THE COURT OF APPEAL

Record Number: 40/2021 & 41/2021

The President.
McCarthy J.
Kennedy J.

BETWEEN/

THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

- AND -

DANIEL KANE

APPELLANT

JUDGMENT of the Court delivered on the 30th day of March 2023 by Ms. Justice Isobel Kennedy.

1. This is an appeal against severity of sentence. On the 11th November 2020, the appellant was convicted of 1 count of coercive control contrary to s. 39 of the Domestic Violence Act, 2018, 12 counts of assault causing harm contrary to s. 3 of the Non-Fatal Offences Against the Person Act, 1997, 1 count of assault contrary to s. 2 of the Non-Fatal Offences Against the Person Act, 1997 and 1 count of intimidation contrary to s. 41(1) of the Criminal Justice Act, 1999. The appellant pleaded guilty to count 1 on a second indictment of attempting to pervert the course of justice, contrary to common law. He was sentenced to 12 ½ years' imprisonment with the final 2 years suspended.

Background

2. The appellant is the former partner of the injured party. The relationship commenced in April 2018, when the injured party was looking for a place to live and she began living with the appellant.

Bill No. 479/2020

Coercive Control

3. On the 22nd September 2019, the investigating Garda received a phone call from Dr Collins, a consultant in emergency medicine at James Connolly Memorial Hospital, who was so gravely concerned about the injured party that she was moved to contact the Gardaí. It transpired that the injured party had attended the hospital in excess of 20 separate occasions and the doctor believed that there was a real threat to her life from the violent behaviour inflicted upon her by the

appellant. The injured party met with the Gardaí on several occasions thereafter and made statements regarding the multiple assaults on her by the appellant throughout their relationship.

4. The offending, the subject of count 1, coercive control, occurred between the 1st January 2019 and the 22nd September 2019. The Domestic Violence Act, 2018 commenced on the 1st January 2019. The injured party made statements outlining common conduct on the part of the appellant, describing how she was living under the constant threat of violence, waking up daily not knowing if she would be beaten or not, how she would be awoken by the appellant roaring abuse, shouting into her face. She described emotional abuse, that the appellant would insult her, using demeaning, aggressive and abusive language. She recalled an incident where she was made to sit in the front room of the apartment unclothed while the appellant berated her. The injured party also described controlling behaviour, that the appellant interfered with her relationship with her family and her access to her friends. She stated that the appellant's behaviour left her meek and submissive and had a serious impact upon her. She described how she was constantly on edge, walking on eggshells, waiting for the next act of violence.

Assault Causing Harm

5. The next series of offences were that of 12 counts of assault causing harm during the period from May 2018 to September 2019, which included burning her foot with a cigarette, grabbing her by the throat and choking her. She described how incidents of this kind were so common that they tended to meld into one another. Another incident concerned cutting her face with a pizza slicer, and incidents of punching her to the face. She described ongoing violence on a daily basis and being pulled around the house by her hair.

6. The violence then appears to have elevated in January 2019. A particularly graphic incident occurred in February/March 2019, the subject of count 8, where the appellant walked down the corridor of the apartment and headbutted the injured party in the nose. This incident occurred while the injured party was recovering from surgery to her nose, unrelated to the assaults, and of which the appellant was aware.

7. Count 9 relates to an incident which occurred between the 14th and 15th March 2019, where the appellant banged the injured party's head against a solid surface. On the 15th March 2019, the injured party called to Blanchardstown Garda Station, where a member of An Garda Síochána noted injuries to her face, nose and eye. The appellant was present at the Garda Station on this occasion.

8. Count 11 relates to an incident which occurred on the 26th March 2019, at a bridge, where the appellant banged the injured party's head against the steel railings of the bridge. She was encountered by a number of witnesses. A member of the ambulance crew which attended at the scene noted the injured party was bleeding heavily from her head. She required seven staples to her head in respect of that injury.

