



THE COURT OF APPEAL

[222/21]

**The President
McCarthy J.
Kennedy J.**

BETWEEN

THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

AND

REECE LAMBERT

APPELLANT

**JUDGMENT (*ex tempore*) of the Court delivered on the 28th day of March 2023 by
Birmingham P.**

Introduction

1. Before the Court is an appeal against severity of sentence. The sentence under appeal is one that was imposed on 8th November 2021 in the Dublin Circuit Criminal Court. It is a sentence of three years and two months detention. It might be noted this is not the first time the appeal has been before the Court, and it is the situation that when it first appeared in the Court list, that this Court raised questions as to whether any issue arose by reason of the fact that the appellant had been sentenced while a minor, while still short of his 18th birthday, but was coming before the Court by way of appeal at a time when he had attained his majority. The question was raised as to whether the Court was in any way constrained. That resulted in the Court receiving written and oral submissions and that issue has been the subject of a separate judgment, *DPP v. Reece Lambert* [2023] IECA 47, a judgment that was linked to another case, that of *DPP v. Cian O’Leary* [2023] IECA 48 that appeared to be raising related issues.

Background

2. The background to the case is to be found in events that occurred on 2nd January 2020 in the Thorndale Avenue area of Artane, County Dublin. There, an encounter took place between two groups of teenage boys. An aspect of the incident was video recorded and broadcast on social media. In particular, it might be noted that the sentencing Court, and now this Court, has had an opportunity to watch a short clip, which apparently was posted on social media, which shows the injured party on the ground in a very distressed state. That such a clip had been posted adds an additional dimension to this offence.

3. In the course of the incident, the complainant and injured party, Mr. Bartosz Bulanda, suffered significant injuries to his hands, face and head. The appellant was initially charged with

offences contrary to ss. 3 and 4 of the Non-Fatal Offences Against the Person Act 1997, s. 11 of the Firearms and Offensive Weapons Act 1990, and violent disorder contrary to s. 15 of the Criminal Justice (Public Order) Act 1994, but entered a plea of guilty to the s. 3 count, a plea that was acceptable to the Director. The initial sentence hearing took place on 29th July 2021, at which point there was a probation report before the Court. However, the case was adjourned to a date in October 2021 in order to facilitate the preparation of an updated probation report, a course of action which had been recommended by the Probation Service.

4. The incident of 2nd January 2020 involved a fight between two gangs of teenage boys or youths; it was estimated to have involved some 25 youths. The initial report relating to the incident, which came to the attention of Gardaí and saw Gardaí despatched to the scene, referred to the fact that some of the participants had weapons such as baseball bats, poles and crowbars. On the account of the injured party, he was one of a group of some seven people who were in the park, when a larger group, estimated to be of the order of 25 people, arrived, some of whom were carrying poles and other weapons. The injured party and his group ran from the scene. It appears that the injured party's position was at the back of the group as they ran from the scene. The injured party described himself as having been pushed to the ground, at which point he was initially hit by a pole, and then, while he was on the ground, he remembers being hit again with a pole and being kicked and hit. To use his own language, the injured party realised afterwards that he had been "sliced", but he did not actually remember that. Following the incident, the injured party was brought to Beaumont Hospital, which was nearby, with injuries to his fingers on both hands. A report constructed by Mr. Jamie Martin Smith, a Consultant plastic and reconstructive surgeon stated as follows;

"This patient presented to Beaumont Hospital on the 3rd January 2020 with multiple injuries to his left and right hand following a report of an attack with a machete. He also had a significant injury to his lip and nose. He was then transferred to Connolly Hospital Blanchardstown where he underwent surgery on the 3rd January."

5. Following this, the injured party underwent a general anaesthetic, and his various injuries were treated. It was necessary to amputate the tip of the little finger of his right hand. Such was the extent of the hand injuries that he required full casting on both hands for six weeks. The injured party also suffered significant facial lacerations and the initial expectation was that he would be left with an obvious and significant scar. The injured party provided a victim impact report to the Court and referred to the very significant impact that the incident had had on him, referring to the fact that the physical scars that he had been left with will be a lifelong reminder of the terrible day. It is the case that in the aftermath of the incident, the family moved from Ireland to Poland – the injured party's family were originally from Poland. It should be explained that the case against the appellant was presented on the basis of joint enterprise. It seems that he was in fact the only person to be charged arising from the incident. He was charged in circumstances where he was identified as a suspect, and then a search warrant was obtained in respect of his home, and during the course of the search, a pair of runners was seized by Garda. There was a blood spot on the runners. A DNA profile was extracted and that DNA profile matched the DNA profile of the injured party.

