



THE COURT OF APPEAL

Record Number: 36/2024

Bill Number: KEDP 139/2020

Woulfe J.

Ní Raifeartaigh J.

MacGrath J.

BETWEEN/

THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC

PROSECUTIONS

RESPONDENT

-AND-

DANIEL BRERETON

APPELLANT

JUDGMENT of the Court delivered on the 27th day of June 2024 by Ms. Justice Ní

Raifeartaigh

Issue

1. This is an appeal against severity of sentence. The appellant was convicted by a jury of one count of unlawful possession of a controlled drug contrary to s. 3 of the Misuse of Drugs Act 1977, as amended, and one count of possession for sale or supply contrary to s.15A of the 1977 Act as amended. There were two other counts on the indictment, and he was acquitted in respect of those.

2. The appellant was sentenced to 6 years imprisonment.

Evidence at the sentencing hearing

3. The sentence hearing took place on 1st February 2024. Detective Garda Williamson gave a summary of the evidence which had been presented to the jury. The sentencing judge had also presided over the trial and so was familiar with the facts.

4. The Gardaí received confidential information in relation to the appellant's house in August 2019. On foot of this the Gardaí kept the house under surveillance for a period of time and witnessed certain comings and goings by various persons. They obtained a warrant and searched the house. Four bags containing small amounts of cannabis, described as 'deal bags' ready for sale, and a weighing scales with traces of cannabis on it were found on the kitchen top counters. There was a strong smell of cannabis in the bathroom and four larger bags, three of which were open, were found behind a loose bath panel there. The total weight of cannabis found was 982 grams, with a value of approximately €19,500.

5. There was nobody in the house at the time of the search, the appellant was said to be away at a truck show in a different county. The appellant's solicitor contacted the Gardaí after the search and indicated that the appellant would meet by arrangement. This happened

two days later and he was interviewed in the presence of his solicitor. The appellant told Gardaí that for work he was in the middle of setting up a business relating to second hand cars. He lived with his partner and three children. The appellant had indicated to Gardaí in interview that he did not have a lavish lifestyle and that his house had been left to him by his grandparents, who had raised him.

6. The appellant was 33 years old at the time of the offending. He had 48 previous convictions: of which 39 were for road traffic offences, 4 for s.3 Misuse of Drugs Act; 1 for s.19 Misuse of Drugs Act (allowing his premises to be used), one for s.112 of the Road Traffic Act, 1 for public order, 1 was for theft, and 1 for handling stolen property. The convictions covered a period from January 2005 to December 2023. The conviction under s.19 Misuse of Drugs Act was committed in February 2020, on a date after the offending in the instant case, and he received a six month suspended sentence in respect of it.

7. A number of documents were put before the sentencing court; a flyer from the appellant's car business, a letter from the appellant's partner detailing their relationship and the good relationship he has with the children, two letters of reference from local business vouching for his good character and that he is a hard-working family man, two letters of reference from former employers of the appellant stating that he was a good and reliable worker, and information about a fundraising tractor run which had the appellant's name and number at the bottom of it. In the plea in mitigation, it was submitted that the appellant was a family man who regularly organised local tractor runs 'throughout the community' which were fundraisers for local charities.

Sentencing Remarks

8. The sentencing judge delivered sentence on 6th February 2024. She imposed sentence on the s.15A count with the s.3 count taken into consideration. She gave a summary of the evidence and offences, noting the value of cannabis which had been recovered from the appellant's house and the other materials before the court in relation to the appellant's personal circumstances. She noted that the legislation set a presumptive mandatory minimum in respect of s.15A offending of ten years. The aggravating factors that the judge identified included that there was evidence of 'active drug dealing' going on in the context of the scourge of drug dealing and the effects on society, that the activity had taken place 'brazenly' in the family home where young children were living (the weighing scales and 'deal bags' having been found on the kitchen counter); that the value and quantity of drugs, although not determinative of the sentence, are a critical factor in indicating the seriousness of the offending.

9. In relation to mitigation, the judge noted that the appellant had met the Gardaí by arrangement, which was to his credit. She noted that how the trial was conducted was to the appellant's credit, as it was expeditious and the appellant had not given evidence or perjured himself. She noted the evidence in relation to the appellant's family circumstances, working history, and voluntary work. The judge also noted that there was an absence of mitigation in that there had been no plea and no material assistance or cooperation with Gardaí in terms of the investigation process. She noted there was also an absence of evidence relating to potential rehabilitation in respect of drugs and an absence of remorse. The judge noted that the appellant had relevant previous convictions which post-dated the offending in the instant case.

