessment of gravity. So the objective of the first stage of the analysis is to locate the offence on the scale of gravity and the spectrum of penalties applicable to the offence in question. The second stage of the analysis involves considering any mitigating factors not already included in the calculation of the headline sentence in the first instance.

The inherent gravity of the offence is addressed by the specific statutory enactment setting out the range of possible sentences, which is determined by the legislature and not by the sentencing court which must conduct the sentencing analysis outlined above strictly within the parameters specified by the relevant legislation. By this process the sentencing court endeavours to produce a final sentence which is just and appropriate in the circumstances of the individual case.

In the case of the offences under consideration in this case the legislature has provided that the inherent gravity of the offence in question or the offences in question are such that they should attract a maximum sentence of 14 years' imprisonment. The offences committed by Mr Brady must be located within this range. The general approach adopted and favoured by the appellate courts involves the use of a tripartite scale of gravity. On this basis offences within the lower part of the scale will attract a headline sentence of up to four years and eight months' imprisonment; those within the medium part, nine years and four months; and those within the upper part, up to the maximum possible sentence of 14 years.

In addition, this Court now has the helpful guidance of the Court of Appeal in sentencing for money laundering offences, as is set out in the judgment in People (DPP) v. Samantha Sinnott, Ciaran Long and Bernard Joyce [2021] IECA 42. Having reviewed previous authorities, Ní Raifeartaigh J stated as follows at paragraph 33: "Having regard to the above authorities, it is clear that among the key factors which the sentencing court must consider when identifying a headline sentence are (a) the amount of money involved, (b) the role played by the accused in relation to the money, and (c) whether the conduct of the accused was intended to assist a criminal organisation, and, if so, the nature and scale of that organisation. Frequently, the first two matters are linked insofar as the more central the role of a person within a criminal organisation, if the evidence suggests that a criminal organisation was involved, the more likely it is that larger sums of money will be entrusted to his or her safekeeping either for storage or for delivery to another. Conversely, the more peripheral the involvement of the accused with the organisation, the less likely it is that he or she will be entrusted with large sums of money."

Considering these matters in the context of this case, the total sum of money involved was very significant indeed. It appears from the evidence reasonable to

infer that these offences were part of a broader pattern of activity by the accused in support of a serious criminal gang. He provided high level assistance to the activities of significant criminal organisation on a number of fronts of over a period of time. It follows that he enjoyed the trust of and was closely associated with this organisation. He no doubt enjoyed significant material benefits from his participation in these matters. These are serious aggravating factors propelling his money laundering offences towards the top of the range. The handling of significant cash sums is an essential component of serious organised criminal activity.

In addition, this Court is satisfied that Mr Brady's activities and those activities alone caused his wife and partner to become involved in criminal activities where there is no indication, given their previous good character and absence of previous convictions, that they would otherwise have become involved in such matters.

Having considered all of these factors, we are satisfied that the facts of the offences in question merit a pre-mitigation headline sentence well within the top range identified above, which is a concurrent sentence of 11 years in each case. We are satisfied that this is broadly in line with the facts and considerations in the Joyce case referred to above."

67. Counsel for the respondent submits that it is clear that the sentencing court considered the relevant principles and considered that the offending itself, without considering the mitigation of Declan Brady, justified a sentence of 11 years. The court had then gone on to state, *"Now, we'll deal with Ms Lukacs and Mrs Brady on the basis of – without repeating the same principles which equally apply in their case."* In counsel for the respondent's submission, while the appellant contends that the presiding judge in the sentencing court *"in contradistinction to how he dealt with the co-accused (where he nominated a headline sentence of 11 years) failed to accord with the two tier approach"*, this fails to take account of the fact that the sentencing court clearly intended the sentence in respect of all co-accused to be read as one decision, and it was submitted that it was not open to the applicant to parse the courts sentencing remarks to suggest otherwise.

68. It was submitted that when the sentencing decision is read holistically, it is clear that the offending is at the upper end; that, before considering the level of culpability of the respondent that a headline sentence of 11 years would be appropriate; that there is a substantial difference in the level of culpability between the respondent's husband on the one hand and the respondent and Ms Lukacs on the other; that the sentence of three years imprisonment is proportionate as a reduction down from a higher headline sentence on the basis of her guilty plea; and that that period would be suspended having regard to all the other mitigating factors in the case. It was submitted that this approach displayed no error.