9. Count 12 relates to an incident which occurred between the 5th and 10th September 2019, where the appellant stamped on the injured party's head while she was on the ground. A neighbour encountered the injured party on the 7th September 2019 and the appellant told the neighbour that the injured party was not to be trusted in respect of what she was saying had happened to her.

10. Yet another incident occurred between the 19th and the 20th September 2019, count 14, where the appellant stamped on the injured party's arm resulting in a comminuted fracture to her ulna. Count 15 relates to an incident occurring between the 19th and the 21st September 2019, where the appellant choked the injured party. When she attended hospital for the fracture a couple of days after that incident, in addition to the fracture, strangulation marks, being finger marks, around her neck were observed. This was the visit which resulted in Dr Collins making the call to An Garda Síochána in respect of the injured party. The doctor called the Garda Station to express her concerns regarding the relationship between the injured party and the appellant. She considered there to be a real and substantial threat to the injured party's life from the appellant's behaviour.

11. It is telling that notwithstanding the pain from the comminuted fracture, the injured party did not attend hospital for a couple of days thereafter.

Assault

12. Count 16, the s. 2 assault, occurred on the 23rd January 2020, the injured party described that while they were in the apartment together, the appellant lunged at her and grabbed her by the face.

13. Calls were made from time to time by the injured party to the Gardaí who observed her injuries and her upset demeanour, photographs were taken of her injuries and there were, on occasion, witnesses to the assaults.

14. The appellant was charged with the above offences, with the exception of the s. 2 assault, when the next offence occurred.

Intimidation of a Witness

15. Count 17, intimidation of a witness, occurred between the 22nd October 2019 and the 28th January 2020, the appellant threatened to disseminate sexually explicit images and videos of the injured party sent to him by her, if she did not withdraw her complaint against him. Specifically, the appellant said he would send the images to her father and her brother, causing her great distress and anxiety. This offence was committed while the appellant was on bail.

16. At trial, in addition to the photographic evidence of many of the injuries inflicted on the injured party by the appellant, there was also the medical evidence and other witnesses, including the Gardaí and civilian witnesses. The audio recordings of four 999 calls were played along with two audio recordings taken by the injured party of the appellant speaking to her in an abusive and berating manner. The two audio recordings formed part of the Director's case of coercive control.

Bill No. 1032/2020

Count of Perverting the Course of Justice

17. The sole count on Bill No. 1032/2020 relates to perverting the course of justice, committed between the 31st March and 31st July 2020. On the 26th June 2020, the injured party swore an affidavit declaring that she wished to withdraw all statements of complaint against the appellant. An investigation was launched, and an application was made to the Irish Prison Service under the provisions of s. 41 of the Data Protection Act, 2018. It was discovered that a total of 245 calls had taken place between the appellant and the injured party while he was in custody. 146 of these were recorded. During these calls, numerous attempts were made by the appellant to cause the injured party to withdraw her complaints. He threatened to self-harm, that he would be harmed in

the prison or that she would be imprisoned should she not withdraw her complaints. He further instructed her to state that some of her injuries were self-inflicted or accidental. At the time of the commission of this offence, the appellant was in custody in relation to the offences to which the earlier bill related. An early plea of guilty was entered in relation to this count on the 12th November 2020.

Sentencing Remarks

18. The judge noted as aggravating factors in respect of the coercive control and assault charges, the serious nature of the offending, the breach of trust, the fear instilled in the injured party, the severe impact of the offending, that the offending was prolonged, occurring over 20 months and the fact that they were in an intimate relationship, with the appellant aware of the injured party's psychological vulnerabilities. She further considered the force used in the assaults, for example, the assault resulting in the fracture of the injured party's arm and the headbutting of the injured party's nose after surgery as well as the use of an implement to cut her face.

