



**Birmingham P.
Edwards J.
Hedigan J.**

BETWEEN

THE PEOPLE

(AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS)

AND

GARETH PRIOR

RESPONDENT

APPELLANT

JUDGMENT of the Court delivered on the 17th day of July 2018

by Mr. Justice Hedigan

1. This is an appeal against the severity of the sentence imposed at Dublin Circuit Criminal Court on the 7th April 2017 by Her Honour Judge Patricia Ryan. The appellant had pleaded guilty on the 28th October to two offences contrary to s. 15A of the Misuse of Drugs Act 1977. A sentence of 12 years imprisonment with the final three years suspended was imposed. The conditions of suspension were that the appellant enter into a bond to keep the peace and be of good behaviour in the sum of €150 for a period of three years and to place himself under the supervision of the Probation and Welfare Service for the three years post release and to comply with any of their directions as regards drug treatment programmes and/or employment training programmes and any other programme as required by the Probation and Welfare Service. The appellant's sentence was backdated to the 5th April 2017.

The background

2. On the 9th December 2015, on foot of a covert operation that was put in place by An Garda Síochána, the movements of the appellant were monitored. He was observed by members of the Gardaí travelling to the Aldi supermarket on the Fonthill Road, Clondalkin. Gardaí observed him remove an orange and black rucksack from another car and place it in the car in which he was a passenger. Gardaí converged on both vehicles and all occupants were detained. The four packages contained diamorphine with a weight of four kilograms, having a combined market value of €560,000.

3. A search warrant was obtained in relation to the appellant's address at 57 Curragh Grange, Newbridge, County Kildare. Gardaí found there 2.5 kg of cocaine with a market value of €175,000, 487 grams of cannabis herb with a market value of €9,740 and 56 grams of ketamine with a market value of €3,360. A number of items relating to drug paraphernalia were seized including plastic bags and weighing scales. The appellant was in possession of the key to the lock on the coal bunker in which these drugs were found.

Personal circumstances

4. The appellant has 17 previous convictions. Seven of these were for drugs offences, four were for s. 3 offences and three were in respect of s. 15. Two were in the Circuit Court, one in 2003, which involved 9,000 ecstasy tablets. This offence occurred on the 13th March 2003. He received three years and two months with nine months suspended in respect of this offence. The second offence in the Circuit Court involved €1,000 worth of cannabis herb. This offence occurred on the 26th September 2009. The appellant received ten months imprisonment in this regard. The District Court matters in relation to s. 15 occurred on the 8th April 2001 and he received three months in prison, suspended for two years. The rest of his convictions are road traffic offences.

The grounds of appeal

5. (i) the learned sentencing judge did not give sufficient weight and balance to the evidence adduced in mitigation of sentence.
- (ii) the sentence imposed by the learned sentencing judge was in all the circumstances unduly severe.
- (iii) the learned sentencing judge did not give sufficient weight to the plea of guilty.

The submissions of the appellant

6. The appellant was extremely cooperative with Gardaí following his arrest. He immediately accepted responsibility for the drugs in both Dublin and in Newbridge. He made full admissions as to his involvement in the transportation, storage and onward supply of the drugs. He further cooperated in detailing the manner in which he was instructed to distribute the drugs by those above him. It is submitted that this cooperation was not adequately taken into consideration by the learned sentencing judge.

7. Gardaí confirmed in their evidence that the appellant's involvement in the offences in question was as a consequence of both a gambling debt and a drug debt. In that regard a number of documents were handed into the Court, namely a forensic psychological report, a letter from Paddy Maher of Aras Community Addiction Services and Urine Analysis. It is submitted that the documentation put before the Court evidenced that the appellant has taken meaningful steps towards addressing the key factors which led to his involvement in his offences. It was noted that the appellant did not come to Garda attention between the date of the commission of these offences being the 9th December 2015 and the date of his sentencing. This is evidence of positive change in his behaviour. Insufficient credit for his positive engagement with the rehabilitative agencies available to him was given.

8. The appellant expressed genuine remorse for his actions in a personal letter to the sentencing judge. He was not afforded sufficient credit for this remorse.

