



THE COURT OF APPEAL

**Sheehan J.
Mahon J.
Edwards J.**

Record No. 260/2013

The People at the Suit of the Director of Public Prosecutions

Respondent

and

Christopher Seery

Appellant

Judgment (ex tempore) of the Court delivered by Mr. Justice Mahon on the 15th day of October 2015

1. On the 15th July, 2013, at Dublin Circuit Criminal Court, the appellant pleaded guilty to one count of possession of controlled drugs for unlawful sale or supply, contrary to s. 15A (as inserted by s. 4 of the Criminal Justice Act 1999) and s. 27 (as amended by s. 5 of the Criminal Justice Act 1999) of the Misuse of Drugs Act 1977. He was sentenced on the 26th November, 2013, to nine and a half years imprisonment, the sentence to run from that date. The court also ordered the forfeiture and destruction of the drugs which were the subject matter of the offence, and it directed the confiscation to the State of the sum of €144,420 seized in the course of the investigation of this crime. This is an appeal against the sentence of nine and a half years.

The background to the case

2. On the 9th March, 2012, gardaí conducted a search of the appellant's property at 91 Ratoath Avenue, Finglas, Dublin 11, and in the course of that search found cocaine, cannabis and ecstasy tablets with an approximate street value in excess of €400,000, in addition to a cash sum of €144,000. The drugs and cash were discovered in three upstairs bedrooms and in the attic of the property. Most of the drugs were found in the attic.

3. The appellant was subsequently questioned at Finglas garda station and made full admissions at that time. The gardaí were satisfied that the appellant was holding the majority of the drugs and cash for a third party. It was noted that the appellant was candid (including making an admission to having dealt in drugs for the previous year), emotional and fearful for the safety of his family in the course of his interviews, and that he was co-operative and was of material assistance to the gardaí. A subsequent incident at the appellant's home after the appellant had been released on bail and which involved a firearm being discharged outside his house by a third party was understood by gardaí to be related to the fact that the appellant had been arrested and charged in relation to these matters, and that a substantial amount of drugs and cash had been lost to a third party as a result of having been seized by the gardaí.

The appellant's personal circumstances

4. The appellant is thirty six years old and is the father of three young children. He and his partner have, in general terms, a good employment record. They had purchased their home in Finglas through a local authority housing scheme.

5. Following being made redundant from his job as a roofing contractor in 2009, the appellant developed a drug addiction and at one stage was spending €800 per week simply to sustain his addiction. He began to sell drugs, including cannabis, cocaine and ecstasy. Following his arrest the appellant appears to have cut all ties with the drug trade and was dealing positively with his drug addiction. It is accepted by the gardaí that the appellant ceased all involvement in criminal activity after the commission of this offence.

6. The appellant has no relevant previous convictions.

The sentencing judgment

7. In the course of his judgment the learned sentencing judge referred to the mandatory minimum sentence of ten years provided for in relation to s. 15A convictions, and the fact that a court may only depart from this mandatory minimum sentence of ten years where it is satisfied that there are special and specific circumstances present such as would justify such departure. The maximum permitted sentence for the offence is imprisonment for life. The relevant provisions relating to the mandatory minimum sentence of ten years are as follows:-

"(3C) Where a person (other than a person under the age of 18 years) is convicted of an offence under s. 15A or 15B of this Act, the court shall, in imposing sentence, specify a term of not less than 10 years as the minimum term of imprisonment to be served by the person.

"(3D) (a) The purpose of this subsection is to provide that in view of the harm caused to society by drug trafficking, the court in imposing sentence on a person (other than a person under the age of eighteen years) for an offence under s. 15A or 15B of this Act, shall specify a term of not less than 10 years as the minimum term of imprisonment to be served by the person, unless the court determines that by reason of exceptional and specific circumstances relating to the offence, or the person convicted of the offence, it would be unjust in all the circumstances to do so.

