



THE COURT OF APPEAL

Record No. 174/2016

Birmingham J.
Mahon J.
Whelan J.

BETWEEN/

THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

- AND -

STANISLAW GRONSKI

APPELLANT

JUDGMENT (*ex tempore*) of the Court delivered on the 2nd day of February 2018 by Mr. Justice Mahon

1. The appellant pleaded guilty and was convicted on the 25th day of May 2016 at Cavan Circuit Criminal Court on an offence contrary to s. 17 of the Misuse of Drugs Act 1977 as substituted by s. 11 of the Misuse of Drugs Act 1984 for the cultivation of cannabis without a license. He was remanded in custody on the same date to await sentence. On the 27th day of May 2016 the appellant was sentenced to a term of four years imprisonment. The maximum sentence for the offence is one of fourteen years imprisonment. The appellant has appealed against that sentence.
2. On the 5th day of November 2105 gardaí uncovered a grow house at Arva, County Cavan in which there were 211 potted cannabis plants at a mature level of growth and with a street value of €268,000. The attic in the premises was completely converted for the growing of cannabis with a sophisticated lighting and ventilation system installed. Based on evidence provided to the court the learned sentencing judge deemed the appellant's involvement in the drugs operation as that of gardener and determined the seriousness of the offences as being at the lower end of the mid range.
3. The appellant came to Ireland from Canada in the early spring of 2015. He has not previous convictions. He is a Polish national and does not speak English.
4. A number of grounds of appeal have been argued on behalf of the appellant, including:-
 - (i) The placing of the offence at the lower end of the middle range prior to considering the mitigating factors was an error;
 - (ii) insufficient weight was afforded to the mitigating factors;
 - (iii) reference by the learned sentencing judge to four years imprisonment being his "*normal tariff*" was in error, in that it suggested a pre judgment of the sentence;
 - (iv) the learned sentencing judge was wrong to recommend to the State that the appellant be deported;
5. The learned sentencing judge set the headline sentence at seven years and proceeded to impose a sentence of four years imprisonment, describing that term as is "*normal tariff...for somebody who is caught in this particular situation*". He also recommended that the appellant be deported. The learned sentencing judge specifically referred to the appellant's early plea of guilty and cooperation with the gardaí, that he had been a model prisoner since being detained in custody, that he was married, had no previous convictions and would have difficulties in a prison in this country as a foreign national with poor English.
6. What might perhaps be described as the appellant's main thrust of his appeal is the contention that the learned sentencing judge's placing of this offence at the lower end of the mid range was inconsistent with the headline sentence of seven years imprisonment in circumstances where the maximum sentence is one of fourteen years. This, it was argued, would suggest that the offence was in reality treated as a mid range offence.
7. The court is satisfied that the determination that this offence was in the lower mid range category was correct. It must follow therefore that the headline sentence of seven years was inappropriate for an offence so categorised. In the court's view the appropriate headline sentence was in the region of five to five and a half years imprisonment.
8. It is, of course, the actual sentence imposed, namely four years in this case, that must be the focus of this appellate court. If that term was an appropriate one for this offence, as committed by this accused, and irrespective of the erroneous determination as to what was the correct headline sentence, the court would not interfere with it. As Barron J. stated in the Court of Criminal Appeal's judgment in *DPP v McCormack* [2000] 4 I.R. 356 at p. 359:-

"Each case should depend on its own special circumstances. The appropriate sentence depends not only upon its own facts but also upon the personal circumstances of the accused. The sentence to be imposed is not the appropriate sentence for the crime, but the appropriate sentence for the crime because it has been committed by that accused. The range of possible penalties is dependant upon those two factors."
9. The appellant was clearly entitled to a substantial discount off any headline sentence for the number of significant mitigating factors which were present, including his guilty plea and cooperation with the gardaí, his lack of previous convictions and his status as a foreign national with little or not English, required to serve a fairly lengthy sentence in an Irish prison. The learned sentencing judge recognised these factors and generously discounted his headline sentence.
10. If the headline sentence is to be taken at five and a half years imprisonment, a minimum discount for these mitigating factors

would be two years leaving a net sentence of three and a half years. The court therefore determines that a sentence of three and a half years to be the appropriate sentence. The court has however been informed that the appellant's mother is seriously ill in Poland, and of the appellant's anxiety to visit her in the immediate future for fear that she may not recover. In those particular circumstances the court will further suspend that portion of the three years and six months sentence yet unserved. The sentence will date from the same date as determined in the lower court.