



**THE COURT OF APPEAL**

**Court of Appeal Record No. 2022/208**

**[2024] IECA 203**

**Woulfe J.**

**McCarthy J.**

**Burns J.**

**Between**

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

**Respondent**

**-and-**

**EOIN HANNAN**

**Appellant**

**JUDGMENT of the Court delivered by Mr. Justice Woulfe on the 30<sup>th</sup> day of July, 2024**

**Introduction**

- 1.** This is an appeal against the severity of the sentence imposed on the appellant. He was convicted by a jury for an offence of harassment contrary to s. 10 of the Non-Fatal Offences Against the Person Act, 1997 (“the 1997 Act”). In July, 2022 he pleaded guilty to two further counts of harassment on a second Bill. This offending was committed while on bail in respect of the earlier Bill.
- 2.** The appellant was sentenced on the 7<sup>th</sup> November, 2022, to a term of imprisonment of three years in respect of the first Bill, and one year in respect of each of the two counts on the second Bill, to run concurrently with each other and consecutively to the sentence imposed on the first Bill.

3. The appellant appealed the sentences imposed on the grounds that the offences committed were non-violent in nature, that the psychiatric report submitted to the sentencing Court contained a damaging falsehood, and that no regard was had to the fact that the appellant is afflicted with bi-polar affective disorder.

#### **Background**

4. It may be useful to outline the events that led to the sentence. The victims in this case are a Ms Ciara Hassett, and her father Mr Paddy Hassett. It appears that Ms Hassett is the sister of a former housemate of the appellant, whom the appellant had believed had represented him in court back in 2013, but he later learned he was mistaken as to her identity.
5. The appellant began corresponding with Ms Hassett in 2016 and sent flowers to her. She replied in that instance by way of text message thanking him for the flowers. This was the only communication she ever made with the appellant. Following further communication with Ms Hassett, the appellant was warned by Garda Emmet Roche in July, 2017 that he had received a complaint from the Hassett family regarding his behaviour. Garda Roche interviewed the appellant voluntarily and warned him that the communications were unwelcome, and that consequences would arise if it were to continue.
6. In April, 2018, the appellant called to Ms Hassett's family home in County Clare, where her father lived alone. In February, 2019, Garda Mark Walsh contacted the appellant following a further complaint from the Hassett family and warned him in the same manner as before. After a lull in contact, the appellant wrote to Ms Hassett by letter dated the 14<sup>th</sup> October, 2019.
7. The appellant began sending correspondence to Ms Hassett's workplace, and arrangements were subsequently made for any such correspondence to be intercepted, although she was informed of same. All of the correspondence received at Ms Hassett's workplace was provided to the Gardaí, and was provided to the sentencing Court. Ms Hassett also received correspondence from the appellant to her family home, and this was also provided to the sentencing Court.
8. In August, 2020 the security guard at Ms Hassett's workplace informed her that the appellant had called to her workplace on two separate occasions, entering the building on the first occasion. On the second occasion, he was refused entry but left a package outside the doorway addressed to Ms Hassett.
9. Throughout the course of the correspondence, as with earlier communications, the appellant professed his affection for Ms Hassett. All of this made her upset, anxious and very unsettled. In a letter to Ms Hassett dated 6<sup>th</sup> August, 2020, the appellant stated "I can kill anything but time", and this instilled fear and upset in Ms Hassett. Another letter received at the family home on the 11<sup>th</sup> August, 2020 referenced her family members, and she described being very stressed and very upset by these letters.
10. On the 25<sup>th</sup> August, 2020, Garda Barry arrested the appellant on suspicion of harassment, and he was detained for the purpose of investigation. He subsequently made admissions to the conduct alleged, but did not admit that it amounted to the offence alleged. He described his actions as trying to "woo" Ms Hassett, and described meeting her at her brother's office on the 6<sup>th</sup> February, 2013. It was ultimately established at trial, however, that the appellant

had in fact never met Ms Hassett before the trial. The appellant expressed outrage at the fact that Ms Hassett had not told him to stop contacting her without involving what he described as “*the department of criminal justice*”.

