



THE COURT OF APPEAL

Record Number 218/2018

The President
McCarthy J.
Kennedy J.

BETWEEN/

THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

- AND -

DARREN COAKLEY

APPELLANT

JUDGMENT of the Court (ex tempore) delivered on the 3rd day of December 2018 by Mr. Justice McCarthy

1. The accused was sentenced in Carlow Circuit Criminal Court on the 6th July, 2018 on one count of unlawful possession of a controlled drug for the purpose of sale or supply contrary to s.15(1)(2) and s.27 of the Misuse of Drugs Act 1977 (as amended). The offence had occurred on the 23rd March in Carlow and three further offences, two in respect of the possession of cocaine and another in respect of the possession of cannabis on the 1st April, 2016, the 8th April, 2016 and the 14th April, 2016, were taken into account. The accused was sentenced to two years' imprisonment and with the final six months thereof being suspended for a period of twelve months' subject to the accused entering into a bond to keep the peace and be of good behaviour and to engage with the Probation and Welfare Service and in the amount of €100.
2. The quantities of cocaine on the 23rd March, 2016 and the 1st April, 2016 were valued at €70 and cannabis in the amount of €50, so that the total amount involved was €240. The offences arose in circumstances where the accused, on being approached by a member of An Garda Síochána, on each occasion the gardaí being involved in an undercover operation, agreed to supply the controlled drugs in question.
3. It is not in debate but that he pleaded guilty at the first available opportunity. After arrest there was no co-operation with the gardaí. It is clear from the transcript that the learned trial judge considered that this constituted merely the absence of a mitigating factor rather than an aggravating one.
4. The accused had forty-four previous convictions, thirty-six of which are in respect of road traffic offences and two for simple possession of controlled drugs contrary to s.3 between 2006 and 2009. It appears that he was a victim of a serious road traffic accident approximately nine years ago. The accused was not a drug addict but rather a user. He apparently ceased to use pain killing medication sometime after the accident due to its side effects and in the words of the Probation Report, he "reverted back" to smoking cannabis which he had been doing for recreational purposes from the age of sixteen. He told the probation officer that the cannabis "provides him with the most effective pain relief and that he smokes the drug on a daily basis. While he acknowledges that cannabis has some side effects, he believes that the side effects are not as significantly as they would be for other medications. Mr. Coakley advised me that if it was available to him he would register for medical cannabis."
5. She said that the accused was "previously known to the Probation Service as were three of his brothers" and it seems that the Health Service Executive had had an involvement with his family over time.
6. He is the eldest of eight children and lives with his parents and a number of siblings. He was born on the 12th January 1987 and he has a poor employment history and it seems that his accident has rendered him unable to work. He is described as having grown up in "an environment without routine and predictability and a lack of consistent parenting arose of what might be considered usual boundaries do not appear to be a feature in his background." He describes himself, perhaps correctly, as being from "a poor and disadvantaged childhood."
7. He is described in the Probation Report as being in the moderate risk category for offending in the next twelve months and it appears that one of the factors here is his use of cannabis. He is also described as a prolific offender in respect of road traffic offences and further it appears that he associated with an anti-social and offending peer group.
8. Familial factors also appear to be relevant. However, he apparently understands the seriousness of the offence as not merely for himself but also for the wider community. He is now the father of a ten-week old baby.
9. It is submitted on behalf of the accused that the learned Circuit Court judge was wrong in as much as the sentence imposed was disproportionate and further insufficient weight was given to the sentence imposed on a co-accused. This was apparently dealt with on a non-custodial basis in the District Court.
10. Of the other five persons who have been dealt with on indictment thus far, custodial sentences were imposed on two, including the appellant, and non-custodial sentences on three.
11. It is further submitted that the Circuit Court judge failed to attach sufficient weight to the mitigating circumstances and in particular "the fact that he had not come to garda attention in the two years between the detention of the offences and sentencing and that he had a degree of stability is likened to his new family circumstances."
12. It was conceded that the ongoing use by the appellant of cannabis is "one which may give rise to a concern". The learned Circuit Court judge addressed the matter, *inter alia*, as follows:-

"In the first instance Mr. Coakley was selling cocaine and cannabis, secondly, he has forty-four previous convictions although three of them relate to drug related offences dealt with in the District Court, although it is a matter for mitigation that the co-operation provided by the gardaí provided to the gardaí and in his interaction with the gardaí was not positive. He was caught red-handed in relation to this matter and in the circumstances it seems to me that the headline sentence in this case is a sentence of three years' imprisonment and as to the matters raised by counsel in support of his plea in mitigation the court indicated that he in the right of the mitigating factors before the court, the fact that he had become accustomed to smoke cannabis as a means of alleviating pain after his injured. The court however

noted that each case must stand in its own merits and in the circumstances it seems to the Court that the appropriate sentence as one of two years in an effort to facilitate the recovery of the accused according to the Probation Officer who is, according to the Probation Office, is at moderate risk of re-offending in terms of the next twelve months, the Court will further suspend the final six months to incentive rehabilitation.”

13. In the Court’s view the learned Circuit Court judge was right to impose a custodial sentence notwithstanding the fact that the value of the drugs either on each occasion or in the aggregate was modest. What was revealed was a regular pattern of offending. Once the learned Circuit Court judge decided that a custodial sentence was appropriate, he had to be conscious that he was sentencing someone who had not previously suffered incarceration. Hence, it was appropriate to consider what would be the minimum sentence which would met the objectives of sentencing.

14. In our view they could have been met by a sentence somewhat less than that imposed. Being of that view, we think we should intervene, but to a limited extent only. We accordingly quash the sentence and instead impose a sentence of two years’ imprisonment with the final twelve months suspended on his entry into a bond in the sum of €100 as follows;

- (1) to keep the peace and be of good behaviour during the balance of his period in custody and for a period of twelve months’ post release, and specifically not to use cannabis or have in his possession for any purpose any controlled drug;
- (2) to place himself under the supervision of and comply with all directions of the Probation & Welfare Service including any directions as to medical treatment urinalysis or otherwise.