19. The aggravating factors taken into account with regard to the intimidation and the perverting of the course of justice counts included that the appellant was on bail when the intimidation offence occurred and with that he had already been charged with the offence of intimidation when latter offence occurred, thus the former aggravating the latter.

20. In mitigation, the judge noted the appellant's previous good character, his alcohol dependency, that he cared for his parents in their old age, that he had a role in his children's lives, his work history, the difficulty of serving a sentence for the first time and during covid-19, his history of self-harm and psychological issues and the efforts he had made to detox and rehabilitate himself with regard to his addiction issues. His difficult childhood was also taken into consideration. In terms of the appellant's alcohol dependency, this was noted but its value as a mitigating factor was discounted as the offending continued while the appellant was in custody and undoubtedly sober.

Grounds of Appeal

21. The appellant appeals the severity of his sentence on the following grounds:-

> *"i. The Learned Sentencing Judge erred in law and in fact in failing to have proper and adequate regard to the proportionality of the totality of the sentences imposed in all the circumstances of the case, in particular, the Accused's age, previous good character and personal circumstances.*
>
> *ii. The Learned Sentencing Judge erred in law in rendering the total sentence disproportionate by requiring the sentence on Count 14 to be served consecutively to the sentence on Count 8 in respect of Bill 479/20.*
>
> *iii. The Learned Sentencing Judge erred in nominating a headline sentence of 6 years in respect of Count 17 of Bill 479/20 - Section 41 Criminal Justice Act, 1999, which was excessive in the circumstances.*
>
> *iv. The Learned Sentencing Judge erred in nominating a headline sentence of 3.5 years in respect of Count 1 of Bill 479/20 - Section 39 Domestic Violence Act, 2018, which was excessive in the circumstances.*

v. The Learned Sentencing Judge erred in nominating a headline sentence of 7.5 years in respect of the sole count on Bill 1032/20 which was excessive in the circumstances.

vi. The Learned Sentencing Judge erred in law in failing to structure a sentence balancing punitive, deterrent and rehabilitative elements, and in failing to structure a sentence proportionate to the gravity of the offences and the circumstances of the offender.

vii. The Learned Sentencing Judge erred in fact and in law in failing to have sufficient regard to the mitigating factors in the case and to the objective of rehabilitation.

viii. The Learned Sentencing Judge erred in law in imposing a sentence that was excessive and disproportionate in all the circumstances."

22. The total sentence came to a sentence of 12 ½ years' imprisonment. The judge suspended the final 2 years of the sentence to incentivise rehabilitation.

The Sentence and the Issues

23. Issue is taken with the notional sentence nominated on the coercive control count of 3.5 years, the 6 years nominated on the intimidation count and the 7 ½ years nominated on the perverting of the course of justice count.

24. Issue is also taken with the consecutive elements of the sentence, specifically that the s. 3 offence on count 14 was imposed consecutively to the s. 3 offence reflected on count 8.

It is said that the sentence imposed failed to have adequate regard to the principle of totality and is disproportionate and excessive in all the circumstances. Finally, it is contended that insufficient regard was had to mitigation.

Submissions of the Parties

The Headline Sentence Nominated in Respect of Count 1

The Appellant

25. Mr Dwyer SC, for the appellant, contends that the notional pre-mitigation sentence nominated on count 1, the coercive control count, being 3 ½ years' imprisonment is simply too high in the circumstances.

The Respondent

26. In response, Ms Lawlor SC, says that the judge carefully assessed the evidence and that the appellant cannot point to any error in principle arising therefrom. It is submitted that given the number of aggravating factors present, a headline sentence of 3 ½ years was not excessive and was well-within the discretion of the court on the evidence.

Discussion and Conclusion

27. Coercive control is a relatively new offence, with the Domestic Violence Act, 2018 commenced on the 1st January 2019. However, s. 39 is drafted in similar terms to the English provision; s. 76 of the Serious Crime Act, 2015 and so the experiences of the courts in our neighbouring jurisdiction are of some interest.

