

Neutral Citation No: [2020] NICA 29

Ref: MOR11267

Judgment: approved by the Court for handing down
(subject to editorial corrections)*

Delivered: 27/05/2020

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

-v-

DOMINIC McGRATH

Before: Morgan LCJ and Stephens LJ

MORGAN LCJ (delivering the judgment of the court)

[1] This is an out of time appeal against sentence. A determinate custodial sentence of 18 months together with a Violent Offences Prevention Order (“VOPO”) for a period of five years was imposed at Dungannon Crown Court on 3 April 2017, the defendant having pleaded guilty to offences of breaching a restraining order and common assault committed on 28 March 2016. The appeal only concerns the imposition of the VOPO. Leave was granted by Horner J on 28 April 2020. Mr Eóin MacDonald appeared for the appellant and Mr Ciaran Harvey for the PPS.

[2] The background is an offence of domestic violence committed on 28 March 2016. The appellant entered the injured party’s home and assaulted her. There had been a history of domestic violence and on 17 February 2016 a restraining order had been granted in favour of the injured party against the appellant.

[3] The Justice Act (Northern Ireland) 2015 (“the 2015 Act”) provides for the making of a VOPO. Section 55 provides that a VOPO may be made if the conditions in section 56 are satisfied. That section provides as follows:

“56. – (1) A court may make a violent offences prevention order in respect of D where subsection (2) or (3) applies to D and the court is satisfied that it is necessary to make such an order for the purpose of protecting the public from the risk of serious violent harm caused by D.

(2) This subsection applies to D where the court deals with D in respect of a specified offence.”

[4] The learned trial judge was plainly satisfied that the Order was necessary for the purpose of protecting the public from the risk of serious harm caused by the appellant but also had to be satisfied that he was dealing with the appellant in respect of a specified offence. Section 55(3) provides that “specified offence” means an offence for the time being listed in Part 1 of Schedule 2 to the Criminal Justice (Northern Ireland) Order 2008 (violent offences). It is common case that neither the offences of breaching a restraining order nor that of common assault are specified offences listed in Part 1 of Schedule 2 of the Criminal Justice (Northern Ireland) Order 2008. Accordingly, it is agreed that the court had no power to make the Order.

[5] The matter came to light shortly after the appellant pleaded guilty to breach of the said VOPO on 24 December 2019. He was sentenced to a custodial sentence of 2 months. He was at the time in custody on foot of a licence breach arising from another matter and wanted the breach of the VOPO dealt with quickly. An appeal against his conviction in respect of that breach of the VOPO was lodged in the County Court and has been adjourned pending the outcome of this appeal.

[6] Section 63 of the 2015 Act provides a right of appeal against the imposition of a Violent Offences Prevention Order when made in exercise of section 56(2). Both prosecution and defence agree that the learned trial judge did not have power to make the Order and we agree. We are satisfied, therefore, that this is an appropriate case in which to extend time and allow the appeal against sentence by removing the VOPO.