10. The sentencing judge found that the offending fell into the mid-range and set a headline sentence of 7 years. The judge held that it would be unjust to impose the presumptive mandatory minimum in this case given the manner in which the appellant conducted himself at trial, that he is a working man with a young family who volunteers in the community, and passage of time. She noted the need to observe the public interest in imposing an overall sentence. The judge reduced the headline to one of 6 years to date from 1st February 2024.

Submissions of the appellant

11. The appellant submits that the headline sentence of 7 years was excessive in all the circumstances. The appellant refers to *DPP v Sarsfield* [2019] IECA 260 and submits that there was no evidence in the instant case of the appellant having any significant financial gain or trappings of wealth and no evidence of the level of the appellant's involvement in the drug trade generally. The appellant acknowledges that he has relevant previous convictions prior to and subsequent to the offending in the instant case, but submits that this offending history is of a different order to a s.15A offence.

12. The appellant submits that the sentencing judge failed to give sufficient weight to the mitigation available. Although the sentencing judge rightly identified the relevant previous convictions post-dating the offence, no credit was afforded to the fact the appellant was of good character since that offending, which was a period of 4 years. The appellant notes the comments in *DPP v Wojtalski* [2018] IECA 361 that such good conduct requires only limited recognition but submits that in this case it is relevant because his subsequent good conduct evidences rehabilitation in circumstances where the sentencing judge remarked on the absence of evidence of rehabilitation.

Submissions of the Director

13. The Director submits that the headline sentence of 7 years was justified in this case having regard to the aggravating factors identified. The evidence established that the respondent had been in effective control of the drugs and that is the important consideration which was identified by the Court in *DPP v Sarsfield*.

14. The Director submits that the sentencing judge did not refer to the mitigating factors which were absent to the detriment of properly considering those which were present. The testimonials from former employers and neighbours and evidence of his involvement in fundraising events cannot gainsay the fact that he was selling drugs within the same community. The sentencing judge had to take account of the appellant's subsequent relevant offending and the appellant had further taken a trial date and had not exhibited remorse. The Director submits that the evidence did not support the proposition that the appellant had substantially mended his ways between the offending and the trial and sentencing, in particular where there was a relevant conviction in the intervening period. The Director submits that the sentencing judge did not err in imposing a sentence of 6 years.

Discussion and Conclusion

15. It may be helpful to recapitulate the Court's approach to the presumptive minimum sentence in s.15A as set out in the authorities spanning 25 years. There is a consistent theme to the effect that, once a decision has been made that it would be unjust to impose the presumptive minimum by reason of exceptional and specific circumstances, the sentencing judge is entitled to impose an appropriate sentence but should still bear in mind that there is a presumptive minimum of 10 years which was selected by the Oireachtas to reflect the gravity of the offence and the harm to communities done by drug dealing. The leading Irish

sentencing textbook, O'Malley, *Sentencing Law and Practice* (3rd edition, 2016) helpfully summarises the approach taken by the courts to the sentencing exercise pursuant to s.15A in the following terms at para 16.12:-

“When selecting sentence for a s.15A or s.15B offence, a judge should begin by considering the gravity of the offence in order to locate it properly on the overall scale, bearing in mind that the maximum sentence is life imprisonment. Appropriate adjustments should then be made for mitigating and aggravating factors. If the resulting sentence is 10 years’ imprisonment or more, it should be imposed. If, however, the resulting sentence is less than 10 years, the judge must take account of the presumptive minimum requirement in s.27(3C) and impose a 10-year prison sentence unless he or she is satisfied that there are exceptional and specific circumstances that would render such a penalty unjust. A judge who is so satisfied may take account of all other relevant factors in deciding on an appropriate sentence. Even then, regard must be had to the presumptive minimum sentence in so far as it indicates a legislative assessment of the seriousness of drug dealing, at least where the drugs have a street value of or above the specified amount. This may be termed the *Renald* principle because of a statement to that effect made by the Court of Criminal Appeal in that case which has frequently been quoted with approval ever since. There it had been argued that once a judge decided that there were exceptional and specific circumstances justifying a sentence less than 10 years, he or she should ignore the minimum sentence provision completely and should certainly not treat it as a benchmark. The Court of Criminal Appeal agreed that in such cases, 10 years should not be treated as a benchmark in the sense of being invariably adopted as

the starting point or figure to which reductions for any mitigating factors should be applied. However, the court also said:

Even where exceptional circumstances exist which would render the statutory minimum term of imprisonment unjust, there is no question of the minimum sentence being ignored. Perhaps the most important single factor in determining an appropriate sentence is the ascertainment of the gravity of the offence as determined by the Oireachtas. Frequently an indication as to the seriousness of the offence may be obtained from the maximum penalty imposed for its commission. This is particularly true in the case of modern legislation. What is even more instructive is legislation which, as in the present case, fixes a mandatory minimum sentence. Even though that sentence may not be applicable in a particular case the very existence of a lengthy mandatory minimum sentence is an important guide to the Courts in determining the gravity of the offence and the appropriate sentence to impose for its commission. That is not to say that the minimum sentence is necessarily the starting point for determining the appropriate sentence. To do so would be to ignore the other material provision, that is to say, the maximum sentence. It would be wrong to assume that the offence of importing controlled drugs in excess of the prescribed amount or value will attract only the mandatory minimum, long though it may be.