28. For example, in the English case of *F v M* [2021] EWFC 4, Hayden J considered s. 76 and commented at para. 109:-

> *"Key to assessing abuse in the context of coercive control is recognising that the significance of individual acts may only be understood properly within the context of* ***wider behaviour.****"*

29. The offence of coercive control is designed to capture the emotional and psychological abuse that can occur in the context of an intimate relationship. The relevant portions of the section provide:-

> ***"****39. (1) A person commits an offence where he or she knowingly and persistently engages in behaviour that—*
>
> *(a) is controlling or coercive,*
>
> *(b) has a serious effect on a relevant person, and*
>
> *(c) a reasonable person would consider likely to have a serious effect on a relevant person.*
>
> *(2) For the purposes of subsection (1), a person's behaviour has a serious effect on a relevant person if the behaviour causes the relevant person—*
>
> *(a) to fear that violence will be used against him or her, or*
>
> *(b) serious alarm or distress that has a substantial adverse impact on his or her usual day-to-day activities…"*

30. In the present case, the judge identified the aggravating factors attributable to both the offence of coercive control and the assault offences simultaneously and considered *inter alia,* the breach of trust, the psychological vulnerabilities of the injured party, the prolonged nature of the offending, over a period of some 9 months, in the case of coercive control, and 20 months in the case of the assaults, the injuries sustained by the injured party, the repeated attendance at hospital, the demeaning remarks, subjecting her to humiliation by berating her whilst unclothed and the level of isolation. The impact on the injured party was, understandably severe.

31. The judge also considered as an aggravating factor, that the appellant and the injured party were in an intimate relationship, however, it is clear from her opening remarks on sentencing that she properly applied s. 40 of the 2018 Act only to the assault offences, as s. 40(5)(b)(ii) excludes an offence under s. 39 as a relevant offence. This is so, as an intimate relationship is a constituent element of the offence of coercive control and so cannot constitute an aggravating factor.

32. It is clear on the evidence adduced that the appellant subjected the injured party to a campaign of fear, emotional suffering, subjugation, threats of violence, violence plus humiliation, leading to her being fearful, meek, submissive and on edge. The fact that she did not attend hospital for a couple of days with a comminuted fracture of her arm is telling in itself of the atmosphere in the home. His behaviour was prolonged, oppressive, domineering, manipulative and frequently brutal, psychologically and physically, designed to humiliate and degrade her, and place her in constant fear. He used different methods of controlling and coercive conduct; violence, threats of violence, humiliation and verbal and emotional abuse. In the circumstances, his moral culpability was high and correctly found to be so by the sentencing judge, the harm done to the injured party was significant and as a consequence, we do not find any error with the judge placing the offending in the mid to upper range of penalties available and her resulting nomination of the notional headline sentence.

The Headline Sentence Nominated in Respect of Count 17

The Appellant

33. It is submitted that in nominating a headline sentence of 6 years' imprisonment in respect of the offence of intimidation contrary to s. 41 of the Criminal Justice Act, 1991, the judge failed to have sufficient regard to aspects of the offence which rendered it less serious than other potential offences of a similar nature. For example, that the material involved was not obtained by force or stealth, that no steps were taken to act on the threat, that no actual dissemination of the material took place or that it did not involve a threat of violence or to physically harm the injured party and/or her family.

34. It is noted that during her sentencing remarks, the sentencing judge referred to the decision of Mahon J in *People (DPP) v Maughan* [2016] IECA 127, in which case, the sentence imposed in respect of intimidation was one of 3 years' imprisonment in circumstances where the intimidation involved a threat to kill the injured party if she did not withdraw her complaints and the injured party took this threat seriously.

35. Reliance is placed on *People (DPP) v Lennon* [2021] IECA 30 in which case Donnelly J identified the following as factors which warrant a headline sentence in the range of 0-5 years for a s. 41 offence:

- Isolated incident;
- Unplanned or sudden outburst;
- Sole perpetrator;
- Lack of violence or threat of violence;
- Psychological injury.

