THE COURT OF APPEAL

Birmingham P.
Edwards J.
Hedigan J.

Record No: 245CJA/17

IN THE MATTER OF S.2 OF THE CRIMINAL JUSTICE ACT, 1993,

AND IN THE MATTER OF:

THE PEOPLE AT THE SUIT OF

THE DIRECTOR OF PUBLIC PROSECUTIONS

Applicant

V

ARTURAS SAMUILIS

Respondent

JUDGMENT of the Court delivered the 11th of October 2018 by Mr. Justice Edwards.

Introduction
1. On the 30th of May 2017, the respondent to this appeal pleaded guilty to two counts of unlawful possession of a controlled drug, to wit cannabis, with a market value of €13,000 or more, for the purpose of selling or otherwise supplying it to another, contrary to s. 15A of the Misuse of Drugs Act, 1977, as amended and inserted ("the Act of 1977"). The remaining six counts on the Bill of Indictment were to be taken into consideration.

2. On the 17th of October 2017, the respondent was sentenced to two concurrent sentences of five years' imprisonment in respect of Counts no's 7 & 8 on the Indictment, with each sentence backdated to the 31st of December 2016, the date at which the respondent was arrested and entered into custody. The last two years of each sentence were suspended for a period of two years on the condition that the respondent remain under the care of the Probation Service during that period.

3. The applicant, namely the Director of Public Prosecutions, now seeks a review of the said sentences under s. 2 of the Criminal Justice Act 1993 on the basis that they were unduly lenient.

Background facts
4. Detective Garda Andy Barron gave evidence at the "full-facts" sentence hearing on the 17th of October 2017. He gave evidence that, on the 31st of December 2016, he and his colleague, Garda Sean Finnegan, were patrolling the Castle Park Estate in Dundalk, Co. Louth, when they noticed that the occupants of a green Audi 6 car, which was travelling in front of the patrol car, appeared to be acting suspiciously. This car then turned right on Castle Road into a yard, which was no longer in use for any business, but which led to the back of some houses on that particular side of Castle Road. The evidence was that the person in the passenger seat of the car ("the co-offender") appeared to be conscious of the presence of the Garda patrol car, whilst the driver, the respondent, was noted to be monitoring the patrol car in his rear-view mirror. The patrol car subsequently left but returned to the yard ten minutes later to find the suspicious car parked directly behind the back of house number 23, Castle Road Estate. At this time, the respondent was on his own in the car. The Gardaí approached the car, noticing that the respondent was *"fiddling in a nervous fashion with two mobile phones"*. The Gardaí asked the respondent why he was there, to which he replied that he had stopped in order to make a call. The evidence was that both Detective Barron and Garda Finnegan found this response *"puzzling"*, given what they had just observed. Further, Garda Finnegan had noticed that the door to house number 23 had been slightly open on their arrival, but that a male had looked out through the opening and, having seen that Gardaí were outside, immediately closed the door.

5. Following further inquiries made by the Gardaí in respect of where the person in the front seat passenger seat had gone, the respondent responded that he had dropped him off some distance away. The Gardaí, knowing this response to be false, and having regard to the suspicious nature of the situation as a whole, decided that it was necessary to conduct a search of the respondent and his vehicle under the section 23 of the Act of 1977. This search led to discovery of four sets of keys in the vehicle, being keys for 23 Castle Road, keys for a premises at 24 St. Patrick's Road, Drumcondra, Co. Dublin, and keys for a premises at 84 Dublin Street, Dundalk. It was established in evidence that these properties were rented properties, the locks of which had been changed and the keys were for the new locks.

6. Detective Barron used one of the keys obtained to open a rear garden door at 23 Castle Road, before then using another key to open a garage door in the back garden. Both Gardaí then observed a large pile of black refuse sacks which were full and tied closed. They also noticed a strong smell of cannabis emanating from them. Materials, plastic trays and electrical items were also observed which both men concluded were being used for the cultivation of cannabis plants. Detective Barron then proceeded to open one of the refuse bags which was full of cannabis. The respondent, after caution stated that he had no knowledge of any of these items. Subsequently, a search warrant was obtained by Detective Barron under s. 23 of the Act of 1977, for the premises at 23 Castle Road.

7. During this search a cannabis cultivation operation was found at the premises. Another person was also found at the premises who Detective Barron believed to be the co-offender. The evidence was that what was found at the premises was *"a sophisticated*

cannabis cultivation operation", and a total of 103 cannabis plants with a market value of €92,280, plus 150 sapling plants were seized, together with 85 grams of cannabis herb worth €1,700, and 13.7 grams of cannabis herb worth €274. Mature plants, i.e. plants that were ready for harvesting, were worth c €800 each. Each sapling had a potential to be also worth that much when mature and harvested. The total value of drug material seized, including the potential street value of all of the immature saplings, was said to be €210,000.

8. Following a *"detailed, careful, thorough and forensic examination of various items"* found at 23 Castle Road, the Gardaí found various items linking the respondent to the properties at 24 St. Patrick's Road, Drumcondra and 84 Dublin Street, Dundalk namely photographs on the respondent's phone of landlord's details and rent details for these premises. CCTV footage was also obtained, showing the respondent and the co-offender at a Woodies DIY on the 30th of December 2016, purchasing items thought to be associated with the cultivation of cannabis. A search warrant was also obtained for a rented property in which the respondent lived, 6 Bryanstown Court, Drogheda, under s. 26 of the Act of 1977, in which a number of probative items were found including a business card related to a premises known as *"The Grow Shop"* a place well known to members of the Gardaí that individuals might go to obtain paraphernalia that would be associated with cannabis cultivation. On foot of the search of the respondent's house, lists for materials; floorplans in relation to plant pots; a tick list for hydroponic and growth products; a tick list for nutrients, grow products, and materials for cultivation, were also found.

9. As a result of the materials found in the course of these searches, the respondent was linked to the premises at 84 Dublin Street and a search warrant was accordingly obtained for this house. This search yielded €6,405 worth of cannabis herb found in a vacuum pack bag in an upstairs area of that house. This search also provided the Gardaí with material linking the respondent with the premises at 24 St. Patrick's Road, Drumcondra. A search warrant was ultimately obtained in respect of this premises and, on the 4th of January 2017, it was searched and discovered to be another grow house. A total of 180 mature cannabis plants were found there with a total street value of €144,000.

