



THE COURT OF APPEAL

**Birmingham J.
Mahon J.
Hedigan J.**

The People at the Suit of the Director of Public Prosecutions

V

Simon Woods Panzaru

88 / 17

Respondent

Appellant

JUDGMENT of the Court delivered on the 30th day of June 2017 by

Mr. Justice Hedigan

Introduction

1. This is an appeal against severity of sentence. The appellant entered a guilty plea on the 25th January, 2017, to two counts of possession of a controlled drug for sale or supply contrary to s. 15 of the Misuse of Drugs Act 1977 as amended. One count related to cannabis and the other cocaine. On the 24th March, 2017, he was sentenced to 18 months imprisonment on each count to run concurrently from the date of sentence. Evidence had been heard on the 13th March, 2017. There is a co-accused whose trial is set for February, 2018.

The circumstances of the offence

2. The offences occurred on the 1st December, 2015, in Dublin 8. On that date the Gardai had confidential information that a BMW vehicle in the area had cannabis in it. The vehicle was stopped at 3.35 pm. The appellant was the driver and had a female passenger. The appellant informed the Gardai that there was cannabis in a Louis Vuitton bag on the backseat. He stated that he was holding it for a friend for a €50 bag of weed. He also had a small amount in his coat pocket. The appellant was arrested and brought to Kevin Street Garda station. The vehicle was seized and cannabis, cocaine and weighing scales with traces of cocaine were found in the boot.

3. The 260g of cannabis were valued at €5,200 and the 14g of cocaine at €983. The Louis Vuitton bag belonged to the passenger. The drugs belonged to the appellant.

4. The appellant's recently rented apartment was searched and nothing of evidential value was found. During interview the appellant took responsibility for the cannabis not the cocaine. XRY analysis of his phone showed concrete evidence of drug sourcing and distribution. The vehicle has been seized by customs officials for reasons unconnected with these offences.

The appellant's personal circumstances

5. The appellant was 24 years old at the time of sentencing. He has dual citizenship of Ireland and the USA. He lived in the USA until he was 12 whereupon he moved to Luxembourg and then Ireland for secondary school. He had a strong interest in science as a teenager and worked as a researcher at the Royal Victoria Hospital in Belfast and co-authored an article published in The Ulster Medical Journal. He did two years of pre-medicine in university in Hungary then switched to law in Dublin. He was in his second year of this course and living with his mother who financially supported him.

6. He started abusing drugs when he was 21 years old. He quickly developed a cocaine addiction. This led to unmanageable financial problems. The Garda did not accept that his drug debts arose from his addiction. The arrest was a wakeup call and brought his addiction issues to his mother's attention. His mother has given over large quantities of money for drug debts. He moved back in with her and in 2016 spent six weeks in St. Patrick's Mental Health Services for detoxification and therapy. He was receiving psychotherapeutic treatment and a consultant psychiatrist confirmed that his prognosis was good provided he remained drug free and continued psychotherapy. There were a number of references. In particular his former science tutor noted that he was intellectually gifted, well rounded and has potential to rectify his ways.

7. He has two previous convictions. Driving without insurance for which he was fined €250 and driving without a licence which was taken into consideration.

Sentence

8. The aggravating factors were the appellant's role in distribution and the value of the drugs. It was noted that the appellant's admissions were not reconcilable with the evidence from his mobile phone. The telephone analysis showed that he was active and instrumental in the sale and distribution of controlled drugs. This combined with the street value, which was held to be significant if not as substantial as many of the other s. 15 cases before the Court, led the sentencing judge to determine a starting point of three years.

9. The mitigating factors were his plea of guilty and lack of relevant previous convictions. It was noted that minimal credit was given for the admissions as they were partial and not a true reflection of his role. His substantial cocaine habit was noted and he was given credit for his efforts to address his addiction. Account was taken of his family support, educational background and current pursuits, his psychological issues and his favourable letters and testimony on his behalf.

Appellant's submissions

10. The appellant appealed on two grounds. First, the sentencing judge erred in failing to adequately balance the mitigating and aggravating factors so that the sentence was disproportionate in all the circumstances. Second, the sentencing judge erred in law in failing to suspend the custodial sentence and encourage further rehabilitation.

11. It was submitted that excessive reliance was placed on the telephone analysis by identifying three years as the appropriate starting point. The drug values were at the lower end of the Circuit Court spectrum and are close to amounts that could be dealt with summarily in the District Court. The valuation should have been the guiding factor in setting the headline sentence, as per Kearns P.

in *The People (DPP) v. Long* [2009] 3 I.R. 486, rather than the aggravating factor.

12. It was submitted that telephone evidence was the only aggravating factor. The limited co-operation and credible admissions were not properly aggravating factors but deprived the appellant of some mitigation.

13. There was very strong mitigation which should have resulted in a significantly lower sentence. This was his first serious offence. There was an early guilty plea. He was a full time student. He had exceptional references and had taken steps to rehabilitate himself. It was submitted that the judge failed to take the individuated approach set out in *The People (DPP) v. McCormack* [2000] 4 I.R. 356 where it was noted that it is the appropriate sentence for the crime committed by the particular offender.