36. It is submitted by the appellant that a number of the above factors are met in the present offence in that it involved a sole perpetrator, a lack of violence or threat of violence and psychological injury.

The Respondent

37. The respondent lists the factors aggravating this offence as follows:-

- The offence was committed while the appellant was on bail;

- The appellant threatened to send sexually explicit images to her family and friends in general and to her father and brother in particular unless she withdrew the complaint; and
- The intimidation had an effect as she swore an affidavit withdrawing her complaint at one stage before trial.

38. It is noted that the maximum sentence permitted by law for this offence is one of 10 years' imprisonment, the offending was identified as being in the mid to upper range and a headline sentence of 6 years was nominated.

39. It is submitted in light of the appellant's reliance on *Lennon*, that the intimidation offence must be viewed in the context of the overall offending, that this offence was not an isolated incident, that it involved some premeditation and was not a sudden outburst and that the threat issued was part of the overall offending which resulted in psychological injury to the injured party. It is further submitted that it is apparent that the threat was taken seriously by the injured party who went to a solicitor and swore an affidavit seeking to withdraw the charges.

40. In this way, it is submitted that the headline sentence was not excessive and was well within the discretion of the court on the evidence.

Discussion and Conclusion

41. The offence of intimidation must be informed by what has gone before. The manner and nature of the commission of the offence is also relevant. There is no doubt that the offence involved some planning on the part of the appellant and the fact that he threatened a woman with known vulnerabilities that he would send intimate images of her to her father and brother and expose same on the internet, bring the offence into the category identified by the judge. This clearly caused her stress and trauma.

42. This offence carries a maximum penalty of 10 years' imprisonment. It must also be recalled that this offence was committed whilst on bail, thus serving as a further aggravating factor. When one looks at the circumstances in which the offence occurred, the timing of the offence and the nature of the activity, we, again, are not persuaded of any error on the part of the judge in identifying a notional sentence of 6 years' imprisonment.

The Headline Nominated in Respect of Count 1 on Bill 1032/20

The Appellant

43. While the appellant acknowledges the seriousness of this offence, it is submitted that the sentencing judge herself referenced features of the offence which meant it warranted a lower headline sentence than was imposed. In particular, that the offending was not characterised by threats of violence or retribution but rather involved "*less vicious tactics on that occasion, relying on inducements, promises and promoting pity towards his situation."* Further, there was no follow through.

The Respondent

44. The respondent lists the factors aggravating this offence as follows:-

- The appellant was in custody;
- The period over which the calls were made – 30th March 2020 to the 31st July 2020 – four months;

- The nature of the calls – threats of self-harm if she did not withdraw the complaints, he would be harmed in prison, she would be arrested, some of her injuries were self-inflicted or accidental and that she write withdrawing same. There were also inducements of marriage and declarations of love;
- The number of calls – 245 calls received and recordings of 146;
- The Appellant continued to try and control and influence the injured party, even after he had been incarcerated;
- The level of planning;
- He had called his sister to try and get her to influence the injured party;
- It was clear that he was aware that the call might be recorded;
- This offence was committed after the intimidation offence had failed; and
- He made no admissions when arrested and interviewed.

45. It is noted that the maximum sentence permitted by law for this offence is one of life imprisonment, the offending was identified as being in the mid-range and a headline sentence of 7.5 years was nominated.

46. It is submitted that this offence must be viewed in the context of the overall offending and that it was clear that the appellant moderated his words due to his awareness that the prison calls might be recorded. It is noted that the behaviour included threats of self-harm, that he would be harmed by others, that the injured party would be arrested and imprisoned and when that did not work, inducements of marriage.

47. In this way, it is submitted that the headline sentence was not excessive and was well within the discretion of the court on the evidence.

