



THE COURT OF APPEAL

[131/2018]

**Edwards J.
McCarthy J.
Kennedy J.**

BETWEEN/

THE DIRECTOR OF PUBLIC PROSECUTIONS

- AND -

RESPONDENT

MICHAL MALECKI

APPELLANT

JUDGMENT of the Court (ex tempore) delivered on the 4th day of March 2019 by Ms. Justice Kennedy

1. This is an appeal against severity of sentence in respect of a sentence imposed before Portlaoise Circuit Criminal Court on the 11th April 2018. On that date, the appellant was sentenced to a period of five years' imprisonment on count 1 with the final two years suspended on terms. This was an offence contrary to s.15 of the Misuse of Drugs Act 1977 (as amended). Count 3; an offence contrary to s.15 of the Misuse of Drugs Act was taken into consideration.

2. By way of background, on the 18th May 2017, members of an Garda Síochána executed a search warrant in respect of an address at Hawthorne Drive, Portlaoise, Co. Laois. During this search, the gardaí uncovered a quantity of drugs including cannabis to the value of €13,400 and methylenamphetamine to a value of €1,825 with a total aggregate value of €15,225. A sum of cash totalling €2,820 and paraphernalia including weighing scales, plastic deal bags and a tick list were also found in the course of the search. The appellant was arrested and taken to Portlaoise Garda Station where he was detained pursuant to s.2 of the Criminal Justice (Drug Trafficking) Act 1996. During the course of interview, the appellant engaged with the process and took responsibility for the substances found. Following this, on the 9th January 2018, the appellant pleaded guilty to two counts contrary to s.15 of the Misuse of Drugs, Act, 1977 (as amended).

3. In sentencing the appellant, the sentencing judge identified a headline sentence of seven years' imprisonment, taking into account the mitigating factors, he then reduced that sentence to one of five years' imprisonment with the final two years suspended on terms.

4. In terms of aggravating factors, the judge considered the quantity of drugs, the evidence of a significant drug dealing operation and the deleterious effect of drugs on society in general. We would add to that, the fact that different types of controlled substances were found on foot of the search of the appellant's home.

5. In mitigation the sentencing judge referred to the early plea of guilty, the cooperation by the appellant, and the absence of previous convictions. The judge also noted that he was conscious of the impact that incarceration would have on the appellant's relationship with his partner and with his adult daughter, and in addition, the judge considered that the sentence would present as more difficult for the appellant as he is a foreign national. However, in this respect we note that the appellant has a partner who lives and works in this jurisdiction and that his daughter is an adult. Therefore, as regards mitigation in this context, it is considerably lessened as a result, but it was a matter, nonetheless which the judge took into consideration.

6. It is submitted on behalf of the appellant that the notional sentence was in error, however, in oral submissions, Ms Perle BL, counsel for the appellant, placed greater emphasis on the mitigating factors with the complaint is that the judge failed to adequately reduce the sentence by virtue of those mitigating factors and also failed to appropriately incentivise rehabilitation by suspending a greater portion of the sentence than he in fact did.

7. The respondent says that sufficient weight was given to the mitigating factors and that whilst accepting that the appellant's plea of guilty and cooperation with the gardaí merited a reduction in sentence, Mr Fennelly BL, for the prosecution says that where the appellant was effectively caught red-handed, a more substantial reduction downwards could not be justified.

8. The respondent further submits by written submissions that the sentencing judge did not err in adopting a seven-year headline sentence given the maximum sentence of life imprisonment and the serious nature of the offence.

Decision

9. The quantity and variety of the controlled substances in the instant case was significant with a market value of €15,225, and indeed whilst the appellant was charged pursuant to s.15 of the Misuse of Drugs Act, 1977 (as amended), as the value exceeded €13,000, he could have faced a more serious charge, that is, a charge pursuant to s.15A of the Act and therefore been subject to a presumptive mandatory minimum sentence of ten years' imprisonment.

10. It is apparent that the appellant was engaged in a commercial enterprise given the items which were found along with the controlled drugs. The judge was therefore mandated to take these matters into account together with the effect that drugs have on society in assessing the aggravating factors leading to the notional sentence of seven years' imprisonment. We do not find any error

in the judge's reasoning or assessment in this respect.

11. The judge then proceeded to consider the mitigating factors and accordingly, reduced the headline sentence by two years. In this respect he took into account the plea of guilty, which we note was an early plea of guilty for which significant credit should be given and in fact was given. He also took into account the fact that the appellant is a non-national and although this court does not view this as a strong mitigating factor in the context of the present case, it was a factor which the judge took into account. The judge also considered the appellant as a person with no previous conviction.

12. We can find no error in the reduction of the sentence by two years' imprisonment in light of the mitigating factors. The final two years of the sentence were suspended in order to incentivise rehabilitation.

13. We can find no error with the sentence imposed and accordingly the appeal is dismissed.