



**THE COURT OF APPEAL**

**Record No: 12/2022**

**Birmingham P.  
Edwards J.  
McCarthy J.**

**Between/**

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

**RESPONDENT**

**V**

**JUSTIN DOYLE**

**APPELLANT**

**JUDGMENT of the Court delivered (*ex tempore*) by Mr. Justice Edwards on the 20th of February 2023.**

**Introduction**

1. The present appeal is brought by Mr. Justin Doyle (i.e. "the appellant") against the severity of his sentence, which sentence was imposed on the 17th of December 2021 by Her Honour Judge Orla Crowe in Kilkenny Circuit Criminal Court. The appellant had been convicted of 4 separate counts (which counts inclusive comprised the sum of the charges preferred against him on the indictment), which are enumerated as follows:
  - (i) Count no. 1 – Criminal Damage contrary to s. 3 of the Criminal Damage Act 1991.
  - (ii) Count no. 2 – Demanding money with menaces contrary to s. 17 of the Criminal Justice (Public Order) Act 1994, as amended.
  - (iii) Count no. 3 – Unlawful possession of a controlled drug contrary to ss. 3 and 17 of the Misuse of Drugs Act 1977, as amended by s. 6 of the Misuse of Drugs Act 1984.
  - (iv) Count no. 4 – Possession of fireworks without holding the appropriate license contrary to s. 68(2)(b) of the Criminal Justice Act 2006.
2. In respect of the first two of the above counts on which the appellant was convicted (count nos. 1 and 2), the sentencing court ordered that the appellant be imprisoned for a period of 4 years, dating from the date of sentence. In respect of the final two of the above counts (count nos. 3 and 4), the sentencing court ordered that those two counts should be taken into consideration with count nos. 1 and 2. Further to this, and in respect

of the particulars of count no. 3, the sentencing court made a forfeiture and destruction order in respect of the drugs seized by An Garda Síochána.

### **Factual background**

3. The following account of the facts is with reference to the evidence of Detective Sgt. Matt Filan given at the sentencing hearing on the 14th of December 2021. At the outset it should be stated that the indictment (Bill No. KKDP00/2021) named three co-accused, the first of whom is the appellant, and the charges preferred against the appellant on the indictment comprised count nos. 1 to 4 inclusive. The appellant entered guilty pleas on the 1st of July 2021 (in respect of count nos. 1 and 2) and on the 21st of July 2021 (in respect of count nos. 3 and 4).
  
4. The index offence occurred on the 7th of August 2020 at an address in Thomastown, County Kilkenny, the home of a Mr. Scott Grace (i.e. "the victim") and his family comprising of his mother, a Mrs. Annette Grace, his father, a Mr. Tom Grace, and his sister, a Ms. Kirsty Grace. The victim's parents were in their 50s, the victim's sister was 19 at the time of the index offence. The victim was well known to gardaí, he having previously come to the attention of the gardaí in the years prior to the index offence in relation to his drug use and incidents involving the victim arising out of a drugs debt which the victim owed to the appellant. It was alleged that this drugs debt arose out of a purchase by the victim of Alprazolam tablets from the appellant. The victim would purchase these tablets on either a fortnightly or monthly basis depending on his rate of consumption. The victim's drugs debt had reached a figure of €1700 by the time of the index offence (the victim purchasing 500 tablets at a time, for a rate of €1.50 per tablet). Payments were made intermittently to the appellant, whom the victim would contact via the Facebook Messenger application on his mobile phone. In July 2020, the victim ceased to use this mobile phone application, resulting in an inability on the part of the appellant to contact the victim. The reason for why the victim stopped using the application is not known.
  
5. On the 7th of August 2020 at around 11:00am, the victim was sitting in his front room at the family home in Thomastown when the appellant and his two co-accused arrived at the property, threatening the victim, shouting, and banging on the windows. The appellant was reported as repeatedly shouting at the victim "*What's the story?*", and one of his co-accused, Mr. Hayden, is reported as shouting "*Scott, I want my money.*" The commotion drew the attention of the victim's younger sister, Ms. Kirsty Grace, who came downstairs and saw the three men outside the property. Ms. Grace opened a window to speak to the men, causing one of the party, Mr. Jimmy Hayden to step aback, he having been stood too close to the window when it was opened. Ms. Grace proceeded to tell the three men to get away from the property, in response to which the appellant reportedly replied, "*I will burn this fucking house down*". Detective Sgt. Filan described the victim's statement of evidence in which the victim averred that the appellant then threatened to throw a brick through the window of the property. At this time, Ms. Grace began video recording the interaction on her mobile phone, which video recording was taken from an upstairs

vantage point at the front of the property. This video recording depicted the three men walking away from the scene, clearly identifiable as the three co-accused.

