



## THE COURT OF APPEAL

**Birmingham J.  
Sheehan J.  
Mahon J.**

**212/14**

**213/14**

**The People at the Suit of the Director of Public Prosecutions**

**Respondent**

**V**

**Michael Devlin (Junior) and Michael Devlin (Senior)**

**Appellant**

**Judgment of the Court (ex tempore) delivered on the 26th day of February 2016, by**

**Mr. Justice Birmingham**

1. The appellants are father and son and each appeal against the severity of sentences that were imposed in the Circuit Court in Dundalk on the 24th October, 2014. The sentences appealed are sentences of twelve years imprisonment with the final four years of that sentence suspended in the case of Michael Devlin Snr. and with the final two years of the twelve years suspended in the case of Michael Devlin Jnr. The sentences were imposed following pleas of guilty to s. 15A Misuse of Drugs offences.

2. The background to the offence is that on the 20th September, 2013, an off duty member of An Garda Síochána who was out cycling in the Termonfeckin area of Co. Louth, was flagged down by the driver of a lorry which very obviously had a foreign registration plate. The driver who spoke very little English showed the off duty garda a delivery docket which referred to Termonfeckin Freshfoods, Wholesale and Distribution, Unit 2, Termonfeckin, Drogheda Co. Louth. The off duty garda immediately became suspicious. He had served in the area and did not recognise the company referred to or indeed the address. He reported his suspicions immediately and they were promptly acted upon.

3. The lorry and container were as a result placed under observation and in the course of that, both appellants were seen to rendezvous with the lorry. At one stage Mr. Devlin Jnr. was seen getting into the cab of the lorry. The lorry and the motorcar, a Citroen which had rendezvoused with it were kept under observation. The car was driven by Mr. Devlin Snr. and Mr. Devlin Jnr. had been a passenger then proceeded in convoy with the car leading, to an industrial estate type complex. There gardaí observed goods and materials being taken from the container. Gardai moved in and 262 packages of cannabis weighing 64.50kg and with a street value of just over €1.3 million were seized.

4. In terms of the accused's background and circumstances, Mr. Devlin Jnr. was aged 40 years and was the father of five children. He had eleven previous convictions including two larcenies, three assaults and a malicious damage and criminal damage. On two occasions he had received prison sentences, one of three months for larceny and one of eighteen months for an assault.

5. The court was told that he had a long history of drug abuse and in particular that he had developed a heroin addiction in 2009. He offered as an explanation to the court for becoming involved in this offence that he had been required to mind a quantity of heroin and that this had gone missing with the result that he had a drugs debt of €10,000 and his involvement in this matter arose from pressure and was designed to clear that debt. However, he also at another stage said that he believed that the contents of the container was cigarettes and it must be said that it is not easy to see how both those horses can be ridden simultaneously.

6. Mr. Devlin Snr. in fairness to him accepted that he was in possession of cannabis and accepted that what he was in possession of was illegal. So far as Mr. Devlin Snr. is concerned he is 61 years of age. He has seventeen previous convictions in all, some in Northern Ireland and one in Scotland. While he had significant convictions in Northern Ireland as a young man, these related to the situation that then prevailed and since moving to this jurisdiction there are no recorded significant convictions certainly not in recent times. There was an attempted burglary in the mid 80s. Significantly neither appellant had any drugs related convictions.

7. The judge identified the offending as being at the higher end of the scale, but he is criticised for doing that and in particular it is said that his view in that regard were inconsistent with the fact that he said that those before him had become involved at the behest of others, so that those others could stay away from the frontline.

8. The judge referred to the statutory regime in relation to sentencing and while he did not state in terms whether he was of the view that there were exceptional and specific circumstances present that caused him to form a view that the imposition of a sentence of ten years or more would be unjust, it is to be inferred from the sentence that he did impose that he concluded that that was the situation in the case of Mr. Devlin Snr. While he did not it seems form a view that a sentence of ten years to be served in the case of Mr. Devlin Jnr. would be unjust.

9. There was a basis for distinguishing between father and son. The case advanced by the defence was that Mr. Devlin Snr. became involved at the behest of his son and was acting out of a really misplaced sense of family loyalty.

10. Mr. Devlin Jnr. was described as being ashamed and remorseful at having got his father involved in such a matter. There was greater evidence of the extent of the involvement of Mr. Devlin Jnr. He it was who rented the shed unit. The cannabis was in packages, 262 packages individually labelled with a number of different names which corresponded to a list of names and quantities found on Mr. Devlin Jnr. However when asked about this at interview he said that this was simply something on the side of the pallet

which he had taken possession of.

11. This was a very serious offence. The quantities of drugs involved were very considerable indeed. There were aspects of the offence which distinguished it from many other s. 15A offences. This was not a case of someone being asked perhaps against a background of addiction or debt to transport a consignment from place A to place B. Neither was it a case of a so called "mule" still less was it a case remotely comparable to the situation of so called "gardeners" where offences are sometimes charged as ones of cultivation rather than s. 15A offences.

12. But here in contrast this was a sophisticated operation. The lorry with the overseas registration was met and was escorted to Bohill Store and Heating Yard. There were other individuals at the yard to receive the delivery, including one who was there to operate a fork lift.

13. On the other side of the coin there were factors present to the credit of each appellant. In each case there was a plea of guilty entered at an early stage. In each case while it could not be said that they came before the court as persons of unblemished character, neither had any previous conviction for a drugs offence. The judge accepted that they were not at the top end of the scale in terms of drugs offending differentiating them from those that he categorised as the drugs baron.

14. In the case of Mr. Devlin Snr. there was evidence of the circumstances in which he suffered serious injuries in a shooting incident, in effect it seems an attempted assassination in 1975 and evidence that perhaps linked to that he had experienced depression and post traumatic stress disorder. There was also evidence relating to his medical situation including heart issues, angina, diabetes and other matters.

15. In the case of Mr. Devlin Jnr. there was the fact of his established drug problems including heroin addiction and the fact that he had taken certain steps to address that, even if his methods were not confined to the classic route and involved purchasing methadone on the street.

16. Having regard to the clearly expressed policy laid out by the Oireachtas the court cannot conclude that the judge erred in deciding that in the case of Mr. Devlin Jnr. a sentence of ten years to be served would be unjust. Neither can the court conclude that the starting sentence of twelve years in either case was excessive. In the case of Mr. Devlin Snr. the judge decided to suspend four years or one third of that sentence and that addressed in a significant way the mitigating factors that undoubtedly were present.

17. As always the question is not whether this Court would have imposed the same sentence and in this case the court cannot conclude that the sentence imposed in either case fell outside the range of sentences available to the judge in the Circuit Court. In those circumstances the court cannot conclude that any error in principle has been established and must therefore dismiss the appeals.

18. The court will simply add one postscript. Some documentation and material was submitted to the court this morning. In the ordinary course of events the court does not have regard to that in a situation where at that stage of re-sentencing is not reached. However the court would observe that it is pleased and impressed to see that both appellants appear to be engaging in very constructive activity in the course of their imprisonment. In particular the court was struck to read about the fact that Mr. Devlin Snr. is operating outside the walls of the prison in a very responsible capacity and the court adds that lest it be thought we were simply ignoring those factors. We do not get to consider them in the circumstances, but we have noted them and are impressed.