10. The respondent was arrested and detained for interview, but maintained his right to silence during the one interview conducted with him by Gardaí. He was ultimately charged, entered a plea and was sentenced in the terms as outlined above.

Respondent's personal circumstances

11. The respondent was born on the 11th of May 1983, making him 34 years-old at the time of sentencing. He is a Lithuanian National, and had moved to the United Kingdom in 2003 where he resided for 12 years before moving to Ireland in or around 2015. He is a single man and lives in a rented property alone. He did not progress to third level education and has spent most of his working life working either as a truck driver or a van driver.

12. During the plea in mitigation, defence counsel submitted that, in 2015, whilst the respondent was in Ireland, his sister died at thirty-six-years-old due to a heart condition. This tragedy, in the words of his counsel, *"sent him off the rails"*, in that he started making very poor life choices, causing him to veer towards the criminal lifestyle that he now finds himself involved in.

13. During cross-examination, Detective Barron accepted that the most important pieces of incriminating evidence against the respondent were on his mobile phone and the respondent freely gave up his passcodes to same, thereby, according to his counsel, demonstrating his co-operation with the Gardaí investigation.

14. During cross-examination, Detective Barron stated that he believed the respondent *"[T]o be an organiser. Perhaps not the head of the operation but to be the organiser and the arranger of the different addresses to sort out the lease agreements, the rental agreements, to source the equipment used in the cultivation operation."* It was also accepted in cross-examination that a man known as *"Mr. Z"* was the main boss in charge of whole operation.

15. At the time of sentencing, the respondent had spent ten months in Cloverhill Prison, during which time, his defence counsel submitted, he had completed a drug overdose prevention programme and had also been studying English and music.

16. The respondent has no previous convictions in this jurisdictions. However, he had accumulated 12 convictions for minor road-traffic offences in the United Kingdom.

The Sentencing Judge's Remarks

17. In passing sentence upon the respondent, the sentencing judge made the following remarks:

> *"It appears that Mr Samuilis was the person with the mobile phone containing the important information being the incriminating evidence in respect of the cannabis growing operation. He had the keys to the property and there was details of the leases and all bank agreements -- or bank accounts, I should say.*
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> *Detective Garda Barron, it is his view that he would be the organiser of -- and, of course, an organiser plays an important link in any drugs operation, but there was a person higher up than him referred to as Mr Z. He would have been the director or the overall controller of the cannabis growing operation, or the drugs operation, whereas Mr Samuilis would have been playing an important link or part in the cannabis drugs operation. I'm satisfied that he would have been in a lesser category, though nevertheless important link but in a lesser capacity or category than Mr Z.*
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> *Also, in respect of the mobile phone, the essential part of the phone, handing a phone by itself is -- goes some way to cooperation, but giving the access code, meaning that the guards were able to deal with the matter in a very efficient manner rather than have to go through some other very technical manner if they didn't have the access code, but the access code was of substantial importance in the investigation and bringing the case to a successful conclusion again this accused, Mr Samuilis.*
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> *Prior to the periods of these offences, Mr Samuilis would not have come to the attention of the guards in this jurisdiction for the obvious reasons that he had no convictions for any offences, and in particular he had no drug related offences and he would have been under or outside the radar of the guards. It was the observance by Detective Garda Barron and Finnegan on the date in question, their observations and suspicions of the accused and the attitude -- and, sorry, and how they were behaving, these persons were behaving in the green Audi, towards them and their suspicions turned out to be absolutely correct in the circumstances.*
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> *In respect of count No. 7, the maximum custodial prison sentence is life imprisonment, which of course is the starting base. Then I must decide where does this count lie in respect of the maximum sentence and I would firstly have regard -- I'd have regard to the provisions of the Misuse of the Drugs Act 1977, and in particular section 27(3), before I --*

where I -- before I define what is the headline sentence. Likewise, in respect of Count No. 8, the maximum custodial prison sentence is life imprisonment and I must decide where does this count lie in respect of the maximum sentence and, of course, I'd have to first, having regard to the provisions of section 27(3) of the Misuse of the Drugs Act 1977, and also in respect of both counts, other matters when putting it into the category that I would put it in and to giving the headline sentence, that's in respect of both counts.

It will be seen that section 27(3B) provides for a mandatory minimum sentence of 10 years' imprisonment where a person (other than a child or young person) is convicted of an offence under section 15A. Section 27(3C) then goes on to provide that this section is not to apply where the Court is satisfied that there are exceptional and specific circumstances relating to the offence which would make such a sentence unjust in all these circumstances. It also specifies certain matters to which the Court may have regard for that purpose, including a plea of guilty by the accused and his or her having materially assisted in investigation of the offence, and such other mitigating and person circumstances that may be relevant, having regard to the particular circumstances of the case.

Now, I must have regard to his personal circumstances first. He has now reached 34 years of age, he is a Lithuanian national. He has completed his education in Lithuania. He is a transport driver. He came to England in 2003 and Ireland in 2015. His sister tragically passed away in 2015 of a heart attack. In mitigation, there was pleas of guilty. I am satisfied that he was fully cooperative in respect of the investigation. He cooperated in respect of his mobile phone. He gave the access code which was containing important information relevant to the offences, containing important and indeed substantial incriminating evidence against him in respect of the offences. He further assisted the guards in the arrest of Mr Z, who would have been the controller of the cannabis growing operation. I am satisfied that, in addition to cooperating fully with the investigation, that he also materially assisted in the investigation on the offences. He has expressed remorse. While in custody, he is working as a cleaner, meaning that that is a high status of trust. He is attending the gym and attending educational courses. He has no previous convictions for any drug-related offences in this jurisdiction, or indeed any other offences in this jurisdiction.

The aggregating factors in the case is the serious nature of the offences, the manner of his involvement in the offences. He was involved as an organiser in respect of the cannabis growing operations in respect of 23 Castle Road, Dundalk and 24 St Patrick's Road, Drumcondra. He had the details of the properties, of the leases in respect of the properties and bank accounts relevant. He had the keys to the properties. The cannabis growing operations were for commercial purposes. Substantial cannabis growing/cultivation operations in respect of both properties. In respect of 23 Castle Road, Dundalk, the amount of mature cannabis plants and the street value which was a substantial amount of cannabis plants, substantial street value and then the potential street value of the saplings. In respect of 24 St Patrick's Road, Drumcondra, the amount of mature cannabis plants, the street value of the cannabis plants, substantial amount of cannabis plants, substantial street value of the plants. In respect of both properties, 23 Castle Road, Dundalk and 24 St Patrick's Road, Drumcondra, the cannabis growing/cultivation operation was for the purpose of selling or otherwise unlawfully supplying drugs. The effect of drugs on society, which is a destructive and devastating effect on society, they are substantial aggravating factors in the case. I am satisfied that the road traffic offences in England are neutral and I'll just treat them as neutral.