69. We were reminded of remarks by this Court in a number of cases, which we do not find it necessary to rehearse again, to the effect that while the tiered approach to sentencing is

recommended as best practice, the mere fact that this practice has not been followed will not necessarily imply an error of principle.

70. It was further submitted that there was no evident error in the sentencing court's approach to discounting for mitigation. It was submitted that an appropriate reduction had been made for the early plea, and that it was not then an error of principle to go further and suspend the resultant sentence to reflect the other mitigating circumstances in the case.

71. The suggestion that the sentencing court had failed to have regard to the gravity of the offence was rejected as misconceived. There was express recognition by the sentencing court that the total sum indicated by counsel for the applicant, namely €770,000, was a *"very very significant amount of money"*. Moreover, it was not correct to say, as had been suggested by the applicant, that the sentencing court had confined the respondent's culpability to that of being a woman under the instruction of her husband. What the court had in fact said was *"we do realise and accept that to a certain extent she was under the instruction of her husband"* (emphasis added).

72. The written submissions on behalf of the respondent also addressed the contention that the sentencing court had had no regard to deterrence as an objective in sentencing. The point was made that there is no requirement for a sentencing court to expressly reference the specific sentencing objectives that it is pursuing in a case. Be that as it may, the significant custodial sentence for the co-accused clearly demonstrated an intention by the sentencing court, in the respondent's view, that it would provide the required level of general deterrence.

73. The suggestion that there was an unbalanced emphasis on the fact that the respondent was not involved in the underlying offending behaviour was rejected as misconceived. It was submitted that the sentencing court heard the evidence and was best positioned to give appropriate weight to that evidence.

74. In conclusion the respondent submitted that the sentencing court's decision in sentencing had been flawless and was one in which it had struck an appropriately fine balance in addressing on the one hand the serious nature of the offending conduct and on the other hand, the low level of culpability of the respondent. It was submitted that the sentence imposed was not unduly lenient because it did not represent a substantial gross departure from the norm, i.e., from what would be the appropriate sentence in the circumstances of the case.

Analysis and Decision

75. In considering the circumstances of this case we have carefully considered, and have afforded significant weight, to the stated reasons of the sentencing court. It is necessary to state at the outset that we do not consider the failure to indicate a specific figure in respect of the headline sentence to apply in the respondent's case to have been an error of principle. We very much take the point that the entirety of the court's sentencing remarks, which related to all three co-accused, have to be considered; and that in

circumstances where it was a judgment applicable to the cases of all three, it is not appropriate to parse it and seek to isolate only those remarks which are said to be specifically applicable to the respondent's case. It is clear from our consideration of the court's sentencing remarks in their entirety, that it considered that the guilty pleas in all three cases should be reflected in a 25% discount from the headline sentences in each case. The provisional sentence nominated by the sentencing court in the case of the respondent after discounting for the plea of guilty, but not having discounted for any other mitigating factors at that stage, was one of three years imprisonment. Accordingly, by a process of reverse engineering it is possible to say with reasonable confidence that the sentencing court had in mind a four-year headline sentence in the case of the respondent.

76. We do not understand the applicant to be complaining about the extent of the specific discount applicable to the guilty pleas. However, she does complain, inter alia, about the overall discount resulting in an entirely suspended sentence. Her case, as we understand it, is that having regard to where the sentencing court ultimately ended up there are strong grounds for believing that the sentencing court had fallen into error.

77. She suggests as a possible error that whatever (unstated) headline sentence the Special Criminal Court had in mind to apply in the case of the respondent must inevitably have been too low, having regard to where the court ultimately ended up. We have some sympathy for that argument, and this is a matter that we will come back to.

78. Further, as we understand it, the applicant contends that having regard to the overall gravity of the case, the custody threshold was passed on any view of it and that for the sentencing court, having already taken into account the most significant mitigating circumstance, namely the plea, to have then gone on to suspend the entirety of the three year term of imprisonment that the court had in mind to otherwise impose at that point, was (absent truly exceptional circumstances) simply inappropriate and an error in principle, which resulted in an unduly lenient sentence. She maintains that the extent of the further mitigation to be considered did not justify an ultimate disposition at a level below the custody threshold.

