



THE COURT OF APPEAL

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

241/13

The People at the Suit of the Director of Public Prosecutions

V

Sarah Coll

Appellant

Judgment of the Court (ex tempore) delivered on the 28th day of November 2014, by Mr. Justice Sheehan

1. This is an appeal against sentence.
2. On the 7th June, 2013, Sarah Coll pleaded guilty to a charge of possession of cannabis to the value of approximately €28,260 contrary to s. 15A of the Misuse of Drugs Act, 1977 (as amended) and to a charge of possession of Diamorphine for her own personal use.
3. Sarah Coll was sentenced to six years imprisonment with the final three years of that sentence suspended for a period of three years on the s. 15A charge provided she entered into a bond to keep the peace and be of good behaviour for that period. Both offences were committed on the 24th September, 2012.

The Facts

4. On the 24th September, 2012, the appellant was arrested at the Deadman's Inn, Palmerstown, Co. Dublin, following a surveillance operation by the National Bureau of Criminal Investigation. She was found in possession of a small amount of Diamorphine and following a subsequent search of her home, cannabis to the value of €28,260 was found in her bedroom.
5. Sarah Coll readily admitted to the gardaí her involvement relating to the cannabis that was found in her home and told the gardaí that she was holding it for her boyfriend. This explanation appears to have been accepted by the gardaí. These seem to be the essential facts insofar as they relate to Sarah Coll.
6. At the time of her trial, two people whom this Court will refer to as co-accused pleaded guilty to offences involving the possession of drugs valued at over €2 million and evidence relating to the description of these offences referred to Sarah Coll accompanying one of the men when a major transaction took place, in respect of which he was charged.
7. The charges in respect of these more serious matters were proceeded with in respect of the two co-accused. At the time of sentence Sarah Coll had no previous convictions and had overcome a serious addiction problem. In the course of imposing sentence on Sarah Coll, the learned judge stated that she was clearly involved in the major drugs operation on the day, referring to the two cases against her co-accused. While this Court understands how the learned judge came to this conclusion, this effectively resulted in her taking into account in the course of her sentencing hearing matters in respect of other crimes for which the appellant had not been prosecuted. At least the impression must be formed that the judge proceeded in this manner.
8. This Court notes the lengthy written submissions filed on behalf of the appellant supported by the various authorities as well as the submissions from the Director and holds that the learned trial judge erred in principle in her approach to sentence in the case of Sarah Coll by taking into account matters which were excluded from the respondent's recital of the facts in relation to her. This represents an error in principle and accordingly the court will set aside the order of the learned sentencing judge.
9. While the Director has accepted that there was an error in principle or at the very least a perceived error in principle, counsel on her behalf contends that the sentence imposed was nevertheless an appropriate one, particularly given the presumptive minimum sentence provided by the legislature for offences of this kind. While there were clearly grounds entitling the learned trial judge to depart from the prescribed minimum sentence, this Court is of the view that the offence committed by Sarah Coll is a very serious one.
10. However, in view of the nature of the error which this Court has found, this Court takes the view that the appellant would have a legitimate sense of grievance were it not to make some reduction in the sentence imposed. This Court notes the booklet of testimonials presented on behalf of Sarah Coll which highlights her powerful and positive response to the crisis that evolved for her on the day that she was arrested and taken into custody.
11. In particular the court notes her successful completion of a rehabilitation programme with the Coolmine Therapeutic Community as well as the report from the Dochas Education Centre which indicates that she has used her time in prison to great effect.
12. Accordingly this Court will reduce the six year prison sentence to one of four years imprisonment and will suspend the final two years of the said sentence, provided that Sarah Coll enters into a bond in the sum of €100, to keep the peace and be of good behaviour for a period of two years following her release from prison.

