



**SUPREME COURT  
DETERMINATION**

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

**AND**

**STEFAN SCHAUFLER**

**APPLICANT**

**Neutral Citation:** [2021] IESCDT 11

**Supreme Court record no:** S:AP:IE:2021:000007

**Court of Appeal record no:** 2019 No 4

**Circuit Criminal Court record no:** Bill No. SODP0022/2018

**Date of Determination:** Thursday, 4<sup>th</sup> February 2021

**Composition of Court:** O'Donnell J, Charleton J., Woulfe J.

**Status:** Approved

**APPLICATION FOR LEAVE TO APPEAL TO WHICH ARTICLE 34.5.3° OF THE  
CONSTITUTION APPLIES**

**RESULT:** The Court does not grant leave to the Applicant to appeal to this Court from the Court of Appeal.

**ORDER SOUGHT TO BE APPEALED**

<b>COURT:</b> Court of Appeal
<b>DATE OF JUDGMENT OR RULING:</b> 6 <sup>th</sup> November 2020
<b>DATE OF ORDER:</b> 6 <sup>th</sup> November 2020
<b>DATE OF PERFECTION OF ORDER:</b> 11 <sup>th</sup> December 2020
<b>THE APPLICATION FOR LEAVE TO APPEAL MADE ON 18<sup>th</sup> January, 2021 AND WAS NOT IN TIME</b>

## **General Considerations**

1. The general principles applied by this court in determining whether to grant or refuse leave to appeal, having regard to the criteria incorporated into the Constitution as a result of the Thirty-third Amendment, have now been considered in a large number of determinations and are fully addressed in both a determination issued by a panel consisting of all of the members of this court in *BS v. Director of Public Prosecutions* [2017] IESCDET 134, (Unreported, Supreme Court, 6 December 2017) and in a unanimous judgment of a full court delivered by O'Donnell J. in *Quinn Insurance Ltd. v. PricewaterhouseCoopers* [2017] IESC 73, [2017] 3 I.R. 812. Accordingly, it is unnecessary to revisit the new constitutional architecture for the purpose of this determination.
2. Furthermore, the application for leave filed and the respondent's notice are published along with this determination (subject only to any redaction required by law), and it is therefore unnecessary to set out the position of the parties in any detail. No aspect of this ruling has precedential value as a matter of law.

## **Decision**

3. The applicant, having pleaded guilty, was convicted and sentenced to a total of 15 years' imprisonment, with six years suspended, on offences involving causing serious harm contrary to s. 4 of the Non-Fatal Offences Against the Person Act 1997, false imprisonment, robbery and unauthorised taking of a motor vehicle. All the offences occurred over the period of the 20<sup>th</sup> and 21<sup>st</sup> of June, 2018.
4. The circumstances of the offences are set out in full in the judgment of the Court of Appeal (Donnelly J.; Birmingham P. and McCarthy J. concurring). The appellant was the tenant of the injured party, an 81 year-old man. The applicant asked the injured party to attend at the premises on a pretext that there was a leak in an upstairs bedroom. The victim went up to inspect the leak and the applicant followed. The curtains were drawn in the room. The applicant then demanded money from the victim, who stated that he had no money but could get him money. The applicant drew an iron bar and hit the victim a number of times across his head and back and then took his bank cards and demanded his PIN number. The victim was subsequently tied up, and his phone smashed. The applicant locked the bedroom door, left the injured party, and it was nearly 29 hours before the Gardaí found and rescued him.

