



THE COURT OF APPEAL

107/2019

The President
McCarthy J.
Kennedy J.

BETWEEN/

THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

- AND -

DEIRDRE O' SULLIVAN

APPELLANT

JUDGMENT of the Court (ex tempore) delivered on the 2nd day of December 2019 by Ms. Justice Kennedy

1. This is an appeal against sentence. The appellant pleaded guilty in Cork Circuit Court to a count of burglary contrary to s.12(1)(a) and (3) of the Criminal Justice (Theft and Fraud Offences) Act, 2001. On the 10th May, 2019 the appellant was sentenced to four years' imprisonment with the final year of that sentence suspended on terms.

Background

2. The background to the offence is as follows: On the 22nd December, 2017 a member of staff at a restaurant on Princes Street in Cork reported that her handbag containing her phone, identity cards, bank cards, cash and jewellery had been taken from the staff room. CCTV footage of the premises was examined and Gardaí identified the appellant leaving the premises with the items in question. A warrant was obtained and the appellant's address was searched with no success. On the 22nd January, 2018 the appellant was arrested on suspicion of burglary and questioned. She initially denied any involvement with the burglary but on 8th February, 2019 the appellant was arraigned and pleaded guilty. The stolen property was not recovered.

The sentence

3. In sentencing the appellant, the sentencing judge said as follows: -

"This lady has a long lamentable history of drug addiction. I accept what the guard says that her lifestyle is totally chaotic, her addiction is complete, and there has been no effort to break that addiction until she went into custody. Her history of convictions for burglaries is long, and she served four years since 2015 for burglary. She has not made any real progress herself while in the community and her burglary on this occasion had a devastating effect on Ms Vida, who was left without her identity card, her driving licence and in particular, for a lady who was, as she says herself, a foreign woman in this country, that caused her a lot of personal anguish and trouble. With this lady's -the accused's history of burglary, it's hard to know where to go because previously she had a partially suspended sentence, didn't seem to work the oracle or have any real beneficial effect, so I am asking myself, you know, what is the point in structuring a sentence for this lady because she is not going to change. And it's really pointless to do the same thing

repeatedly. Now, were I going to structure a sentence, I'd set a headline sentence of four years and suspend one, but as I say, looking at the background, it's probably pointless."

The sentencing judge then concluded by imposing a sentence of four years' imprisonment with the final year suspended.

Personal Circumstances

4. The appellant was thirty-three years old at the time of sentencing, the court heard that she is a chronic drug user with a serious heroin addiction which has contributed to her high volume of previous convictions. She has 178 previous convictions the majority of which were dealt with in the District Court. These include; 78 theft offences; 8 relating to burglary and one for trespass with intent to commit an offence. One of the convictions for burglary was a conviction before Cork Circuit Court in 2015 for the offence of burglary and a sentence of four years' imprisonment with the final two years suspended was imposed in that regard.
5. The Circuit Court also heard that the appellant paid over a sum of €500 by way of compensation towards the injured party and in the plea of mitigation, counsel for the appellant informed the court that the appellant had made efforts towards rehabilitation whilst in custody.

Submissions of the appellant

6. The appellant submits that the sentencing judge erred in failing to follow the recommended two-stage process of sentencing and as such, the sentencing process lacked transparency and the sentence imposed was not proportionate to the offence itself and the personal circumstances of the appellant.
7. The appellant submits that the trial judge erred in failing to have adequate regard to the mitigating circumstances of the appellant. In particular, the appellant submits that the sentencing judge ought to have attached more weight to the appellant's expression of remorse and the 500 euro offered to the injured party. The appellant further submits that it was not made clear what discount was afforded to the mitigating circumstances.
8. The appellant submits that the trial judge erred in failing to take into account the rehabilitation of the appellant during her time in custody.

Submissions of the respondent

9. The respondent accepts that the sentencing judge did not follow the recommended approach to sentencing but it is submitted that it does not necessarily follow that such amounts to an error in principle and the overall sentence imposed was appropriate in the circumstances.
10. The respondent submits that the sentencing remarks of the judge, laid out above, demonstrate that the sentencing judge clearly considered all relevant circumstances including the gravity of the offending which had a considerable impact on the injured party, the numerous convictions of the appellant and the appellant's lack of progress in the

community. In relation to the rehabilitation of the appellant, the respondent submits that while submissions were made to the Court that the appellant was engaging in counselling and on methadone while in custody, there was no other evidence before the Court detailing the rehabilitation progress or details as to a future plan.

11. The respondent concludes that the sentence imposed took account of all relevant matters and was within the sentencing discretion of the trial judge.

Conclusion

12. We do not accept that the complaint that the sentencing judge failed to follow the well-known two stage process in sentencing is an error in principle. As has been stated by Edwards J. in *The People (DPP) v Molloy* [2018] IECA 37, sentencing is about substance over form. The failure to adhere to a particular form will not therefore in and of itself lead to an error of principle.
13. In our view, the suggestion that the sentence lacks transparency is not borne out by an examination of the judge's remarks. Initially, he deemed a pre mitigation sentence of four years with a reduction by one year in view of the mitigation to be the appropriate sentence. On being requested by counsel to consider suspending part of the sentence, the judge restructured the sentence so as to suspend the final year on terms, clearly in light of the mitigation and in order to incentivise rehabilitation.
14. Finally, the argument is advanced that the judge failed to give adequate reduction for mitigation. The appellant had entered a plea of guilty, she is a woman with a history of addiction and had offered €500 to the victim of her crime. The judge affords a reduction of 25% for these factors, and, in order to incentivise rehabilitation by suspending the final year of the sentence on terms. These terms assist the appellant in her efforts to rehabilitate herself on her release.
15. In the circumstances we do not find any error in principle and accordingly we dismiss the appeal.