



THE COURT OF APPEAL

**Birmingham J.
Sheehan J.
Mahon J.**

248/13

The People at the Suit of the Director of Public Prosecutions

V

Alan Long

Appellant

Judgment of the Court (ex tempore) delivered on the 16th day of July 2015 by Mr. Justice Sheehan

1. This is an appeal against severity of sentence.
2. The appellant pleaded guilty to an offence contrary to s. 15A of the Misuse of Drugs Act 1977, as amended involving possession of drugs with an estimated street value of €680,500 and was sentenced to eight years imprisonment with the final two years suspended.
3. The offence occurred on the 20th September, 2011, at Ashbourne, Co. Meath and the sentence was imposed at Trim Circuit Court in February 2013.
4. In his written submissions, counsel for the appellant contends that the sentencing judge failed to construct a sentence which was both proportionate to the offence committed by the appellant and to his circumstances. He further submits that the sentencing judge failed to give adequate weight to the identified mitigation and in particular to the fact that it was accepted by An Garda Síochána that the appellant had become involved in the offence after he had been subjected to a very high level of duress including real and substantial threats to his own life and that of his mother. Counsel submitted that there had been a failure to give clear recognition to the rehabilitation achieved by the appellant and in particular that there was no linkage between this rehabilitation and the decision of the learned sentencing judge to suspend the final two years of the sentence. The clear insight and remorse of the appellant and the general rehabilitation which he had achieved by the date of sentencing were reflected in the probation and welfare report furnished to the sentencing judge. The sentencing judge acknowledged in his sentencing remarks that the probation service deemed the appellant to be at low risk of re-offending.
5. The appellant had been involved in a public house prior to the offence and his involvement in this public house resulted in serious financial loss to him. He appears to have become indebted to people who were involved in organised crime and became involved in the distribution of drugs under duress and as a result of demands by these people that he repay what they said he owed them.
6. The particular facts of this case are that on the day in question, as a result of confidential information, the gardaí observed the appellant collecting drugs from an industrial estate in Portlaoise and bringing them to his brother's house in Ashbourne at a time when he was moving home. His brother had absolutely no knowledge of what the appellant was doing.
7. The appellant was arrested and made full and immediate admissions to the gardaí. Garda evidence at trial accepted his explanation for his involvement. At the time of sentence he was in a relationship and the father of a two year old child. He had an impressive work record. He had a good family background and was a person without previous convictions.
8. The principle mitigating factors in this case are the appellant's early plea of guilty, his co-operation with the investigating gardaí, his remorse, his low risk of re-offending and the absence of previous convictions. There was also evidence at the time of sentence of rehabilitation that had occurred between the time of the offending and the date of the sentence hearing.
9. The aggravating factors were the value of the drugs seized, the appellant's involvement in the supply of illegal drugs and the destructive effect of drugs on society.
10. At the oral hearing counsel for the appellant while conceding the seriousness of the case contended that greater weight ought to have been afforded to the mitigating factors. The respondent on the other hand submitted that the sentencing judge had taken into account all relevant matters including each of the mitigating factors referred to by counsel for the appellant.
11. The court notes the value of the drugs in this case and can find no error of principle in the decision of the sentencing judge to locate an eight year sentence as the appropriate place on the scale for this offending.
12. The question that does arise is whether or not the extensive mitigating factors were adequately reflected in the portion of the sentence that was suspended. In particular the court notes that by the time of sentence the appellant was indeed a changed man, who clearly appreciated not only the seriousness of his offending, but also the impact of that offending on others. These matters were confirmed to the sentencing judge by the probation service.
13. Given the appellant's extensive co-operation, his early plea of guilty, his rehabilitation and previous history, this Court is of the view that while these factors were in the most part acknowledged in the remarks of the sentencing judge they ought to have attracted greater weight and to this limited extent the court holds that the sentencing judge erred.
14. In now considering what the appropriate sentence is, the court has been brought up to date on the programmes that the appellant has completed while in prison. These show a high level of commitment by him, which goes beyond rehabilitation. In light of these additional matters the court will suspend a further part of the sentence to the extent of adding twelve months to the period of suspension that is already in place.
15. Accordingly this Court allows the appeal and sets aside the original order and in place of that original sentence this Court now imposes a sentence of eight years imprisonment with the final three years of that sentence suspended for a period of three years on

the appellant entering into his own bond of €100 to keep the peace and be of good behaviour for that period.