



**THE COURT OF APPEAL**

**Record Number: 47/2023**

**The President.  
Edwards J.  
Kennedy J.**

**BETWEEN/**

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

**RESPONDENT**

**- AND -**

**RICHARD SHAW**

**APPELLANT**

**JUDGMENT of the Court delivered (*ex tempore*) on the 1<sup>st</sup> day of February 2024 by Ms. Justice Isobel Kennedy.**

**1.** This is an appeal against severity of sentence. On the 7<sup>th</sup> February 2023, the appellant was sentenced to 32 months' imprisonment in respect of one country of burglary contrary to s. 12(1)(b) and (3) of the Criminal Justice (Theft and Fraud Offences) Act, 2001.

**Background**

**2.** On the 21<sup>st</sup> April 2022, at approximately 11pm, the injured party was alone in her home when she heard noises at her front door. She got out of bed and could see the outline of a shadow downstairs in the hallway. She called An Garda Síochána. She heard the person coming upstairs and entering her bedroom. She recognised him as a casual acquaintance. She screamed at him to leave which he did, taking a pair of sunglasses from under the stairs with him. It transpired that the front door to the house was closed but unlocked.

**3.** The appellant was arrested by An Garda Síochána in the hallway of the house and detained. It was clear that the appellant was intoxicated. He gave what is described as a non-probative interview and did not provide an explanation of why he went to this particular house. He wrote a letter of apology to the injured party after the incident.

**Personal Circumstances of the Appellant**

**4.** The appellant has a two-year-old daughter with his ex-partner. He is a man who has serious issues with addiction. He has engaged with Coolmine Drug and Alcohol Treatment Centre and it appears that he graduated from their programme in 2020.

5. The appellant has 13 previous convictions, all but one relating to District Court matters. On the date of the sentencing hearing, he was in custody in respect of a s. 3 assault matter.

6. The appellant has achieved enhanced prisoner status in custody and has continued his engagement with Coolmine.

### **Sentencing Remarks**

7. The judge outlined the salient facts to include that the appellant was serving a sentence imposed by the same judge. He took account of the appellant's guilty plea, his expression of remorse and his cooperation. He imposed a sentence of 32 months from the date of the sentencing hearing. The judge observed:-

*"...He's serving a prison term at present for an assault incident and the Court must take that into account. It seems his release date is, I think, January of next year sometime."*

He went on to say:-

*"I think the appropriate sentence for him, taking everything into account, is a term of imprisonment of 32 months from today's date. Thank you. I think if the two matters had been dealt with together, I think that probably the length of sentence I would have given."*

### **Grounds of Appeal**

8. The appellant relies on the following grounds of appeal:-

a) *The Learned Sentencing Judge erred in law and in fact in imposing an overly punitive sentence in all the circumstances taking into account the mitigation before the court and the personal circumstances of the appellant.*

b) *The Learned Sentencing Judge erred in principle by failing to indicate what allowance, if any, was made for each of the mitigating factors in the case."*

### **Submissions of the Appellant**

9. Counsel for the appellant emphasises his difficulties with alcohol and substance abuse and his efforts to address same, engaging in programs while in custody, issuing a wholehearted apology to the injured party and engaging in genuine rehabilitative efforts. Counsel stated that the Probation Service found him at low risk of reoffending.

10. The complaint is made that the sentencing judge did not nominate a headline sentence and consequently, it is unclear as to how mitigation and rehabilitation were addressed.

11. It is submitted that insufficient discount was given for mitigation and that the judge did not address his rehabilitative efforts. The appellant relies on *People (DPP) v Molloy* [2018] IECA 37.

12. It is further submitted that the failure to consider and engage with the mitigation caused the sentencing judge to set an overly punitive, deterrence-based sentence which failed to strike a balance between the principles of deterrence and rehabilitation.

### **Submissions of the Respondent**

13. Counsel for the respondent submits that the sentence was not excessive in all the circumstances. Reliance is placed on *People (DPP) v Casey* [2018] IECA 121 where this Court endorsed the comments of Hardiman J in *People (DPP) v Barnes* [2006] IECCA 165, regarding the violation of a dwelling. It is submitted that the appellant entered an occupied dwelling which

included a confrontation with the injured party. This Court in *Casey* held that if a number of aggravating factors are present then this would place the offence in the middle range at least and usually above the mid-point in that range.

**14.** Taking account of the aggravating factors and the mitigation present, the Director says that the sentence of 32 months was not excessive.

**15.** In relation to rehabilitation, the respondent relies on *People (DPP) v DW* [2018] IECA 143:-  
*"the appropriate balancing of the accepted penal objectives of retribution, deterrence and rehabilitation are, in the absence of statutory guidance, uniquely matters for the exercise of judicial discretion ..."* (para. 78).

**16.** It is submitted that the instant case is simply an example of sentencing by instinctive synthesis and that while the sentencing judge did not nominate a headline sentence and apply mitigation to arrive at the ultimate sentence, the sentence imposed was just and proportionate and within the sentencing judge's margin of appreciation.

### **Discussion and Conclusion**

**17.** This was a most unpleasant offence, entering an occupied dwelling at night, while intoxicated and with a dog, invading the occupant's home, causing undoubted fear and alarm. He stole a pair of sunglasses while there.

**18.** The issue is raised that the judge failed to identify a headline sentence and so the reduction afforded for mitigation or as to how, or if, the judge incentivised rehabilitation, cannot be ascertained.

**19.** We have repeatedly stated that while it is helpful if a headline sentence is identified so as to enable transparency so that this court can assess the sentence imposed, a failure to do so does not necessarily amount to an error in principle. This is a most experienced judge who clearly was alert to all the circumstances of the case and had in fact dealt with the appellant on a prior occasion when he imposed a sentence for the offence of assault causing harm. That sentence was due to conclude in January 2024. While the judge could have imposed a consecutive sentence, his remarks clearly indicate that he was taking account of the previous offence and effectively sentenced the appellant as if he had been sentencing for both offences simultaneously. We find no error in this regard.

**20.** Insofar as the issue of rehabilitation is concerned, this offence was committed following the appellant's time in Coolmine, and, while it is said he was doing well in custody and had achieved enhanced prisoner status, we do not see that the judge erred in the ultimate sentence he imposed.

**21.** Accordingly, we dismiss the appeal.