6. The incident was reported to An Garda Síochána at that time on the same date, and the gardaí arrived at the scene whereupon they sought to ascertain what had happened. The victim, initially reluctant to identify the perpetrators, later reported that he had handed over €1700 to the appellant in Thomastown approximately 2 weeks following the index offence and that, in the light of this payment, the victim believed that that was the end of the matter, that the drugs debt which he had owed to the appellant had been settled.
7. Approximately 8 weeks later, on the 15th of October 2020, the appellant and an unknown male visited at the victim's family's property, again looking for the victim. Ms. Grace in a statement averred that she recognised the appellant and explained to him that the victim was not at home. The unknown male, whom Ms. Grace did not recognise, stated that they (the appellant and him) would be back, and the two men subsequently left the area.
8. At a later date, on the 17th of October 2020, at approximately 9:30pm, an unknown male dressed all in black called to the front door of the victim's home and thereupon proceeded to bang on the front door and the window. This incident was not the subject matter of the charges before the sentencing court. Following this incident, however, the victim was then aware that matters had not come to an end in relation to the drug debt, which realisation motivated the victim to make formal complaints to the gardaí.
9. Following the making of complaints, the gardaí commenced an investigation which ultimately led to the execution of three search warrants on the 20th of October 2020 under the Misuse of Drugs Act 1977, one of which was executed at the appellant's address in Leighlinbridge, County Carlow. While searching the appellant's address, gardaí discovered a quantity of suspected fireworks and six blister packs of Alprazolam tablets comprising 54 tablets in total (each tablet was valued at €1.50 each). These effects were seized by gardaí and formed the subject matters of count nos. 3 and 4 respectively. A ballistic report carried out by gardaí revealed that the suspected fireworks were indeed fireworks, and specifically were fireworks in respect of which a certain type of license is required, which type of license the appellant did not have. The respective addresses of the two other co-accused were also searched by gardaí, which searches yielded discoveries of identical blister packs (at Mr. Hayden's address) and a substantial amount of cocaine, a small amount of cannabis for personal use and suspected psilocybin or "magic mushrooms" also for personal use (at Mr. Lawlor's address). Having carried out these searches, the gardaí arrested the three men.
10. The appellant and Mr. Lawlor were interviewed at Thomastown Garda Station, having been detained under s. 4 of the Criminal Justice Act 1984. Detective Sgt. Filan reported that the appellant was interviewed on two separate occasions, during which he was shown the footage taken by Ms Grace. Nothing of evidential value emerged.
11. The book of evidence was served in March 2021 and pleas were forthcoming at the following sessions in July 2021. Detective Sgt. Filan agreed with the sentencing judge that

the pleas of guilty could be considered early guilty pleas, that they could be considered pleas of value in the circumstances as the pleas had spared the injured parties having to come to court to give evidence at trial. In cross-examination, Detective Sgt. Filan confirmed that that the guilty pleas offered by the appellant and his co-accused came as “*a significant relief to the Grace family*” in circumstances where the victim’s family knew “*immediately*” that the offending was connected with the victim’s drug use and the people that he was encountering as part of his drug habit.

### **Appellant’s personal circumstances**

#### *Conviction history*

12. The appellant at the time of the sentencing hearing had 88 previous convictions, 20 of which post-dated the index offence of the 7th of August 2020. Detective Sgt. Filan confirmed that in relation to the 68 convictions which pre-dated the index offence, those convictions were dealt with either in the District Court, or on appeal from there to the Circuit Criminal Court. Detective Sgt. Filan outlined the offences which did not post-date the index offence. These offences principally comprised a range of driving-related convictions but also included inter alia
  - (i) 10 public order convictions including 4 convictions for threatening, abusive or insulting behaviour in a public place;
  - (ii) 1 criminal damage-related conviction for damaging property belonging to another;
  - (iii) 3 convictions for possession of drugs;
  - (iv) 1 conviction for possession of an article with intent to cause injury, and;
  - (v) 4 convictions for hit and runs.
13. The appellant’s date of birth is the 11th of December 1996. The earliest conviction (dated 19th of July 2014) related to offending which occurred on the 1st of April 2012, on which date the appellant was 16 years of age, the conviction in question relating to an offence under the Criminal Justice (Theft and Fraud Offences) Act 2001. The most recent conviction at the time of sentencing in this case, which was in respect of 1 count of possession of drugs dated to the 12th of November 2019. In respect of his previous convictions, numerous custodial sentences had been imposed, the appellant had been fined on several occasions, and he had been the subject of various probation orders and community service orders.
14. The present case marked the first instance in which the appellant had appeared before the Circuit Criminal Court on indictment. On every other occasion when the appellant was before the courts, the matters were dealt with first by the District Court and then on appeal to the Circuit Court.