Personal Circumstances of the Appellant

6. In terms of the appellant's background and personal circumstances, the Court heard that he had six previous convictions recorded, but that all those convictions related to a single incident which had occurred on 20th March 2020, when the appellant and another person were apprehended in the vicinity of Mountjoy Prison in possession of a number of controlled drugs, which they were trying to throw over the wall to persons inside the prison. The six convictions that are recorded are explained by the fact that different types of drugs were involved. The matter was dealt with by way of the application of the Probation of Offenders Act 1907, as amended in the Children's Court on 11th March 2021. The sentencing Court was told that the appellant had a supportive family, with reference to the fact that his mother had accompanied him to Court at all times.

7. Apart from the probation report, to which there has already been reference, a number of other professional reports from psychologists and speech and language therapists and an occupational therapist were put before the Court. From the reports, it emerges that the appellant lived with his mother and her partner, his stepfather, and two younger siblings. He had left secondary school in September 2019, and thereafter had attended Youthreach. The psychologist's report indicated that the appellant's daily functional skills were in the extremely low range. A Wechsler Adult Intelligence Test indicated that he was in the borderline mild range of disability. The psychologist who prepared the report also noted that the appellant's level of verbal communication was reduced throughout the assessment. It may be noted that the psychologist, speech and language, and occupational therapy evaluations were all initiated prior to the offence the subject of the present proceedings, and were undertaken in circumstances where the injured party's mother had sought an Assessment of Need from the Health Service Executive. The occupational therapist's report indicated that the appellant's profile would be consistent with a diagnosis of developmental coordination disorder.

8. The probation reports saw him as being at moderate risk of reoffending, and the primary risk was seen as being association with negative peers. While the appellant had seemed to do well at Youthreach for a period, he had been asked to leave following an occasion when a number of associates of his arrived at the Youthreach Centre on bicycles. Thereafter, he had been undertaking part-time work with his stepfather, fitting kitchens, one day a week.

The Approach of the Trial Judge to Sentencing

9. It might be noted that the trial judge's approach to sentencing was particularly careful and considered. The judge did not proceed to sentence when the evidence on the sentence hearing concluded, but rather, she put the matter back for the preparation of a further report. On the adjourned date, when it came to the imposition of sentence, the judge introduced her sentencing remarks in these terms:

"This assault was persistent and sustained, and while the victim was defenceless on the ground, a number of youths, including the accused, with weapons, beat him savagely. It was bordering on barbaric. The injuries sustained both physically and mentally, included an amputated finger, are lifelong, and the victim, a young man, moved with his family in the aftermath of this assault to Poland. The damage done has also had a significant impact

on the victim's family, and their peace of mind and their enjoyment of life has been significantly affected."

10. In the course of her sentencing remarks, the judge indicated that she saw the offending as being at the upper range of the offending that is provided for under s. 3 and explained that she was of that view because of the culpability involved and the harm done. The judge then proceeded to the task of identifying a headline or pre-mitigation sentence and she did so in these terms:

"The Court views this offending as at the upper range of the offending provided for under s. 3, given the culpability involved and the appalling harm done. It is an example of a sentence which the Court believes has to have as a headline sentence of five years where the maximum sentence is five years. Taking mitigation into account, the appropriate sentence is three years and 10 months. The Court takes the fact that the accused was a minor at the time of this offending also into account, and separately reduces by a further four months to acknowledge same."

