

UNAPPROVED

NO REDACTION NEEDED



THE COURT OF APPEAL

[127CJA/21]

Neutral citation number: [2022] IECA 52

The President

Kennedy J.

Donnelly 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

AND

DENISE CRIBBIN

RESPONDENT

JUDGMENT of the Court delivered on the 8th day of March 2022 by Birmingham P.

1. This is an application brought by the Director of Public Prosecutions pursuant to s. 2 of the Criminal Justice Act 1993, seeking to review on grounds of undue leniency a sentence that was imposed on the respondent on 1st July 2021 at Wicklow Circuit Court. The sentence was imposed in circumstances where the respondent had pleaded guilty to the offence of making a false statement contrary to s. 12(a) of the Criminal Law Act 1976. The sentence sought to be reviewed is one of two years' imprisonment, suspended in full. The offence in question carries a maximum sentence of five years' imprisonment.

Background

2. The offence in question was precipitated by events arising out of a single car collision which took place in the early hours of 12th July 2016. During the evening beforehand, the respondent and the injured party had both been socialising in the Step Inn in Stepside. They met and left the premises. The respondent drove them in her car to Enniskerry where there was to be some event at a hotel, and a collision occurred on a sharp bend approaching the entrance to Enniskerry Village. The injured party stated that, at this point, the respondent had said that there was no need for the Gardaí to be involved and that any injuries could be sorted out between them. The noise caused by the crash alerted a young man who lived close to the accident scene, and in spite of being told not to do so by the respondent, he contacted Gardaí. Gardaí were dispatched towards the scene. In the aftermath of the incident, the respondent and the injured party had started to walk towards Enniskerry Village. At about 2.30am on 12th July, Gardaí came across the two individuals. The injured party stopped and engaged Gardaí in conversation, but the respondent continued to walk on. Subsequently, Gardaí could not locate her when they sought to do so.

3. The following day, when next on duty, one of the Gardaí who had been despatched to the scene received a phone call from the mother of the respondent, wherein she made some suggestion that there was more to the road traffic accident than one might expect. On the evening of 12th July, the respondent, in the company of her mother and a friend, met the injured party in the Golden Ball, another licensed premises in Stepside. On this occasion, there was a suggestion or accusation made that the injured party had sexually assaulted the respondent, and that it was this that had given rise to the accident. At that point, the injured party contacted the Garda Station, told Gardaí that he was frightened, that he had met the driver of the vehicle, and that she had threatened that she was going to complain that he had

sexually assaulted her. At that point, there were essentially parallel investigations: an investigation into the road traffic accident and the failure by the driver to remain at the scene; and an investigation into the suggestion of a sexual assault.

4. Both the injured party and the respondent were invited to make statements in the course of these investigations; the injured party did so on 10th August 2016, 18th November 2016, and 17th January 2017. Initially, the respondent agreed to make a statement, but then declined to do so on the occasion when arrangements had been made for her to have her statement taken. In those circumstances, a prosecution was initiated for dangerous driving and failing to remain at the scene of an accident. Summonses were issued, and the respondent then made a statement of admission on 18th August 2016. She accepted that she was the driver of the vehicle, but critically, indicated that there were “other factors involved”.

5. In December 2016, the respondent submitted a document set out in bullet point form. It involved allegations that the injured party was drunk, that he had given her a false name, that he had gotten into her car, had pestered her, had sexually assaulted her, had been dragging at her breasts, and had put his hands between her legs, despite her shouting at him to leave her alone. She alleged that he would not leave her alone while she was driving. She described how she wanted to ring Gardaí, but that at one point, he had her arm bent behind his back. She suggested that he wished to extort money from her.

6. The respondent indicated that she wished to make a formal statement of complaint; the count on the indictment is in relation to this statement. It was made by the respondent on 7th April 2017 and largely reflects the contents of the bullet-point document. At this stage, Gardaí began a formal investigation into the alleged sexual assault. There were interviews with a number of witnesses, and these contradicted the respondent’s statement. It became apparent to Gardaí that the statement had been false. The respondent was separately prosecuted for a dangerous driving offence, to which she pleaded guilty, and that was dealt

with by way of a €500 fine and a twelve-month disqualification from driving, handed down on 21st June 2018.