14. It was submitted that the sentencing judge did not take sufficient account of the appellant's significant steps taken to rehabilitate himself. There was not specific reference to his six week in-patient treatment and continuing treatment by a psychiatrist. His steps were over and above merely making efforts and deserved significant credit. Imposing an immediate custodial sentence was a failure to have sufficient regard to these significant steps. It also failed to give due weight to the public interest in the appellant's rehabilitation.

15. It was submitted that consideration should have been given to incentivising the appellant by suspending part of his sentence as was set in *The People (AG) v. O'Driscoll* [1972] 1 Frewan 351 at 359. This principle was upheld in *The People (DPP) v. Alexiou* [2003] 3 I.R. 513 where a suspended sentence was upheld when the mandatory minimum sentencing provisions of s. 15A applied. Also a wholly suspended sentence for a s. 15A offence was upheld in light of the interests of society, the facts of the case and the offender's circumstances in *The People (DPP) v. McGinty* [2007] 1 I.R. 633. In that case the Court held that it had to consider whether it was in the interest of society to risk the rehabilitation by sending the accused to prison and removing him from the Coolmine programme. It also noted the strong evidence of rehabilitation already achieved and likelihood of complete rehabilitation.

16. It was submitted that the sentencing judge erred in principle in not having sufficient regard to the appellant's rehabilitation and continuing course of studies which would have resulted in her suspending part of the sentence.

Respondent's submissions

17. The respondent submitted that the sentencing judge correctly identified the aggravating factors as the significant value of the drugs and the appellant's instrumental and active role in distribution. She acknowledged that the value was significant but not as substantial as in other cases. The mitigating factors were correctly identified. These were the guilty plea and steps to address the appellant's addiction. He received some credit for his partial admissions. His personal circumstances were taken into account. Particularly, his support from his mother, his education, psychological issues and favourable references.

18. It was submitted that the sentencing judge correctly balanced the nature and the circumstances of the offence, the aggravating and mitigating factors and the appellant's personal circumstances.

19. The rehabilitative efforts to which the judge was referred were the appellant's six week in-patient detoxification treatment, a brief psychiatric report which noted he had been referred to the psychiatrist with a history of depression and that he attended irregularly since January, 2015 in respect of a generalised anxiety disorder. The doctor opined that in respect of these conditions his prognosis is good as long as he remains drug free and continues psychotherapy.

20. The evidence therefore before the Court was that he attended the detoxification programme and was drug free in February, 2017. It was submitted that the sentencing judge took full and proper account of those rehabilitative efforts. It is not a case where the sentencing court might consider suspension to encourage the completion of rehabilitation from drug addiction.

21. There was no error in principle in the sentence and it was not unduly severe. Section 15 are serious offences with a maximum penalty of 14 years. The appellate courts have noted that drug dealing offences are serious due to the damage they inflict on society.

Decision

22. On behalf of the appellant, Mr Mulrooney addressed the court firstly on the matter of the XRY analysis of the appellant's mobile phone. It is indeed one of the main factors that seems to have led the learned trial judge to impose a custodial sentence. The evidence derived from that analysis showed what was described as concrete evidence of drug sourcing, purchasing and distribution between several different sources and the appellant. This was in marked contrast to the limited admissions made by him initially. The judge however did also take account of the relatively low value of the drugs found on the occasion of his arrest being somewhat over 6000 Euro. She considered this value level to be significant although not as substantial as in many cases coming before the courts. The telephone analysis however did demonstrate that the appellant was taking an active and instrumental role in the sale and distribution of drugs. These she clearly considered the aggravating factors in the case and this led her to set a headline sentence of three years. She then went on to consider the mitigating factors in the appellant's favour. She gave him credit for his plea of guilty. She accorded him some though minimal credit for his partial admissions because they were not a true reflection of his role. She gave him credit for his lack of relevant convictions. She also gave him credit for his efforts to deal with his addiction. She considered also the support from his mother, his educational background and his current studies in this direction. She considered all the favourable testimonials furnished on his behalf. Upon balancing all these factors she fixed upon a sentence of eighteen months on each of the two charges to which he had pleaded guilty. The argument that because she referred to the necessity of a custodial sentence she was somehow convinced that there was a mandatory element to this offence is unconvincing. The judge clearly meant that in the circumstances of this case, a custodial sentence was warranted. It is easy to see why. Those involved in the sale and distribution of drugs will always be regarded in the most serious light.

23. It is only where this court can identify some error of principle by the sentencing judge that it can intervene. It is not possible to identify any such error here. The judge took account of the aggravating and relevant mitigating factors in the case and proceeded to fix upon a headline sentence which, at three years, in the light of the maximum sentence was certainly very much at the lower end of the scale. She then proceeded to consider all the mitigating factors that had been raised and because of these fixed the sentence at eighteen months. In the light of the rehabilitation programme that the appellant had very creditably engaged in so that, at the date of sentencing, he was drug free, no need arose to consider a suspension of the sentence to encourage rehabilitation. He had already received credit for this in the mitigating factors the learned sentencing judge had taken into account. The emphasis therefore was on identifying the appropriate sentence for the offence. The judge approached this in the way that we have noted. The final sentence arrived at whilst not a lenient one, was not one so severe as to fall outside the available range. The appeal is dismissed.