- 11.** The appellant was subsequently charged with harassment and then released on bail, one condition of which was that he not have any contact with Ms Hassett. In an attempt to circumvent the bail conditions, the appellant sent a letter to Ms Hassett’s father dated the 19<sup>th</sup> January, 2021. Following this, Mr Hassett received a phone call from the appellant in which he asked for Ms Hassett’s phone number. Mr Hassett refused, and told the appellant not to contact him again. As Mr Hassett was aware of the appellant’s previous conduct towards his daughter, he was concerned and worried as a result of these communications. He told Ms Hassett, who was at the time living with him, about the phone call and the letter, and immediately after discovered that an attempt had been made by the appellant to call his phone number again, and that the appellant had left a voicemail once again asking for Ms Hassett’s number.
- 12.** On the 3<sup>rd</sup> March, 2021, the appellant was arrested for harassment, detained and interviewed. He again made admissions as to the conduct alleged, but expressed a belief that Ms Hassett had forgiven him. He then suggested he would stop contacting the Hassett family.
- 13.** On the 2<sup>nd</sup> December, 2021, Ms Hassett again received a letter from the appellant which caused huge worry to her. She described real worry about the stress this unwanted contact was causing her eighty-two year old father, and the fact that it had been going on for five years without knowing when it would end was very stressful.
- 14.** On the 15<sup>th</sup> June, 2022, the appellant was again arrested, detained and interviewed. When asked why he had sent the December, 2021 letter, he stated that having to wait until October, 2023 for a trial would be grossly unfair, and that sending the letter would cause his trial date to be brought forward.

### **Victim Impact Statements**

- 15.** Two victim impact statements were provided to the sentencing judge, one of Ms Hassett in respect of both Bills, and one of Mr Hassett in respect of the latter Bill. In her statement Ms Hassett outlined the history of the matter from her perspective. She detailed how the situation had been unnerving, frightening and overwhelmingly exhausting. When she was made aware during the unwanted contact of the appellant’s mental health issues, and his history of criminal behaviour, this only served to heighten her fear. She detailed the embarrassment she felt when having to tell her employer about the appellant’s unwanted contact with her. The fact that her elderly father had to endure receiving unwanted contact from the appellant also caused her a lot of anxiety.
- 16.** Ms Hassett stated that she found the escalation in the appellant’s conduct in 2020 especially alarming and frightening. The fact that he had persisted in his contact while on bail with strict conditions left her feeling helpless and even more dependent on the legal process. She described how she found the court process both difficult and exhausting to experience, and

how this meant being in very close proximity to the appellant, who she was genuinely fearful of.

- 17.** In his victim impact statement Mr Hassett detailed the worry and concern he had experienced as a result of the appellant's persistent harassment of him and his daughter. The letters addressed to him had been especially concerning. He stated that he initially tried to protect his daughter by not telling her of the contact which the appellant tried to make with him. The extent of the contact to his daughter at his home added to his concerns about the situation and the unwanted contact to himself.

**Personal circumstances of the Appellant**

- 18.** The appellant was aged forty-nine at the date of the sentencing hearing. He had forty four previous convictions from 2009 to 2022. These included twenty two under the Criminal Justice (Public Order) Act, five for criminal damage, one for threats to kill, two for possession of knives, one for robbery, one for a s. 3 assault causing harm, three for failure to appear, two for refusal to give names and addresses, four for failure to comply with directions of An Garda Síochána. On one of these convictions he received a three year custodial sentence in 2014, for threats under s. 5 of the 1997 Act.
- 19.** In his plea in mitigation counsel for the appellant referred to a psychiatric report from Dr Conor O'Neill which was before the Court. In his report Dr O'Neill stated that the appellant had a long history of bi-polar affective disorder, a severe and enduring mental illness, initially diagnosed in the late 1990s. He had had a large number of relapses of his conditions since his mid-twenties, largely in the context of non-compliance with medication and also substance abuse. He had had numerous hospitalisations in Limerick, Cork and in the Central Mental Hospital. The appellant had been repeatedly advised over many years of the need to abstain from intoxicants and to comply with treatment, including prescribed medication.
- 20.** Dr O'Neill noted that during the time of the offending behaviour described, the appellant had admissions to hospital in Cork in March and April, 2018. He was assessed as manic during a committal to the Midlands Prison in 2018, and admitted to hospital in Limerick on release in May, 2018. In February, 2019, he was noted to be manic in Cloverhill Prison, and when he was released on bail on that occasion, Gardaí were contacted and admission to hospital was recommended. During a further remand to Cloverhill in April, 2019, the appellant again presented with relapse of manic psychosis. He was released on bail and admitted to hospital in Limerick in May, 2019. When further remanded in September, 2020, he was again manic and psychotic, and he was again granted bail to enable admission to hospital in Limerick from October, 2020 to February, 2021.
- 21.** Dr O'Neill stated that the appellant was markedly improved after this lengthy hospital admission, and remained well for a period on medication, but by his account subsequently discontinued his medication and resumed substance use. Dr O'Neill formed the opinion that the appellant was likely unwell and manic through much of the period of the harassment behaviour as charged. He formed the opinion that such behaviour was a considerable part driven by acute symptoms of his illness, and that his underlying illness was relevant in mitigation.