Then in respect of the offences, in respect of Count No. 7, the maximum custodial prison sentence is life imprisonment. Then I must decide where does this count lie in respect to the maximum sentence. I am satisfied would be in the middle to higher range. However then I must have regard -- and also applies in respect of Count No. 8. Then I have to regard whether there are exceptional and specific circumstances relating to both counts, No. 7 and counts No. 8, which would make the maximum minimum sentence of 10 years unjust in all the circumstances and I am satisfied that there are exceptional and specific circumstances relating to both counts 7 and 8, having regard to the mitigating factors that I have referred to and having regard to the totality of matters that I have referred to, that would make such the maximum minimum sentence in respect of each count unjust in all the circumstances of the case, but it still remaining extremely serious matters.

In respect of count No. 7, I must have regard to the serious nature of the offence and to the substantial aggravating factors and to have regard to the mitigating and the personal circumstances. I am satisfied that the headline sentence in respect of count No. 7 is five years. Then allowing for the mitigating and the personal circumstances, I propose to suspend the last two years. So, in respect of count No. 7, I am imposing a five years custodial prison sentence, the five years to run from the 31st of December 2016, but the last two years to be suspended and to be suspended on the accused entering into a bond of €200 to be of good behaviour for a period of two years from the date of the release from custody in respect of the sentence which has been imposed.

In respect of Count No. 8, I must have regard to the serious nature of the offence and to the substantial aggregating factors and balance it against the mitigating and the personal circumstances and, having regard to the mitigating and the personal circumstances in respect of the headline sentence, again I am satisfied the appropriate sentence is one of five years, and that along with the mitigating and the personal circumstances, that the last two years should be suspended and also that this sentence should run concurrently with the other sentence, having regard to the totality and proportionality concept. So, in respect of count No. 8 I am imposing a five years custodial prison sentence, the five years to run concurrent with the other sentence, and I am suspending the last two years of the five-year sentence on the same terms."

Grounds of Appeal

18. Counsel for the applicant criticises the trial judge's sentence in respect of the s.15A offences on seventeen discrete grounds, and the overall sentencing process on a further five grounds, as follows:

A. In respect of Counts 7 and 8

i. The sentencing judge erred in law, fact and principle in imposing an unduly lenient sentence in all the circumstances, being a sentences of five years' imprisonment with two years suspended. The maximum sentence for this offence is life, with a presumptive mandatory minimum of ten years' imprisonment.

ii. The sentencing judge erred in law, fact and principle in that he placed the section 15A offence in each instance at the middle to higher range end of the scale, instead of in the higher range simpliciter, notwithstanding the substantial value of

the cannabis, and that the respondent was not merely a courier or transported of drugs (sometimes referred to colloquially as a "mule") but played an active conscious role in organising the business of drug cultivation and the supplying of drugs so cultivated.

iii. The sentencing judge erred in law, fact and principle in failing to have apt regard to the range of sentences appropriate to such offences in his approach to sentencing

iv. The sentencing judge erred in law, fact and principle in failing to have appropriate regard to the presumptive mandatory minimum sentencing regimes applying to offence.

v. The sentencing judge erred in law, fact and principle in failing to specify any or any significant or sufficiently weighty features within the evidence as would merit a departure from the prescribed minimum sentence.

vi. Further or in the alternative, the sentencing judge erred in law, fact and principle in purporting to identify weighty features within the evidence which, when viewed in an overall context, were wholly insufficient as to merit the exercise of the statutory discretion exercised by him in the instant case.

vii. Further or in the alternative, the sentencing judge erred in law, fact and principle in that, having purported to identify weighty features within the evidence which led to the imposition of the said sentence, he then gave excessive weight matters urged upon him as mitigating factors in an about the imposition of the sentence of five years with two suspended.

viii. Further or in the alternative, the sentencing judge erred in law, fact and principle in that having identified weighty features within the evidence which led to a departure from the prescribed mandatory minimum and to the imposition of the said sentence, he then gave excessive weight to the matters urged upon him as mitigating factors in and about the imposition of five years with two years suspended.

ix. The sentencing judge erred in law, fact and principle in determining that five years with two suspended was the appropriate sentence having regard to its place on the spectrum of seriousness of offences of this kind.

x. The sentencing judge erred in law, fact and principle in attaching undue weight to mitigating factors in the case and in particular to the personal factors relating to the respondent.

xi. The sentencing judge erred in law, fact and principle in that he imposed a sentence that was disproportionate in that it gave insufficient weight to the aggravating features of the offences and gave excessive weight to the mitigating factors bearing in mind the maximum sentence available for the offence.

xii. The sentencing judge erred in law, fact and principle in being unduly lenient regarding the matter of an appropriate sentence when arriving at the totality of the period of incarceration to which the respondent was to be subjected, the sentencing court having failed to give any or any sufficient reasons for the suspension of the portion of the sentence in question.

xiii. The sentencing judge erred in law, fact and principle in that he gave excessive weight to the mitigating factors in the case to include; the plea of guilty offered in the case, the degree of co-operation of the respondent and the fact that the respondent has no previous convictions.

xiv. In respect of Count No. 7, The sentencing judge erred in law, fact and principle in that, having given excessive weight to the plea of guilty offered in the case and in that he gave excessive weight to the degree of co-operation offered by the respondent to the investigation of the case, he failed to have any or any adequate regard to the fact that the respondent was "caught red-handed".

xv. The sentencing judge erred in law, fact and principle in that he gave excessive weight to the fact that the Court might have regard to the particular difficulties that the respondent might experience as a person of foreign origin incarcerated in the State.

xvi. The sentencing judge erred in law, fact and principle in failing to have adequate regard to the requirement of deterrence, both in general terms and in his failure to have adequate regard for the fact that this respondent was not merely a courier or transporter of drugs (sometimes referred to colloquially as a "mule"), but played an active, conscious and deliberate role in organising the business of drug cultivation and the supplying of the drugs so cultivated.

xvii. The sentencing judge erred in law, fact and principle in the imposition of such a lenient sentences which was not in the public interest in all of the circumstances and the sentence imposed would clearly not act as a deterrent to other persons and the prevention of further crimes.

