



THE COURT OF APPEAL

Neutral Citation Number: [2015] IECA 142

**Peart J.
Sheehan J.
Mahon J.**

216CJA/14

In the matter of Section 2 of the Criminal Justice Act 1993

The People at the Suit of the Director of Public Prosecutions

- and -

Mark Kavanagh

Respondent

Judgment of the Court (ex tempore) delivered on the 8th day of June 2015 by Judge Michael Peart (sentence)

1. This court has found that the sentence imposed by the Trial Judge below was unduly lenient and it falls to this court now to impose what it considers to be the appropriate sentences for the offences to which Mr. Kavanagh pleaded guilty.
2. There is no doubt as the judgment of the Court has indicated that these are serious offences. Nevertheless before the Trial Judge himself there were a number of mitigating factors pointed to, which this Court also has full regard to, namely the plea of guilty, the non existence of any previous convictions and a genuine sorrow and remorse on the part of Mr. Kavanagh for having got caught up in the criminality for which he has pleaded guilty.
3. The Court takes full account of those mitigating factors but they have, in turn, been impressively endorsed in this Court's view by more recent testimonials.
4. Firstly from the Chaplain in the prison who has spoken very highly of Mr. Kavanagh's behaviour and conduct and remorse while in prison and also the fact that he has been placed in what can be regarded as a trusted position within the prison, working in the bakery.
5. This Court wants to indicate that were it not for those additional mitigating factors contained in the more recent testimonials the sentence which this Court considers appropriate might well be higher than the one which the Court will now indicate.
6. But as I have said there were aggravating factors in this case which cannot be overlooked. One being the value of the drugs in question, which was €153,000. There was also the presence of a concealed firearm and ammunition which was found and those have to be aggravating factors which must be balanced against the undoubted mitigating factors which have been taken into account, both with regard to taking this case out of the mandatory portion of s.15A but also in arriving at an appropriate sentence.
7. In this Court's view the appropriate sentence for the s.15A offence is a sentence of five years with one year of that sentence suspended. The same period of time, a sentence of five years with one year suspended, is the appropriate sentence in this Court's view for the firearms offences. Those two sentences will run concurrently. They will be backdated to 15th October 2015, which is the date on which Mr. Kavanagh first went into custody in respect of these offences.
8. The one year suspension of each of those five year sentences is for a period of three years following release and the bond in respect of that suspension would be entered into before the Governor at the appropriate time to this release. The usual conditions apply in that regard and also a bond in a nominal amount of €100.