



**THE COURT OF APPEAL**

**[236/CJA23]**

**The President  
McCarthy J.  
Ní Raifeartaigh 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 (DPP)**

**APPLICANT**

**AND**

**ANDREW LACEY**

**RESPONDENT**

**JUDGMENT of the Court delivered on the 1<sup>st</sup> day of March 2024 by Birmingham P.**

**Introduction**

**1.** Before the Court is an application brought by the Director pursuant to s. 2 of the Criminal Justice Act 1993, seeking to review a sentence on grounds of undue leniency. The sentence sought to be reviewed is one of seven and a half years imprisonment, with the final 18 months of the sentence suspended for a period of three years, that was imposed in respect of the offence of manslaughter. The sentence hearing took place in circumstances where the accused had been charged with murder, contrary to s. 4 of the Criminal Justice Act 1964, but had been convicted of the offence of manslaughter by a jury.

**2.** There is really only one point in this application for a review, with the Director advancing only a single criticism of the approach taken by the trial judge. The criticism focuses on the decision by the sentencing judge to suspend the final 18 months of the sentence. To that point, the Director has described the approach taken by the sentencing judge in the course of her written submissions as “unimpeachable, and impeccably reasoned”.

**3.** At the outset, we can say there is no real dispute between the parties as to the legal principles applicable to undue leniency reviews, and indeed, it is the case that there has been little disagreement as to those principles since the first case of *DPP v. Byrne* [1995] 1 ILRM 279.

**Background**

**4.** Before turning to consider the trial judge’s approach to sentencing, we will provide a brief factual context. The sentence hearing arose out of events which had occurred on 14<sup>th</sup> and 15<sup>th</sup> October 2019 in the Loughlinstown area of Dublin where one Mr. Derek Reddin was fatally

wounded. There was background to the incident which resulted in the fatality, in the sense that there had been what was described as a feud – although objection was taken to the use of that term as misleading or overstating the situation by defence counsel during cross-examination of the investigating Garda – between two groups: the respondent being associated with one group, and the deceased, Mr. Reddin, and some of his associates, with the other. On the evening in question, the respondent had been socialising, playing darts in a local public house. He had gone for chips afterwards and was walking home. The late Mr. Reddin, and a companion, Mr. H, decided to engage with the respondent. Counsel for the prosecution asked Detective Garda Stephen Ryan if they had “...called for a straightener with the accused man...” and he confirmed that this was the situation. Counsel for the defence asked the investigating Garda, notwithstanding the reference to a “straightener”, if he would accept that Mr. Reddin and his associate were there to ambush the respondent. Detective Garda Ryan responded, “[w]ell, they were certainly there to attack Mr Lacey, yes.” A fight ensued, and during the fight, the respondent killed Mr. Reddin with a knife that he, the respondent, was carrying on his person. There was some element of uncertainty in the evidence about the extent to which a baseball bat featured in the incident. There was evidence that the deceased had such a baseball bat earlier, but the evidence was somewhat unclear as to whether a baseball bat, or indeed two baseball bats, featured during the course of the actual incident. Emergency services were called to the scene by the respondent.

### **Personal Circumstances of the Respondent**

5. In terms of the respondent’s background and personal circumstances, he was 32 years of age at the time of the offence. He is married and the father of five children. He had a history of lengthy employment with Dun Laoghaire Rathdown County Council, and he had a number of public order convictions, four in all, three of which were related to a single incident, and the sentencing judge – rightly, in our view – felt they were of no relevance in the context of the case with which she was dealing.

### **Sentencing**

6. The judge’s approach to sentencing was to identify a headline sentence of eight and a half years imprisonment, which she proceeded to reduce to seven and a half years imprisonment having regard to the mitigating factors present. The Director is very clear that no issue is taken with the headline sentence of eight and a half years, or with the reduction to seven and a half years, which it is accepted was entirely appropriate. The sole issue taken is with the decision by the trial judge to suspend the final 18 months of the sentence. The judge’s sentencing remarks merit quotation:

“Therefore, a headline sentence of eight and a half years is appropriate having regard to the use of the knife in the way as evidenced by the medical and forensic science findings. I have noted the mitigating factors in this case and the personal circumstances of [the respondent], and taking those into consideration I will impose a sentence of seven and a half years’ imprisonment to date from 15<sup>th</sup> of June of 2023, noting time already spent in custody. **In this case I have noted in particular reports in relation to one of [the respondent’s] children. This child has and is displaying worrying behaviour and is**

