



THE COURT OF APPEAL

Ryan P.  
Birmingham J.  
Sheehan J.

128/13

The People at the Suit of the Director of Public Prosecutions

Respondent

V

Trevor Williamson

Appellant

**Judgment of the Court (ex tempore) delivered on the 17th day of November 2014, by Mr. Justice Birmingham**

1. In this case Mr. Williamson appeals against the severity of a sentence that was imposed upon him. The sentence being one of ten years imprisonment with the final two suspended that was imposed on the 29th May, 2013, in respect of an offence under s. 15A of the Misuse of Drugs Act, to which the appellant pleaded guilty.

2. By way of a very brief summary of the background facts, the position is that on the 28th September, 2012, a surveillance operation was mounted by gardaí at Mahon Point Shopping Centre. The targeted car was one that was being driven by Michael O'Connell. While the surveillance operation was in progress the appellant, Trevor Williamson, arrived at the shopping centre and was seen in conversation with Mr. O'Connell. Mr. Williamson then got into the driver's seat of the O'Connell car and they both travelled together in that car away from the shopping centre. While under surveillance, they drove to another location which was about two miles away at Wallace's Avenue, at which point the passenger, Mr. O'Connell, got out of the car. Mr. Williamson continued on his way and he drove to a house on Boreenmanna Road. There the appellant was seen to enter the house and after a short period of time to emerge carrying a number of boxes which he placed into the boot of the car. A total of nine boxes were taken and put into the boot and he was assisted in relation to the final box by a Mr. Jerome O'Halloran. We will be referring to that aspect in more detail. Mr. Williamson then drove the car back to the car park of a licensed premises on Boreenmanna Road where he parked the car and went into the bar and then a short time later, Mr. O'Connell emerged and got into the car and as he attempted to drive away was stopped.

3. The car was searched by the gardaí and the nine boxes that had been seen to be put in the boot were examined and found to contain a total of 99 kilos of cannabis resin with a street value of €594, 000. Gardai entered the public house and arrested Mr. Williamson who was at the bar. Also arrested was the driver of the car Michael O'Connell who subsequently received a ten year prison sentence. It will be noted that it was his second s. 15A conviction, so this sentence was truly mandatory.

4. A search warrant was obtained then for the house of Boreenmanna Road, where the loading operation had been observed, which is the home of Mr. Jerome O'Halloran. When gardai entered he indicated to them that there was cannabis in a bedroom and a further large quantity in the attic. The total value of the drugs found in the house was €781,500 bringing the total value of drugs seized in the course of the garda operation to €1.375million.

5. The case for the appellant is not so much really that the sentence imposed, ten years with two suspended, was inherently unfair or inherently excessive, but rather that there was too gross a disparity between the sentence that was imposed on him and the sentence that was imposed on Mr. O'Halloran, which was one of six years suspended.

6. However, while the disparity between the sentences is at the core of the appeal, counsel on behalf of the appellant accepts that it was a case that his client was always likely to receive a greater sentence than Mr. O'Halloran. However, the complaint is not about the existence of a disparity, but rather it is about the scale of the disparity.

7. In that regard the following points might be noted. Mr. O'Halloran's immediate reaction when the gardaí called to his house was to accept that there were drugs there and to tell the gardaí that there were drugs located in a bedroom and in the attic. Subsequently in the course of formal interviews at the garda station, he admitted his role in storing the drugs and said that he had been approached to do so by Mr. Williamson and had agreed to do this.

8. Mr. Williamson, for his part when interviewed initially denied any knowledge of the drugs. He then changed his account to claiming that he believed that he was collecting boxes of cigarettes and gave a false account of collecting those boxes at another location, which was identified as Crab Lane, from another vehicle. But only when the surveillance evidence was put to him, did he change his position and accept that he was aware that the substance involved was cannabis and that he himself had initially collected those drugs. It must be said that when the surveillance evidence was put to him, he did in fact change his position.