- 5.** The victim was discovered in the locked bedroom lying on the floor. He was disorientated and his face was covered in blood. His glasses had been knocked off, and his hearing aids were out. His face was very swollen and he was badly injured. He had five lacerations on his face, all of which were deep, and the skin around them was bruised and injured. He had widespread intra-cerebral bleeding of both frontal lobes. He also had a small subdural haemorrhage and a small epidural haemorrhage. He had multiple fractures of his nasal bones, eye orbits, zygoma and skull. His brain injuries were life-threatening. He was likely to recover from injuries to his shoulder and spine, but likely to have long-term symptoms from both his facial and brain injuries. There was very significant impact on the victim and his life. After a long initial period of partial recovery, he was, however, no longer able to live his life as before, could not carry out his work, his eyesight was affected, and he had vertigo and headaches every second day. He was also confused.
- 6.** The applicant took the victim's car, and took out a total of €400 from two ATMs. After approximately six days, he called into a shop in Rosslare and voluntarily turned himself in to An Garda Síochána. He was arrested under the Mental Health Act, and medically assessed, ultimately detained and made admissions and expressed remorse, although he did downplay the extent of the violence done to his victim. He did not apply for bail, and pleaded guilty at the first opportunity. The applicant is a 51 year-old German national who had worked for many years in Formula One motor racing, had moved to Ireland, had had some financial difficulties, and had no previous convictions. He said he was concerned about his daughter in Germany who had, he said, been involved in a car accident, but there was no independent evidence of that fact. It was not suggested he was at risk of re-offending and a probation report indicated that there did not appear to be a role for probation services.
- 7.** The trial judge, His Honour Judge Comerford, identified the headline sentence as 16 years, and sentenced him to 15 years, with six years suspended on both the false imprisonment count and the s. 4 count of causing serious harm. He also sentenced him to seven years on the robbery count, and two and a half years on the count of the unauthorised taking of a motor vehicle, with all sentences to run concurrently. The applicant appealed to the Court of Appeal, which, however, upheld the sentences, noting that, while it might have structured the sentence differently, the sentence was within the range of sentences which could be imposed given the gravity of the offence.

- 8.** The applicant now seeks leave to appeal to this Court and argues that the case involves issues of general public importance in that it is said that the headline sentence identified by the trial judge of 16 years' imprisonment was in excess of the top range identified in the then-applicable guidelines for s.4 offences of causing serious harm in *People (DPP) v. Fitzgibbon* [2014] 2 I.R.L.M. 116 ("*Fitzgibbon*"), which suggested that sentences in the range of seven and half years to twelve and a half years were appropriate for the most serious type of the offence. The offence carries a maximum sentence of life imprisonment. It should be noted that those guidelines have themselves been revised upwards in *People (DPP) v. O'Sullivan* [2019] IECA 250, although it was accepted that the sentence was to be considered by reference to the guidance given in *Fitzgibbon* which was applicable at the time of the sentence in the Circuit Court.
- 9.** The applicant seeks an extension of time for leave to appeal, and contends that the case involves a number of matters of general public importance and, in particular, as to whether it was open to the trial judge to set a headline sentence in excess of the sentence indicated in the then-applicable guidelines for the most serious offences; whether, if it was possible to do so in exceptional circumstances, such circumstances had to be specifically identified by the sentencing judge; and, if it was appropriate to take mitigation into account by way of suspending a part of the sentence, rather than by a straight reduction since a suspended sentence was still a sentence.
- 10.** The Court of Appeal considered that the trial judge had plainly attached considerable importance to the fact that the offence herein involved both the s. 4 causing harm, which was a serious offence, and the count of false imprisonment, and, indeed, observed that he did not know which was the more serious offence. In those circumstances, the Court of Appeal considered that it was plain that this was the factor which had led the trial judge to fix a headline sentence at 16 years. Furthermore, given that the evidence of the Probation Services was that the applicant was at low risk of re-offending, the basic sentence which he would have to serve of nine years, was well within even the *Fitzgibbon* guidelines.
- 11.** The Court does not consider that this case raises any issue of general public importance. On the contrary, the question of the appropriate sentence in this case was reviewed by the Court of Appeal, which has itself set out detailed guidelines, and has, moreover, extensive experience in the application of the principles of sentencing to individual cases. That was the appropriate forum in which to deal with both the general issues, and the specific matters raised in this case. It is to be noted that the

applicable guidelines have been themselves revised and that general sentencing guidelines are to be produced under the aegis of the Judicial Council. Thus, it is difficult to see that this case involves issues of systemic importance. Inasmuch as it is looked at in isolation, the suggested point cannot be said to truly arise: the *Fitzgibbon* guidelines dealt with a single offence of s.4 causing serious harm, whereas this incident concerned multiple offences which were themselves serious. It would indeed have been an error to proceed to sentence the applicant as if he had only committed an offence contrary to s.4. While the applicant may dispute the sentence imposed or consider that a different structure would have been preferable, that is a matter for the Court of Appeal and does not give rise to any issue meriting appeal to this Court. In the circumstances, while the Court will extend the time for the bringing of the application, the Court will refuse leave to appeal to this Court.

**And it is hereby so ordered accordingly.**