



THE COURT OF APPEAL

**Birmingham J.
Sheehan J.
Edwards J.**

4/16

Director of Public Prosecutions

Respondent

V

Neil Mannion

Appellant

Judgment of the Court delivered on the 3rd day of November 2016

by Mr. Justice Birmingham

1. This is an appeal against severity of sentence. The sentence appealed is one of six and half years imprisonment imposed in the Dublin Circuit Criminal Court on the 21st December, 2015, in respect of an offence of s. 15A of the Misuse of Drugs Act 1977, as amended.
2. The factual background to this offence is somewhat unusual. The offence is recorded as having occurred on the 5th November, 2014, at Bank House, 331 South Circular Road, Dublin 8. The position is that the gardaí had information available to them relating to a particular computer IP address and the sale and supply of controlled drugs on the "dark net". As part of the investigation, surveillance was placed on the appellant, Mr. Neil Mannion, and he was seen to visit premises at Bank House. A search warrant was obtained in respect of that premises and when it was executed, a holdall which contained LSD, small amounts of cannabis resin and amphetamine was located. The LSD was in a number of different forms, LSD tabs, LSD microdots, LSD liquid and LSD powder. The value of the LSD was €141,631 and the total value of the drugs was €143,000 approximately.
3. The search of the premises revealed a weighing scale which was in the holdall, various Visa electron cards, a vacuum packing machine, brown envelopes, white envelopes, labels for postage and foil wrapping. Present at the time of the search was the appellant and another individual, Mr. Richard O'Connor. Mr. Mannion was arrested and subsequently interviewed and in the course of interviews he took responsibility for the controlled drugs that were located and accepted that his role was as vendor of drugs on the "dark net". Mr. Mannion had accepted that his role as vendor meant that people would put in an order with the "Hulkster" which was his online name and he would package and send the items to the persons who placed the order. Orders were dispatched to the UK, USA, Czech Republic, Germany, Italy, Mexico, France, Holland, Australia, Austria, Brazil, Japan, Sweden, Ukraine, Thailand, Denmark, Spain, Malaysia, Israel, Norway, Argentina, Canada, Lithuania, Finland and Belgium as well as Ireland. At this stage he was also operating a business involving e-cigarettes and an auction website. When interviewed in relation to the drugs operation, Mr. Mannion was cooperative in terms of providing passwords and explaining the mechanics of how the system worked.
4. In the course of interviews he was asked "is it a successful business in terms of profitability?" He responded "reasonable, when I did it first I didn't expect to have hundreds of customers and or get so much attention. Things just flew a bit out of control". At another stage he was asked "what position are you in financially Neil?" and he responded "reasonable state, this has not been lucrative recently, but I had money already".
5. Of relevance in the context of the arguments advanced on the appeal is that Mr. Mannion had engaged the assistance of a helper, Mr. Richard O'Connor. Both Mr. Mannion and Mr. O'Connor were present at the time of the garda search operation. According to the judge, Mr. O'Connor's role was to put the LSD in the envelopes, seal them and post them. The judge observed that it seemed that Mr. O'Connor was receiving remuneration for these services of €500 to €600 on an ordinary week and in a good week was taking about €1,000. Mr. O'Connor was dealt with by the judge at the same time as he sentenced Mr. Mannion and in his case received a sentence of three years imprisonment. This appeal has focused to a significant extent, on the disparity between the two sentences, which it is said is such that it cannot be justified. However, it may be noted that the evidence at the sentence hearing of the investigating garda was that it was clear from the investigation that Richard O'Connor played "a very secondary part in this enterprise".
6. In the course of the cross examination of garda witnesses and in the course of submissions, the point was made that Mr. Mannion was now accepting that he had made a very big mistake. The gardaí accepted that that was a sincere observation. Sergeant Brian Roberts, who led the operation, told the Court that Mr. Mannion had the technical know-how to become involved and in doing so had made a massive mistake, but that he had been a person who was pleasant to deal with and who now understood the consequences of his actions. The Detective Sergeant added "he is not the normal type of criminal that we deal with at the Drugs and Organised Crime Bureau if I can put it that way". The Court was told that the gardaí accepted that there was a long history of his using various types of drugs.
7. In terms of his background and circumstances he came from a very respectable background, was educated to leaving cert level and had done post leaving cert certificate courses. He had then worked at Eircom for a large number of years and left employment there in October 2013. The sentencing court was brought by defence counsel through an amount of documentation, including a report from a rehabilitation consultant who indicated that he was impressed with his efforts to deal with his dependence. There was also a lengthy report from a psychologist and a number of testimonials from people who had known him and his family over many years. All these reports were made available to this Court and have been considered.

The judges sentencing remarks

8. The judge first set out to place his sentencing remarks in the context of the statutory regime provided by s. 15A. He then referred

to the personal circumstances of the two men before him, noting that both men had no convictions whatever, that both had good work history records, both had good family backgrounds and that both had certain problems in their lives in relation to drugs and he took the view that both were unlikely to reappear before the courts. In that regard it may be noted that Detective Sergeant Roberts had agreed with the defence counsel that he was also of the view that it was unlikely that the appellant would appear before the courts again. The judge took the view that in both cases, there were factors present which justified him departing from the presumptive mandatory minimum sentence of 10 years. He then went on to comment:-

"Now I think Mr. O'Connor and Mr. Mannion can be distinguished from each other. I think Mr. Mannion's part on these crimes was much more serious. He seems to have operated this dealing enterprise. He seems to have been, if you want to call it, the brains behind the operation. It seems that he procured the customers and it seems from what I have heard from the sergeant, Mr. O'Connor followed his instructions, did what he did and obviously aided the enterprise in what he did. So it is very unusual that this type of person appears before this Court."

The grounds of appeal

9. Two grounds of appeal have been advanced. First, it is said that the disparity between the sentences imposed on the appellant and Mr. O'Connor cannot be justified. Counsel appeared to accept that some divergence was to be expected, but says that the scale of the divergence which would see his client's sentence more than double that of his co-accused cannot be justified. Secondly, it is said that the sentence when considered in the context of all the circumstances of the case was excessive and did not adequately reflect the fact that the appellant had no previous convictions and was of previously good character, nor did it reflect his efforts to end his dependence and to rehabilitate.

10. In the Court's view this was a particularly serious offence. It is commercial drugs supply on an international scale. The Court is in no doubt at all but that the roles of Mr. Mannion and Mr. O'Connor were very different and it was proper and indeed necessary that the difference in roles should be reflected in significantly different sentences. It may be that the sentence imposed on Mr. O'Connor might be regarded as a lenient one, but it provides no basis for interfering with the sentence imposed on Mr. Mannion. The sentence imposed in this case of six and a half years while obviously a significant one, cannot be regarded as excessive if regard is had to the nature of the activity that was underway and to the central role played by Mr. Mannion. The Court cannot find any error in principle and must dismiss the appeal.