B. In respect of overall sentencing:

xviii. The sentencing judge erred in law and in fact in that, having regard to ingredients of the offending evidenced before him in respect of both counts, and having regard to his requirement to apply the totality principle, he failed to have any or any adequate regard to his discretion to impose a consecutive sentence.

xix. The sentencing judge erred in law and in fact in that he failed to have any or any adequate regard for the fact that he was sentencing the respondent for two separate occasions of s. 15A offending.

xx. The sentencing judge erred in law and in fact in that, having regard to the fact that he was sentencing in respect of two occasions of s. 15A offences at two separate locations, he failed to have adequate regard for the fact that at both locations the respondent was engaged in an operation of industrial proportions in both the cultivation and sale and supply levels.

xxi. The sentencing judge erred in law, fact and principle in being unduly lenient regarding the matter of an appropriate

sentence when arriving at the totality of the period of incarceration in sentencing for two such s. 15A offences, to which the respondent was to be subjected; the sentencing court having failed to give any or any sufficient reasons for the suspension of the portion of the sentence in question in respect of the offences.

xxii. The sentencing judge erred in law and in fact in that he failed to have any or any proper regard for those offences on the Indictment which was he required to take into consideration when sentencing for Counts 7 and 8, and thus, in effect, failed to take those offences into consideration either adequately or at all.

19. . When these complaints are examined it is immediately apparent that they can be distilled down to a relatively small number of core complaints. These are:

• That the sentencing judge under assessed the gravity of the case, having regard to the role and culpability of the respondent, and the aggravating factors in the case.

• That the sentencing judge was in error in finding that exceptional and specific circumstances existed which permitted him to depart from the presumptive mandatory minimum sentence.

• That the sentencing judge was too generous in discounting for mitigation, and in particular attached too much weight to the plea and/or to the respondent's co-operation and/or to his lack of previous convictions and/or to the fact that prison in Ireland would be more difficult for him as a foreign national.

• That the sentence ultimately imposed was disproportionate, inappropriately structured, and out of kilter with comparators.

• That the sentence, in various of its aspects, was not properly explained.

Discussion and Decision

20. It seems appropriate to start with the issue of comparators. We were referred by the applicant to a number of cases in that regard, including The People (*Director of Public Prosecutions) v. Murtagh* [2015] IECA 3; *The People (Director of Public Prosecutions) v. Botha* [2004] 2 I.R. 375; and *The People (Director of Public Prosecutions) v. John Ryan* [2015] IECA 10. However, these were only helpful up to a point in as much as they are all generic s.15A cases. However, none of them deal specifically with the situation of a person or persons involved in the operation of a cannabis *"grow-house"* and who has in that context been found to be in possession of cannabis, or plants of the genus cannabis, with a value in excess of €13,000.

21. There is no shortage of cases involving grow houses for use as comparators, and it is disappointing that we were not referred to any on either side. This Court has dealt with numerous such cases in the four years of its operation to date. A simple search of the judgments database on the Courts Service website yields up the following as possible comparators: *The People (Director of Public Prosecutions) v. Ba Nguyen and Ha Nguyen* [2014] IECA 56; *The People (Director of Public Prosecutions) v. Phuc Nguyen Le and Hong Thi Nguyen* [2015] IECA 157; *The People (Director of Public Prosecutions) v Xiao Fei Weng and Shi Dong He* [2015] IECA 261; *The People (Director of Public Prosecutions) v Choung Vu, Kham Tu and Cong Le* [2016] IECA 36; *The People (Director of Public Prosecutions) v Zinck* [2016] IECA 368; *The People (Director of Public Prosecutions) v Kilkenny* [2016] IECA 348*; The People (Director of Public Prosecutions) v Peng Fei He* [2017] IECA 313; *The People (Director of Public Prosecutions) v Trifonovs* [2018] IECA 18; *The People (Director of Public Prosecutions) v Gronski* [2018] IECA 22 and *The People (Director of Public Prosecutions) v Caldwell* [2018] IECA 183. In addition, the Court itself is aware of the case of *The People (Director of Public Prosecutions) v Gerry Coffey* [2012] IECCA 31, an ex tempore decision of the former Court of Criminal Appeal, to which we referred in our judgment in *The People (Director of Public Prosecutions) v. Choung Vu, Kham Tu and Cong Le.*

22. It is sometimes the case that the plants found in a grow house are not yet mature and therefore only have a potential market value, rather than an actual market value, thus precluding the preferment of a s.15A charge. Accordingly, whilst in some of the cases listed above charges of possession for sale or supply under s.15 and/or s.15A of the Act of 1977 were laid, in other cases the charges preferred were charges of cultivation contrary to s.17 of the Act of 1977 either in addition to, or instead of, possession charges. However, what is relevant, and of particular interest in the context of reviewing the sentences imposed in the present case, is how gravity was assessed in each instance, having regard to the nature of the operation and the particular role being played by the accused in the operation.

23. In the case of *The People (Director of Public Prosecutions) v. Ba Nguyen and Ha Nguyen,* a grow house containing 1300 cannabis plants said to have a potential value of in excess of €1,000,000 was discovered. It was a sophisticated operation. However, the two accused, who were charged with s.17 offences, were vulnerable economic migrants, who spoke no English, and who were employed at the lowest level in the organisation to tend the plants. The trial judge had assessed the gravity of their offences as being *"at the highest level"* and, in circumstances where a s. 17 offence attracts a maximum penalty of fourteen years' imprisonment, sentenced them to six years' imprisonment with the final two years suspended. The Court of Appeal held that the judge was in error in assessing gravity as being at the highest level and substituted sentences of three years' imprisonment and suspended the unserved balance in each case unconditionally.

24. In the case of *The People (Director of Public Prosecutions) v. Phuc Nguyen Le and Hong Thi Nguyen*, an industrial unit had been converted to a grow house. When it was discovered it was found to contain 1,384 plants at various stages of cultivation, with a potential value of c. €1,000,000. Also found was 29.5 kilos of dried cannabis herb with a value of €590,000. The accused pleaded guilty to s.17 cultivation (it is unclear if possession charges had also be preferred but dropped). Although the accused, a husband and wife, were acknowledged to be so-called *"gardeners"*, the trial judge considered that such persons played a vital role in the operation, and assessed gravity as being "at the higher end". Both accused were sentenced to ten years' imprisonment. On appeal the Court of Appeal held (at para 6) 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."*

25. The Court of Appeal substituted sentences of five years with one year suspended in the case of the first appellant (the husband), and three and a half years with six months suspended in the case of the second appellant (the wife).

