



THE COURT OF APPEAL

Birmingham J.
Sheehan J.
Edwards J.

The People at the Suit of the Director of Public Prosecutions

V

Istvan Bogdan

46/15

Respondent

Appellant

Judgment of the Court (ex tempore) delivered on the 19th day of February, 2016, by Mr. Justice Sheehan

1. This is an appeal against severity of sentence.

2. On the 28th November, 2014, at the Dublin Circuit Criminal Court, the appellant pleaded guilty to the possession of 76kg of cannabis herb, with an estimated street value of €1.5 million, for the purpose of sale or supply contrary to s. 15A of the Misuse of Drugs Act 1977, as amended. Following a sentence hearing on the 18th February, 2015, the appellant was sentenced to six years imprisonment backdated to the day of his arrest, namely the 5th May, 2014.

3. The appellant submits that the sentencing judge erred in imposing a six year custodial sentence for the following reasons:

1. The learned trial judge imposed a sentence that was excessive and erred in principle in the imposition of same having regard to the gravity of the offences and the circumstances of the offender and failed to give adequate weight to the guilty plea and to the fact that a clear indication had been given by the prosecuting gardaí that the appellant had materially assisted them.
2. The learned trial judge failed to have due and adequate regard to the fact that the appellant had no previous convictions of any nature and was a man of exemplary character.
3. The learned trial judge failed to take account of the fact that the drug was cannabis herb, possession of which is often viewed by the courts to be less serious than drugs such as heroin, cocaine or amphetamines.
4. The learned trial judge failed to have adequate regard to the mitigating circumstances in the case and placed undue emphasis on the aggravating factors.

4. In the course of oral submissions, counsel submitted that the disparity in sentencing between the appellant and his co-accused, who had received a five years sentence of imprisonment, amounted to an error of principle and relied on the judgment of the Court of Criminal Appeal in *The People (DPP) v. Duffy and O'Toole* [2003] 2 I.R. 192 as well as the earlier judgment in the case of *The People (DPP) v. Poyning* [1972] I.R. 402. In order to consider these grounds of appeal, it is necessary to set out the background to the offence, the personal circumstances of the offender and the relevant sentencing remarks of the trial judge.

Background

5. The background to this case is that on the 5th May, 2014, as a result of a surveillance operation by An Garda Síochána, the appellant was observed handing boxes from a white Volvo Lorry to another person at the North West Business Park in Mulhuddart. These boxes contained cannabis herb. The appellant had collected the cannabis herb in Warrington in the UK while on his way from Holland to Ireland. He was arrested and taken to Clondalkin garda station, where he made full admissions.

Personal circumstances of the appellant

6. The appellant is a 42 year old Hungarian citizen who is married and the father of three teenaged children. He works as a long distance lorry driver. He has no previous convictions. He cooperated fully with the gardaí following his arrest and was deemed to be of material assistance to the investigation. He pleaded guilty at the first opportunity, and the court was told that he was due to receive a sum of €5,000 for bringing the drugs in question from Warrington to Dublin.

7. There was also evidence before the court at the time of sentence that the appellant, who had been in custody since the date of his arrest, was getting on well in prison, that he had already been placed on an enhanced regime and was deemed to be a person who was of good behaviour, and that he had been promoted to working in the kitchen. The appellant made a public apology in the Circuit Court for his offending behaviour.

8. In the course of his sentencing remarks, the trial judge stated:-

"Now in dealing with Mr. Bogdan this Court has to take into account the law and there is a statutory framework in relation to s. 15A. I think that Mr. Bogdan and obviously both counsel and practitioners in court will know and Mr. Bogdan will know that there is a mandatory minimum sentence of ten years for this type of offence. Now this Court has dealt with a lot of s. 15A's over the years. The jurisprudence is well known to me and it is not entirely settled that there is no definite sentence for this type of offence. Now I have had the benefit of assistance from the higher courts and obviously they have given their views, but the overriding view has been given by the Oireachtas and they have indicated that the appropriate sentence for this type of case, the minimum mandatory sentence is ten years, so that must be my starting point. Obviously there is a life sentence for this type of offence in the extreme cases.

Now in deciding what to do in within the same legislation I have been given the discretion to depart from the mandatory minimum sentence where I find there is sufficient suitable circumstances for so doing. In this case I think I can depart from this sentence by reason of the material assistance given to the gardaí by the accused, his cooperation and the way he dealt with the guards. Therefore I am at large as to what the appropriate sentence is, but that does not mean I

disregard what the Oireachtas has told me with regard to this types of case.”

The trial judge further stated:-

Now I am aware that he has pleaded guilty obviously, he has cooperated fully, he gave material assistance, he made full admissions, he has no record whatsoever, he is a hardworking man, I have no doubt, he is a good family man and he is a Hungarian national. Most of his routes are in Hungary and I must take that into account, because I think it can be easily understood that for a man such as Mr. Bogdan serving a sentence in an Irish prison will be very difficult. There will be a certain absence of visitation and obviously he will be removed from his children and I have no doubt that he loves them dearly. Now the characteristic of this type of offence is that many people of unblemished background come before these courts in relation to these offences.”

9. Counsel for the respondent relies on these remarks of the judge and submits that the learned sentencing judge committed no error in principle. Counsel further submits that the sentence imposed was proportionate, that the sentencing judge gave appropriate consideration to all mitigating and aggravating factors, and that the judge arrived at a sentence that was properly constructed.

10. We have considered the submissions of both counsel in this case. We find that the sentencing judge approached the question of sentence carefully. We do not consider that any point arises regarding the five year sentence imposed on the appellant’s co-accused particularly in light of the limited information in relation to that co-accused, and we reject this ground of appeal.

11. While the sentence imposed undoubtedly causes serious hardship for Mr. Bogdan, not to mention the hardship for his family, this sentence is not out of line with sentences imposed on offenders who find themselves in possession of similar amounts of cannabis in similar circumstances. The sentencing judge gave proper weight to the plea of guilty, the appellant’s cooperation and his personal circumstances, including the important facts that he had no previous convictions and was the father of a young family, as well as keeping in mind what the Oireachtas had said about this type of offence.

12. We find no error of principle and accordingly dismiss the appeal.