**Decision of the Sentencing Judge**

- 22.** The sentencing judge considered each of the two Bills separately, detailing the timelines and the circumstances of the appellant's offending. The aggravating factors considered by the sentencing judge were the appellant's persistent and ongoing contact with the victims despite the warnings received from the Gardaí; the escalation in the appellant's contact with Ms Hassett; the commission of the later offences while on bail for the earlier ones; the appellant's previous convictions, and the impact that his offending had on the Hassetts.
- 23.** The sentencing judge also considered any mitigating factors which arose, including the appellant's early plea in respect of the second Bill, as well as his psychiatric history. She referred to the psychiatric report that the Court had had regard to, and the mental health difficulties contained therein. She noted that the appellant had an established diagnosis of bi-polar affective disorder with over forty admissions to hospital, many of those involuntary. She referred to Dr O'Neill's view that the appellant was likely unwell and manic throughout much of the period of harassment.
- 24.** In relation to Bill 399/21, the sentencing judge stated that the maximum penalty at that time was seven years' imprisonment. She held that a headline sentence of four years was warranted, noting that the appellant's communications were non-threatening for the most part, despite the one instance where the appellant stated that he could "kill anything except time", a statement which instilled a level of fear and upset in Ms Hassett. The judge also noted that the appellant chose to contest the trial unrepresented, which did require Ms Hassett to testify and make herself available for cross-examination. In light of the mitigating circumstances present the Court imposed a sentence of three years in respect of Bill 399/21.
- 25.** In relation to Bill 1403/21, the sentencing judge nominated headline sentences of three years, in circumstances where these offences were committed while the appellant was on bail in respect of Bill 399/21. In the light of the mitigating circumstances present, she imposed concurrent sentences of two years on the two counts, consecutive to the sentences imposed on Bill 399/21. She then further reduced the sentences to one year's imprisonment having had regard to the totality principle.

### **Grounds of Appeal and Submissions on Appeal**

- 26.** The appellant, appearing as a litigant in person, appealed the severity of his sentence on the three grounds set out at para. 1 above. He did not file written submissions in advance of the appeal hearing, but read out a prepared statement in Court at the hearing.

#### *Submissions of the Appellant*

- 27.** The appellant stated that he suffered from bi-polar disorder. He contended that as of 2019 his contact with Ms Hassett was a civil matter, and if pursued as a civil matter he might have been aware that the identity of the person he was writing to was not the intended recipient of the letters.
- 28.** The appellant referred to two cases cited in the respondent's submissions. In *DPP v. Carraher (No.2)* [2018] IECA 170 ("*Carraher*"), this Court imposed a sentence of three years'

imprisonment, with the final eighteen months suspended, in a case involving the harassment of a garda between March, 2009 and May, 2011 with internet postings and telephone calls. In *DPP v. Doherty* [2019] IECA 350 ("*Doherty*"), this Court left a sentence of three years imprisonment in place, but suspended the unserved portion, in a case involving harassment by a female Garda of a new partner of her former partner. The appellant stated that these offenders had received lesser sentences than he did, and he found it hard to reconcile that he got four years for mistakenly sending a series of romantic style letters to the wrong girl.

- 29.** The appellant stated that Dr O'Neill's report included errors resulting from his negligent reading of the legal records of the appellant's previous convictions, and that this had materially affected his ability to get bail, and affected the sentences imposed on him by the sentencing judge. Dr O'Neill recorded that the appellant had stated that a barring order was taken out against him by a former girlfriend in 2005, and that he had previously attended court for breach of this barring order. The appellant stated that no barring order was ever applied for or granted against him, and that this was a damaging falsehood.
- 30.** The appellant stated that the offences committed by him were non-violent, were romantic rather than sinister, and were based on a case of mistaken identity. He repeated that he believed the Gardaí should not have been involved in the early stages as it "was not a criminal matter to send a letter to a girl", and as a corollary to this, stated that he would not have sent the letters had he known he was communicating to the wrong person.

