



THE COURT OF APPEAL

Record Number: 65CJA/2024

**McCarthy J.
Kennedy J.
Burns J.**

IN THE MATTER OF SECTION 2 OF THE CRIMINAL JUSTICE ACT 1993

BETWEEN/

THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS

APPLICANT/

- AND -

MICHAEL LUCEY.

RESPONDENT

JUDGMENT of the Court delivered (ex tempore) on the 14th day of October 2024 by Ms. Justice Isobel Kennedy.

1. This is an application brought by the Director of Public Prosecutions pursuant to s. 2 of the Criminal Justice Act, 1993 for the review of a sentence on grounds of undue leniency.
2. On the 24th of November 2023, the respondent pleaded guilty to count 1, dangerous driving causing death contrary to s. 53(1) of the Road Traffic Act 1961 as substituted by s. 4 of the Road Traffic (No.2) Act 2011, and count 2, drunken driving contrary to s. 4(4)(a) and s. 4(5) of the Road Traffic Act, 2010.
3. Subsequently, on the 13th of February 2024, the respondent pleaded guilty to count 3, dangerous driving simpliciter under s. 53(1) of the Road Traffic Act, 1961, as substituted by s.4 of the Road Traffic (No.2) Act, 2011.

4. On the 14th of February 2024, the respondent was sentenced to 3 years imprisonment, with 18 months suspended in respect of count 1, 6 months in respect of count 2, and 6 months in respect of count 3, with all sentences to be served concurrently. The sentencing judge also imposed a disqualification on the appellant's drivers' licence of 5 years in respect of count 1 and 2 years in respect of count 3.

Factual Background

5. On the 12th of December 2022, the funeral of the respondent's father and the funeral of the deceased woman's uncle took place in Ballingearry, County Cork. Following the funerals, receptions took place in two different public houses in the village.
6. In the early hours of the morning of the 13th of December 2022, the respondent left the funeral reception with his brother, nephew and sister-in-law. The respondent drove his brother's car from the public house.
7. A group of mourners from both funerals, including the deceased; Gobnait Twomey, her sister and mother, Pdraig Hogan and the respondent's brother met on the main street and were exchanging condolences. At approximately 01:10am, the vehicle driven by the respondent collided with the group.
8. Gobnait Twomey was pronounced dead at the scene after the impact and injuries were also sustained by others present.
9. The gardaí who arrived at the scene identified the respondent as the driver. The respondent, found to be in a state of upset and distress, admitted under caution at the scene that he had been the driver of the vehicle. He was arrested and brought to Bandon Garda station, where he provided a urine sample. The sample was found to contain 179 milligrams of alcohol per 100 millilitres of urine, over the limit of 67 milligrams per 100 millilitres. The respondent was fully cooperative during his custody and detention and showed great remorse and regret for what had occurred and his decision to drive.
10. An examination of the vehicle in question uncovered no defects that could have caused or contributed to the collision.
11. Garda Deirdre O'Mahony gave evidence in relation to the forensic collision investigators report: the area where the incident occurred was narrow and poorly lit, with a streetlight on the far side of the road, the respondent drove through the village for approximately 295 meters at an average speed of 27.3 kmph, which Garda Deirdre O'Mahony stated was "low" and below the speed limit, the mourners were wearing black, which, combined with the poor lighting, meant it was difficult to make out the presence of the group until the car was approximately five meters from them.

Personal Circumstances of the Respondent

12. The respondent was 42 years of age at the time of sentencing, he comes from a farming background and has a good employment history. The respondent has no history of alcohol issues, no previous convictions and has never come to the attention of the gardaí.

13. He had a poor relationship with his father, the reason therefor is as outlined in Dr. Margaret Kelleher's psychiatric report. The respondent's mother died at age 54 of cancer. Various reports and testimonials were before the court of sentence.