(b) Subsection (3C) of this section shall not apply where the court is satisfied that there are exceptional and specific circumstances relating to the offence, or the person convicted of the offence, which would make a sentence of not less

than 10 years imprisonment unjust in all the circumstances and for that purpose the court may, subject to this subsection, have regard to any matters it considers appropriate, including –

(i) whether that person pleaded guilty to the offence and, if so

(I) the stage at which he or she indicated the intention to plead guilty, and

(II) the circumstances in which the indication was given,

and

(ii) whether that person materially assisted in the investigation of the offence.

(c) The court, in considering for the purposes of paragraph (b) of this subsection whether a sentence of not less than 10 years imprisonment is unjust in all the circumstances, may have regard, in particular, to –

(i) whether the person convicted of the offence concerned was previously convicted of a drug trafficking offence, and

(ii) whether the public interest in preventing drug trafficking would be served by the imposition of a lesser sentence.”

8. The learned sentencing judge apparently did accept that in the circumstances of this case – and he referred in that regard to the plea of guilty, his “*reasonably*” good record and his co-operation with the gardaí – would be such as enabled him depart from the imposition of the mandatory minimum sentence. Having done so however, the learned sentencing judge took the view that the appropriate sentence was, nevertheless, imprisonment for ten years. He indicated that in his view that he could not go below ten years, although he was later persuaded to do so to a very limited extent, and imposed a sentence of nine and a half years imprisonment. In reality, because the appellant had already spent three months in prison awaiting trial, and could reasonably have expected to have been given credit for same, the nine and a half year sentence represented just three months short of the ten year sentence initially deemed appropriate by the learned sentencing judge. He also commented to the effect that if the drugs located in the attic had been the appellant’s own property he would have imposed a sentence closer to fifteen years imprisonment.

9. The learned sentencing judge referred to a number of mitigating factors in relation to the appellant including, his plea of guilty, his remorse, his relatively good record, his co-operation with the gardaí, his good working history and his stable family circumstances. He also, and appropriately, referred to the very serious nature of the offence and the significant amount of drugs and cash found in the appellant’s home. He described as “*very aggravating*” the fact that the appellant was dealing on a very large scale in drugs.

The decision

10. The remarks of the learned sentencing judge in describing the serious and reprehensible nature of this offence were quite appropriate and justified. Dealing in illicit drugs and facilitating such dealing by storing such drugs and minding the profits from that activity for others only serve to reek havoc on society generally, and the courts must take a strong line in relation thereto.

11. In this case the learned sentencing judge correctly identified certain mitigating factors as being such as would justify a departure from the requirement to impose the minimum ten year sentence, and particularly the appellant’s fulsome admissions and his early plea of guilty, and the material assistance provided to the gardaí. The issue however in the appeal is whether a sentence of nine and a half years sufficiently provided for the mitigating factors in the case, many of which were clearly referred to by the learned sentencing judge. Perhaps the most compelling mitigating factor is the fact that by all accounts, the appellant had reformed and rehabilitated himself to a significant degree. There is clearly a strong reason to believe that he will not return to criminality in the future. In support of this belief is the fact that the appellant’s behaviour in prison has been exemplary, so much so that he has been placed in an open prison; somewhat unusual at an early stage in a lengthy sentence for a serious drugs offence.

12. The court has identified an error of principle on the part of the learned sentencing decision to the extent that he failed to adequately take account of the rehabilitation of the appellant which was, at the time of sentencing, already well underway and the probability that such rehabilitation would continue and strengthen into the future, and which indeed has proved to be the case to date. A suspended element of the nine and half year sentence was, and is, appropriate in respect of this mitigating factor in particular. This court will therefore allow the appeal and impose in place of the existing sentence a sentence of nine and a half years with the final two years suspended on condition that the appellant enter into a bond in the sum of €100. The suspended part of the sentence will remain in place for the remainder of the appellant’s period in custody, and for three years post release.