The Assessment of Gravity

79. As in all cases involving a statutorily created offence with statutory penalties the starting point must be the range of available penalties, which in turn reflects the cardinal ranking which the legislature has afforded to the type of criminal conduct to be sentenced. The concept of cardinal ranking in sentencing scholarship refers to how seriously the legislature ranks one type of criminal offending compared with another or other types of criminal offending. In the case of money laundering offences contrary to s. 7 of the Act of 2010, the Oireachtas has provided for a range of penalties ranging from non-custodial options up to a maximum of 14 years imprisonment, and accordingly it has a cardinal ranking equivalent to other offences for which similar penalty ranges are available, such as for burglary prosecuted on indictment. Where an offence committed in any individual case lies on the range indicated is known as it's ordinal ranking, and that falls to be

determined by the sentencing court. In doing so, the sentencing court must assess the gravity of the offending conduct in the particular instance, having regard to the offender's culpability and the harm done (or that might potentially have been done).

80. In so far as money laundering offences contrary to s .7 of the Act of 2010 are concerned, assistance may be gleaned from the guideline judgment of this Court in *The People (DPP) v. Sinnott, Long and Joyce* [2021] IECA 42. That was a case in which, in order to assist us in formulating appellate sentencing guidance, and consistent with an approach we have adopted in the construction of some earlier guideline judgments, we heard several sentencing appeals involving the same species of offence together (i.e., s. 7 money laundering offences), so as to obtain the benefit of a wider range of views and submissions than would otherwise have been possible. Giving judgment for the Court in the three cases concerned, Ní Raifeartaigh J. having reviewed the judgments in *The People (DPP) v. Kavanagh* [2020] IECA 13; *The People (DPP) v. Ajibola* [2019] IECA 253 and *The People (DPP) v. Carew* [2019] IECA 77, respectively, said (at paras 33 and 34):

> *"33. Having regard to the above authorities, it is clear that among the key factors which the sentencing court must consider when identifying a "headline" sentence are (a) the amount of money involved, (b) the role played by the accused in relation to the money, and (c) whether the conduct of the accused was intended to assist a criminal organisation and if so, the nature and scale of that organisation. Frequently, the first two matters are linked insofar as the more central the role of a person within a criminal organisation (if the evidence suggests a criminal organisation was involved), the more likely it is that larger sums of money will be entrusted to his or her safekeeping either for storage or for delivery to another. Conversely, the more peripheral the involvement of the accused with the organisation, the less likely it is that he or she will be entrusted with large sums of money.*
>
> *34. The above factors seem to be of particular relevance when selecting the headline sentence, bearing in mind that the maximum sentence is one of 14 years. So, for example, in the Kavanagh case, a 6-year headline sentence was identified where the sum of money was €829,000 and his role seems to have been limited to being that of a delivery person, and in the Carew case, the Court approved in principle of the identification of a 9- or 10- year headline sentence where the amounts in question (i.e. for the two new offences) were (the increasingly greater) sums of €191,000 and €351,000 respectively and the role of the appellant was central to a criminal organisation which was large and sophisticated. A headline sentence of 4 years was identified in the Ajibola case where the sum involved was €32,000 and there was no evidence of a wider criminal organisation with which he was operating. In all cases, as usual, the mitigation may operate to reduce the headline sentence to a greater or lesser degree. As pointed out in Kavanagh, the Court may be disposed to go the "extra mile" where it is persuaded that a suspensory portion of a sentence will be sufficient to deter the offender from reoffending. And as Edwards J pointed out in Ajibola, while the maximum sentence*

is one of 14 years for the offence of money laundering, there is a full spectrum of options, commencing with non-custodial options."

81. Applying those principles to the circumstances of the respondent's case, it is clear that the amount of money involved, being circa €770,000, was very significant.

82. Moreover, it was generated through direct involvement by the respondent's husband in the activities of an organized criminal gang. The evidence was unclear as to the nature and scale of that organization. However, it is reasonable to infer from what was found in the searches of the commercial premises at 52 Grant Drive, Greenogue Industrial Estate, and of the family home at 19 The Park, St Wolstan's Abbey, Celbridge, that it was a sophisticated organization which was very likely engaged in significant criminality, given that its members had access to an extensive variety of firearms and weaponry (15 assorted firearms and ammunition comprising of a sub machine gun and silencer, a Kalashnikov assault rifle, revolvers and semi-automatic pistols), and logistical support and resources (including warehousing equipped with a stolen forklift, equipment for creating false number plates, vehicle tracking devices and the substantial amounts of cash in various currencies found in both locations). That having been said, there is no suggestion that the respondent personally was directly involved in such activities. Her culpability arises from her indirect involvement, both active and passive, in the laundering of the proceeds of their criminal conduct.