7. On 10th August 2018, the respondent was arrested and interviewed in relation to the making of a false statement. At that point, she furnished a prepared statement, standing by the original complaint and refuting any suggestion that the allegation was false.

8. The sexual assault investigation into the actions of the injured party was concluded in January 2018 when the investigating Garda received a direction from the DPP that no prosecution would be pursued, meaning there had been a live, formal investigation for a period of approximately eight months. However, the respondent had effectively maintained some level of false accusation from 12th July 2016 until her guilty plea was entered on 7th July 2020, a period of just under four years. It is noted that she pleaded guilty over a year after the matter was returned for trial, which had occurred on 1st April 2019.

9. The injured party furnished the court below with a victim impact statement setting out how the false accusation, the investigation, and the actions of the respondent had affected his life. He stated that at one stage, when he was in a public house in the area, the respondent and her mother had been abusive towards him (something which the respondent denies). He alleged that there had been whispers about him around town, that he felt “guilty until proven innocent”, and that the allegations made it difficult for him to find employment. He noted the impact it had on his mental health, and explained that the fear of not being able to clear his name caused him to emigrate.

The sentence

10. Sentence was imposed on the respondent on 1st July 2021. The initial sentence hearing took place on 13th January 2021, a hearing which was continued the following day. In the course of the January hearing, the trial judge canvassed the possibility of the matter being put

back, providing an opportunity for further information to be put before the Court which might provide a basis for the matter being dealt with non-custodially. It emerged that he had been researching the matter. In particular, he had referenced Professor Thomas O'Malley's work on sentencing and sexual offences, and had concluded that the offence that he was being asked to deal with was one where a custodial sentence would have to be considered, and where indeed that was the likely outcome unless very significant information was put before the Court which would provide a basis for dealing with the matter non-custodially. Counsel on behalf of the respondent agreed with alacrity to the judge's suggestion.

11. When the matter resumed in July, there was a report from a consultant psychiatrist before the court and also a report from the then accused's general practitioner. In the course of the sentencing hearing, the judge rehearsed the circumstances of the case and was of the view that while the respondent's plea of guilty could not be considered an early plea, it was "of significant utility" that the respondent had stopped wasting court time by entering her plea. The judge took the view that, apart from the road traffic offence, which formed the background to the case, the accused came before the court with no prior convictions, but that given the seriousness of false accusations such as these, they should usually result in an immediate custodial sentence.

12. The general practitioner's report explained that the respondent had not been a patient of the practice at the time of the events leading up to the incident the subject matter of the case, that she had first joined the practice in April 2018, and that the doctor had first seen her in May 2019. The GP's report referred to immense stress levels between 2014 and 2018, and stated that the respondent had turned to alcohol and gambling. In January 2021, the GP referred her for a further psychiatric opinion (a psychiatric appointment had been declined at an earlier point in time).

13. The report of the psychiatrist, Professor Colin O’Gara, also referenced the respondent’s difficulties with gambling and alcohol, as well as the difficulties she was experiencing with her equestrian business, and the further stress that she had been under in the past when providing full time care for her father. Professor O’Gara saw the respondent presenting with problematic personality traits which, at times, reached the criteria for a diagnosis of a personality disorder.

14. The judge referenced the severe alcohol use disorder and generalised anxiety disorder of the respondent, which were alleged as going towards explaining her behaviour in the context of the charge she faced. Specifically, in relation to the respondent’s “doubling down” with regard to her false statement in August 2018, the psychiatrist stated that there was evidence of “severe emotional dysregulation” on the part of the respondent, being the explanation for the events of that time. The judge noted that the respondent was due to attend an in-treatment rehabilitation programme in order to deal with her alcohol dependency and other issues, and he considered that she was “making strides towards necessary improvements in her life”.

15. In the course of his sentencing remarks, the judge referred to the victim impact statement that had been provided by the injured party and made specific reference to the fact that the injured party had instituted civil proceedings in the High Court against the respondent, seeking damages for *inter alia* harassment, intimidation, and infliction of emotional harm. The judge considered that the false allegations were not at the upper end of the scale of sexual offences. He noted that the respondent continued with the allegation, even when it was “of no use to her”.