Sentencing Remarks

14. The sentencing judge considered driving having consumed alcohol to be the only aggravating factor. The judge took account of the victim impact statements of Mr Amari, the victim's partner, Mr Sean Twomey, as a representative of the victim's family, and Mr Patrick Horgan who was also injured.
15. In mitigation the sentencing judge considered the respondent's genuine expressions of remorse, his entering a guilty plea at the earliest possible opportunity, his good work history, good character, the loss of his mother, the recent loss of his father with whom he had a difficult relationship, the fact he had not before come to the attention of the gardaí and was apparently not a regular drinker.
16. The judge also noted that the rehabilitation and specific deterrence were not an issue in this case considering the specific circumstances of the respondent, and that incapacitation was not relevant given the availability of an order disqualifying the respondent from holding a licence.
17. The sentencing judge had regard to the cases of *DPP v Flynn* [2020] IECA 294, *DPP v Cambridge* [2019] IECA 133, *DPP v Nestor* [2018] IECA 255, and *DPP v O'Dwyer* [2007] 2 IR 825.
18. The judge nominated a headline sentence of 6 years imprisonment in respect of count 1, which he reduced by two years accounting for an early plea of guilty and the respondent's remorse, citing the principle in *DPP v Cambridge* [2019] IECA 133 that an early plea of guilty justifies a reduction of 1/3 of the headline sentence. Taking account of all mitigating factors, the judge reduced the sentence further to 3 years. The judge suspended the final 18 months of this 3 year sentence and imposed an ancillary disqualification from driving for a period of 5 years.
19. In respect of count 2, the trial judge imposed a 6 month sentence to run concurrently, and in respect of count 3 the trial judge imposed a 6 month sentence to run concurrently, with a 2 year consequential disqualification on the respondent's license.

Submissions of the Director

20. The Director relies on two grounds of application. Firstly, that the learned sentencing Judge erred in principle in imposing an unduly lenient sentence in all the circumstances, and secondly, that the learned sentencing Judge erred in law and in fact in placing too much weight on mitigating factors in the case.
21. In respect of the first ground of appeal, the Director submits that while the headline sentence of 6 years was proportionate, the final 3 year sentence with 18 months suspended was insufficient to meet the justice of the case.

22. In respect of the second ground of appeal, the director submits that while the correct mitigating factors were identified, too much credit was awarded for those factors.
23. In addressing the early plea of guilty, the Director submits that the sentencing judge erred in his reliance on *DPP v Cambridge* [2019] IECA 133. The Director seeks to distinguish the facts of this case from those in *Cambridge*, noting that case concerned a signed plea in the District Court, while this case concerned a plea at first appearance in the Circuit Court. The Director further submits that the respondent was clearly identifiable as the driver, and that his plea must be considered in light of the overwhelming weight of evidence which he would have faced at trial.
24. The Director also submits that the other mitigating factors, while correctly identified, were afforded too much weight.

Submissions of the Respondent

25. The respondent submits that the sentence in this case was not unduly lenient on account of the particular circumstances of both the offence and the offender.
26. Moreover, that the judge's consideration of the case law in Flynn and Nestor evinces an informed and rational approach to the sentence, avoiding undue leniency.
27. The respondent relies on the case of *DPP v Welby* [2023] IECA 29 as a comparator drink driving case where a similar sentence was imposed on appeal. A 5 year headline sentence was increased to 6 years on appeal, but a 1/3 reduction for an early plea was upheld, as well as suspension of the final 18 months. That case involved more aggravating factors, and a "mid-early" plea of guilty, as opposed to a signed plea.
28. In response to the director's submission that the sentencing judge mistakenly relied on *Cambridge* due to the overwhelming evidence against the accused, the respondent submits that in the *Cambridge* case itself, the evidence against the accused was also very strong.
29. The respondent submits that the rationale underlying the discount for a plea of guilty would be undermined if a discount were not granted due to the fact the signed plea procedure was not adopted.
30. The respondent also submits that the value of a guilty plea should be assessed in light of the fact that the burden in the case was not straightforward, and it would not have been sufficient for the prosecution to merely prove that the respondent was driving the vehicle with a particular level of alcohol, but also, as outlined in *People v Quinlan* 1962 ILT & SJ 123:-