**being dealt with by professionals. As already noted, all the children in this case are innocent and have and will suffer due to the unlawful action of adults. I have no doubt this child will find the absence of a father very difficult during critical years of this child's development. For this reason, and only this reason, I will suspend the final 18 months of the sentence on [the respondent] entering his own bond..." [emphasis added]**

7. This is a case where the sentence hearing took place on 27<sup>th</sup> July 2023, with the judge imposing sentence the following day. It is fair to say that the difficulties being experienced by the children of the respondent were not centre stage during the course of that hearing. Towards the end of his plea in mitigation, counsel on behalf of the then accused commented:

"The other factors of note, the Court will see from the documents is that two of his daughters have suffered with educational issues which have been exacerbated by the ongoing stress of the legal process and of course will be further exacerbated by the absence of [the respondent] from the family home and unfortunately [the respondent's] wife and children are additional victims of what happened on that night in October 2019 and victims who are entirely blameless and --

Judge: Isn't that always the way?

[Counsel for the respondent]: Absolutely, it is but I would ask the Court to bear that in mind.

Judge: Similarly the children of Mr Reddin."

8. The documents referred to by counsel were a collection of testimonials which had been put before the Court by the solicitor for the then accused. Counsel summarised these as saying:

"... they range from letters from each of [the respondent's] five children, his wife, his parents, one of his grandparents, to members of the community and his work colleagues and all of them speak in glowing terms of [the respondent's] character and how this offence was not in keeping with his everyday life."

Counsel asked the Court to look in particular at the respondent's own letter to the Court.

### **Discussion and Decision**

9. The documentation submitted contains professional reports prepared in relation to two of the daughters of the respondent. The reports are concerning, particularly the reports in the case of the younger daughter, but not at the level of extreme concern that this Court sometimes encounters.

10. Given the run of the sentencing hearing, it is perhaps somewhat surprising that the judge decided to suspend a significant portion of the adjusted sentence that she had arrived at – 20% of that sentence – by reason of reports in relation to one of the respondent's children.

11. As was accepted on both sides of the Court, it is often the situation that the incarceration of a parent will have an impact on children. Indeed, by way of general comment, we would observe that while the adverse impact of imprisonment is all but inevitable, if it is being suggested that there are particular and special conditions or circumstances which should receive consideration, then there should be clear, cogent and focused evidence in that regard. When such an issue is raised, it is preferable that it be put into the general mix alongside other mitigating

factors to be dealt with there, rather than being dealt with in isolation on a free-standing basis. In the present case, we do not believe there was an evidential basis that required or indeed justified the suspension of 20% of the sentence. For that reason, we feel we must accede to the Director's application. In those circumstances, we are obliged to resentence, and we do so as of today's date, taking into account the up-to-date information that has been made available to us.

### **Resentencing**

**12.** We do not believe what is involved is as simple as removing the suspension, thereby leaving the respondent with a sentence of seven and a half years to serve. Even if the judge had not decided on the course of action upon which she eventually decided, suspending solely by reason of the reports as to difficulties with one child, the family situation, and in particular the fact that not one but two children were experiencing significant difficulties, formed part of the broader picture that had to be considered by the judge. The information before the Court made clear that the respondent was a devoted father who was very much involved in the upbringing of his children. The already difficult situation of the children was going to be exacerbated by their father's absence, and in those circumstances, it would inevitably be the case that the judge would be anxious that the children should have their father restored to them at the earliest point in time consistent with the imposition of an appropriate sentence. It seems to us that, had the judge not decided on going down the suspension route, it is likely she would have made a somewhat greater allowance for mitigation than she actually did, pre-suspension, and would have arrived at a sentence to be served somewhat less than the one she had under consideration pre-suspension.

**13.** Adopting that approach, and also having regard to the up-to-date information which has been made available to us, we will quash the sentence that was imposed in the Central Criminal Court and substitute therefor a sentence of six years and nine months imprisonment, to date from 15<sup>th</sup> June 2023, being the same date as in the Central Criminal Court, to take account of the time that had been spent by the respondent in custody before being admitted to bail.