



THE COURT OF APPEAL

**Birmingham J.
Mahon J.
Hedigan J.**

The People at the Suit of the Director of Public Prosecutions

V

Ciaran Nally

37/16

Respondent

Appellant

JUDGMENT of the Court delivered on the 28th day of April 2017 by

Mr. Justice Hedigan

Introduction

1. This is with an appeal against the severity of sentence imposed on the appellant in the Dundalk Circuit Criminal Court on the 29th January, 2016, for the offence of possession of a controlled drug contrary to s. 15A of the Misuse of Drugs Act 1977. He had entered a guilty plea on the 21st May, 2015. A sentence of six years was imposed on the 29th January, 2016 to run from that date. The last three years were suspended on condition that he enter into a bond of €200, to be of good behaviour for a period of three years from the sentencing date and to be of good behaviour for a period of three years from the date of his release from prison in respect of the sentence imposed. The appellant was one of four co-accused.

The Circumstances of the Offence

2. On the 4th April, 2014 the residences of two co accused named O'Donoghue and Tully were placed under surveillance. It was anticipated that these two were going to be involved in the handover of drugs on that day to a third individual. Mr. O'Donoghue's car was under surveillance and it was observed driving to Bessexwell Lane where Mr. Tully put a pink plastic bag in the car. This vehicle was then observed driving to the car park of The Monasterboice Inn where the appellant moved two packs from the boot of Mr. O'Donoghue's car to the boot of a second vehicle occupied by Mr. Millen (co-accused). This vehicle was later stopped on the motorway, the packs were recovered and were found to contain cocaine. The drugs weighed 1,987.478 grams and were valued at €139,123.46.

3. The appellant's house was searched on the 5th April, 2014, and nothing of evidential value was found. It was arranged that he would attend the Garda station on the 7th April which he duly did and was arrested. He cooperated throughout the investigation, made admissions during interview and fully explained his involvement. His admissions were regarded as being of material assistance.

4. The Gardaí were satisfied that the most he would have known during the journey to The Monasterboice Inn was that the packs contained what was described as "weed". He received no financial benefit. It was accepted that he was just along for the spin. He did not know the value of the drugs or the scale of what was going on. However, he took no steps to disassociate himself.

5. Mr. O'Donoghue and Mr. Millen also received no financial benefit, were well down the chain of drug dealing, had no previous associations with drug dealing and received the same sentence as the appellant.

The Appellant's Personal Circumstances

6. The appellant was 29 years old at the time of the offence. He had an addiction to cannabis. At the time of the sentencing hearing he was making efforts to deal with this. Garda Carey accepted that he wouldn't ever encounter him again if he dealt with that problem in the future. The Probation Welfare Report placed him at a low risk of re-offending. The appellant had a good work history. He worked as a part time chef until October, 2015 and obtained a certificate of professional competency in road transport haulage in October, 2015. He was disqualified from driving which led him to rely on lifts which led him to be in the company of Mr. O'Donoghue. Garda Carey accepted that he was swept up in what was going on.

7. It was submitted to the sentencing judge that his conviction would severely impact his ability to obtain employment in the future. It was the appellant's case that he was in the wrong place at the wrong time and had no part in the grouping that was involved in the commission of the offence.

8. He has no previous convictions for any drug related offences but has 50 for road traffic offences.

Sentence

9. The learned sentencing judge found in the light of the personal circumstances, the mitigating factors and the totality of the evidence that there were exceptional specific circumstances in respect of each of the accused that would make the minimum sentence of 10 years unjust in all the particular circumstances of the case.

10. He found that the aggravating factors were; i) that this was a serious offence. ii) as to the manner of his involvement in the offence, he played an important link or conduit in the moving or transferring of the drugs and thus was an important link in the sale or supply of drugs of a substantial quantity iii) The destructive and devastating effect of drugs on society, iv) his previous convictions for road traffic offences were treated as neutral.

11. The judge found the mitigating factors were; i) his guilty plea which was of substantial benefit to the prosecution, ii) his cooperation with the investigation, he fully explained his involvement, made admissions and materially assisted in respect of the investigation, iii) he expressed remorse, iv) he had last smoked cannabis about five months before sentencing which indicated that he'd taken positive steps in respect of his cannabis abuse and this was positive rehabilitation v) there was no personal gain, vi) he had no previous convictions for any drug related offences, vii) he was assessed as a low risk of re-offending and Garda Carey was of the view that he was unlikely to come before the Court again.

Appellant's Submissions

12. On the part of the appellant it is argued that he was really swept up in the events and it was accepted by the investigating Garda that he had been "a bit of an eejit". The whole affair had been somewhat fortuitous and unplanned. The appellant submitted that while the sentencing judge stated that he had regard to the mitigating factors and personal circumstances of the appellant, he did not attach sufficient weight to them. The sentence imposed was excessive.

Respondent's Submissions

13. The respondent submitted that the appellant could have refused to touch the bag. His suspicions as to the contents presented a culpability.

14. The sentencing judge carefully considered all the relevant sentencing objectives. While the appellant's previous convictions were treated as neutral they were evidence of an indifference over that period to road traffic legislation. The note in the probation report that the appellant tried to minimise his involvement reflected a lack of full rehabilitation. It was further submitted that the judge omitted that the Gardaí had the appellant's house under surveillance before anything took place.

15. The appellant appears to accept that the judge set out all relevant matters. Based upon these the respondent argues, the sentence was both reasoned and reasonable and the suspension was reasoned and on reasonable terms. The judge clearly stated the importance of deterrence of casual couriers. If an offender could tag along suspecting that only cannabis was involved and receive a modest penalty this would set the legislative regime and common law principles at naught. He was a link in the chain of drug smuggling and this was an important factor to be considered.

16. While it is not a lenient sentence it is well within principle. Sufficient weight was attached to the appellant's personal circumstances and the mitigating factors in the course of the imposition of a careful and considered sentence.

Decision

17. In the court's view the learned trial judge fully respected the sentencing norms and applied them appropriately. At pages 39 and 42 of the transcript he described accurately the involvement of the appellant in this incident. He noted the investigating Garda's opinion that the appellant thought the bags contained cannabis. At page 46 he explained why, in the light of the particular circumstances of the case he considered the minimum ten year sentence would be unjust. He went on to observe however that the offence remained an extremely serious one. He noted the requirement for deterrence and taking that into account together with the aggravating factors of his being an important link or conduit in the sale and supply of drugs of substantial value, whilst at the same time taking account of the need for rehabilitation, he fixed upon a sentence of six years from the date of sentence and suspended the last three years on terms for a period of three years.

18. In all the circumstances this court cannot identify any error of principle on the part of the learned sentencing judge. The sentence was a fair and reasonable one and well within the range that was open to him. This court will not interfere with it. The appeal is dismissed.