



THE COURT OF APPEAL

[246/18]

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

BETWEEN

THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

AND

MARK CARLISLE

APPELLANT

JUDGMENT (Ex tempore) of the Court delivered on the 12th day of November 2019 by Birmingham P.

1. This is an appeal against severity of sentence. The sentence under appeal is one of seven years and six months imprisonment that was imposed on 26th July 2018 in the Dublin Circuit Criminal Court. It was imposed in respect of a count of a violent disorder and the sentence was to date from that day. A count of assault causing harm was taken into consideration.
2. The sentence was imposed following a conviction by a jury on counts of violent disorder and assault causing harm. The trial had related to events on 12th October 2015 at Captain's Road, Dublin.
3. Following his conviction, the appellant lodged an appeal against conviction and sentence. At an earlier stage, this Court, differently constituted in part, dismissed the appeal against conviction. In the course of giving the decision on the conviction aspect, the background facts were set out in some detail and it is not proposed to repeat that exercise here today.
4. However, to briefly summarise, the evidence at the sentence hearing was that on Sunday 12th October 2015, the injured party, a Mr. Mark Conway, was making his way home to his parents' house on Captain's Road when he encountered a group of five or six young men. A bottle was thrown at him, after which he was then in contact with his brother, Derek Conway, who had been a short distance behind him. Derek Conway received a punch to the face, and when he got up, he saw a group of males in the garden, kicking his brother, Mark. Derek Conway gave evidence that the males were stamping on his brother's head. As he approached the garden, the males began to move away and then all of them, bar one, ran away. This male, who remained, continued to deliver eight to

twelve kicks to his brother while he was on the ground. This lasted some ten seconds. This individual then ran away. It was the prosecution case that it was Mr. Carlisle who was the one individual who remained behind

5. In terms of the injuries sustained by the injured party, the sentencing Court was told that he had sustained a base of the skull fracture with inter-cranial haemorrhage and that there was extensive facial trauma. The Court heard that having initially been released from hospital, he was subsequently readmitted to the Emergency Department with a seizure caused by low blood sodium levels and that that led to a diagnosis of Diabetes. The Court was also told that he had developed an overactive bladder and that he had developed Anxiety Disorder as a result of it.
6. In terms of the appellant's personal circumstances, he was 28 years old at the time of the sentence hearing, his date of birth being 22nd September 1989. He had 109 previous convictions recorded, and of note is that there were relevant convictions involving violence, from the Circuit Court. These included assault causing harm. Strikingly, there were three violent disorder convictions, there were convictions for threats to kill, assault on a Peace Officer and possession of firearms in suspicious circumstances. At the time of the trial, the appellant had been serving a sentence of five years imprisonment in respect of a violent disorder offence and that sentence expired on 27th May 2018. The appellant had been on bail for that offence at the time when the instant offence was committed. The fact that this offence was committed while on bail must, by statute, be regarded as an aggravating factor.
7. In terms of his background and personal circumstances, more generally, he had, at one stage, been a talented boxer. He had been a Dublin, Leinster and All Ireland Champion at different age groups. However, interest in boxing had waned as alcohol became a greater feature of his life. He also had a work record, having worked as an apprentice plasterer in his father's business, a business which unfortunately failed during the years of recession.
8. As to the grounds of appeal that have been advanced, it is submitted that the judge erred in fixing the headline sentence at ten years, the maximum, or certainly setting the headline at a figure very close to that. He did not do that explicitly, but it is said that it was clearly implicit in how he approached the sentence. It is also argued that the judge erred in failing to have regard to the 5-year sentence that had just been served and to the effective consecutive element. It is said that in so doing, the judge did not have regard to the principles of proportionality and that imposing a seven and a half year sentence, on top of and following from a sentence of five years, that that gave rise to an overall sentence that was disproportionate. It is said that the judge should have suspended some of the seven and a half year sentence in order to incentivise rehabilitation in respect of a man who had a very difficult history with alcohol.
9. In response, the DPP points out that the appellant is in fact serving a 3-year sentence for a firearms offence which was imposed on 27th May 2018, and that the current sentence runs concurrently with that, and that this is a matter which has to be taken into account.

The DPP says that the sentence imposed was a proportionate and appropriate one for an offence of this gravity.

10. In the Court's view, this was a very serious offence indeed, committed by someone with a very significant criminal record, including directly relevant previous convictions. For our part, we cannot identify any error on the part of the trial judge. Indeed, particularly if one has regard to the concurrent 3-year sentence, we cannot see how the sentence actually imposed could, in all the circumstances, be regarded as a severe one, still less, as an excessively severe sentence.
11. In the circumstances, we dismiss the appeal.