The Appeal

11. The appeal today has focused in the main on two issues. First of all, there is the selection of five years as the headline or pre-mitigation sentence. It is argued on behalf of the appellant that while that might possibly be regarded as appropriate and beyond criticism if the offence was one that had been committed by the adult, that it was not appropriate when the offence was committed by a 16-year-old, and was not appropriate when the Court was being called on to sentence someone who was a minor. While, as we will see, there was a degree of confusion as to whether the accused had just turned 18, or was just shy of 18 years of age, the appellant says that it is beyond question that a degree of recalibration was required at the assessment of the gravity at/identification of the headline sentence stage in order to take account of the age, or more precisely and accurately, the youth of the person before the Court, and the level of maturity of that person. The appellant refers to two decisions of the Court in that regard, that of *DPP v. TD* (Unreported, Court of Appeal, 4th March 2021) and *DPP v. BH* [2021] IECA 129, in support of his view that youth and maturity should be taken into account at the headline sentence identification stage. While that point may indeed have some validity, it might also be said that the issue as to whether youth and maturity should feature at the headline or at the later mitigation stage, that that might be seen as being in the nature of a distinction without a difference.

12. The second point that is made on behalf of the appellant is that he, a minor at the time of imposition of sentence, was treated more severely than he would have been if he had been an adult. It is said he received a sentence of three years and two months detention, whereas had he been a little older and an adult at the time of the sentence hearing, that he would, it appears, have been dealt with by way of a sentence of three years and six months imprisonment, but with the final six months of the sentence suspended. It is said that this is clearly wrong in principle, and it is said that moreover, it offends against the terms of a statute, and in that regard, the appellant quotes from s. 96(4) of the Children Act 2001:

"The penalty imposed on a child for an offence should be no greater than that which would be appropriate in the case of an adult who commits an offence of the same kind and may be less, where so provided for in this Part."

Discussion and Decision

13. To put this issue in context, it is necessary to point out that the judge was proceeding on the basis that the person she was called on to sentence was then 18 years old, she explicitly said as much. In exchanges with counsel, it emerged that she was operating on the basis that the appellant's birthday, the day on which he attained his majority, was 3rd November 2021, when in fact it was 18th November 2021. It appears that the date of 3rd November 2021, which the judge had in mind, was taken from a report that had been put before the Court. After further exchanges, sentence was set at three years and two months detention, down from three years and ten months, which had been initially identified as an appropriate sentence for an adult. It is clear from the transcript of the occasion on which sentence was imposed, and indeed from the whole sentencing process that the judge was very conscious that the person before the Court was very young, that the person had offended in a very serious manner while 16 years old, and that those factors were true, whether the person was days short of their majority or had just turned 18 years old days earlier. It is in those circumstances that we make the observation that it seems to us there is no real distinction in substance in the circumstances of this case as to whether the view was taken that regard should be had to the age and maturity at the headline identification stage or at the application of mitigation stage.

14. As to the point that the appellant had been treated more severely, it is clear that the judge felt that the appropriate sentence, if she had been dealing with an adult, was three years and ten months. It was clear that she felt that if she was dealing with someone who had just turned 18, that the appropriate sentence would be one of three years and six months imprisonment, but with six months of that sentence suspended. The sentence of three years and two months detention that was imposed could only be regarded as a more severe penalty than the sentence that would have been regarded by the judge as appropriate for someone who had just turned 18 years of age if the suspended sentence element of the new adult sentence is totally ignored, and if the view is to be taken contrary to the long-established jurisprudence of the Court that the suspended sentence element was not a real penalty at all. The possibility that, had there been a part-suspended sentence, that the appellant might have been called on to serve, cannot be dismissed. It might be seen as a real possibility. The probation report had referred to him as being at a moderate risk of reoffending and had identified the peer group with which he associated as a risk factor. The fact that he was involved in the drug-related incident at Mountjoy Prison two months after this very serious offence would serve to heighten concerns. This was not a case where someone who had become involved in a serious matter is shocked by the nature of what he or she has become involved in, and becomes determined to remove themselves from all antisocial behaviour.

15. By any standards, this was a very serious incident. It involved the gathering of a group, numbering somewhere in the order of 25, with a view to fighting in public with another group. The fact that a number of those who assembled had brought weapons is a factor. The very serious injuries that were inflicted, injuries which can fairly be described as life-changing, involving partial amputation and significant scarring, which it seems is to be regarded as permanent, the fact that the young victim of this assault and his family moved to Poland, all these are factors which

establish the real seriousness of the offence. The posting of the very disturbing clips on social media, to which there has been reference, is but a further dimension.

16. Overall, it appears to this Court in the circumstances of the case, that the sentence that was imposed did not fall outside the available range for offending of such seriousness. We do not identify an error in principle.

17. In the circumstances, we will dismiss the appeal.