As was common at the time, the court referred to s.27(3C) as specifying a mandatory minimum sentence whereas it merely specifies a presumptive

minimum, as courts have more recently recognised. Aside from that, the *Renald* principle remains intact. Courts are always required to take note of the presumptive minimum, though not as a starting point, even where there are significant mitigating factors. But in every case, they must have regard to the grave nature of drug trafficking as reflected in both the maximum and minimum penalties.”

(Emphasis added. Footnotes omitted: although it may be noted that the citation for *Renald* is *People (DPP) v Renald*, unreported, Court of Criminal Appeal, 23rd November 2001)

16. The above approach has also been applied by the Court of Appeal since its establishment in 2015. The approach was confirmed in its decision in *People (DPP) v. Sarsfield* [2019] IECA 260, where the Court made some additional comments about guilty pleas in such cases, as well as cases involving “significant involvement” in “high level commercial drug dealing” :

“18. [...] It has long been recognised that the proper approach to sentencing is for a judge to identify the appropriate sentence without reference to the presumptive minimum. If the appropriate sentence is at or in excess of the statutory minimum, nothing further is required. If the sentence under contemplation is below the presumptive minimum, the Court will have to address the presumptive minimum and consider whether the imposition of the mandatory presumptive minimum would, in all the circumstances of the case, be unjust. Where the offence involves significant involvement in a very high-level drug offence, the headline or pre-mitigation sentence is likely to be well in excess of the statutory presumptive minimum. In the case of high-level commercial drug dealing involving very large quantities of drugs,

we would expect that the headline or pre-mitigation sentence is likely to be of the order of fourteen or fifteen years, and in some exceptional cases, significantly higher.

19. What we have to say about the ultimate sentence is more tentative still, having regard to the very wide variation in the circumstances of offenders coming before the Courts. The Court would, however, observe that in the sort of very high-end commercial drug trafficking cases to which we have been referring, a plea of guilty, of itself, without something more, is unlikely to justify a reduction below the presumptive minimum sentence. Such a situation is particularly likely if the plea was entered against a backdrop of very strong or overwhelming evidence, not an unusual situation in the context of s. 15A cases.”

17. Given the above statements of the correct approach, we have no hesitation in upholding the sentence imposed by the judge in this case. First, this was a case where the appellant did not plead guilty and the trial judge nonetheless chose to exercise her discretion to depart from the presumptive sentence in light of the focussed way in which the trial was run on his behalf. This approach was generous to the appellant and indeed many judges might have taken the view that, in practical terms, a departure from the presumptive sentence would not be appropriate in the absence of a guilty plea. It may be noted that there was no suggestion of anything in the way of “material assistance”, another factor explicitly mentioned in the statutory provision. The height of any co-operation appears to have been that he met the Gardaí by arrangement after the search had taken place. Secondly, the cannabis was found at the appellant’s home in various places (four bags behind a loose bath panel, and deal bags and weighing scales with traces of cannabis on the kitchen top counters). While there may not have been indications of a lavish lifestyle or a drug value indicative of top-end commercial dealing (the value being approximately €19,500), the use

of the appellant's family home in the manner described nonetheless suggests that he had a more than peripheral role in whatever level of supply was taking place, to say the least. Thirdly, the appellant had a significant criminal record, spanning about 18 years. While many of these were road traffic offences, some of them were not and, significantly, the appellant had received a further conviction in respect of drug-related activity (allowing his premises to be used) which took place *after* he had committed the instant offence. It is true that he received a suspended sentence for this, and also that he appears to have stayed out of trouble in the time between that and the trial and sentence. However, he was very far from being a person coming before the court on a s. 15A charge for sentencing with no previous convictions. Taking all of these matters into account, we consider that the sentencing judge did not err in any way in selecting a headline sentence of 7 years. If anything, he was lucky to receive the benefit of a departure from the presumptive sentence.

18. Further we see no error in principle in the sentencing judge's reduction of the headline to 6 years having regard to the mitigating factors advanced on his behalf. He was a family man, had a good working record and did voluntary work in the community, but as the Director points out, this is the very community in which the drug dealing would have its impact.

19. All in all, there was nothing particularly exceptional or unusual about the circumstances of the offence or the offender's situation such that a headline of 7 years and an ultimate sentence of 6 years for this offence could possibly have been considered unduly severe.

20. The Court dismisses the appeal.