



THE COURT OF APPEAL

[Appeal No: 82/18]

Clarke C.J.  
Birmingham P.  
Kennedy J.

BETWEEN/

THE DIRECTOR OF PUBLIC PROSECUTIONS

APPLICANT

AND

JOHN O'HALLORAN

RESPONDENT

**Judgment (ex tempore) of the Court delivered by Mr. Justice Frank Clarke, Chief Justice on 4th December, 2019.**

1. The respondent ("Mr. O'Halloran") faced an indictment involving 214 counts when he pleaded guilty to eleven counts on a so-called full facts basis, and was sentenced by His Honour Judge Seán Ó Donnabháin at Cork Circuit Criminal Court on 27 February, 2018.
2. It is accepted that the offences can be grouped as follows:-
  - (i) 147 counts of theft from the C.I.E. Pensions Scheme relating to the payment into Mr. O'Halloran's bank account of his late father's pension. This involved a sum of approximately €11,800;
  - (ii) 18 counts of theft and corruption, involving six separate incidents, relating to payments obtained by Mr. O'Halloran from the U.C.C. Students Union;
  - (iii) 13 counts involving theft and corruption concerning the Connaught Avenue Residents Association;
  - (iv) 34 miscellaneous charges of theft involving a large number of people arising out of payments received by Mr. O'Halloran concerning the Summer Evening on the Quad charitable event and the Barrack St. Old Folks Christmas Party. Monies solicited for those charities were diverted into accounts for Mr. O'Halloran's own benefit.  
  
These last three categories involved a sum of approximately €15,000; and
  - (v) Two counts relating to a Ms. Mairead O'Callaghan.  
  
This count involved approximately €5,000.
3. The sentencing judge imposed a term of two years imprisonment in respect of all counts, to run concurrently, but suspended each of those terms for a period of two years. The D.P.P. has appealed against that sentence on the grounds of undue leniency.
4. Both parties accept the following synopsis of the matters which were established in evidence at the sentencing hearing.

- (a) At all times Mr. O'Halloran was a serving member of An Garda Síochána.
  - (b) He used his position as a Garda with regard to a number of those offences, particularly those relating to UCC students' union, in respect of which counts of corruption were laid and to which pleas of guilty were specifically entered to three counts of corruption (Counts 157, 160 and 163).
  - (c) With regard to those offences concerning UCC students' union he had sent forged invoices created by him on paper which appeared to be Garda headed notepaper, over a three year period from 2011 to 2013. The documents in that regard seized in the course of the investigation were handed into Court at the sentencing hearing.
  - (d) A similar modus operandi was operated to the above with regard to the Connaught Avenue Residents Association. The offences relating to this injured party also occurred over a long period of time.
  - (e) Mr. O'Halloran set up a bank account, with only one signatory required to withdraw funds, which he then utilised for lodging cheques which he had obtained from his offending behaviour and which he then used for his personal benefit. This account was set up in place of previous accounts which required two signatories.
  - (f) With regard to the offences of theft relating to his later father's pension, he had misused a Garda official stamp and signed a document the pension scheme required to continue payment of the pension in the name of a non-existent Garda.
  - (g) Mr. O'Halloran when interviewed as part of the investigation did not offer anything of probative value at interview.
5. In his sentencing remarks the trial judge said that the offending behaviour of Mr. O'Halloran took place over a lengthy period of time and was pre-meditated. It required Mr. O'Halloran to seek out persons, in his role as a Garda, whom he knew, and who knew him and to behave corruptly in his role as a Garda to seek money from them. It involved him forging documents over an extended period of time. It also involved very significant and serious breaches of trust. His offending behaviour touched a very large number of persons. It was noted that whilst 147 of the Counts concerned one injured party, i.e. the CIE pension fund, the remainder involved a very large number of people, all of whom knew Mr. O'Halloran and interacted with him as a Garda.
6. However, in addition, the sentencing judge agreed that a number of mitigating factors were required to be taken into account as follows: -
- (a) His lack of previous convictions and his previous good character.
  - (b) His excellent performance as a community Garda and the very high standing in which he was viewed by all persons who knew him as a community Garda. In that context this Court notes that there was a reluctance on the part of a number of

victims to give evidence against Mr. O'Halloran because of the regard in which he was held.