Discussion and Conclusion

48. It is true that this offence did not include threats of violence or matters of that nature but as said by the judge in assessing this offence:-

> *"This offence was committed by a documented and catalogued attempt to emotional manipulation and psychological blackmail of a woman whose peace of mind had been utterly destroyed and shattered by his physical abuse."*

49. Again, one cannot ignore what has gone before in assessing the culpability of the appellant on this offence. This was committed whilst the appellant was incarcerated for offences relating to the injured party of which he was ultimately convicted, despite his best efforts to avoid prosecution. This offence is an affront to the interests of justice; where he had failed to prevent the prosecution through psychological intimidation, he resorted to manipulative mind games to seek to stop the prosecutions. His contact with her was nothing short of astonishing, some 240 odd phone calls, many of which were recorded. This offence carries a maximum penalty of life imprisonment and, again, we see no error in principle in how the judge approached the offence and her nomination of the headline sentence.

Consecutive Sentencing

The Appellant

50. While the appellant accepts that a sentencing judge has considerable discretion as to whether to impose custodial sentences consecutively or concurrently, the following from Prof. O' Malley is relied on as the common law principle:-

"In so far as there is any guiding common-law principle, it is that concurrent sentences should ordinarily be imposed for offences arising from the same incident, while consecutive sentences should be imposed for offences arising from separate and unrelated incidents."

51. Thomas' *Principles of Sentencing is* also relied upon-

"…The essence of the one transaction rule appears to be that consecutive sentences are inappropriate when all the offences taken together constitute a single invasion of the same legally protected interest…The concept of 'single transaction' may be held to cover a sequence of offences involving a repetition of the same behaviour towards the same victim, such as a series of sexual offences with the same partner, a number of frauds on the same victim or several perjured statements in the course of the same trial, provided the offences are committed within a relatively short space of time. The concept will not normally apply to a series of similar offences involving different victims, even though the offences are of a similar nature."

52. It is submitted that the assault causing harm offences comprised offences of the same nature in respect of the same victim over a relatively confined period of time and as such would attract concurrent sentences in the ordinary course.

53. It is noted, while not on all fours with the present case, that although this Court has identified serial sexual abuse of one victim as one of the situations where consecutive sentencing may be appropriate, the general approach is to impose concurrent sentences in such cases.

54. It is submitted that the seriousness of the offences had already been reflected by the nomination of headline sentences of 4 years' imprisonment in respect of counts 8 and 14, same being close to the maximum term of imprisonment that can be imposed for assault causing harm, 5 years. It is further submitted that the imposition of a 7-year term for the counts, being a term greater than the maximum term of imprisonment for either offence was disproportionate, particularly in light of the fact that a consecutive sentence was required in respect of count 17.

The Respondent

55. The respondent acknowledges that there is no law prescribing that the sentence imposed for count 14 be imposed consecutively to that imposed on count 8. However, it is pointed out that the effect of making that sentence consecutive did not result in the overall sentence being increased and served instead to mark the seriousness of the circumstances of the offence without having an effect on the total time to be served.

56. In terms of the appellant's reliance on Thomas' *Principles of Sentencing*, the respondent submits that while involving the same victim, the offending could not be said to be within a "*relatively short period of time*" where it began on the 1st May 2018 and continued until the 28th January 2020, a period of some twenty months.

57. It is noted that not all of the assaults causing harm were made consecutive to each other, the judge identified the two most serious assaults, counts 8 and 14, which occurred six months apart and made only these consecutive to each other. While it is acknowledged that the maximum term of imprisonment that can be imposed for an assault causing harm is 5 years, it is submitted that it is not the case that the court was restricted to a maximum of 5 years for all assaults inflicted on the injured party by the appellant.