### **The Probation Service Report**

15. The probation report described the appellant's appreciation of the "*extremely serious*" nature of the offences. It noted that the appellant regrets what he has done and that the two co-accused were involved as result of his own debts and the debts owed to him. The appellant has known the victim for a number of years and he is remorseful that the situation escalated. He accepts responsibility for what took place and attributes his criminal behaviour to his own drug misuse problem and his associated involvement in the illicit drug trade. The appellant admits that he engaged in explicit and intimidatory tactics to recover the drugs debt and he agreed that threats are just as effective as physical violence due to the constant fear of reprisal, which the appellant could relate to because of his own circumstances of owing a drugs debt. The appellant further stated that his mother had to take out a Credit Union loan to cover the drugs debt that he owed.
16. The probation report had regard to the appellant's conviction history and noted that he has a "*significant number*" of past convictions. It noted that that the appellant had conceded that he had a serious addiction to Xanax and that the tablets discovered by gardaí were for his own personal use. At the sentencing hearing on the 14th of December 2021, Detective Sgt. Filan, in cross-examination, agreed that the appellant is a person with a "*pronounced drug addiction*" and that this fact would seem to account, or perhaps explain the context of some of his offending. Detective Sgt. Filan further described the appellant as appearing to be "*fairly reckless*" when he is taking drugs. The probation report noted that the appellant had first experimented with alcohol when he was about 12 or 13 years old and that at around that same time he had first tried cannabis. The appellant's alcohol consumption, the probation report notes, "*escalated to the point whereby it was an every day occurrence*". The appellant's cannabis consumption also increased and by the time he was 18 years old, the appellant was also misusing Valium. The appellant informed the probation officer who compiled the probation report that he combined all day drinking with the taking of 20 to 30 Valium tablets on a daily basis and that this "*was the norm for a significant period of time in his life.*"
17. The probation report noted that in January 2017, while the appellant was the subject of a 12-month probation bond, he had expressed a willingness to access residential treatment and he was also engaging with a community-based drugs worker. Following a series of three-way meetings, it had become apparent that the appellant was "*sufficiently motivated*" and a "*suitable*" candidate for a residential treatment programme, to which the appellant was admitted on the 21st of February 2017 and was discharged on the 10th of April 2017, he having fully completed the programme.
18. The probation report notes that the appellant relapsed after serving a custodial sentence imposed in 2019, after which relapse the appellant has been unable to address his addiction. The appellant advised the probation officer that for approximately 12 months prior to the index offence of 7th of August 2020 he was consuming between 30 to 40 Xanax tablets a day and was drinking heavily. The probation report observes that Xanax is "*extremely addictive*" in nature, and that the effect of the substance, when taken, is such that the user feels compelled to take more and more "*to achieve the desired effect*". The probation report notes the admission by the appellant that he was "*high addicted*" to

Xanax and that he ignored daily responsibilities, re-directing "*all of his energy*" towards drug seeking and risk taking behaviour, his life revolving around "*getting, taking and recovering from his drug misuse.*" The appellant advised the probation officer that his addiction has had a "*damaging effect*" on his health and quality of life, and that his addiction also impacts upon the lives of others and those closest to him. The appellant stated that there were significant waiting periods for residential treatment brought about by the impact of the Covid-19 pandemic, and that he eventually approached his GP for a medical detox, which programme the appellant did not complete.

