



THE COURT OF APPEAL

Record Number 195/2018

The President.
McCarthy J.
Kennedy J.

BETWEEN/

THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

-AND-

ROY CAMBRIDGE

APPELLANT

Judgment of the Court (*ex tempore*) delivered on the 2nd day of April 2019 by Mr. Justice McCarthy

1. This is an appeal against severity of sentence on the 24th May, 2018. The appellant pleaded guilty to two offences under s.3 and s.15 respectively of the Misuse of Drugs Act, 1977 (as amended). The appellant was sentenced in Cork Circuit Criminal Court on the 6th June, 2018 to five years' imprisonment with the final eighteen months suspended for the s.15 offence with the s.3 offence marked, 'taken into consideration'.
2. At the sentencing hearing, it was stated that on the 22nd May, 2017, the Gardaí stopped a car driven by the appellant at around 9.30am on the northside of Cork City. It was stated that the appellant appeared to be very nervous. A garda searched him under s.23 of the Act of 1977, but at that time nothing was found. However, the appellant had two mobile phones with him and he consented to their examination. Whilst doing so, text messages were found which were incriminating in terms of the sale and supply of drugs.
3. The appellant was then brought to a nearby garda station for the purpose of a further search. Before it commenced, the appellant produced a plastic bag and indicated that the drugs had been hidden internally. This contained two individual bags which was said by the appellant to contain heroin and indeed they did. The total street value being €970.50. The appellant was thereafter arrested for an offence under s.15 of the Act. He was interviewed and he made admissions as to the possession of the heroin for the sale and supply of it to others.
4. Evidence was also given that the appellant was 25 years of age at the time of sentence and was known to be a chronic heroin user. The garda witness stated that the appellant had told him that he was selling and supplying others with heroin to feed his habit and that he believed that to be true. He also gave evidence of a number of previous convictions of the appellant under the Misuse of Drugs Acts to include thirteen under s.3 for possession for personal use and three under s.15 for the sale or supply of controlled drugs to others and one under s.15A.
5. On enquiry, at the hearing of this appeal however, it emerged that of those convictions under s.15, one was in respect of the same incident as that which attracted the conviction under s.15A, and another was the conviction which was before the Circuit Court. Thus in fact, rather than four relevant previous convictions there were two. Thus, the evidence before the court was not accurate. The judge was accordingly misled. We hasten to add that this was entirely inadvertent but nevertheless it is crucial to this appeal. Obviously the judge proceeded on the basis of the evidence before him.
6. In giving judgment, the judge said this: -

"the aggravating factors in this case must be the nature of the offence. The impact on society and previous convictions. One section 15A in 2013 and three similar offences of this nature under s.15 between 2016 and this year in the last two years. Not only must the court take into consideration your previous convictions, the court must also take into account what the guards found in your mobile phone and the contents of the text messages found in your phone, which clearly show that you were an active dealer in spite of what might normally be considered the low value of the drugs actually found in your possession."
7. The judge very properly took into account the fact that there were previous convictions for the same type of offending. Having regard to the circumstances of the arrest, and in particular what was found on the mobile phone, the judge rightly concluded that the appellant was engaged in dealing in controlled drugs. We think that a headline sentence of up to seven years would not have been outside his margin of discretion. However, because of the errors in the evidence, such headline sentence was excessive on the facts of the present case and an error in principle inadvertently arose in consequence.
8. We accordingly quash the sentence. We then proceed to resentence. We think that the appropriate headline sentence in respect of the s.15 offence is five and half years' imprisonment. The plea of guilty in this instance was signed in the District Court and

affirmed in the Circuit Court. We again take this opportunity of emphasising the special weight which should be attached to signed pleas whatever the state of the evidence. We think in the circumstances that the appropriate reduction from the headline sentence, because of the signed plea, should be in or about a third, that is to say, two years.

9. We think accordingly that the appropriate sentence in the circumstances is one of three and a half years on the conviction for the offence contrary to s.15. To facilitate the appellant's reintegration into society (he appears to have made some modest progress in this regard whilst imprisoned), we will suspend the last twelve months thereof for twelve months on his entry into a bond to keep the peace and be of good behaviour for a period of twelve months from the 6th June, 2018, that is to say the day which he went into prison so the bond will apply in other words whilst he is in prison and after his release for a period of twelve months. The s.3 offence was marked 'taken into consideration', which we do also.

Additional dialogue

President:

"Just to clarify, in terms of the bond. He will be required to be of good behaviour during his period in custody and for a period of twelve-months post release and the sentence of the court today, the substituted sentence of the court, will date from the same date as the sentence imposed in the Circuit Court, and clearly that is under s.15."