



THE COURT OF APPEAL

Record Number: 2/2021

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

BETWEEN/

THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

- AND -

SHAUN GROOME

APPELLANT

JUDGMENT of the Court delivered (*ex tempore*) on the 30th Day of January 2023 by Ms. Justice Isobel Kennedy.

1. This is an appeal against severity of sentence. On the 21st December 2020, the appellant was sentenced to fifteen years' imprisonment for an offence of assault causing serious harm contrary to s. 4 of the Non-Fatal Offences Against the Person Act, 1997 with an offence of criminal damage by arson taken into consideration.

Background

2. At approximately 1:05am on the 7th September 2015, two witnesses noticed that an old stone cottage in the village of Rhode, County Offaly was on fire. On entering the property, they found the injured party in a dog pen. It seems that the injured party had crawled into the pen in order to get some water in an effort to put out the fire.

3. Emergency services were called, and the injured party was seen by a doctor at Tullamore Regional Hospital. He was then transferred to St James's Hospital and had six blood transfusions on the way to the hospital. A doctor at St James's outlined that the injured party had sustained sixteen stab wounds, including one to the heart cavity and that 96% of his total body surface area was covered in major burns. His injuries were described as life threatening.

4. CCTV was harvested from numerous systems around Mullingar for the night in question. There was CCTV footage of the appellant in the forecourt of a garage purchasing a red jerry can and filling it with petrol. He also purchased two bottles of water. The clothing worn by the appellant in this footage, which included a tracksuit bottoms was found by An Garda Síochána on the roadside at the exit to the M4 at Kinnegad. A knife with bloodstains was retrieved from the tracksuit bottoms. The appellant's DNA profile was located on the inside of this item of clothing and the blood on the knife matched that of the injured party.

5. The evidence disclosed that on the night of the 6th September 2015, the appellant and a young male entered the injured party's home, confronted him and then the appellant stabbed him 16 times before throwing petrol over him. The co-accused opened the stove and poured petrol into it causing the injured party to be set alight. Aside from the injuries resulting from the 16 stab wounds, the injured party suffered burns to approximately 96% of his body and lost his ears as a result of the attack. On any view, this was appalling offending.

6. The appellant was arrested and admitted that he knew the injured party, it appears that the motivation for the attack arose in circumstances where the appellant disliked the injured party's alleged reaction on discovering that an individual had died, resulting in the cancellation of a drug debt held by the injured party which the appellant had taken over. Moreover, the appellant held the erroneous view that the injured party was a Garda informant.

7. The appellant identified himself on CCTV footage and confirmed the clothing he was wearing on the CCTV. He alleged that he purchased the petrol for a motorbike. The appellant exercised his right to silence in respect of a number of other questions and was ultimately released on High Court bail. He failed to appear for trial and it took two years to locate him. A European Arrest Warrant was issued for his arrest, and he was extradited on consent from the United Kingdom.

Personal Circumstances of the Appellant

8. The appellant was twenty-six at the time of the offending herein. He is the eldest of a family of three and his parents separated when he was very young. He completed his Leaving Certificate and went to Athlone Institute of Technology for two years. He is a father to two young children, one of whom is on the autism spectrum. He has worked in a variety of jobs in the area of landscaping and construction.

9. The appellant has 48 previous convictions, the majority of which are for road traffic offences and were dealt with summarily.

Sentencing Remarks

10. The sentencing judge, having noted that the maximum sentence available was one of life imprisonment, identified a headline sentence of 20 years' imprisonment for the s. 4 offence. He observed that the injured party was severely injured, that he jumped onto the appellant in order to try and escape the fire but was thrown off by him. The appellant suffered serious burns following the incident and was treated in Northern Ireland for his injuries.

11. In terms of mitigation, the judge had regard to the appellant's guilty plea his good behaviour in prison and his letter of apology. He formed the view that the appellant was well capable of reform. However, he noted that his departure from the jurisdiction was not to his credit. Accordingly, he reduced the notional sentence to one of 15 years' imprisonment with the arson offence taken into consideration.

Grounds of Appeal

12. The appellant appealed his sentence on several grounds, but, in essence, complains that the judge did not permit of sufficient discount for mitigation and that in permitting of a 25% reduction, did not distinguish between the reduction for the plea and for the other mitigating factors. Secondly, that a portion of the sentence ought to have been suspended, and thirdly, that there is too great a disparity between the co-accused's sentence and the sentence imposed on this appellant. In truth, the latter is not pressed with any degree of force.