26. The case of *The People (Director of Public Prosecutions) v. Xiao Fei Weng and Shi Dong He* again involved a sophisticated cannabis growing operation in a large warehouse type premises, inside which a smaller grow house had been constructed. A total of 1,498 cannabis plants and 417 grams of cannabis herb were found. The plants were said to have a potential value of €1,198,400, and the cannabis herb was valued at €8,342. The accused were each charged with s.17 cultivation and s.15 possession offences. They were Chinese nationals who had come to Ireland as economic migrants and they were conceded to be *"gardeners"* living on the premises, who were not allowed to leave and their food was supplied to them. At first instance the sentencing judge had assessed the gravity of their offending conduct as being *"very, very serious"* and had nominated headline sentences of eleven years' imprisonment. Ultimately, she imposed concurrent sentences of 6 years in respect of each of the s.15 and s.17 offences in the case of both accused. The Court of Appeal allowed an appeal against severity holding (at para 30):

> *"The sentencing judge indicated that her starting point before giving a discount for mitigation was eleven years. In this Court's view her starting point was clearly too high in the circumstances of this case, and that represented an error of principle."*

The Court of Appeal substituted sentences of four years' imprisonment for those imposed by the court below.

27. In the case of *The People (Director of Public Prosecutions) v. Choung Vu, Kham Tu and Cong Le*, which involved a grow-house operation that had been established in a rented cottage, 126 cannabis plants were found to be growing with a potential value of €100,800. The involvement of the three accused was more than that of mere gardeners. Mr Tu had rented the cottage, and Mr Vu and Mr Cong Lee were apprehended as they arrived at the cottage in a vehicle that contained items necessary for the cultivation of cannabis. There was evidence that they had visited a B&Q where they were captured on CCTV shopping for these items. The three accused were charged with a variety of possession and cultivation offences and following their convictions in respect of cultivation, Mr Vu received a sentence of six years with three suspended, Mr Tu received a sentence of four years with two and a half years suspended (consecutive to a sentence he was already serving) and Mr Cong Le received a sentence of four years with the final three years suspended. The Director of Public Prosecutions applied for a review of these sentences on the grounds that they were unduly lenient. The Court of Appeal found that the sentences imposed, although lenient, were not unduly lenient. With reference to headline sentences, the Court had this to say:

> *"62. Counsel for the DPP has submitted that, properly assessed, the offending conduct of each of the convicted persons in this case fell to be measured as falling into the mid-range, where the range runs from non-custodial options up to imprisonment for a term of fourteen years. It was further argued that Mr. Tu merited a sentence greater than Mr. Vu and Mr. Cong Le, though still within that range, in circumstances where he was an admitted primary participant whereas the involvement of Mr. Vu and Mr. Cong Le was capable of being regarded as secondary participation on the available evidence.*
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> *63. Reference to a mid-range implies dividing the range or spectrum of penalties into at least three tranches, i.e., a low range, a mid-range and an upper range. Applying a crude mathematical division would result in a low range from zero (being non-custodial options) to 56 months (i.e., 4 years and 8 months), a mid-range from 57 months to 112 months (i.e., 9 years and 4 months), and an upper range from 113 months to 169 months (i.e., 14 years).*
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> *64. Applying this yardstick, the headline sentence of six years in the case of Mr. Vu fell squarely into the mid-range, whereas the four year sentences of Mr. Tu and Mr. Cong Le fell into the upper end of the lower range. Mr. Tu's sentence was clearly influenced by the sentencing judge's determination that it should be consecutive to the sentence imposed at Naas Circuit Court, and the need to respect the totality principle so as to ensure that the resulting overall combined sentence was a proportionate one. It is reasonable to assume that if Mr. Tu had not faced consecutive sentencing, the headline sentence for the present offence would probably have been very much greater than four years, and somewhere in the mid-range. It could very possibly have been in excess of six years in circumstances where the sentencing judge regarded Mr. Tu as having the greatest degree of involvement, being a primary participant, and also bearing in mind the judge's assessment of the seriousness of Mr. Vu's offending conduct, which on the evidence amounted to secondary participation. While Mr. Tu's headline sentence of four years was undoubtedly very lenient, this Court considers that it was within the sentencing judge's margin of reasonable appreciation in circumstances where it was the product of the application of the totality principle in the consecutive sentencing scenario that arose in Mr. Tu's case.*
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> *65. Whatever about Mr. Tu's case, it is undoubtedly the position that there was little ostensible justification for differentiating between Mr. Vu and Mr. Cong Le in terms of fixing their headline sentences, although there was plenty of scope for differentiating between them once it came to making due allowance for mitigation. Be that as it may, in this Court's assessment, neither the six-year headline sentence in the case of Mr. Vu nor the four year headline sentence in the case of Mr. Cong Le was so far outside the margin of appreciation available to the sentencing judge, in terms of rating the seriousness of the offending conduct, as to represent a manifest error. Having regard to their roles which on the evidence involved secondary participation, their conduct could legitimately have been rated as belonging either in the upper end of the lower range or alternatively in the lower end of the mid-range without the sentencing judge falling into error; in practical terms, any headline sentence of between four years and six years could not be regarded as being so divergent from what might have been expected to be the product of a proper application of sentencing principles as to be erroneous."*

28. The related cases of *The People (Director of Public Prosecutions) v. Zinck and The People (Director of Public Prosecutions) v. Kilkenny* both arose out of a substantial grow-house discovered in two industrial units in Piltown, Co Kilkenny, in which 2,504 cannabis plants at various stages of maturity, and 43.45Kgs of cannabis herb were found. The combined potential value of the cannabis plants, and the actual value of the cannabis herb, came to €2,874,174. Both Mr Zinck and Mr Kilkenny were charged with s. 15A offences. In the case of Mr Zinck the garda evidence was that his role was above that of *"gardener"*, but below that of Mr Kilkenny who was considered the top man. Mr Zinck claimed that he was a drug addict and that he had become involved due to a need to pay off a drug debt. He contended that his role was in essence to deliver food and other supplies to the gardeners, who were Chinese people living on the premises, and that he was to be paid a fee of €5,000 for this work but was not due to get a share in the profits of the enterprise. The sentencing judge found that there were exceptional and specific circumstances that allowed her to depart from the presumptive mandatory minimum sentence, and imposed a nine year sentence which she then wholly suspended both to reflect what she perceived to be substantial mitigating factors in the case and to incentivise continued efforts at rehabilitation. The Director of Public Prosecutions sought a review of the sentence on the grounds of undue leniency and the Court of Appeal found the sentence to

have been unduly lenient. As Mr Zinck was making good progress towards rehabilitation the Court put the matter back for a year before re-sentencing, and ultimately re-sentenced the appellant to ten years with the entirety suspended *(People (DPP) v Zinck* [2017] IECA 33.)