- (c) The fact that he had lost his career, his gratuity payment, and part of his own pension. The sentencing judge did, however, note that Mr. O'Halloran had undoubtedly brought these consequences on his own head.
  - (d) That he had lost his marriage and had to bear the disgrace and opprobrium that came with being a former Garda who had committed these offences. Likewise, those matters were also noted to be natural consequences of his own criminal behaviour.
  - (e) That the motivation for the offending behaviour arose from a severe gambling addiction, which had spiralled out of control over the years, and for which he had sought treatment. In that context the Court notes the well documented evidence of significant attempts to address this problem including undergoing residential treatment.
  - (f) That he had pleaded guilty. It was accepted that this did occur late in the day but was in advance of the trial.
  - (g) That the plea of guilty had saved a lengthy trial, which would have occupied four weeks of Court time.
7. The maximum sentence in respect of the charges of deception and attempted deception was one of five years imprisonment while the maximum sentence in respect of the theft and corruption counts was a term of imprisonment of ten years.
8. Taking into account the factors identified earlier, the sentencing judge indicated that the appropriate headline sentence was one of three years. In respect of the mitigating factors the sentencing judge took the view that the saving of a lengthy trial with a large number of witnesses was a significant factor which would warrant a halving of any custodial sentence (although in fact what occurred seems to have been a reduction of one third) and then went on to take into account the effects which the conviction placed on Mr. O'Halloran being that he lost his position as a member of An Garda Síochána and his gratuity payment. In addition, the sentencing judge took into account Mr. O'Halloran's gambling addiction, the treatment which he had undergone for same and the payment of compensation. On that basis the sentencing judge reached the conclusion that a two year sentence wholly suspended was appropriate.
9. From that sentence the Director of Public Prosecutions has appealed to this Court on the grounds of undue leniency having regard to s.2 of the Criminal Justice Act, 1993. The principles applicable to such an appeal are well settled and are summarised in *D.P.P. v. Strong* [2011] IECCA 79. In essence it is necessary for the D.P.P. to persuade this Court that the sentence was outside the ambit or scope of the sort of sentence which it was within the sentencing judge's discretion to impose.

10. It was accepted by counsel on both sides that there was only limited authority for the proper approach to sentencing in a case such as this.
11. Counsel for the D.P.P. essentially made two principal points.
  - (a) First the headline sentence for corruption was said to be too low at three years. No similar point was made in respect of the theft charges.
  - (b) Second, while accepting that there was significant mitigation present, it was said that this should not have resulted in a wholly suspended sentence.
12. Without being unduly prescriptive it is possible to identify different certain categories of cases involving dishonesty and corruption.
  - (a) Private issues between citizens (including abuse of trust as an aggravation factor);
  - (b) Abuse of an official position not directly related to the carrying out of the duties associated with that position;
  - (c) Abuse of an official position to subvert the very purpose of that official position itself.

While many factors may influence the gravity of the offence (such as the amounts involved, the identity and vulnerability of the victims and the persistence of the wrongdoing), the categories above are also of significance and rank in ascending order of seriousness.

13. The first focus of the D.P.P.'s appeal centred on the headline sentence for the corruption charges. The offences involved a significant amount of money and were carried out over a lengthy period. They were in the intermediate category referred to earlier but much of the monies taken has been repaid. In the Court's view the headline sentence, while at the bottom of the range which would have been open to the sentencing judge, does not involve an error of principle. As noted earlier the trial judge, in effect, reduced that headline sentence by one third to reflect the plea of guilty. This was also in the range available to the sentencing judge.
14. On that basis the issues on this appeal come down to an analysis of whether the other mitigating factors present were such as could have permitted the sentencing judge to wholly suspend that period.
15. Had this appeal been conducted very shortly after sentence had been imposed the Court might very well have concluded that some element of an immediate custodial sentence was required notwithstanding the significant mitigation present. Corruption of this type would normally merit at least some period of incarceration notwithstanding significant mitigation.

16. However, the jurisprudence permits this Court to have, in appropriate cases, regard to the lapse of time between the imposition of an initial sentence and the determination of a leniency appeal. In that time Mr. O'Halloran has continued satisfactorily with a significant programme designed to address the gambling addiction which lies at the root of all of his difficulties.
17. In those particular circumstances the Court will not interfere with the sentence but would emphasise that, if anything, this judgment should be taken as a precedent that similar wrongdoing in the future should ordinarily be met with an immediate custodial sentence.