16. The judge then identified the appropriate sentence as one of two years’ imprisonment. Having done so, he said that in mitigation, he took account of *inter alia* the guilty plea, the remorse of the respondent, and the fact that it seemed unlikely she would end up in this

situation again. As a result, he suspended the sentence in its entirety, subject to the condition that the respondent remain under the care of her doctor and her psychiatrist.

17. In seeking a review of the sentence, the Director submits that the sentencing judge erred in law and in fact in nominating a headline sentence of two years, which, she says, had insufficient regard to the aggravating factors that were present, and further complains that having nominated a headline sentence that was itself too lenient in all the circumstances, he proceeded to suspend the sentence in its entirety. It is said that the sentencing judge failed to attach any, or any sufficient weight to the principle of general deterrence, and instead, put excessive weight on the mitigating factors that were present. There is specific criticism of the fact that the judge fell into error in suspending the whole of the sentence, with the result that the ultimate sentence was unduly lenient. It is fair to say that in general, the Director does not take major issue with the sentence itself, but rather, the focus of her criticism is on the decision to suspend the sentence in its entirety.

18. For her part, the respondent says that this was clearly a case where the trial judge approached the task of sentencing with conspicuous care and attention. The sentence arrived at, it is said, was a proper one, and while some might regard it as lenient, it was undoubtedly one that was open to the judge and fell firmly within his margin of appreciation.

Discussion and decision

19. We begin our consideration of this issue by saying that we regard this as offending of very real seriousness. An offence contrary to s. 12(a) of the Criminal Law Act 1976 is capable of being committed in a number of different ways. However, when the offence involves a false allegation of sexual offending, directed against an individual, in our view, it is offending that is inherently serious. A false allegation against an individual is likely to cause damage to the reputation and standing of the person against whom it is made. It is to be

expected that it would give rise to very considerable stress and anxiety. Obviously, the situation would be more serious still if an actual prosecution resulted and/or if the individual against whom the allegation was made suffered a loss of liberty. It is the situation that these additional features of prosecution and loss of liberty are not features of the present case. Nonetheless, there are aspects present which aggravate the gravity of what is an inherently serious offence.

20. In this case, the initial false reports would appear to have been designed to advantage the respondent at a time when she was going to be, or could expect to be, the subject of an investigation under the Road Traffic Acts. Obviously, dangerous driving and failing to remain at the scene of the accident are in no sense trivial matters, and the seriousness of driving offences is obviously increased if the driving at the time of the accident was not covered by insurance, as was initially (though wrongly) believed to be the situation by the respondent. However, an accusation of sexual assault is of a different dimension of seriousness. The aspect that sets the present case apart from many is the duration that the allegation persisted, and the fact that even when there were opportunities to withdraw and set the matter right, they were not taken, and instead, the respondent persisted with her allegation and, as it was put during the course of the sentence hearing, “doubled down”. It seems to us that offending of this seriousness is so significant that it crosses the custody threshold. It is a case where a custodial sentence of some dimension was inevitable and could not have been avoided.

21. We understand the reluctance of the sentencing judge to incarcerate someone who had not offended previously, and who had documented difficulties in life. We do acknowledge that there were factors present by way of mitigation, including the guilty plea, the expressions of remorse, and that, by the time of the resumed sentence hearing at least, the accused was addressing difficulties in her life. These were factors to which a sentencing court was entitled

to have regard, and indeed was obliged to have regard, but in our view, they did not provide a basis for a fully non-custodial disposal.

22. Therefore, being of the view that the sentence imposed involved an error in principle, we are obliged to resentence. In doing so, we will identify a headline or pre-mitigation sentence of three and a half years' imprisonment. We believe that there were factors present that would justify a structured sentence, with a part-suspended element. In circumstances where, as we have already indicated, we believe that a decision to suspend in full amounted to an error in principle, we will suspend the final two and a half years of the sentence. In deciding on the sentence that we have, we have had regard to up-to-date information that has been put before us, and we have also taken account of the fact that we recognise that being resented at this stage and being required to serve a period in custody for somebody who must have believed that they had avoided custody will be difficult.