29. In Mr Kilkenny's case, he admitted signing a lease for the two industrial units involved using a false name and a false company name. The court was told that other evidence relating to his involvement included the purchase of a vacuum packer; the placing of an order for 500 vacuum bags signed for under a false name; and mobile phone top up slips found at the industrial units, which were traced and found to have been purchased at a particular location in Wexford, where CCTV showed that those buying the top up credit did so using a van registered to a non-existent owner but used by the respondent. Of particular significance was that a wrapped kilo of cannabis herb, which was found inside the unit, bore the respondent's fingerprints.

30. Once again, the sentencing judge found that there were exceptional and specific circumstances that allowed her to depart from the presumptive mandatory minimum sentence, and imposed a sentence of ten years with the final six years suspended. The DPP sought a review on the grounds of undue leniency, and the Court of Appeal found the sentence to have been unduly lenient. Giving judgment for the Court of Appeal, Birmingham J (as he then was) stated:

> *"10. In the Court's view, the Piltown matters was a very serious offence indeed. This was commercial cultivation and production on a grand scale. The operation in Piltown was by any standards a very large one, and the respondent's role was a central one. He, it was who had leased the premises, and it was he who was also involved in sourcing machinery. His role was at an entirely different level to the "gardeners", whose task it was to tend to the plants, but his role was also much greater than that of another person who was brought before the courts arising from the Piltown operation; this person was dealt with at a different sitting of the Circuit Court and by a different judge."*

31. While acknowledging that the threshold for departing from the presumptive mandatory minimum had been met if there was to be any intervention, the Court went on to hold that:

> *"This was a case where a starting sentence in excess of ten years was required. Accordingly, the Court will impose a sentence of twelve years imprisonment, which it feels is the minimum required to meet the situation."*

32. The Court of Appeal went on to suspend four years of the twelve year headline sentence that it had nominated to reflect mitigation.

33. The case of *The People (Director of Public Prosecutions) v Peng Fei* He is included in this review, although it was not a grow house case, because it featured and was cited as a comparator in the case of *Caldwell* to be considered later in this review. This was a s.15A case involving a controlled delivery of two packages being transported from Spain to Ireland by DHL, following the earlier interception of those packages at Dublin Airport by customs officers. The first package contained 3.53 kg of cannabis with a market value of €70,620 and the second package contained 3.565 kg of cannabis valued at €71,300. The appellant, who claimed to have gambling debts and to have become involved on that account, accepted responsibility for both packages. He admitted selecting the locations for delivery having made sure the premises were empty. He admitted ordering the packages from Spain. The sentencing judge considered that in light of the value of the drugs the offence was one within the mid-range for this type of offending. She indicated that if the matter had gone to trial and there was no mitigation the appropriate sentence would have been 12 years. Ultimately, having taken mitigation into account, she imposed a sentence of eight years with the final two years suspended, having found that exceptional and specific circumstances existed allowing her to depart from the presumptive minimum. There was an appeal against the severity of the sentence, and the Court of Appeal found that it was too severe. We stated (at para 35):

> *"We have considered carefully the submissions made to us by both counsel. We have examined the cases to which we have been referred for comparative analysis of sentencing. The case of People (DPP) v Devlin [2016] IECA 125 is one of those that bears some consideration. In that case drugs with a value of 1,300,00 Euro were involved in an illicit transaction. Heroin and cocaine were the drugs in question. A 12 year sentence was upheld by this court. Almost ten times the value of drugs in this case were involved there. Additionally, cannabis was the drug involved herein. We are of the view that the headline sentence identified herein was too severe and thus identify an error of principle. We will therefore quash the sentence and proceed to resentence. We find that the headline sentence in this case should be one of 9 years. Applying the same mitigating factors outlined above together with the very favourable reports that have been furnished to us today, we consider the appropriate sentence should be one of 6 years. We also consider that the same exceptional circumstances exist as specified by the learned sentencing judge which would make the mandatory minimum sentence of 10 years unjust. Further, as the learned sentencing judge found, we are very impressed by the manner in which the appellant has conducted himself in prison. The conduct to which she was referred has continued since sentencing and this is greatly to the credit of the appellant. We hope his positive attitude will continue and to incentivise that we will suspend the last 18 months of the sentence subject to the same conditions as before."*

34. The case of *The People (Director of Public Prosecutions) v Trifonas* was another grow house case involving a person who was charged with a s. 17 cultivation offence. Some seventeen cannabis plants with a potential value of €17,000 were involved. The appellant was the occupier of the house in a bedroom of which the plants were being cultivated. When asked by the sentencing judge whether the appellant was *"involved in the cultivation or simply a caretaker"*, counsel for the prosecution indicated that he was *"involved in the cultivation because he was tending to the plants that were in the room. He indicated that he got the seeds from [another] person, where his instruction appeared to be general sort of gardening insofar as the plants were concerned. He said to the guards also that he was told that the person who he was involved with … wanted them for some sort of medical purpose."* The appellant told Gardaí that the other individual rented the room in question from him for €200 per month. He also said that he was only involved in cultivation in the initial stages of growing, and that after a certain stage the other individual changed the locks to the room, and to the front door of the house. Thereafter the appellant was provided with a key to the front door but not to the room.