83. In so far as the respondent was involved in the laundering of the monies concerned, she had allowed her bank accounts, both those in her sole name and in the joint names of herself and her husband, to be used for the lodgment, holding and dispersal of undeclared and illicitly obtained funds, including facilitating the movement of monies abroad. In so far as illicitly obtained monies were used to fund mortgages at home and abroad, this had the effect of laundering the funds in question in that the properties concerned could be later sold with no questions being asked by the purchaser as to how they were acquired, and in circumstances where the proceeds of any sale, emanating from a legitimate purchaser, could then be readily disbursed.

84. While the evidence does not suggest that the respondent had any detailed knowledge of the organization with which her husband was involved, or concerning precisely what criminal activity it (or for that matter, her husband) was engaged in, the respondent was nonetheless aware that her husband was receiving undeclared income from what, at the very least, she must have suspected to be criminal activities. In so far as she turned a blind eye to that, she is significantly culpable. Further, she benefitted from the proceeds of those illicit monies to at least some degree, in that they were used in part to fund the mortgage on the family home, and to pay for the lavish wedding of a close relative. As the presiding judge in the Special Criminal Court observed, the obvious question arises as to *"[w]here did she think this manna from heaven was coming from?"*

85. While counsel for the respondent characterised her failure to question where the money was coming from as *"a sin of omission rather than commission"*, her involvement, although mainly so, was not entirely passive. She was involved in the management of a

property abroad funded through undeclared income and would travel to Spain once a year to visit it. While the prosecution's witness accepted that her visits to this property did not constitute holidays, and that she would not have benefitted in that way, these annual visits by her do provide evidence of active involvement in the management of the Spanish property concerned.

86. In terms of the respondent's culpability, we recognize that she was in an invidious position by virtue of being married to her co-accused Declan Brady, and that the nature of their relationship would have rendered it difficult for her not to have co-operated with him or to bring the matter to the attention of the authorities. That having been said, no evidence of her being subjected to any actual duress was offered. As we understand it, what is being relied upon was duress of circumstances rather than any specific fear, or exposure to any kind of specific threats or coercive action, whether emanating from Declan Brady or those he was associated with.

87. In terms of the headline sentence, we are satisfied that the custody threshold was unquestionably crossed in the circumstances of this case. That is not to say that the ultimate sentence would inevitably be a custodial one, but the nomination of a headline sentence inside (and indeed well inside) the custodial range was certainly required as a starting point. In that regard, we would observe that the sentencing objectives of retribution, deterrence and reform/rehabilitation were all potentially engaged by the circumstances of this case, but that arguably the need to protect the public, and society, from the activities and predations of organized criminal gangs would have justified an approach that afforded some priority in this instance to retribution and deterrence. The nomination of an appropriate, but nonetheless proportionate, headline sentence provided the mechanism for doing so in the circumstances of the case. This would still leave scope for the promotion of the objectives of reform/rehabilitation, to the extent appropriate to and merited by the circumstances of the case, at the later stage of discounting from the headline sentence for mitigation. However, any such discounting could not in this case see the subordination of the objectives of retribution and deterrence to those of reform/rehabilitation. The respondent's conduct needed to be appropriately punished with a substantial custodial pre-mitigation sentence, both to mark the wrong that she had done and to reflect society's deprecation and disapproval of it, and also to provide general deterrence to others who might be minded to similarly offend.

88. Taking these considerations into account we believe that the gravity of the case would have merited a headline or pre-mitigation sentence of six years in the respondent's case, rather than the four-year headline sentence that we infer the sentencing court as having had in mind. In nominating our figure of six years imprisonment we have also had regard to the substantial sums involved; the nature and scale of the criminal organization responsible for generating the funds to be laundered (to the extent that it is known); the role played by the respondent; her relationship through marriage with one of the co-accused; the duration of her offending conduct, the level of the respondent's actual knowledge; and the extent to which the respondent benefitted personally.

