



**THE COURT OF APPEAL**

**Record Number: 148/2018**

**Birmingham P.  
Edwards J.  
McCarthy J.**

**BETWEEN/**

**THE DIRECTOR OF PUBLIC PROSECUTIONS**

**RESPONDENT**

**- AND -**

**ANTONIA MCGRATH**

**APPELLANT**

**JUDGMENT of the Court (ex tempore) delivered on the 25th day of January 2019 by Mr. Justice McCarthy**

1. This is an appeal against the severity of a sentence of three and half years' imprisonment imposed by His Honour Judge Nolan at Dublin Circuit Criminal Court on an early plea of guilty to an offence of possession of cannabis and cannabis resin to the value of approximately €450,000 contrary to the s.15A of the Misuse of Drugs Acts. The offence occurred on the 25th May, 2017.
2. The Gardaí, acting on confidential information received, conducted a surveillance operation in the vicinity of the appellant's home at Aras na Cluaine apartments, Nangor Road, Clondalkin.
3. Mr. Keith Tiswell, the appellant's co-accused, drove a vehicle into the carpark of the apartment complex and exited from it some twenty minutes later. When the vehicle was later stopped it was found to contain 5.98 kilograms of cannabis. CCTV footage had shown the appellant carrying cannabis in the car park and putting it into the boot of the car and the illicit substances were found in the boot. A warrant had been obtained for the appellant's apartment and 16.39 kilograms of cannabis herb and 1.43 kilogrammes of cannabis resin were found. Their total value was €336,380 and when the value of the substances found in the car was added, the total value was in or about €450,000.
4. Subsequent to her arrest and detention for the investigation of the offence, the appellant asserted that she wasn't in a position to give information of the kind which would be of material assistance to the Gardaí because she felt under threat. She explained her engagement in the matter because she feared for the safety of her son.
5. The appellant was born in July 1992, grew up in Lucan, Co. Dublin, was described as being from a very good family and in the past had been found to be a talented footballer, to the point of securing a football scholarship to Manchester University. She could not take up the latter because she was expecting a child, who is now seven years old.
6. The judge's sentencing remarks were as follows:-

"[...] The defendant stored these drugs and obviously her function was I think to give it to third parties who were going to transport these drugs to where they were due. Now, it is unclear how this defendant became involved in this drug dealing operation. It seemed for a period of time she was addicted to some form of drugs and I can infer that she incurred some obligations to these third parties who used this to put pressure on this defendant to store these drugs. It seems if she was receiving some reward or consideration, it was very small. Now I accept that her sole function was to hold the drugs and distribute the drugs onwards to other parties who were going to transport these drugs. [...] This defendant co-operated with the Gardaí. This defendant also made admissions to the Guards. This defendant has no relevant convictions at all, prior convictions at all. She is a mother of a child. She comes from a very, very, good family and I can accept that it is highly unlikely that this defendant will involve herself again in this type of misbehaviour.

Obviously this is a 15A offence. There is a mandatory minimum sentence of ten years for this type of misbehaviour. The legislation that I suppose set up this offence has given me discretion to depart where I find that there are suitable excusing circumstances. I find her plea and her co-operation allow me to depart. The question is, how far should I depart. It seems this defendant must have known she was dealing with a large quantity of drugs by reason of the bulk. She must have known what she was doing was wrong, and she must have known that she was involving herself with very, I suppose, serious criminals. There is strong mitigation in the case which has been well outlined by Mr Orange, but it seems to me that the defendant, Ms. McGrath, must undergo and must suffer a substantial term of imprisonment. I think the term of imprisonment I am going to prescribe in this case is a term of three and a half years from today's date."

7. The appellant's grounds of appeal against severity of sentence are that;
  - (a) The sentence imposed was excessive and or disproportionate in all of the circumstances of the case.
  - (b) The sentence imposed failed to take adequate account of the mitigating factors and the personal circumstances of the appellant.
  - (c) The sentence failed to take sufficient account of the previous good character of the appellant.

(d) The sentence failed to take account or full account of the early plea and the finding that the appellant was unlikely to commit a similar offence again.

(e) The sentence failed to take full account of the fact that the prosecuting member himself accepted that in relation to the subject matter of the investigation/prosecution, the appellant's life and that of her young son were put under threat.

(f) A proper basis why the court was of the view that the appellant must serve a "substantial term" was not present notwithstanding the value of the drugs seized.

(g) The sentence imposed did not reflect the fact that the court found that there was "strong mitigation in the case".

8. In fact, the trial judge seems to have gone somewhat further than the evidence in giving some weight to the fact that she was addicted to some form of drugs and inferring that she had incurred some obligation to third parties who used her addiction to put pressure on her to store drugs receiving little reward or consideration. It seems right to infer that he attached no significance to the latter but in respect of the former this inured to her benefit since there was no evidence that the prescription medication to which she says she was addicted was illicitly supplied or obtained or the slightest suggestion that it was as a result of her addiction that she became involved in the event. She is not, accordingly, in the position of a drug addict who to fuel an addiction succumbed to pressure or stored drugs because he or she might be indebted. Rather, to put the matter at its height, the fact that she had an addiction to prescription medication and she had what is characterised as a chaotic lifestyle is of some relevance to mitigation.

9. The ultimate issue which we must determine is whether or not the learned trial judge fell into an error of principle. The moral culpability of an offence involving sale or supply of drugs contrary to the Misuse of Drugs Act is serious. The starting point for offences of this kind is that the Oireachtas has provided for a mandatory minimum sentence of ten years' imprisonment. There is provision for departure from that mandatory minimum and here concluded it was possible to do so and there has been no attempt at review.

10. He, in fact, departed very substantially from that mandatory minimum having decided that there were substantial mitigating factors present in the case. In fact, the sentence he ultimately imposed cannot be characterised as particularly severe and on the contrary, in our view, very clearly fell within the available range. We cannot accordingly see any error of principle.

11. We therefore dismiss the appeal.