



THE COURT OF APPEAL

[258CJA/23]

[259CJA/23]

The President

McCarthy J.

Ní Raifeartaigh J.

BETWEEN

THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS (DPP)

APPLICANT

AND

REBEKAH WALSH

RESPONDENT

JUDGMENT of the Court delivered on the 14th day of March 2024 by Birmingham P.

Introduction

1. On 12th December 2022, the respondent was sentenced to two consecutive terms of imprisonment, each of two years duration, with each sentence suspended in full. The Director has sought to review the sentences on grounds of undue leniency. On each matter before the Court, the respondent had initially appeared alongside a different co-accused. The Director has not sought to review the sentences that were imposed on the co-accused nor indeed has she taken issue with the headline sentences identified or with the ultimate adjusted sentences arrived at. However, the Director says that the failure of the sentencing judge to provide for any period of custody in respect of either or both bills was unduly lenient, it failed to mark the seriousness of the offending on each bill, and it failed to provide for either specific or general deterrence. The essential submission on behalf of the Director is that a period of custody was required and that wholly suspended sentences were unduly lenient.

Factual Background

2. The first of the two bills, bill 15 of 2019, was concerned with events that occurred on 12th July 2018. The respondent entered pleas of guilty on the morning of the trial to counts of threats to kill, possession of an article (an iron bar forming part of a dumbbell) in a public place and criminal damage of a window at Kilkenny Garda station. The factual background is that the respondent attended at an apartment in Kilkenny city in the early hours of the morning. The evidence indicated she had been drinking all day and that she had taken intoxicants. She made her way to the upstairs area of the apartment block and approached the door of the injured party, AH, who did not know her and who had just returned home from work. The respondent said she was a resident of downstairs, but the resident of the apartment knew that she was not. The

respondent then banged on a neighbour's door, while roaring. The occupant of the apartment opened the door to ask the respondent to leave and she was immediately approached by the respondent. Despite this, she was able to close the door. Threats to kill were issued along with other vulgarities. The respondent was in possession of an iron bar from a dumbbell and threats to kill were repeatedly screamed over a prolonged period. There were threats to smash in the face of the injured party along with the threats to kill.

3. Gardaí were called and the respondent and a co-accused were found outside the apartment building. The respondent was arrested. Then, at Kilkenny Garda station, she damaged a glass window. The respondent entered a plea on the morning of the trial, but the trial proceeded in the case of a co-accused who was charged in respect of a threat to kill the boyfriend of the occupant of the apartment. That person was a reluctant witness as he suffered from unrelated mental health issues. Ultimately, a plea in respect of trespass was accepted in respect of the involvement of the co-accused.

4. In the case of bill 4 of 2021, the events in issue occurred on 28th August 2020. At that time, the respondent was on bail in relation to the offence that we have discussed earlier. This incident occurred at the home of Mr. KR, a vulnerable drug user who was living in an apartment in Kilkenny city. The respondent to this application was charged, along with a co-accused, who was her then boyfriend. Her co-accused pleaded guilty on the morning of the trial, but the respondent contested the trial and was convicted. It is the situation that the injured party and the respondent knew each other from drinking together in the city centre, and indeed had known each other since childhood. She had asked to use his flat in the city centre the night before and had been allowed to do so.

5. On the occasion of the incident, when Mr. KR returned to his flat, both accused were present, and an argument developed. According to the injured party, Ms. Walsh attacked him viciously with a vodka bottle and other glass bottles were also used. The boyfriend of the respondent, who had been asleep, woke up and he struck the apartment dweller a forceful punch to the face. Thereafter, both accused left the flat and called the emergency services, pretending that they had not been present.

6. In the incident, the injured party suffered significant injuries, including a fractured eye socket, a broken nose, a broken finger, with multiple lacerations and bruising to his head and torso. In the course of the sentencing remarks, the judge made the following comments:

"It was her co-accused that damaged his head area and the eye area in relation to those matters, so her role is of a lesser one as it were in relation to the assault *per se*. But she did attack him with a bottle and this Court vividly recalls the sight of circular, clear, very clear bruise on the man's torso which the gardaí told the Court they were of the view was the end of a bottle having been administered with some degree of pressure shall we say to his torso in relation to that.

In respect of the aggravating factors in respect of this matter, he was a friend, they had been friends for a long time, and it was an extreme breach of trust. He had welcomed her into his home, he let her stay there and then she was involved in assaulting him.

The fact of the matter is that she was on bail for bill 15/19 at the time and that is another factor this Court has to take into account. And the amount of previous convictions that she

has as already outlined, but they include one for section 2 assault and the fact that she used a bottle in this.

In mitigation, she is now remorseful in relation to the matter and the Court notes that that is in conjunction with a huge amount of work being done in dealing with her addiction issues. And she has not been in trouble since April, May of 2021 and that in and of itself is a very important feature in relation to somebody who has a chronic history of offending that appears to be chronically tied to a chronic addiction which she is now dealing with. In and of itself in relation to the section 3 assault it warrants a headline sentence of three years. In light of the mitigation, I will impose a sentence of two years in respect of this matter.

