



THE COURT OF APPEAL

**Birmingham J.
Sheehan J.
Edwards J.
6/15**

The People at the Suit of the Director of Public Prosecutions

Respondent

V

Christiane Moringa Fortis

Appellant

Judgment of the Court (ex tempore) delivered on the 22nd day of October 2015 by

Mr. Justice Sheehan

1. This is an appeal against severity of sentence.
2. On the 4th November, 2014, the appellant pleaded guilty to the unlawful importation of cocaine at Dublin Airport on the 14th May, 2014, contrary to the s. 21(2) of the Misuse of Drugs Act 1977, (as amended) and was sentenced to four years imprisonment.
3. The appellant appeals on the basis that the sentencing judge was incorrect in holding that a further custodial sentence had to be imposed on the appellant at the time of sentence, she having been in custody since the date of her arrest and further that the sentencing judge failed to give sufficient weight to the mitigating factors.
4. In the course of written submissions by counsel on her behalf, it is further contended under a number of different headings that the sentencing judge erred in his approach to sentence.
5. The respondent takes a different view and in the course of her written submissions argues that the sentence imposed was appropriate and that no error of principle is disclosed in the trial judge's approach to the sentence.
6. In order to consider these grounds to appeal it is necessary first of all to set out the background to the offence.
7. Evidence was given in the Circuit Court by prosecuting Garda to the effect that upon being stopped and questioned by immigration officers, the appellant told them that she was going to study in Ireland and produced return tickets from a college, medical insurance and various letters including letters from the college stating that accommodation was to be provided for her in Dublin. The immigration officers were suspicious and ultimately conducted a swab of the appellant's passport which gave a positive result for cocaine. The appellant was then interviewed and admitted to having cocaine in her possession. She removed her bra which had cocaine pellets concealed inside it and then removed two pairs of underclothing containing four sanitary towels that had pellets and wraps of cocaine concealed inside. A narcotic test was conducted of a white substance which showed positive for cocaine.
8. When asked whether she had put the cocaine into the sanitary towels herself, the appellant custom officials that someone had left these in the toilets at Sao Paulo airport and that she had collected them there. In response to further questioning she informed the officers that she was due to receive €3,500 for transporting the drugs. She removed ten cocaine pellets containing cocaine from her vagina and following her arrest was brought to Beaumont Hospital where a further nine pellets were removed. The total amount of cocaine recovered from her person was to the value of €64,262. The appellant made full admissions when interviewed by the gardaí and the court was told that she had no previous convictions.
9. During the course of his evidence, the prosecuting garda also confirmed that the appellant had appeared gullible and displayed a child-like manner when being interviewed and told the court that the appellant's motivation for carrying out the offence was to get money to enable her to reclaim custody of her seven year old daughter.
10. At the time of sentencing, the appellant was 28 years of age. The court was also told that she had been she had been brought up by her mother and step father and had spent some time in Japan. A detailed forensic psychologist report was submitted on her behalf and this report concluded that the appellant was a naïve psychologically vulnerable 28 year old woman whose early life had been marked by a lack of stability and security in her various carer child relationships. Her father had been absent from her life and this had resulted in her being more vulnerable to maltreatment by males in her later life.
11. Her overall cognitive functioning was assessed as being in the poor range and being surpassed by 92% of her peers. She had no history of drug and alcohol abuse, was in a considerable amount of debt at the time of the offence. She had expressed considerable remorse for her actions and vowed not to re-engage in criminal behaviour should she return to Brazil.
12. In the course of his sentencing remarks, the learned trial judge stated the following:-

"Well the accused is before the court in circumstances where she has been found with a significant quantity of an illicit drug cocaine. She is fortunate that the plea entered on her behalf and by her has been accepted by the Director and that she is not facing a sentence that would carry in the first instance a minimum term of ten years imprisonment given the quantity of the drug involved. It is fair to say that in her particular circumstances even if that offence was levied against her, it is not likely that she would have to serve anything approaching ten years. Nonetheless the offence to which she has pleaded guilty carries a significant maximum. The legislature here measures severe sentences for offences

involving large quantities of drugs because of the problem it creates and they create in our community. It has been urged on me that I might adopt the precedence of other cases and consider, it seems in terms, a wholly suspended sentence at this juncture given that the accused has been in custody since the date of her arrest in May. Such an approach to my mind would defeat the purposes of the prosecution as a means of indicating to others like the accused, that there is likely to be a prison sentence imposed if they are apprehended in the process of bringing drugs into this country. I regret to say it would send out the entire wrong message for others to engage in what the accused did. She must serve a term of imprisonment if nothing more than to act as a deterrent and to have regard to the view of the community expressed in the law. It is submitted that this was a case that amounts to an act of desperation. I can't accept that. This is not something that was done on the spur of the moment. It may well be that the accused did not give much consideration to her actions and the consequences of it, but this is a crime and her involvement emerged over some time. The engagement with her boyfriend, her introduction to the proposal, the negotiation she says by email, that's difficult to appreciate. It is the experience of this court that an assessment, however crude, of a purported mule as she was and is, needs to be done directly and at hand. In any event documentation had to be put together and all of the necessary preparations made."

13. It is difficult to decipher from these remarks what penal aim the sentencing judge was pursuing at the time of sentencing, apart from the principle of deterrence. It is unclear what weight was given to the plea of guilty in the absence of previous convictions or indeed the appellant's good work history. Furthermore, the detailed psychological report, which had been handed into the court for the assistance of the sentencing judge, is not referred to in the course of imposing sentence.

14. In short it is not clear where on the scale of offending the sentencing judge located this offence, before considering mitigation factors and for this reason, this Court finds that the trial judge erred in his approach to sentencing.

15. The court is now obliged to sentence the appellant afresh and in this regard the court has been assisted by an up to date psychological report.

16. The court is satisfied that the correct starting point in this case is a sentence of four years imprisonment. This Court also agrees with the trial judge's view that this was a case which required a prison sentence to be imposed "if nothing more than to act as a deterrent and to have regard to the view of the community expressed in the law".

17. It is this Court's view that it is essential that it be known that those who import illegal drugs into Ireland will receive a custodial absent extraordinary excusing circumstances.

18. The principle mitigating factors at the time of the original sentence have already been set out in the earlier part of this judgment. These mitigating factors also include the appellant's cooperation with the gardaí and her difficult family situation which led to her involvement with this crime.

19. The Garda who investigated this matter described the appellant as childlike. The up to date psychologist report refers to the breakdown of the appellant's relationship since her imprisonment as well as a number of incidents of self harm. The report emphasises this appellant's vulnerability.

20. In light of these matters as well as the other significant mitigating factors already referred to in the course of this judgment, the court will suspend the final eighteen months of the four year sentence of imprisonment, provided that the appellant now enters into a bond in the sum of €100, to keep the peace and be of good behaviour for a period of two years following her release.