*Submissions of the Respondent*

- 31.** The respondent acknowledged that the offending did not involve the use of physical violence. However, she contended that the offending concerned was serious and had a significant impact on its victims. She submitted that in the circumstances the sentence imposed was appropriate to the offending committed by the appellant.
- 32.** As regards the appellant's complaint of a damaging falsehood in Dr O'Neill's report, the respondent contended that the issues outlined by the appellant form only a very small and incidental part of the report. She submitted that the sentencing judge, when imposing sentence, did not explicitly consider the reference to a historical breach of a barring order as a factor, and certainly not as an aggravating factor.
- 33.** The respondent submitted that the sentencing judge had due regard for the appellant's diagnosis of bi-polar affective disorder, as she quoted Dr O'Neill's report where it stated that the appellant had this established diagnosis. She states that the sentencing judge recognised that the appellant's mental health issues were very significant in their nature, and that the Court explicitly considered the appellant's psychiatric history to be a mitigating factor when imposing sentence.
- 34.** During oral submissions, the respondent sought to differentiate the two cases cited in their written submissions. In respect of *Doherty*, the respondent stated that it was a very different case as regards the nature of the harassment. She submitted that the mitigation in that case was much different to that of the appellant in this case, as in *Doherty* there were a plethora of mitigating factors of great significance in approaching sentence that are not present in this case.

**35.** As regards *Carragher*, the respondent again contended that that case presented a very different fact pattern than that of the appellant's. In that case, efforts were made to reverse the damage done by the appellant, consistent with remorse, and it was stated in the resentencing in that case that the offending only constituted mid-range offending, as opposed to the higher level considered applicable in this case by the sentencing judge. There were also other mitigating factors present there, including the fact that the appellant undertook educational courses during his time in prison.

### **Decision**

**36.** The appellant's first ground of appeal against the severity of sentence was that this was a non-violent offence. While it is the case that the offending did not involve the use of physical violence, the offending concerned a serious and persistent pattern of harassment, and had a significant impact on its victims, as set out above.

**37.** In relation to Bill 399/21, the Court takes the view that there was no error of principle by the sentencing judge in nominating a headline sentence of four years, in circumstances where the maximum sentence at that time for the harassment offence was seven years. As regards the appellant's reliance on comparative cases, while the Court accepts that consistency of sentence is of course a desirable objective, the Court is of the view that the outcome of one or more comparative cases, involving somewhat different factors, cannot necessarily be decisive in a later case. This may be particularly so in the context of comparator harassment cases: see *Doherty* at para. 7. Overall the Court is of the view that the headline sentence nominated in the present case, taking account of all of the material factors, was within the range of the headline sentence available to the sentencing judge, given the serious offending involved.

**38.** The Court is also satisfied that the sentencing judge took into account all of the relevant mitigating factors in then imposing an effective sentence of three years on Bill 399/21. The appellant's second ground appeal was that the sentencing judge took no account of the fact that he is afflicted with bi-polar affective disorder. However, the sentencing judge expressly stated that she had had regard to the psychiatric report, and the mental health difficulties contained therein. She also expressly stated that the Court was cognisant of the fact of the appellant's mental health difficulties as outlined by Dr. O'Neill. It is therefore clear that the sentencing judge did take account of the fact that the appellant was afflicted with bi-polar affective disorder, as part of her consideration of mitigating circumstances.

**39.** In relation to Bill 1403/21, the Court takes the view that there was no error of principle by the sentencing judge in nominating a headline sentence of three years, in circumstances where these offences were committed while the appellant was on bail in respect of Bill 399/21, circumstances which the sentencing judge was clearly entitled to treat as a significant aggravating factor.

**40.** As set out above, the sentencing judge went on to impose concurrent sentences of two years on the two counts, having regard to the appellant's guilty plea, consecutive to the sentences imposed on Bill 399/21. Having regard to the totality principle, she then imposed an overall sentence of four years, which meant in fact a sentence of one year on the consecutive

sentences on Bill 1403/21. The Court is satisfied that it was clearly open to her to arrive at this overall sentence of four years between Bill 399/21 and Bill 1403/21.

- 41.** The appellant's third ground of appeal was that Dr O'Neill's report had contained a damaging falsehood, in suggesting that the appellant had stated that his former girlfriend had taken out a barring order against him in 2005, and that he had previously attended Court for breach of that barring order. While the sentencing judge considered this report, she did not expressly consider the reference to a barring order as a factor in this case, and certainly not as an aggravating factor. In the circumstances there is nothing to indicate that she relied in any way upon this reference to a barring order, and in the circumstances we cannot uphold this ground of appeal.
- 42.** We therefore dismiss this appeal.