9. Gardaí confirmed the appellant was not a major player in the drugs market and that his involvement resulted from a cumulative drug and gambling debt which he was unable to service. In all the circumstances the sentence was unduly severe. Moreover the learned sentencing judge did not give sufficient weight to his plea of guilty. This was an early plea and was of significant benefit in extinguishing the possibility of any potential evidential difficulties for the prosecution.

The submissions of the respondent

10. The learned sentencing judge correctly identified a headline sentence of 12 years which reflected the gravity of the offence. She then went on to suspend the final three years on condition that he place himself under the supervision of the Probation Service for a period of three years post release. Given the particular facts of the case, it warranted a 12-year prison sentence. The value of the drugs was very significantly over the s. 15A threshold. Moreover the Gardaí searching the appellant's home found items relating to drugs paraphernalia including plastic bags and weighing scales. The appellant had been the subject matter of the Garda surveillance operation and was clearly entrusted within the drugs trafficking community with handling this large quantity of drugs.

11. The defendant has 17 previous convictions, seven under the Misuse of Drugs Act and of particular significance were three previous convictions for the supply of drugs pursuant to s. 15 MDA, notably two from the Circuit Criminal Court. As noted above, one of these related to the supply of €9,000 worth of ecstasy tablets and the second Circuit Court matter related to €1,000 worth of cannabis. In the circumstances the headline figure of 12 years was correct and appropriate given the circumstances of the case taking into account the gravity of the offending and the personal circumstances of the offender and was well within sentencing parameters.

12. The learned sentencing judge gave careful consideration to the appellant's personal circumstances and made specific references to the same during the sentence hearing. She balanced all the factors in the case including his personal circumstances and this is reflected in the sentence actually imposed. The Court is referred to the decision in *The People (DPP) v. O'Halloran* (the Court of Criminal Appeal, 21 October 2002) to the effect that the Court of Appeal should not reduce a sentence simply because its members would have imposed a lighter one had they been dealing with it at first instance.

The decision of the Court

13. The offences in this case were very serious ones indeed. They involved a quantity and variety of drugs of enormous value. The appellant was found to have possession also of certain drug paraphernalia. On top of this, the appellant has a record of previous convictions that demonstrate a long history of involvement in drug trafficking. The Oireachtas has provided, notably in s. 33 of the Criminal Justice Act 2007 for mandatory levels of sentencing in drug trafficking offences. It has done this explicitly to mark the harm done by this particularly insidious form of criminality which has had a devastating effect on whole communities here in Ireland and around the world. The courts thus in sentencing must take full account of the need for deterrence, retribution and the imperative to protect society.

14. Mr. Dwyer, senior counsel on behalf of the appellant, made an eloquent plea to the learned sentencing judge in mitigation. He brought her attention to all the factors which could be identified as mitigating. He emphasised the early plea, the shame and remorse evident in the appellant's own letter to the learned sentencing judge and in the various reports opened to her and submitted to this Court. He referred to his addiction and gambling problems as root causes of his criminal activity. He noted his efforts at rehabilitation and urged on the Court the appellant's resolve to reform his life notably in the light of his young children. He noted the probation report which put him at a moderate risk of reoffending. He urged on the Court to structure a sentence so as to incentivise rehabilitation.

15. The learned sentencing judge adjourned sentencing in order to consider all the reports that had been furnished on the appellant's behalf. It is to be noted that the maximum sentence was life imprisonment while s. 33 of the Criminal Justice Act 2007 provided for a minimum of 12 years save for exceptional and specific circumstances. In sentencing, she noted all the details of the offences and the appellant's previous convictions. She accepted that he did not exhibit any of the trappings of wealth and that there were people above him in this criminal endeavour. She identified both the aggravating factors and the mitigating factors including his clean record since December 2015 and his efforts to rehabilitate himself. She noted the request to structure a sentence so as to encourage and facilitate rehabilitation.

16. The learned sentencing judge did not identify any exceptional and specific circumstances that would justify declining to impose the minimum sentence. She could have imposed a minimum 10 years in prison but did not. She may be taken to have considered that the early plea, the high level of cooperation, the efforts to rehabilitate himself and the presence of his young family were such circumstances. As requested, she did impose a sentence structured to encourage further rehabilitation both in prison and post release. The sentence and its structure seem to the Court to be appropriate in all circumstances. No error in principle can be identified and thus the appeal will be dismissed.