35. The sentencing judge determined upon a headline sentence of four years, from which he discounted a year to reflect mitigation. In considering, and ultimately dismissing, a subsequent appeal against the severity of this sentence, the Court of Appeal stated:

> *"13. It follows that [the sentencing judge] therefore regarded it as belonging towards the upper end of the lower range. It has been submitted by counsel for the appellant that this was an error. We do not agree.*
>
> *14. This was not a case of a single cannabis plant, or a small number of plants, being grown in a flowerpot on a window sill for personal consumption. This was a commercial operation, albeit small by the standards of some of the grow houses that have featured in prosecutions before our courts in recent years. It was carefully planned and executed, and engaged in for profit and reward. Moreover, it is clear from the evidence that the appellant's involvement was*

considerable. After all, he procured a rental of the property, he assisted in bringing in and setting up the paraphernalia, and he tended to the crop. It seems to have been a two-person operation, and while the evidence is inconclusive as to the exact division of responsibility, and the control exercised by the appellant, it is clear that he was significantly involved. The sentencing judge characterised the set up as sophisticated, and we agree.

15. Counsel for the appellant referred to him as "a gardener", but the evidence suggests he was much more than that. The term "gardener" as often used in these cases has become almost a term of art to describe low level menial workers, frequently trafficked from another jurisdiction, with little or no English, working as enforced labour employed to tend the plants in a grow house, often working for food and accommodation alone, or for very, very, low wages, almost as slave labour, indeed. The appellant's circumstances were entirely different, as is properly conceded by his counsel.

16. He was the tenant of the building in which the operation was established, he dealt with the landlord, and he permitted and facilitated the alterations to the property effected in connection with the enterprise, including the changing of the locks without notice to the landlord, or the provision of keys to the landlord. … In the circumstances we consider that the offending conduct in this case properly belonged towards the upper end of the lower range."

36. The lower range was identified as being, in the case of s.17 cultivation, from zero i.e., (non-custodial options) to 56 months (i.e., four years and eight months).

37. The case of *The People (Director of Public Prosecutions) v Gronski* involved a grow house discovered in Co Cavan in which there were 211 potted cannabis plants at a mature level of growth and with a street value of €268,000. The accused was charged with a s.17 cultivation offence. The sentencing judge deemed the appellant's involvement in the drugs operation to be that of a gardener and determined the seriousness of the offences as being at the lower end of the mid-range. The learned sentencing judge set the headline sentence at seven years and proceeded to impose a sentence of four years' imprisonment, describing that term as a *"normal tariff…for somebody who is caught in this particular situation"*. On appeal, it was argued that the sentencing judge's placing of this offence at the lower end of the mid-range was inconsistent with the headline sentence of seven years' imprisonment in circumstances where the maximum potential sentence was fourteen years. This, it was argued, would suggest that the offence was in reality treated as a mid-range offence. The Court of Appeal agreed. In re-sentencing the appellant, it determined upon a headline sentence of five to five and a half years, and ultimately imposed a post mitigation sentence of three and a half years (the unserved balance of which it suspended in particular circumstances then obtaining, and which it is unnecessary to elaborate on.)

38. The penultimate case in this review is the case of *The People (Director of Public Prosecutions) v Caldwell*. This was another grow house case, and in this instance the appellant was charged with a s.15A offence. Two grow rooms were found inside a rented house in West Cork, and 33 fully mature cannabis plants and 7.2 kilos of cannabis herb were seized on the premises. The total value of the plants and drugs found was €170,000. The appellant, one of four people suspected of being involved, was subsequently arrested at his residence and later in interview he admitted that he had rented the house; that he had invested €5,000 in equipment to set up the grow house and that he planned to make €50,000 to €60,000 profit from it. However, the Garda view was that he was inclined to exaggerate his involvement in as much as he had indicated that he was essentially the boss of the operation with the other three working for him, whereas the position in fact seemed to be that the appellant and one of the other men arrested were jointly in charge and the other two were working for them.

39. The judge at first instance imposed a sentence of seven years with the final three years thereof suspended upon conditions, being satisfied that exceptional and specific circumstances existed so as to allow him to depart from the presumptive minimum. The appellant unsuccessfully appealed the severity of his sentence. The Court of Appeal, in dismissing the appeal, commented that the headline sentence of seven years was entirely appropriate to the gravity of the offence.

40. The final case that it is proposed to review is the decision of the former Court of Criminal Appeal in *The People (Director of Public Prosecutions) v Coffey*. In this case the appellant was convicted of two s. 17 cultivation offences involving grow houses at two separate addresses. At one of these addresses cannabis plants with a potential value of €325,000 were found, while at the other address, cannabis plants with a potential value of €20,000 were found. The appellant, a 56 year old man, was arrested at the scene. He had a business in garden ornaments, was engaged in ornamental design and had a keen interest in gardening. He had become involved by demonstrating to others involved how to clone cannabis plants and how to cultivate and develop them. The Court of Criminal Appeal concluded that it was a major operation and a serious offence, although it accepted that his involvement was not at the very highest level. The court below had placed the offence at "above the middle level" and the Court of Criminal Appeal agreed with that. The appeal succeeded in circumstances where the court below had failed to indicate by how much it had discounted for mitigation, and had simply nominated an ultimate sentence. The Court of Criminal Appeal felt that it could not be satisfied that adequate discount had been given for mitigation. In resentencing the appellant, the court nominated a headline sentence of eight years from which it discounted substantially to reflect the mitigating circumstances in the case, ultimately imposing a sentence of four years imprisonment with the final year suspended.

41. What can be taken from this review is that persons involved in grow house operations, (it is immaterial whether they be ultimately charged with s. 15 /s.15A possession offences, or with s. 17 cultivation offences) generally fall into three categories in terms of their involvement and consequently their culpability. There are principal or top tier organisers who fund and orchestrate the setting up of the operation, and the sale and distribution of the produce, and who get to keep and enjoy the profits earned. Such persons will be regarded as having a high level of culpability. Then there are second tier managers, who provide logistical and supervisory support, usually receiving a substantial fee for their efforts, although not sharing in the ultimate profits. The culpability of persons in this category will usually be located in the mid-range. Finally, there are low level operatives/gardeners who frequently are economic migrants, usually of foreign nationality, who are exploited due to their poverty, and low level of education and lack of sophistication; or, worse still, they are persons trafficked illegally into the country as virtual slaves specifically to fulfil the gardening role, and who receive very low remuneration, if any at all. The culpability of persons in this category will generally be regarded as falling within the low range.

42. The scale and sophistication of a grow house operation is also clearly a relevant factor in assessing gravity, as is the value of any actual drugs or mature/harvestable plants seized and the potential value of any immature or not yet harvestable plant material seized.

