THE COURT OF APPEAL

Birmingham J.
Sheehan J.
Mahon J.

Record No.: 254/2015

Between/

The Director of Public Prosecutions

Respondent

- and –

William Trimble

Appellant

Judgment (ex tempore) of the Court delivered by Mr. Justice Mahon on 27th day of October 2016

1. The appellant pleaded guilty and was convicted at the Circuit Criminal Court on 20th July 2015 on one count of money laundering contrary to s. 7(1) and (3) of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010. He was sentenced on 12th October 2015 to a term of imprisonment of four years and six months. Three similar counts were also taken into consideration. Forfeiture and Seizure Orders were also made in relation to cash and a motor vehicle. The appellant has appealed against severity of sentence.

2. Following the receipt of confidential information, gardaí observed the appellant in a Chrysler jeep motor vehicle at 35, Russell Terrace, Kettles Lane, Kinsealy, Co. Dublin on 18th July 2014. The appellant was seen entering and exiting the building. A search warrant was obtained and on 21st July 2014 a search of the premises and a motor vehicle was undertaken, revealing a false compartment behind the passenger seat of the vehicle containing €24,000 in cash, and on the premises itself a concealed apartment was found to contain €23,000 in cash, and a small quantity of drugs.

3. The appellant's dwelling and a shed at 45, Edenmore Drive was also searched, revealing four packages of €50,000 in cash, a sum of GBP£12,000, another €15,000 in cash and a further sum of €6,150 in cash. The total cash recovered was €292,850 and GBP£12,000.

4. The appellant's grounds of appeal include the following:-

> (i) A failure to construct a proportionate sentence.
>
> (ii) A disproportionate emphasis was placed on the aggravating factors, in particular, the maximum permissible sentence, and a failure to have adequate regard to the mitigating factors essential to constructing a proportionate sentence.
>
> (iii) The sentence imposed was overly punitive, disproportionate and at variance to sentences imposed for comparable offences of this nature.
>
> (iv) There was a failure to afford adequate credit for the appellant's remorse and high levels of co-operation.

5. In the course of his sentencing judgment, the learned sentencing judge noted that the appellant had participated in this criminality for a reward of €4,000 or €5,000. He noted that the appellant had become involved with third parties in relation to the issue, and that his involvement had become deeper to a point where he felt himself unable to extricate himself from it. He remarked that money laundering is a serious offence and that the appellant, as a mature man, ought to have known better than to become involved in the enterprise.

6. In relation to the mitigating factors, the learned sentencing judge stated as follows:-

> *"I believe Mr. Trimble has very good mitigation. He has pleaded guilty. It seems that he's, I think, expressed true remorse and I think it is unlikely that Mr. Trimble will come back before this court for criminal misbehaviour. Mr. Trimble has a very old criminal record which is not relevant to this sentencing hearing."*

7. The learned sentencing judge noted that the maximum sentence for the offence is a term of imprisonment of fourteen years, and that he felt constrained to impose *a reasonably substantial prison sentence*. He did not specifically identify on the gravity scale where he believed the offences to lie, nor did he refer specifically to any headline sentence, other than the sentence actually imposed.

8. The appellant has specifically identified as an error of principle the learned sentencing judge's failure to identify where on the gravity scale these offences rested, nor the extent, (if any), to which credit was afforded to the appellant in respect of his mitigating factors.

9. The appellant has also referred the Court to a number of what are described as comparator cases, all involving money laundering in one guise or another. The sentences imposed in these cases ranged from twelve months in respect of IR£105,000 found in an attic in the case of *DPP v. McHugh* [2002] 1 I.R. 352, (this conviction was later quashed on appeal), a sentence of four years, (with the final twelve months suspended), in relation to a sum of €1.5m. concealed in bog land, following a plea of guilty, in *DPP v. Duffy* [2015], and a fully suspended five year term of imprisonment in relation to €275,000 in the case of *DPP v. Cunningham* [2013] IECCA 62. Mr. Cunningham had originally been found guilty of ten counts of money laundering following a forty four day trial, and involving €2.4m. and was sentenced to ten years imprisonment. Having served three years of that term, his conviction was quashed on appeal. The fact that he had served three years imprisonment was taken into consideration at the time he was subsequently sentenced to a suspended term of five years imprisonment.

10. The offence committed by the appellant was indeed a serious one, as was pointed out by the learned sentencing judge. Money

laundering is a particularly serious offence. It acts as a significant aid and support to serious criminality, not to mention the fact that it can undermine the economy and legitimate business activity. While the appellant was not a principal in terms of ownership of the very substantial funds involved, he was, in effect, providing a safe haven for these funds which he knew to be the proceeds of crime. He was therefore providing an essential service to an individual or individuals engaged in criminal activity. While his plea of guilty and obvious co-operation with the gardaí was welcome, and deserves recognition in sentencing, it should also be observed that the appellant was very much caught *"red handed"* and any effort on his part to contest the charges is likely to have been futile.

11. In the absence of the learned sentencing judge undertaking in express terms the preferred exercise of identifying on the gravity scale where this offence properly lies, and then discounting for the mitigating factors, which he considered to be very good, but, on the assumption that he nevertheless conducted that exercise in approaching sentencing, it is probable that the four and a half year term imposed represented or equated to a headline sentence of six, or six and a half years imprisonment, with the final eighteen months or two years suspended. Such a suspended element would certainly have been justified, having regard to the factors specifically identified. The Court has considered the appeal on this basis.

12. It is also noteworthy that the gardaí expressed the belief that the appellant was unlikely to reoffend. The learned sentencing judge clearly accepted this as being so.

13. The task for this Court therefore is to decide if an assumed headline sentence of six or six and a half years is excessive having regard to the particular circumstances of the case.

14. Certainly, on its face, such a sentence would appear to be inconsistent with sentences imposed in other money laundering cases. It is however important to emphasise that the background facts and the aggravating and mitigating factors of such cases can vary greatly, making efforts to achieve consistency in sentencing difficult.

15. While it is preferable that there be a degree of consistency in sentencing for particular offences, it is also important to stress that each case must depend upon its special circumstances. In *DPP v. McCormick* [2000] 4 I.R. 356, Barron J., in giving the judgment of the Court of Appeal stated as follows:-

> *"…the appropriate sentence depends not only upon its own facts but also upon the personal circumstances of the accused. The sentence to be imposed is not the appropriate sentence for the crime, but the appropriate sentence for the crime because it had been committed by that accused."*

16. Notwithstanding such difficulty, and allowing as much as reasonably possible for such factual variation as between individual cases, it is the Court's view that the sentence imposed by the learned sentencing judge was excessive, and to this extent there was an error of principle.

17. In these circumstances, it is necessary to re-sentence the appellant as of today. The sentence it will impose is one of five years imprisonment. In recognition of the strong mitigating factors as already identified both in this Court and the court below, and with due regard to the documentation submitted including the very positive report from the prison authorities, and also, in particular, the impressive letter written to the Court by the appellant's daughter, and in the interests of incentivising rehabilitation, the Court will direct that the final two years of the five year term be suspended for a period of two years on the appellant entering into a bond in the sum of €100 to keep the peace and be of good behaviour.