9. The judge in the Circuit Court took the view that the evidence before him indicated that there was a very clear distinction in the role, nature, and level of involvement between the appellant and Mr. O'Halloran. The appellant was responsible for arranging the storage of the drugs and distributing them as requested, while the role of Mr. O'Halloran was to store the drugs for which he was to receive the sum of €1,000.

10. The appellant, according to the evidence, was in touch with Mr. O'Connell who was coming from Limerick and also it seems in touch with the main player in this whole affair. There are some other distinctions, some perhaps less crucial than others. There is for example the fact that Mr. O'Halloran came forward for sentence on a signed plea of guilty, which Mr. Williamson did not do, but it is the case that Mr. Williamson nonetheless entered an early plea in the Circuit Court.

11. It is also the case that there was no material assistance, apart from the sense in which it can be said that the plea itself was of assistance, offered by Mr. Williamson, but as against that it has to be said that it was indicated that Mr. Williamson was fearful of the consequences for him and for family members if he was to assist.

12. The Detective Sergeant who gave evidence however, did accept that Mr. O'Halloran had been of material assistance and there has already been reference to the response when gardaí called to his home. There is also some distinction in terms of their ages, though both might be described as being middle aged, Mr. O'Halloran was in his late 50s, Mr. Williamson in his mid to late 40s.

13. The reports that were before the court and indeed the observations of the Detective Sergeant giving evidence were clear in outlining that Mr. O'Halloran was very unlikely indeed to re-offend. The probation report had initially indicated that the appellant was assessed as being at moderate risk of re-offending. However, it is the situation that Mr. Williamson was called to give evidence during

the course of the sentence hearing and it is pretty clear that he impressed the trial judge, because the judge indicated that he had moderated the sentence from what he had originally been thinking of imposing and it is the case that the trial judge indicated that he accepted what Mr. Williamson was saying, which was that he would not get into trouble again.

In making the arguments that he does in relation to the significance of the disparity, counsel has referred to cases of *Attorney General v. Poyning* [1972] I.R. 402,

*DPP v. Duffy and O'Toole* [2003] 5 I.C.L.M.D. 100, and *DPP v. Rashid Shekale* [2008] IECCA 28.

14. So far as the *Poyning* case is concerned, Walsh J. in the course of his judgment had this to say at p. 408:-

"Not only in regard to each crime but in regard to each criminal the court of trial has the right and the duty to decide whether to be lenient or severe. It is for these reasons and with these purposes in view that, before passing sentence, the court of trial hears evidence of the antecedents and character of every convicted person. It follows that when two persons are convicted together of a crime or of a series of crimes in which they have been acting in concert, it may be (and very often is) right to discriminate between the two and to be lenient to the one and not to the other. The background, antecedents and character of the one and his whole bearing in court may indicate a chance of reform if leniency is extended; whereas it may seem that only a severe sentence is likely to serve the public interest in the case of the other, having regard both to the deterrent effect and the inducement to turn from a criminal to an honest life. When two prisoners have been jointly indicted and convicted and one of them receives a light sentence or none at all, it does not follow that a severe sentence on the other must be unjust. If in any particular case one of such joint accused has received too short a sentence that is not per se a ground on which this Court would necessarily interfere with the longer sentence passed on the other. Of course, in any particular case the Court must examine the disparity in sentences where, if all other things were equal, the sentences should be the same; it must examine whether the differentiation in treatment is justified."

15. Again the case of *Duffy and O'Toole* [2003] is authority for the proposition that an Appeal Court is entitled to intervene where there is an unjustified disparity in sentencing individuals who have been jointly indicted, but it does seem to be that the limitation of those cases has to be noted.