"...in a manner which the reasonably prudent man, having regard to all of the circumstances, would recognise as involving a direct, immediate and serious risk to the public"

31. The respondent submits this would not be straightforward where the offence involved a momentary delay in reacting to pedestrians in the road, in circumstances where it would have been difficult to see until a distance of 5 meters, while driving at low speed.
32. The respondent also relies on the case of *DPP v James Doyle* [2024] IECA 130 in drawing a distinction between the deliberate decision to drive drunk, and the failure to react while driving.

Discussion and Determination

33. The issue on which the applicant focuses is that of the discount afforded for mitigation. Reliance is placed on the decision of *Nestor* where the sentence imposed by this Court on an undue leniency review was one of 4 years with 2 years suspended, leaving an effective carceral sentence of 2 years.

The respondent in reply contends that one must examine the sentence globally and refers to *Flynn* where a headline sentence of 6 years was identified on review by this Court. The respondent contends that a lesser headline sentence could have been nominated in the present case where it is said that the culpability has a narrow focus. It is argued that the level of mitigation is exceptional which material is set out in detail by the sentencing judge.

34. The principles applicable to applications of this nature are well settled, commencing with the decision in *People (DPP) v Byrne* [1995] 1 ILRM 279 and *People (DPP) v Stronge* [2011] IECCA 79, where McKechnie J. distilled the applicable principles.

The starting point for our consideration commences with the onus resting on the Director to establish that this sentence was unduly lenient so that the divergence between the sentence imposed and that which ought to have been imposed leads to an error of principle before this Court may justifiably intervene.

35. We have carefully considered the transcripts of the evidence and sentence. This is a deeply tragic case with catastrophic consequences where a woman lost her life, and others were injured in this accident. We are cognisant that the respondent would not have seen the group until he was approximately 5 metres away. We are also cognisant of the fact that he had consumed a considerable quantity of alcohol.
36. The judge considered the evidence overnight and his sentencing remarks reflect the conspicuous care with which he approached this case. It is well settled that this Court places considerable emphasis upon the view of the sentencing judge in reviews of this nature where the onus rests on the Director.
37. Each case must be considered on its own facts. This is a grave offence, where one person died and two people were injured in circumstances where the respondent knew that his ability to drive was significantly impaired given that his alcohol level was three times in excess of the legal limit. In our view the judge properly considered the respondent's culpability as being "very significant" and so nominated a pre-mitigation sentence of 6 years imprisonment.

38. The judge allowed a reduction of 30% in light of the early plea of guilty, this is more usual in terms of a signed plea, however, this was a very early plea and falls within the margin of appreciation afforded to the judge. The judge then further reduced the sentence to one of 3 years imprisonment in terms of the balance of the mitigation. The mitigation was certainly extensive and justified the reduction to that of 3 years; including the immediate admissions, the deeply felt remorse, the absence of previous convictions, his previous good character, his background and circumstances, the testimonials and reports and his full co-operation with the gardai. The real issue insofar as this Court is concerned is that of the suspension of the final 18 months of that sentence.
39. There is no doubt that this is a lenient sentence, indeed it could be said to be a *very* lenient sentence, but the question is whether the Director has satisfied this Court that the sentence ultimately imposed is unduly lenient.
40. We repeat that this Court gives considerable weight to the discretion of sentencing judges in s.2 reviews. The judge carefully analysed whether he ought to suspend some or all of the 3 year sentence and concluded that it was appropriate to suspend a part of the sentence with the ancillary disqualification for a period of 5 years.
41. We are not persuaded that the Director has met the threshold for reviews under s. 2. We are satisfied that the sentence imposed falls within the margin of appreciation afforded to a sentencing judge and so we refuse the application.