

**An Chúirt Uachtarach
The Supreme Court**



DETERMINATION

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

AND

KEVIN MOLLOY

APPLICANT

Neutral Citation: [2021] IESCDET 1

Supreme Court record no: S:AP:IE:2020:000115

Court of Appeal record no: 2020 No 120

Circuit Criminal Court record no: Bill No. WHDP0034/2018

Date of Determination: Friday, 8th January 2021

Composition of Court: O'Donnell J, MacMenamin J., Charleton J.

Status: Approved

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

RESULT: The Court grants leave to the Applicant to appeal to this Court from the Court of Appeal.

ORDER SOUGHT TO BE APPEALED

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| COURT: Court of Appeal |
| DATE OF JUDGMENT OR RULING: 25 th September 2020 |
| DATE OF ORDER: 25 th September 2020 |
| DATE OF PERFECTION OF ORDER: 16 th October 2020 |
| THE APPLICATION FOR LEAVE TO APPEAL MADE ON 22nd October, 2020 AND WAS IN TIME |

1. This determination concerns a decision of the Court of Appeal as above. The background is a debt collection business run by the applicant. He pleaded guilty in the Circuit Criminal Court in Mullingar to two counts of harassment contrary to s 10 of the Non Fatal Offences Against the Person Act 1997 while a co-accused pleaded guilty to two counts contrary to s 11 of the same Act.
2. This application concerns not the facts but the law applied to the sentence. This was 30 months from 30 September 2020 with the final 12 months suspended on condition of keeping the peace and not engaging in any debt collection for a term of 7 years.
3. This sentence is said to be contrary to law. It is claimed to be an attack on the applicant's right to follow his chosen career. An argument may be made that any suspension of a sentence may carry a condition only for that suspended term.
4. A point made on behalf of the prosecution is that s 99(3) of the Criminal Justice Act 2006 is said to enable this. The applicant says that a criminal court has turned itself into a regulatory body.
5. The applicant now seeks leave to appeal to this Court.
6. 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 33rd 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 and in a unanimous judgment of a full Court in *Price Waterhouse Coopers (A Firm) v Quinn Insurance Ltd. (Under Administration)* [2017] IESC 73. Accordingly it is unnecessary to revisit the new constitutional architecture for the purpose of this determination.
7. The application for leave filed, and the respondent's notice thereto, are both 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 further detail.

8. The court is not one for the correction of error. No aspect of this ruling has precedential value as a matter of law.
9. This Court notes the careful judgment of the Court of Appeal. The Court notes the analysis of precedent and of where this case came on sentencing bands. More work on this is needed and this appeal may furnish that opportunity. A matter of general public importance is also the extent to which a condition of suspension may be continued indefinitely or beyond the portion of a prison sentence imposed but suspended. As to whether there is sufficient or any power in a court to delay the final consequence of a determinate sentence whereby an actual term of imprisonment of 6 months may hang over someone for 84 months and whether any statutory authority supports that is a matter of general public importance.
10. No case should be allowed to lose precise focus. The notice of appeal and the response are well defined. With this principle in mind, the Court suggests the following as issues in the appeal and would perhaps refine these at case management:
 1. The precedents from Ireland and from other countries on demanding with menaces/harassment/unlawful debt collection cases, conduct in other words which would seriously undermine the sense of safety and security of members of the community, no matter what the purported motive, and how these divide into bands of lenient, ordinary, more serious and most serious bands.
 2. Whether s 99(3) of the Criminal Justice Act 2006 in enabling a court to impose conditions for the suspension of a sentence extends beyond the period suspended, here 12 months with the possible imposition extending to 84 months.
 3. The extent to which the Constitution or statutory authority enables a criminal sentencing court to regulate the conduct of a convicted person and if so over what period and on the basis of what authority.

The Court therefore grants the application for leave to appeal

AND IT IS HEREBY ORDERED ACCORDINGLY

