

APPROVED



THE COURT OF APPEAL

Record Number: 29/2023

**Edwards J.
McCarthy J.
Burns J.**

BETWEEN/

**THE PEOPLE AT THE SUIT OF THE DIRECTOR OF
PUBLIC PROSECUTIONS**

RESPONDENT

- AND -

DONNACHA LOUGHNANE

APPELLANT

JUDGMENT of the Court delivered on the 29th day of February, 2024 by Ms. Justice Tara Burns

1. This is an appeal against severity of sentence. On 7 October 2022, the appellant was convicted of assault causing harm, contrary to s. 3 of the Non-Fatal Offences Against the Person Act 1997 and production of an article capable of inflicting serious injury contrary to s. 11 of the Firearms and Offensive Weapons Act 1990.
2. On 12 January 2023, the appellant was sentenced to a 5 year term of imprisonment, with the final 6 months suspended for the assault causing harm charge and a 4 year term of imprisonment with 6 months suspended for the production of an article offence, both sentences to run concurrently. The sentences were backdated to 20 February 2022 to reflect when the appellant went into custody.

Background

3. The appellant resides in close proximity to a short-term residential unit for homeless people.
4. On 18 February 2022, at 16.41 the appellant was captured on CCTV banging on the front door of the residential unit, kicking it and then walking away.

5. The appellant returned to the unit at 18.28 and spoke, through a window, with the Social Care Manager of the unit. He complained about residents of the unit robbing things from his house and his parents' house. The appellant was agitated and refused to calm down. He told the manager as he left the vicinity that *"he would be back and he wouldn't need the guards"*.
6. At 23.10, the appellant again returned to the unit, which is captured on CCTV. He spoke to another Social Worker to whom he complained that a named resident at the unit had burgled his home and his parents' home earlier that day. The named resident overheard the conversation and came to the front door whereupon a physical row ensued between the named resident and the appellant.
7. The appellant produced a lump hammer from his pocket and struck the injured party to the side of the head. The injured party fell to the ground, whereupon the appellant stood over him and struck him at least 6 further times on the head. A report prepared by an accident and emergency consultant, noted the injured party sustained fractures to his skull and eye socket; suffered from a loss of consciousness; sustained 4 wounds on his head; and sustained a wound on his ring finger.
8. The appellant was subsequently arrested and detained for questioning. He denied that it was him who was depicted on the CCTV and he denied assaulting the injured party. He accepted that he had called to the residential unit on the two occasion earlier in the evening. He indicated that he held the injured party responsible for a break in at his house.

Grounds of Appeal

9. By notice of appeal dated 21 January 2023, the appellant appealed against his sentence and set out his grounds of appeal as follows:-
 1. *"The Court erred in determining a headline sentence on count 1 of 5 years*
 2. *The Court erred in determining a post-mitigation sentence on count 1 of 5 years*
 3. *The Court erred in determining a headline sentence on count 2 of 4 years*
 4. *The Court erred in determining a post-mitigation sentence on count 2 of 4 years*
 5. *The Court erred in the location of the offences on the scale of gravity*
 6. *The Court erred in failing to give sufficient weight to the mitigating factors;*
 7. *The Court erred in imposing a sentence which was excessive having regard to the gravity of the offences and to the mitigating factors;*
 8. *In all the circumstances the sentence imposed was unduly severe and was excessive."*

Personal Circumstances

10. The appellant was 55 when sentenced. He is single man, who was born and reared in Co. Tipperary. He moved to England where he worked in the building industry for many years, before returning home. The appellant had difficulties with alcohol, however he has remained abstinent from alcohol for 12 years prior to the sentencing hearing. He had a longstanding dependency on benzodiazepines, prescribed because of low mood and depression, which required close monitoring and restriction by his GP. He had 7 previous convictions dating from prior to 2004 which the sentencing judge determined were not relevant.

Sentencing Determination

11. The sentencing judge marked a term of imprisonment of 5 years on the assault causing harm offence as the appropriate headline sentence. He imposed a term of 5 years imprisonment on the appellant, but *"in view of the accused's age, his background, he does not have any relevant previous convictions, and so as not to close the door completely on him and to encourage rehabilitation"*, the sentencing judge suspended the final 6 months of the sentence. He imposed a similarly structured sentence on the production of an article offence, substituting 4 years for 5 years.
12. In addressing the aggravating and mitigating factors in the case the sentencing judge stated:-

"Now, the aggravating circumstances are the production and use of the lump hammer, which was used to repeatedly strike the injured party to the head. The serious head injuries to the injured party, and the obvious physical effects of these on the injured party. The mitigating factors are the accused is fifty-five years of age, he's nearly fifty-six, he's lived at this address for about 12 years. He's obviously going to lose his accommodation now. I take into account his background, and I take into account the report from Dr Bogue, and I take into account his general background. I am not treating him as a person with any significant previous convictions, and his previous convictions obviously do not aggravate the offence."