Errors in Sentence

13. It is submitted that the judge erred in failing to give appropriate credit to the mitigation advanced on behalf of the appellant. Attention is drawn to the appellant's guilty plea which it is submitted in accordance with *The People (DPP) v Melissa Whelan* [2018] IECA 142 ought to have resulted in a sentence reduction of 25-30%, his admissions and cooperation with Gardaí, that his previous convictions were of a minor nature, his cooperation with the prison service, his remorse and letter of apology and his family circumstances. The plea, whilst a late one, it is said was nonetheless of value.

14. Further, it is submitted that in circumstances where the appellant had no serious previous convictions in relation to violent crimes, rehabilitation should have been to the forefront of the court's mind. It is contended that there was no attempt by the court to incentivise the rehabilitation of the appellant by suspending a portion of the sentence.

15. Reliance is placed on *The People (DPP) v Cullen* [2015] IECA 4 where this Court substituted a sentence of nine years' imprisonment for a serious assault which resulted in the injured party having to have his right foot amputated and *The People (DPP) v Meagher* [2018] IECA 148 where

the injured party was subjected to a very serious and violent assault in his home during which he sustained life changing injuries and was left with brain damage. this Court deemed a headline sentence of ten years appropriate. Issue is also raised concerning the principle of parity.

16. The respondent says that the sentencing judge fully considered the mitigating factors, reduced the sentence accordingly and considered the issue of a suspended sentence.

Decision

17. In our view, Mr Dockery SC for the appellant properly accepts that this offending falls within the exceptional category bracket, albeit, he says the nomination of 20 years is at the outer limits of the range. Nonetheless, he properly accepts, such nomination falls within the margin of appreciation afforded to a sentencing judge. In the view of this Court, Mr Dockery is correct on this, there is no doubt that this was a truly shocking offence resulting in devastating and lifelong injuries for the unfortunate victim.

18. In terms of reduction for mitigation, it is the position that this was a late plea, indeed, a very late plea, some years after the offending conduct, where the appellant absconded having taken a trial date and was ultimately the subject of an extradition, which he did not contest. Therefore, the judge was entitled to give less weight to this plea than might otherwise be the case. Insofar as the argument is advanced, that he failed to afford appropriate weight to the balance of the mitigation, we look to the remarks of the judge in considering the appropriate reduction:

" A late plea is still a mitigating factor. It seems he has a record of conviction, but the record of conviction, while numerous, the offences themselves are not too serious. It seems another factor I must take into account is that I think Mr Groome is well capable of reform, by reason of the way he has behaved in prison and it seems he is an intelligent man and has prospects. I do believe that his letter of apology is sincere. I believe he regrets what he did and he is ashamed for his actions. I think that when he emerges from prison, if he wants to he can lead a productive life. It seems he has I'm not sure a wife, but a partner with two children. It seems he is a good father and these children have some challenges in life and it seems he is a very helpful and caring father."

19. Notwithstanding the erudite arguments advanced by Mr Dockery on the appellant's behalf, in our view, the five-year reduction for mitigation was entirely appropriate in the circumstances. The judge properly considered the mitigation present and discounted accordingly.

20. Regarding the issue of suspending a portion of the sentence in order to incentivise rehabilitation, again, the judge considered the appellant capable of reform and specifically noted that as factor in his sentencing remarks in the imposition of sentence. We do not find an error in this respect.

21. Finally, on the issue of parity, we find we can address this in short order. The appellant was the older of the two accused, he drove the vehicle to and from the scene, he used the knife, he stabbed the injured party 16 times and then poured petrol over him. Whilst it was a case of joint enterprise, it is clear that the co-accused played a lesser role, he was a juvenile, he indicated a plea in advance of trial. A headline sentence of 8 years was nominated in his respect. The sentence ultimately imposed on him being a sentence of 6 ½ years with 18 months suspended was imposed consecutive to a sentence which he was serving and so the totality principle was engaged. In the circumstances, again, we find no error in this regard.

22. Accordingly, as we are not persuaded of any errors in principle, the appeal is dismissed.