89. It follows that the headline sentence which we infer the sentencing court to have had in mind, namely one of four years imprisonment, was an inappropriate starting point that failed to reflect the gravity of the respondent's offending conduct, and it represented an error of principle.

90. In so far as mitigation was concerned, the respondent was entitled to a significant discount on whatever headline sentence was appropriate. She had pleaded guilty at an early stage, had been co-operative, and was of previous good character. She was a first-time offender, and it may reasonably be inferred that she represents a low risk of re-offending. She has also made substantial progress in addressing the issue of her outstanding tax liabilities, and in doing so has lost the benefit of the money gifted to her by her father which was used towards the acquisition of their first family home at 39 Glencarrick Drive, Firhouse. She was also entitled to have a number of adversities in her personal life taken into account, including that during their married life her husband's legitimate business collapsed during an economic downturn, with predictable adverse financial implications for the family unit; the fact that her (now adult) children all have mental health difficulties; and her discovery of her husband's infidelity during the investigation leading to this prosecution.

91. The sentencing court was disposed to afford a discount in the order of 25% for the plea of guilty alone, and we have not understood the applicant to be suggesting that a discounting at that level for the plea was inappropriate. Approaching the matter on the basis that the headline sentence was four years imprisonment as we have been disposed to infer, the discount for the plea would have been twelve months, leaving a resultant three-year custodial sentence before any further discounting for mitigating factors not yet taken account of. The sentencing court then went on to suspend the entirety of that three-year period to take account of what it described as *"the balance of the matters"*.

92. In our belief the level of discounting afforded for the balance of the matters was excessive, absent exceptional circumstances. It amounted to an error of principle, not least because it took the ultimate disposition below the custody threshold once again. Further, it was disproportionate to the true level of mitigation provided by any mitigating and personal circumstances of the respondent that had not yet been taken into account. It is well established that a wholly suspended sentence may be imposed where exceptional circumstances justifying it exist, but they did not exist here. While the presiding judge did not expressly reference promotion of the objectives of reform/rehabilitation as having influenced the sentencing court's decision to wholly suspend the aforementioned three year term, we have no difficulty in assuming that as a matter of likelihood their decision may indeed have been influenced to some extent by a desire to promote the respondent's reform, given the emphasis in the curial part of the judgment on *"the absence of previous convictions"* and the reference to *"allowing for the circumstances of Mrs Brady."* That having been said, while there was certainly scope for some generosity, and the showing of considerable overall leniency, on that account, the extent to which leniency was in fact afforded cannot be justified in our view. On whatever basis it was done, whether that was wholly or partly in promotion of the objective of

rehabilitation/reform, or in the promotion of some other unspoken sentencing objective, it had the effect of subordinating or undermining the objectives of retribution and deterrence which we consider were also important, and ought to have been prioritized, in the circumstances of the case. The excessive discounting for mitigation was therefore in our view a further error of principle.

93. The result of all of this was that on each count respectively, (i) a headline sentence may be inferred, that we consider to have been too low; and (ii) there was an excessive discounting for mitigation other than for the plea of guilty; leading to an ultimate sentence that represented a substantial departure from what would have been the appropriate sentence in the circumstances of the case, and one which was unduly lenient on that account.

94. Having found the sentences imposed by the court below to be unduly lenient, we must quash them and proceed to re-sentence the respondent.

Resentencing

95. We will nominate a headline sentence of six years imprisonment on each count. Further, we will discount from that by four years to reflect the substantial mitigating circumstances in the case, to include the early plea of guilty.

96. Further, while we believe that the respondent must serve a period in custody, and that it would not be appropriate, absent exceptional circumstances, to wholly suspend the balance of the remaining two years imprisonment, we are nevertheless prepared to suspend the final twelve months thereof, on condition that she enters into a bond in the sum of €100 to keep the peace and be of good behaviour for a period of two years following her release. We do so in furtherance of the objective of promoting the respondent's reform, in circumstances where she is a first-time offender and we believe her to represent a low risk of re-offending. It is also intended to reflect recognition on the Court's part that for the respondent to have to commence serving a custodial sentence at this remove from the original sentencing will represent a disappointment to her. Finally, we would observe that while the custody threshold has been exceeded in the circumstances of this case, we regard this as being a case where the fact that the Court has found it necessary to impose a custodial sentence is of greater significance than its duration.