19. The probation report concluded that there was no evidence to confirm that the appellant was drug-free.
20. As to the appellant's personal circumstances, the report noted that the appellant resided at an address in Leighlinbridge, County Carlow with his mother. The appellant has two siblings, an older brother and a younger brother, both of whom live independently of the family home. The appellant has never had any contact with his father, and he was reared by his mother and his step-father. The appellant's step-father committed suicide in August 2021, which loss had a "*significant impact*" on the appellant. The appellant was in a relationship which ended as a result of his drug misuse. He has one child, a daughter, resulting from this relationship who was one year old at the time the probation report was compiled. Detective Sgt. Filan in cross-examination on the 14th of December 2021 confirmed that the appellant's daughter was born on the same date on which he was arrested in relation to the index offence, the 20th of October 2020. The report further noted that the appellant had completed his secondary education to at least a Junior Certificate level, he having completed those examinations at a secondary school in Carlow. Following this, the appellant secured a place at the Youth Training Centre in Carlow, where he attended for almost 2 years.
21. Due to alcohol and substance misuse, the appellant does not have any formal employment history.
22. The probation report described how, following completion of the residential drug treatment programme in April 2017, the appellant was referred to the La Nua Special Community Employment Scheme, which scheme he commenced in May 2017 having been deemed a suitable candidate. The probation report noted that this scheme provided him with a supported environment and offered a range of training and employment opportunities, and that the appellant made good progress on the programme and was in attendance there until he received a custodial sentence in January 2019 and a further custodial sentence in February 2019. The appellant's place on the scheme remained available upon his release for a time, until it was withdrawn following the appellant's relapse while serving his sentence.
23. The probation report noted that the appellant was unemployed and was in receipt of state benefits. The appellant was assessed in the high-risk category in terms of the likelihood of re-offending within a 12-month period. It cited, as the most salient risk factors: the appellant's history of offending, nature and frequency of offending; the appellant's drug

misuse; the appellant's alcohol misuse; the appellant's association with pro-criminal peers, and; the appellant's absence of constructive use of time.

24. The report further noted that the appellant had never appeared before the courts for offences of the nature seen in the present case, which the probation officer understood as indicative "*that his offending is increasing in seriousness*". It described the appellant's behaviour as "*unprecedented*" having regard to his own history of offending and stated that his behaviour "*is currently causing untold amount of damage to individuals, families and local communities.*" The probation report accepted as likely that the court below would impose a custodial sentence on the appellant. It nevertheless concluded that in circumstances where the appellant is aware that he must address the risk factors at the root of his offending and in circumstances where the appellant had stated that he intended to make the most of opportunities available to him while in custody, the Probation Officer commented that the appellant "*will require the ongoing support and intervention of the Probation Service following his release.*" Accordingly, the probation report recommended that the court below might consider community-based supervision upon release as an appropriate feature of any overall sentence plan.

#### **Victim Impact Statement**

25. Neither the victim nor his family tendered a victim impact statement to the sentencing court.

#### **Sentencing Remarks**

26. On the 17th of December 2021, the Circuit Court judge imposed sentence on the appellant.
27. She noted the appellant's conviction history and that Detective Sgt. Filan had described the appellant as having had a "*pronounced drug addiction*" which she recognised as possibly explaining some of his offending. The sentencing judge also noted that Detective Sgt. Filan described the appellant as appearing to be "*fairly reckless*" when under the influence of drugs. The sentencing judge further noted that the appellant is a father, and that his daughter was born on the day of his arrest. She further noted that the appellant had suffered a tragic family bereavement earlier in 2021. The sentencing judge also noted Detective Sgt. Filan's observation that the situation which the appellant had described in the probation report, that he was merely selling drugs he had sourced from individuals higher up in the drug trade and that he owed those individuals monies in connection with the Xanax tablets he had sold to the appellant, would not be "unusual" but he was not commenting that that was indeed the case here. The sentencing judge further noted the reference the appellant had received from a prospective employer, which reference was furnished to the court, and also the letter which the appellant had written and handed in to the sentencing court. The sentencing judge further acknowledged the appellant's indication that he understood that he was facing a custodial sentence, and that he had expressed a willingness to engage with the prison services. The sentencing judge also noted the appellant's acknowledgment that he has a substance misuse problem and that he was seeking an "*incentive*" to sobriety upon release.