13. Regarding the circumstances of the offending and the moral culpability of the appellant the sentencing judge stated:-

"He accepts the verdict of the jury, and he had a certain belief that the accused was getting into his house or had broken into his house, and perhaps into his parents' house, and he became obsessed with this idea...He called to the Novas Centre to confront Mr Hackett, he had called earlier but on the night in question, later on that night he called, and Mr Hackett was present. The accused was aggressive, he was armed and he had armed himself with a lump hammer. It's obvious from the CCTV, that you can see the handle of the lump hammer sticking out of his pocket, but that was a matter for the jury. But the accused had called for Mr Hackett to come out, the accused was aggressive and violent. Mr Hackett does come out and Mr Hackett

does attack the accused. But the accused then produces a lump hammer and assaults Mr Hackett in the manner described. The accused obviously had a certain belief, as set out, but that does not justify or entitle him to call to the home of the injured party, armed with a hammer and to confront him and assault him in the manner in which he did. Now, the case was not run as self-defence, but the plea in mitigation has mentioned that the issue of Mr Hackett attacking the accused and that Mr Hackett had, to use the words of counsel, "had started it". It wasn't run as self-defence, it was run as a denial, but in any event, the Non-fatal offences against a Person Act, section 18(17) applies that the defence of self-defence does not apply to a person who causes conduct or a state of affairs, with a view to using force to resist or terminate it. And there's no doubt that in this case, the accused did cause the conduct or the state of affairs with a view to producing the hammer, in order to assault Mr Hackett."

Submissions of the Parties

14. The appellant submits that the sentencing judge erred in imposing a 4.5 year term of imprisonment upon him. It is asserted that the sentencing judge did not adequately assess the appellant's moral culpability given the circumstances of the case, in that the appellant did not start the altercation with the injured party. Further, the appellant submits that the sentencing judge did not have regard to the mitigatory factors in the case including his history of work; alcoholism issues; mental health and addiction issues; no previous convictions for assault; acceptance of the jury verdict; and that he had lost his home.
15. The respondent submits that the sentencing judge properly and appropriately assessed the appellant's moral culpability in the circumstances of the case and had regard to the mitigatory factors, such as they were. It is asserted that an error in principle does not arise.

Discussion and Determination

16. The assault on the injured party was of a very serious nature. He was hit by a lump hammer which the appellant brought to the scene and then, when knocked to the ground, was hit about his head on at least 6 further occasions. The injuries sustained were significant. The appellant does not take issue with this but asserts that as the injured party threw the first punch, the appellant's moral culpability was not properly assessed by the sentencing judge.
17. The Court does not agree. The appellant had been at the hostel on two occasions earlier that day. On each occasion, he was acting in an aggressive manner. On the final occasion he returned, he came armed with a lump hammer and proceeded to make allegations against the injured party. While the injured party threw the first punch, the appellant came prepared and was actively involved in a fight with the injured party which culminated in a vicious assault. Nominating a 5 year headline sentence for this assault does not reveal an error in principle.

18. With respect to mitigation, while it is correct to say that the sentencing judge did not reduce the headline sentence in light of mitigatory factors, he did have regard to mitigation and suspended six months of the term of imprisonment. This approach, in itself, does not reflect an error in principle.
19. The more pertinent question perhaps, is whether sufficient weight was given to the mitigatory factors which are asserted to have been present. Specifically, Counsel for the appellant asserts that sufficient regard was not had to the appellant's mental health condition. The difficulty which the appellant has in this regard is that there was no evidence before the Court of any mental illness. While Counsel attempted to rely on some unusual utterances from the appellant at the time of his interview with the investigating guards, this is not sufficient to establish a mental health issue, particularly in light of the appellant's GP records which do not record any such condition.
20. The sentencing judge referred to the mitigatory factors which he had regard to. The appellant did not have the benefit of a plea of guilty or co-operation with the investigation. The length of time which the sentencing judge suspended from the term of imprisonment imposed appropriately reflects the mitigatory factors which were evidenced in the matter and cannot be said to demonstrate an error in principle.

Conclusions

21. The Court is of the opinion that an error in principle has not been established by the appellant in the sentence imposed upon him. Accordingly, his appeal against sentence is dismissed.