



**THE COURT OF APPEAL**

**[74/2018]**

**Edwards J.  
McCarthy J.  
Kennedy J.**

**BETWEEN**

**THE PEOPLE (AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS)**

**AND**

**RESPONDENT**

**FARID FAWZI**

**APPELLANT**

**JUDGMENT (ex tempore) of the Court delivered on the 5th day of March, 2019 by Mr. Justice McCarthy**

1. This is an appeal against severity of sentence. On the 6th March, 2018 the appellant entered a plea of guilty before Cork Circuit Criminal Court to one count of possession of controlled drugs with intent to supply, contrary to s.15A of the Misuse of Drugs Act, 1977, as inserted by s.4 of the Criminal Justice Act 1999. On the 6th March, 2018 the appellant was sentenced by His Honour Seán Ó Donnabháin to ten years' imprisonment with the final two years suspended, backdated to the 18th December, 2017. – according to the perfected order.

2. On the 15th September, 2016 a search was carried out at a premises at Coneybeg, Rathpeacon, Co. Cork where the appellant resided. Drug Squad personnel recovered a quantity of cannabis to a value of €94,550, and cocaine to a value of €3,160. The appellant was not in the premises at the time. A mobile phone was also recovered which was found to contain multiple messages concerning the sale and supply of drugs. Such was the extent of the messages that the Gardaí present were directed to a number of locations where the drugs were recovered. Text messages received on the phone indicated that the appellant was in Killarney at that time. Contact was made with Gardaí in Killarney and the appellant was located and arrested. He was questioned and detained where he made admissions in relation to the drugs seized at his address. Further, he admitted that he was directing the operations remotely from Killarney at the time, and that the other people associated were involved to a lesser extent. Since a number of persons resided in the house the admissions were especially valuable in proof of possession. The appellant had no previous convictions for related offences but has a previous conviction for two counts of assault contrary to s.3 of the Offences Against the Person Act.

3. He was thirty-one years of age at the time of sentencing. He was engaged in part-time employment, although that as a matter of reality this must be open to doubt. In interview, the appellant acknowledged that he became involved in the offending behaviour as it was lucrative; he did not have issues with addiction. It was also accepted that he had been subjected to threat, presumably because he owed €70,000 to suppliers and was owed €40,000 approximately. These factors do not of course go to mitigation but serve to emphasise the significance of his involvement.

4. The sentencing judge noted the serious nature of the offending, in that the appellant played a pivotal role in the movement and distribution of a significant amount of drugs. After determining a sentence of ten years' imprisonment, the sentencing judge considered the appellant's guilty plea and the level of his admissions. In mitigation, the judge suspended the final two years of the sentence.

Grounds of Appeal

5. The appellant submits the following grounds of appeal in that the sentencing judge erred:

(1) in principle in failing to afford sufficient weight to the mitigating factors in the case;

(2) in failing to afford sufficient weight to the factors set out in s.27(3C) of the Misuse Drugs Act and the exceptional and specific circumstances, in particular: -

(i) The plea of guilty

(ii) The early indication of the intention to plead guilty

(iii) The circumstances in which the plea of guilty was entered

(iv) The material assistance of the applicant in the investigation of the offence;

(3) in imposing the within sentence in that sufficient weight was not afforded to the public interest in the rehabilitation of the applicant.

We think that it suffices to deal with all grounds together.

6. Mr. Heneghan rightly accepted that the headline sentence was within the discretion of the trial judge when he fixed 10 years. He placed the primary emphasis on the admissions of the accused and his plea of guilty. These, he submitted, were of exceptional weight having regard to the extent to which the appellant was distant (by which he did not mean merely physically distant) from the controlled drugs found at the house. Of course, one of the factors relevant to the weight which should be attached to a plea of guilty is the strength of the evidence against the accused. Thus, as here, where difficulties, perhaps not fatal, but undoubtedly existing, in proof of an essential element of the offence without the admissions (possession) the plea was of particular value. Absent any other factor we think that any reduction should have been towards the higher level of what is usual appropriate, viz, up to a third. The plea was not of course tendered at the first available opportunity in as much as the accused was returned for trial to the sessions of Cork Circuit Criminal Court in October but absconded. We think that an effective discount of two years was an error in principle, and it seems to us that the appropriate reduction of the headline sentence would have been three years.

7. Arising from the identified error in principle we quash the sentence and will now proceed to re-sentence; in doing so we have considered the prison governor's reports which are generally favourable to the accused. We nominate headline sentence of 10 years and we reduce it to take account of mitigating factors by three years. We accordingly impose a sentence of seven years, and we suspend the final six months thereof for a period of two years on the terms that the appellant will enter a bond to keep the peace and be of good behaviour during his period of imprisonment and for two years thereafter, and further, place himself under the supervision of the probation and welfare service.