28. Assessing the gravity of the appellant's offending, the sentencing judge had regard to aggravating factors, identifying: the appellant's involvement in the drugs trade such that he partook in the obtaining of and selling on of drugs and that he had organised and brought two co-accused with him to a family home; the banging, shouting an disruption at this family home and the upset caused to the victim and his family; the threat in the nature of burning down the their house, and the subsequent return to the property at a later date when it would appear that some of the debt had been paid by the victim; and the previous convictions to his name, the quantity of those previous convictions, and; the risk assessment of the probation service in relation to the appellant.
29. The sentencing judge identified 10 years' imprisonment as the maximum custodial sentence for criminal damage contrary to s. 3 of the Criminal Damage Act 1991. She also identified 14 years' imprisonment as the maximum penalty that the offence of demanding money with menaces contrary to s. 17 of the Criminal Justice (Public Order) Act 1994 carries.
30. Having considered these aggravating factors, the sentencing judge nominated as a headline sentence in respect of count nos. 1 and 2, the criminal damage count and the demanding money with menaces count, 6 years' imprisonment. The remaining counts, count nos. 3 and 4, were taken into consideration by the sentencing court.
31. The sentencing judge then proceeded to consider the mitigating factors, specifically identifying the appellant's early plea; expression of remorse both to the court and acknowledged in the probation report, and; his full cooperation with the probation service in preparation of the report, notwithstanding his role as the principal actor in relation to this serious matter.
32. Having regard to those foregoing mitigating factors, the sentencing judge then applied a discount from the headline sentence by a third, deducting 2 years to leave a net 4 years' imprisonment to be served.
33. No part of the 4 years' custodial sentence was suspended.

**Notice of Appeal:**

34. The appellant in Notice of Appeal lodged on the 13th of January 2022 now advances the following grounds:

- "1. *The learned sentencing Judge erred in law and/or on the facts in imposing an aggregate custodial sentence of 4 years which sentence was, in all the circumstances, excessive. In particular, it will be respectfully submitted that the learned sentencing Judge erred in the following respects:*
  - a. *In giving disproportionate weight to the aggravating factors in the case;*
  - b. *Accordingly, in identifying "headline sentences", in respect of each of the two offences, of 6 years;*



- c. *Failing to have adequate regard for the mitigating factors present;*
- d. *Failing to have adequate regard for the prospects of rehabilitation;*
- e. *Having regard to those matters, in failing to suspend any part of the sentences imposed.*

2. *Subject to this Honourable Court, such further or other grounds as may be relied on and notified to the Court, and the Respondent, prior to the hearing of this appeal."*

35. Ultimately, just two points were pressed. It was contended firstly that the headline sentence of six years had been too high in all the circumstances of the case; and secondly that the sentencing judge had erred in failing to suspend any part of the post mitigation sentence to incentivise rehabilitation.

### **Submissions**

36. The court is in receipt of helpful written submissions from both sides to which it has had full regard. These will be referred to, to the extent considered necessary, in the curial section of this judgment.

### **The Court's Analysis and Decision**

37. In relation to the headline sentence nominated by the sentencing judge, the appellant submits that the sentencing judge erred in her characterisation of the gravity of the offences of the 7th of August 2020. The appellant, in support of this submission, draws this Court's attention to the decisions of *DPP v. Kirwan* [2020] IECA 235 and *DPP v. Mindadze* [2016] IECA 337. These cases, it is contended, involved offending of a like type but of a more serious nature to those at the heart of the present appeal. In *Kirwan*, which case involved a threat to cause criminal damage made in the course of an ongoing burglary, this Court suspended the final 2 and a half years of a 5 years' custodial sentence imposed in respect of the threat to damage property. In *Mindadze*, which case involved an assault made in the context of extortion, a custodial sentence of 3 and a half years was imposed at first instance, with 6 months suspended. In dismissing the appeal against severity of sentence, this Court noted that the court below was correct in determining the sentence which it ultimately imposed, notwithstanding that the offence of demanding money with menaces carries a maximum custodial sentence of 10 years and notwithstanding that the appellant in that case had returned to the injured party's property ten days later in accordance with the threat that he had made at the time of assault. The appellant submits that these two authorities are "useful comparators" insofar as they pertain to offending of like type to the offending at the heart of this appeal. The appellant submits that in those cases, such offending attracted lower custodial sentences notwithstanding their greater severity.

38. We think that the *Kirwan* case is readily distinguishable. The accused in that case was not charged with demanding money with menaces. It is true that he was charged with threatening criminal damage contrary to s. 3 of the Criminal Damage Act 1992, an offence with which the appellant in this case was also charged but the circumstances of the case were radically different from those in the present case. We accept that the

*Mindadze* case represents a somewhat closer comparator but would make two observations. Firstly, this was an appeal against sentence which was rejected. The Court of Appeal was not called upon to re-sentence. If it had been required to do so it might well have imposed a higher sentence than that imposed at first instance. Secondly, we should observe that that decision was handed down before the Supreme Court's appellate guideline judgement on sentencing in blackmail harassment and demanding money with menaces in *The People (Director of Public Prosecutions) v Molloy* [2021] IESC 44, and in the light of that jurisprudence we have some reservations as to whether, if Mr. Mindadze was being sentenced today, a sentence as low as that imposed upon him at first instance would be regarded as adequate.

