THE COURT OF APPEAL

Appeal No: 163/14

Appeal No. 162/14

Birmingham J.
Sheehan J.
Mahon J.

The People at the Suit of the Director of Public Prosecutions

Respondent

- And -

Phuc Nguyen Le and Hong Thi Nguyen

Appellants

Judgment (ex tempore) of the Court delivered by Mr. Justice Mahon on the 13th day of July 2015

1. Both appellants were convicted of cultivation contrary to s. 17 of the Misuse of Drugs Act 1977 (as substituted by s. 11 of the Misuse of Drugs Act 1984) and s. 27 of the Misuse of Drugs Act 1977 (as amended by s. 6 of the Misuse of Drugs Act 1984). Both received the same sentence, being a prison sentence of ten years to date from 19th April 2013. Mr. Nguyen had the final three years of his sentence suspended on conditions, while the final four years and six months of the sentence of Mrs. Nguyen was suspended, also on conditions, in recognition of her having stronger mitigation factors.

2. Both appeals are against severity of sentence.

Facts
3. The appellants were arrested and charged following a raid by An Garda Síochána on an industrial unit at Kells Business Park, Cavan Road, Kells, Co. Meath. The unit had been converted to provide for the cultivation of cannabis. Approximately 29.5 kilos of dried cannabis was found with a value of €590,000, together with 1,384 plants at various stages of cultivation, with a potential value of €1,000,000.

4. The appellant's grounds of appeal are, in effect, that the learned sentencing judge erred in a number of respects including a failure to fully take into account the fact that Mrs. Nguyen had no previous convictions, and that he also failed to attach sufficient weight to her co-operation and remorse. In relation to both appellants, the learned sentencing judge was criticised for failing to take into sufficient account the effect that imprisonment would have on both appellants, being foreign nationals in a foreign country and neither of whom speak English. The sentencing decision is further criticised for imposing a sentence based on the significant value of the drugs where the amount is not a necessary ingredient of the offence. It was submitted on behalf of the respondent that the value of the drugs plants was a relevant factor in the approach to sentencing, and that the learned sentencing judge had correctly placed the offence at the higher range, having regard to the value of the plants in question. Emphasis was placed by the respondent on the fact that the cultivation of cannabis in this case was undertaken on an industrial and sophisticated scale and warranted sentences of the nature imposed on the appellants.

5. The learned sentencing judge quite correctly described the cannabis growing operation as sophisticated, elaborate and substantial. He also remarked on the high potential value of the plants when cultivated. He clearly attached a great significance to the fact that the appellants as the gardeners are cultivators of the plants had played a vital role in the operation, and that without this involvement such an operation could not succeed. He placed the offences, which carried a maximum sentence of fourteen years, at the higher end in terms of their gravity and proceeded to sentence both appellants to ten years, but with different suspended elements in each case.

6. The court is satisfied that there was an error of principle in the learned sentencing judge's approach to both sentences. While he correctly identified the sophistication of the operation as well as the appellant's essential role in that operation, he failed to adequately take account of the fact that these appellants were not involved in its setting up, planning and financing, and that their only benefit from it was the provision of a modest income and very basic living conditions. They were merely workers, and had been brought into this country for that purpose. They were obviously vulnerable to exploitation and may not have had absolute freedom to walk away from their involvement. On this basis the placement of the offences at the higher end of the gravity scale was not appropriate in the particular circumstances of the appellants' involvement, nor was the sentence of ten years in both cases.

7. It is this court's view that the appropriate sentences before mitigating factors are taken into consideration are considerably less than ten years in both cases. The mitigating factors in the two cases are different, and these must be reflected in the individual sentences. In Mr. Nguyen's case, he did have a relevant previous conviction in 2007 in the U.K., whereas Mrs. Nguyen has no previous convictions. Mrs. Nguyen appears to have co-operated to a greater extent than did her husband. There is also the fact that both appellants are now in a strange country, far from home, and have little or no English and have not had, and probably will not have, family visits while in prison.

8. The court will therefore impose the following sentences in substitution of the sentences imposed in the Circuit Criminal Court. In the case of Mr. Nguyen the sentence will be five years with the final twelve months suspended for a period of two years post release. In the case of Mrs. Nguyen the sentence will be three and a half years with the final six months suspended for a period of two years post release.

9. Appropriate bonds will be required in relation to the suspended element of the sentences, in respect of both appellants.