



THE COURT OF APPEAL

Appeal No. 69/15

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

The People at the Suit of the Director of Public Prosecutions

Respondent

- and -

Alan Rees

Appellant

Judgment (ex tempore) of the Court delivered by Mr. Justice Alan Mahon on the 24th day of July 2015

1. On the 31st October, 2014, the appellant pleaded guilty at the Dublin Circuit Criminal Court to one count of keeping prohibited goods within the meaning of s. 94 of the Finance Act 1999, contrary to s. 102(3)(c) and (4) of the Finance Act 1999, as amended by s 98(a) of the Finance Act 2010 and s. 78(1)(x) of the Finance Act 2012. The appellant was sentenced on the 11th March, 2015, to eighteen months imprisonment (to date from the 11th March, 2015). The maximum penalty for this offence is a term of five years imprisonment and/or a fine of up to €126,000.

2. This is an appeal against severity of sentence.

3. The essential background in this case is the activity known as fuel laundering. On 17th May, 2013, customs officers intercepted the appellant while he was in the process of removing a load of approximately 2,600 litres of laundered fuel or "washed diesel" from an industrial unit in Orion Business Centre, Ballycoolin, Blanchardstown, Dublin 15. On that occasion the appellant informed a customs officer that he was not the lessee of the unit, whereas in fact the appellant had leased the unit for a period of six months from December 2012 for a cash payment of €3,000. The appellant admitted to the customs officer that he had removed approximately 2,000 litres of washed diesel from the unit almost every second day over the period of approximately six months.

4. The appellant has brought his appeal on a number of grounds, including:-

- that the learned sentencing judge did not adequately consider the possibility of a non custodial sentence;
- that the imposition of an eighteen month sentence was a disproportionately high sentence;
- that the learned sentencing judge imposed a sentence without due regard to the mitigating and other personal circumstances of the appellant, and
- that the learned sentencing judge drew an inference from the evidence of a customs officer to the effect that the washed diesel was likely to be used in retail premises or to be sold to unsuspecting members of the public when there was no evidence of same.

5. In his sentencing judgment, the judge clearly took the view that this offence was a serious one and emphasised the importance of imposing a sentence that would act as a deterrent to others involved, or who might considered becoming involved, in this type of criminal activity.

6. The learned sentencing judge took the following aggravating factors into account when imposing the sentence of eighteen months:-

- The duration and frequency of the offending activity.
- The environmental consequences of offences of this nature.
- The potential harm and loss to the public.
- The appellant's previous convictions.

The learned sentencing judge also took into account the appellant's plea of guilty, his co-operation with the customs authorities, and his relative youth.

7. The appellant has four previous convictions. They include convictions for dangerous driving in 2005, assault in 2006, and using laundered fuel in 2007, in respect of which he was fined €2,500.

8. The learned sentencing judge, somewhat generously, appeared not to deem these previous convictions of being particularly relevant, in that he stated:-

"Mr. Rees is a young man. It seems that he is decent young man. It seems that he has some record of conviction of which is not too relevant. I don't deem it relevant that he used washed diesel. It seems that he has involved himself in this to make monies. He is a hardworking man. He owes money and this is a profit making operation."

9. The learned sentencing judge appeared to rule out any question of suspending any part of the sentence. He also declined to defer

sentence for a period of time to facilitate the appellant organising his affairs before commencing his prison sentence.

10. It is quite evident that the appellant's involvement in the activity of fuel laundering was far from a one off. The fuel laundering operation was well established and quite sophisticated. As was pointed out by the learned sentencing judge, this type of activity is difficult to detect, it can and does cause significant distress and loss to car owners not to mention loss of revenue to the State. For all these reasons the offence is a particularly serious one, albeit not at the higher end of the gravity scale for this type of offence. The learned sentencing judge's decision to impose a custodial sentence was quite appropriate. The sentence of eighteen months without imposition of a fine for an offence that carries a five year maximum prison sentence and/or a six figure fine was not disproportionate.

11. In circumstances where the learned sentencing judge considered imposing a non custodial sentence and where the director had indicated her consent to have the matter dealt with summarily in the District Court where the maximum sentence would have been twelve months, the suspension of portion of the sentence which ultimately the learned sentencing judge decided to impose was a matter which she ought to have considered, and in the circumstances applied, in the interest of rehabilitation. It is the court's view that the failure to suspend any portion of the eighteen months sentence was an error of principle.

12. The court has been informed that the appellant is an enhanced prisoner in Wheatfield Prison and it has been provided with a letter confirming the availability of employment for him when he is released from prison. Having regard to in particular those factors the court will suspend the final six months of the eighteen months sentence. The suspended sentence will remain in place for a period of twelve months.