16. So far as the *Duffy and O'Toole* case is concerned, the disparity with which the court was concerned arose as a result of the decision of the Court of Criminal Appeal in another case to reduce a sentence on another individual, a Mr. Denis Thompson, who had been involved in the Ballymount incident which was at the centre of all these cases, from six years which had been imposed by the Special Criminal Court, a court constituted differently from the Special Criminal Court which dealt with Mr. Duffy and Mr. O'Toole, to one of six years with four years suspended. The court accepted that there was a significant disparity between the sentences imposed on both defendants and that which Thompson ultimately received. However, in the view of the court, the disparity in the case of Mr. Duffy was clearly justified given his prominent role, in effect a leadership role in the Ballymount incident. But the position of Mr. O'Toole was different and his case was seen to closely resemble that of Mr. Thompson, and so the court intervened.

17. This is a case where the trial judge heard the evidence and it is important to stress that it was one trial judge conducting one sentence hearing. This was not a case where two different judges perhaps in different courts, as was the situation in *Poyning*, in different parts of the country, as was also the situation in *Poyning*, were dealing with the case. This was a sentencing judge hearing the evidence and taking the view that the role played by the two individuals was not comparable and indeed in that regard it is accepted by the appellant that O'Halloran could legitimately be considered to be lower down the chain. It was after all Mr. Williamson who recruited Mr. O'Halloran it appears.

18. Not only is it the case that their actual role in this operation was different, but thereafter matters diverged further. Mr. O'Halloran's approach was one of immediate co-operation and one of providing material assistance and I have the point about the somewhat different approaches to entering a plea.

19. So far as Mr. Williamson is concerned, the trial judge was dealing with a man who was 47 years of age when he came up for sentence. He had been living in the Cork area with his wife and three young children, who had a good work record and who had struggled with alcohol difficulties over the years. Certainly it is the case, and this is a point which seems to apply to both people whose sentences are being discussed at the moment, that it was accepted by the gardaí that, so far as Mr. Williamson is concerned, he did not exhibit any trappings of wealth and in that regard there was no inquiry sought under s. 4 of the Criminal Justice Act 1994. Quite the contrary in that it was accepted that he had financial difficulties and that he had debts, including significant mortgage arrears.

20. In the view of the court, it cannot really be said that here we were dealing with like offenders with the expectation that they would be dealt with alike. The role in the offence was different and it is fair to say, very different. The immediate response was different with the immediate cooperation on the part of Mr. O'Halloran, and denials and untruths on the part of Mr. Williamson. Material cooperation was forthcoming from Mr. O'Halloran and, perhaps, for reasons we have referred to, not unfortunately from Mr. Williamson.

21. It seems to us that it was always going to be the situation that the treatment of both offenders was going to diverge significantly. Having said that, it also has to be said that Mr. O'Halloran must count himself very fortunate indeed to have escaped from serving a period of time in custody. It might be seen as not in his favour that Mr. O'Halloran allowed himself to become involved, and become involved in very serious criminal activity despite coming from a stable comfortable background. Be that as it may, in a situation where the position of Mr. Williamson and Mr. O'Halloran diverged significantly, the focus of attention really has to be on the actual sentence that was imposed on Mr. Williamson.

22. The offence in question, a s. 15A offence, subject to the exceptions that are well known, carries the mandatory minimum ten year sentence, while the maximum sentence provided for by the Oireachtas is life imprisonment.

23. The quantity of drugs and the value of drugs in this case was very substantial indeed, €1.375 million, when drugs to the value of €13,000 would bring s. 15A into operation. It is the case that there was a plea but beyond that no material assistance was forthcoming. The plea was of course valuable, and it has to be said that Mr. Williamson had been effectively caught red handed and observed in the act and it is also the case that there were no relevant previous convictions.

24. It seems that in that situation, the scope available to the court to depart from the ten year sentence that was prescribed by the Oireachtas was limited and indeed it seems from certain observations made by the trial judge that he, at one stage, had been minded

to impose a sentence more severe than the one he ultimately did. Had he in fact imposed an actual sentence of ten years, it is not certain that a court would have been in a position to identify any error of principle justifying an intervention. But be that as it may, as far as the sentence that was actually imposed is concerned, it falls well within the sentence range available and it just does not seem to be the case that there is any question of an error in principle and in those circumstances the court will refuse the appeal.