Now, that sentence has to be consecutive to the sentence on 15/19. So, 15/19, that is a two-year sentence. And on bill 4/21, that is a two-year sentence bringing the matter to a total of four years.

The Court has to have regard to principles of punishment, [deterrence] and rehabilitation in respect of this matter. And in relation to this, the Court has very carefully considered all of the matters that were put in mitigation. There's a considerable bundle of documentation that have been put before the Court in relation to her going into residential rehabilitation first of all, completing that. Then attending daytime rehabilitation, completing that. Moving out of Kilkenny, moving up to Dublin in the first place and then moving on from there and now being in Wicklow.

I've read the documentation from Chrysalis, I've read from the documentation from the Care After Prison organisation, the HSE in relation to the Keltoi and the programme that she has attended through there and they speak, Merchants Quay Ireland also documentation in relation to all of that. And it's all vouched for what she has done.

The most compelling piece of this in actual fact is that in conjunction with that, this Court is not aware of any fresh charges facing this woman who has now gone a very long way down the road to endeavouring to put herself in a better place. In putting herself in a better place she becomes less of a risk to the people of Ireland because she is clearly and I'll be very clear about this, in relation to [AH] and her boyfriend, in relation to [KR], she's the offender in relation to this. They were innocent victims of this woman's aggression and violence, threats, criminal damage, going around with steel bars, assaulting people with bottles, things of that nature, all of that is disgraceful behaviour. And for a woman of now 32 years of age who was clearly in the grip of significant addiction issues that have gone on for a significant period of time in respect of this, these are very serious matters.

But this Court has decided in light of the significant efforts that have been made in respect of this, that it will give [the respondent] one last really substantial chance. And what I'm going to do is that I'm going to suspend these sentences which total four years in their entirety and I'm going to suspend them for a period of four years from today's date...".

Personal Circumstances of the Respondent

7. In terms of the respondent's background and personal circumstances, she was 32 years of age at the time of the sentence hearing and 27 previous convictions were recorded, including convictions for criminal damage, theft, burglary, assault, matters under the Misuse of Drugs Act 1977, as amended, and matters and offences under the Road Traffic Acts. The second offence was committed at a time when she was on bail for the first offence that the Court was dealing with and it was committed during the currency of two short suspended sentences which had been imposed in the District Court. The first offending the Court was concerned with occurred at a time when she had only just completed an 18-month fully suspended sentence.

8. Today, we have been provided with a psychologist's report dating from December 2023. We have regard to its contents, in particular, we have noted with concern the contents of paragraph 7.4. While the Director has taken the position that this is offending of such seriousness that it had to be met with a custodial sentence, the respondent takes a different view. The respondent, while at least implicitly accepting that this was a lenient sentence, says that the Circuit Court judge took a course of action that was open to her and an intervention by this Court at this stage and at this time remove would not be justified.

Discussion and Decision

9. For our part, we take the view that the judge's approach was not just lenient but was in fact unduly lenient. We come to that view even though we recognise that the judge felt that the person before the Court was potentially at a turning point in her life and was someone who, if given a chance, might take it. It is the situation that information that has been put before us gives us reason to query whether that optimistic view was justified. In that regard, we have been told that the respondent faces a number of charges arising from incidents that are alleged to have occurred post the Circuit Court. We want to make clear that, at this stage, they are charges, charges that have not yet been heard and determined by the Court, and so we will not be having regard to them today. Being of the view that we are, that the sentences from the Circuit Court are unduly lenient, we are obliged to resentence, and we do so as of today's date.

Resentencing

10. We propose to deal with the situation by imposing a sentence of 18 months imprisonment on bill 15 of 19. Then we will impose a consecutive two-year sentence in respect of the other bill number. The sentence must be consecutive as it was committed while the respondent was on bail. However, having regard to the factors that were present that caused the Circuit Court judge to act with such leniency, and having regard to the totality principle, we will suspend the sentence imposed on the second bill. It was a sentence of two years imprisonment, and it will be suspended for a period of two years.

11. We will hear from counsel as to whether there are any conditions that would be appropriate. We want to stress that we have not had regard to the merits of the charges that are now pending in the District Court; the respondent enjoys the presumption of innocence in that regard. In the event that the accused is convicted of some or all of the charges, it is possible that would precipitate an application to activate the suspended sentence; however, if that happens, that is a matter for another day.

12. We are quashing the sentence imposed in the Circuit Court in respect of bill 15 of 2019 that concerned events on 12th July 2018, and we are substituting for the sentence in the Circuit Court a sentence of 18 months imprisonment. In respect of the second bill, there is a consecutive sentence of two years, but that sentence is suspended for a period of two years.