39. We are satisfied that the headline sentence of six years that was nominated by the sentencing judge in this case was not an error. It was perhaps at the severe end of her margin of appreciation but we do not consider that it was outside the range of her discretion. The significant considerations in this case are that this was a crime committed with premeditation. It involved a deliberate targeting of a dwelling house where a number of completely innocent people were residing. The Constitution protects the inviolability of such persons' dwelling. The purpose of the visit was to demand repayment of a drug debt from one resident of the house. However, three persons attended in the effort to collect this debt and intimidated the innocent occupants. The demand was made with a high degree of menace. There was banging on doors and windows, shouting and the issuance of threats. At one point, one of the group of would-be debt collectors threatened to throw a brick through a window of the house. Much more seriously, however, there was a threat to burn the occupants out i.e., to burn down the house. There were also two follow-up intimidatory visits which, although not the subject of separate charges, are part of the circumstances which we must nevertheless take into account.
40. In the *Molloy* jurisprudence the Supreme Court observed that it is a criminal offence for debt collectors to deploy practices designed to cause alarm, distress or humiliation to the debtor. They observed that menaces can undermine both the entitlement of the victim to be left in peace and that the only legitimate way to collect a debt is through court proceedings. Of course, we are talking about a drug debt in this case, which clearly could not be enforced through the courts because the sale and supply of controlled drugs is illegal activity in itself. However, if anything that was an aggravating circumstance. The attempt to collect a drug debt in the circumstances outlined vividly points to the sordid and sinister criminality associated with the drug supply underworld, and its willingness to deploy violence and intimidation in support of its criminal objectives. We therefore reject the contention that the headline sentence was inappropriate.
41. Counsel for the appellant also submitted that there was a "*sufficient evidential basis*" for the prospect of rehabilitation and that, in such circumstances, the sentencing judge ought to have given some consideration to suspending part of the custodial sentence. The appellant identifies, as relevant to whether there should have been such consideration given, the following matters:

- i. The recommendations of the Probation Service to the effect that the sentencing court might consider "*community based supervision*" as "*appropriate as part of an overall sentence plan*";
  - ii. The evidence of Detective Sgt. Filan that he would "*love to see him taking some action to prevent re-occurrence*";
  - iii. The letter written by the appellant and addressed to the sentencing judge in which he expressed assurances that he would not re-offend, and;
  - iv. The submissions made to the sentencing judge by counsel on behalf of the appellant.
42. The appellant draws this Court's attention to the decision of this Court in *DPP v. Kearney* [2016] IECA 394 in which this Court held that the sentencing judge erred in not giving consideration to suspending part of the sentence. The appellant submitted that the sentencing judge in the court below fell into similar error, notwithstanding specific reference to the appellant's stated willingness to engage with the prison services and had asked the court below for an "*incentive*" to encourage sobriety upon release from custody.
43. This court has emphasised on a number of occasions that while it is a legitimate objective of sentencing to seek to rehabilitate an offender and to incentivise rehabilitation, a sentencing judge is not required to do so in every case. Rather, it is a matter of discretion and there requires to be a sound evidential basis for the exercise that discretion. The difficulty facing the appellant in this case is that he was previously given a chance as described in the detailed Probation Report. In 2017 he was afforded the opportunity to undertake residential drug treatment and did so. However, he did not remain clear of drugs and resumed his drug-taking. While it is certainly true that since going into custody on this occasion he has self-referred to addiction counselling in prison, and he is deserving of credit for that, we do not think that this *per se* provides a sufficient basis at this stage for taking a further chance on the appellant through the suspension of a portion of the post mitigation sentence. A court might have been justified in doing so if there had been some track record of progress towards addressing his drug addiction issues, but there is none. There is simply an assertion of resolve to address them, but this has to be viewed against a background where he was given a chance previously and failed to take it. Further, it would be remiss of us not to observe that we regard it as highly concerning that at the time that the appellant committed the offence in this case in August 2020 he had 68 previous convictions and by the time he came before the court for sentencing in December 2021 that number had grown by a further 20 convictions. Against that background we consider that more than his mere assertion of a resolve to address his addiction issues would have been required for the judge to have been justified in part - suspending the post mitigation sentence. We find no error of principle.
44. The appeal is dismissed.