43. Where a s.15A charge is preferred, and assuming proof exists of value in excess of the threshold figure of €13,000, the presumptive mandatory minimum sentence also arises for consideration. However, while regard must be had to it, it does not affect the assessment of gravity *per se*. On the contrary, gravity must be assessed in the first instance without reference to the presumptive minimum. Mitigation is then applied to the pre-mitigation or headline figure arrived at. If the ultimate figure arrived at is in excess of the presumptive minimum, then no further consideration of the presumptive minimum is required and the sentence as so determined is simply imposed. If, however, the ultimate sentence as so determined would fall below the presumptive minimum if

imposed, the sentencing court must then consider whether there are exceptional and specific circumstances which would render it unjust to impose the presumptive minimum. If such circumstances are found to exist, the ultimate sentence as determined can be imposed notwithstanding that it falls below the presumptive minimum. Conversely, if such circumstances are found not to exist then the presumptive minimum sentence of ten years must be imposed.

44. In the present case, the role played by the appellant was clearly at middle management or second tier level. He was far more than a low level operative or gardener, and yet he was not at the top level. He was characterised as an organiser but not the head of the operation. Mr Z appears to have been at the top or first tier level. However, be that as it may, the respondent's role was nonetheless a significant one. It was the respondent who was the tenant of the relevant properties. Moreover, the bank statements found on his phone indicate that he operated, or at least had access to, a bank account used in connection with the illicit business. In addition, he sourced and purchased supplies for the operations, including making purchases of relevant paraphernalia at Woodies DIY, and at the so-called Grow Store.

45. In s. 15 and in s.15A cases the range of available penalties (ignoring at this stage any presumptive mandatory minimum) ranges from zero (i.e., non –custodial options) up to life imprisonment. However, in the great majority of cases the effective maximum usually tops out at around fifteen years. There will, of course, always be truly egregious cases where even higher sentences might be justified. If one divides the effective range that operates in most cases by three, that allows for a low range from zero to five years, a mid-range from five to ten years, and an upper range from ten to fifteen years.

46. We consider that the gravity of the respondent's offending conduct, when considered with reference to the effective range spoken of, and taking into account his culpability, the size, scale and sophistication of the operation he was helping to run, the value of the actual drugs seized, and the potential value of the immature plant material seized, was such that it was properly to be located well within the mid-range. We would in fact locate it centrally in the mid-range and so, having regard to a sentencing judge's margin of appreciation, any headline sentence that fell either side of the mid-point by a year or so would be within the scope of a sentencing judge's discretion.

47. In this case the sentencing judge determined upon headline or pre-mitigation sentences of five years in each instance. In our view these were clearly too low. He then proceeded to determine that two years of those five year terms should be suspended to take account of mitigation and personal circumstances. We do not accept the respondent's contention that there were was too much discount for mitigation. However, even though the discount in mitigation was appropriate the ultimate sentence was manifestly unduly lenient, caused in the main by the selection of a headline sentence that was simply too low.

48. Even assuming for the purposes of argument at this point that the sentencing judge was correct in finding that there were exceptional and specific circumstances that justified him in departing from the presumptive mandatory minimum sentence (and that is disputed), the resultant sentence was far too low in any event, and was unduly lenient in our view.

49. We agree with counsel for the applicant that the ultimate sentences did not sufficiently address the penal objective of deterrence, both general and specific.

50. The comparators considered support us in our views, indicating as they do that the headline sentences determined upon by the court below were those more appropriate in the case of low level operatives/gardeners charged with s. 17 offences, than in the case of a person involved at second tier level, such as the respondent.

51. We have given careful consideration to the appellant's argument that the circumstances pressed on the respondent's behalf as justifying a departure from the mandatory minimum, namely his pleas of guilty, his co-operation, and lack of relevant convictions, were neither sufficiently exceptional nor specific as to have rendered it unjust to impose the presumptive mandatory minimum. It is further complained that the sentencing judge does not adequately explain the basis on which he concluded that the required exceptional and specific circumstances existed. We agree that this aspect of the sentencing judge's sentencing remarks could have been better explained and better reasoned. However, although we find the issue to have been finely balanced, we have come to the conclusion that the pleas of guilty and his co-operation, whatever about his lack of convictions, were, in the circumstances of the case, sufficient to constitute exceptional and specific circumstances.

52. The statute specifically references a plea of guilty, especially where it is an early one, as being potentially relevant in that context. While it is claimed that the respondent was caught red handed, the plea offered was nonetheless valuable. Yes, there was an incentive to plead in the circumstances but it cannot be gainsaid that a plea represents voluntary self-incrimination. A person has the right not to self-incriminate, and anyone who elects to do so by offering a plea, notwithstanding their constitutional right not to do so, acts specifically and in doing so behaves exceptionally.

53. Moreover, the co-operation offered in this case was significant and in our view represented material assistance, and therefore was exceptional. The respondent's co-operation in unlocking his phone so that it might be inspected by the Gardaí was a matter of considerable assistance to them. The evidence is silent one way or the other as to whether they could ever have recovered the data on the phone without his co-operation, but even if that were so his provision of the code is likely to have greatly speeded up their inquiries. It was as a result of the material found on that phone that the second grow house in Drumcondra was located, leading to the apprehension of Mr Giniskas, who in turn led the Gardaí to Mr Z. We consider that in the circumstances of this case, in which there were these exceptional and specific circumstances, it would have been unjust to apply the presumptive mandatory minimum.

54. Having found the sentences on counts 7 and 8, respectively to have been unduly lenient it is appropriate to quash those sentences and to proceed to re-sentence the respondent.

55. We nominate a headline sentence of eight years imprisonment on each of counts 7 and 8 , respectively, to reflect the gravity of the appellant's offending conduct, and we will discount from that by two years in each instance to take account of the mitigating circumstances in the case. We are satisfied that exceptional and specific circumstances exist that would render it unjust for us to impose the presumptive mandatory minimum sentences of ten years' imprisonment, and we therefore will not do so. The net sentences therefore after discounting for mitigation will be six years on each count. However, with a view to incentivising rehabilitation, and also to reflect what is sometimes called the disappointment factor in having a sentence imposed at first instance increased following a review, we will go further and suspend the final year on each count.

56. The ultimate sentences are therefore six years imprisonment on each of counts 7 & 8, with the final year in each case to be suspended on standard conditions, both sentences to run concurrently and to date from the 31st of December 2016.