Discussion and Conclusion

58. On a consideration of the transcript, there is no doubt but that the judge approached the entire sentencing process with scrupulous care and diligence. The discretion to impose consecutive sentences was exercised with reference to the nature of the appellant's actions and the severity of the assaults. The assault, the subject of count 8, was that of headbutting the injured party after she had had surgery on her nose and took place some 6 months after the first assault in May 2018. Count 14, was yet another particularly egregious assault where he stamped on her arm, causing a comminuted fracture. The judge was justified in exercising her discretion to make those sentences consecutive to one another. The offences were not committed within a relatively short period of time, the evidence was that the assaults were so frequent so as to meld into one another. Again, we find no error in the manner in which the judge exercised her discretion.

Proportionality and Totality

The Appellant

59. The appellant relies on the decision of *People (DPP) v Farrell* [2010] IECCA 30, insofar as it states that a court which imposes consecutive sentences "*must be careful to take account of the overall impact of the sentence, the moral blameworthiness of the accused and the prospect of rehabilitation.*"

60. It is accepted, in light of the mandatory consecutive element in respect of the offence committed by the appellant while he was on bail that he faced a lengthy sentence. However, it is submitted that the total sentence imposed of 12½ years' imprisonment was excessive and ought to have been reduced. It is further submitted that the suspension of the final two years of the overall sentence to promote rehabilitation was not adequate to reflect the principle of totality and that there ought to have been an overall reduction ameliorating the severity of the total sentence followed by a further suspension to foster rehabilitation, having regard to the appellant's age and lack of relevant previous convictions.

The Respondent

61. It is submitted by the respondent that after identifying individual sentences for all of the offences, the sentencing judge had specific regard to the principle of totality as follows:

> *"The Court must take a step back at this stage and consider the principles of proportionality and totality and whether the sentence imposed is fair and appropriate in the context of those principles. For the reasons this Court has already set out, the Court believes that they are, and the sentences are proportionate and appropriate, given the offending involved and they reflect the totality of the offending which took place over an approximately 20 month period, all of which was totally unprovoked and unpredictable in terms of its commission."*

62. The respondent highlights the seriousness of the offending, being so severe that an A&E consultant was so concerned for the appellant that she made a report to An Garda Síochána believing there to be a real threat to the injured party's life. It is submitted that while the judge approached the sentencing of the appellant as though he was a first-time offender, the offending was serious and persistent, occurring over a prolonged period of time and the appellant failed to show any remorse or offer an apology, even at the sentencing stage.

63. In terms of rehabilitation, the respondent submits that the judge had regard to the principle of structuring a sentence to encourage rehabilitation and not only did she suspend part of the sentence, but she did to on conditions designed to facilitate the rehabilitation of the appellant.

Discussion and Conclusion

64. The total sentence imposed was that of 12 ½ years' imprisonment with the final 2 years suspended on terms.

65. When we examine the overall offending in the present case in order to assess whether the sentence imposed was proportionate with due regard to the principle of totality, it cannot be gainsaid but that the offending in the present case was egregious indeed. Even if we leave to one side the offence of coercive control and look to each of the assault offences, while some may not be as serious as others, some are very serious, and could be said to be at the upper end of seriousness in terms of penalty for s. 3 assaults: the choking, the assault resulting in a fracture of the arm, the burning, and the incident where the appellant smashed the injured party's head against a railing. When we then look to the intimidation count, committed while on bail and the manner in which the intimidation was exercised, this makes the overall offending of a greater order. Turning then, to the perverting the course of justice count, it is difficult to see how the overall, ultimate sentence of 10 ½ years actual incarceration is disproportionate.

66. We are satisfied that the judge took proper account of the mitigating factors and reduced the sentence accordingly. She took account of the sole plea of guilty on the second Bill of Indictment and assessed and considered the appellant's personal issues.

67. In the circumstances of these serious, prolonged offences, the nature of the activity, the appellant's controlling and coercive behaviour, the injuries sustained to the injured party, both physical and emotional, we are not persuaded that the appellant has demonstrated an error in principle and, accordingly, the appeal is dismissed.