



THE COURT OF APPEAL

**Mahon J.
Edwards J.
Hedigan J.**

Record No: 181/2017

**THE PEOPLE AT THE SUIT OF
THE DIRECTOR OF PUBLIC PROSECUTIONS**

Respondent

V

PETER HANLEY

Appellant

JUDGMENT of the Court (ex tempore) delivered on the 14th of June 2018 by

Mr. Justice Edwards.

Introduction

1. The appellant pleaded guilty on the 6th of February 2017 before Cork Circuit Criminal Court to the offence of being in unlawful possession of controlled drugs, to wit cocaine, cannabis and cannabis resin, with a value of €13,000 or more for the purposes of selling or otherwise supplying the said drugs to another, contrary to s. 15A of the Misuse of Drugs Act 1977, as amended.
2. The appellant was sentenced on the 28th of June 2017 to a period of eight years imprisonment to date from the 3rd of March 2017 with the final two years thereof suspended on the conditions that he would keep the peace and be of good behaviour for a period of two years post his release, and further that he would comply with all directions of the Probation Service during the period of two years post his release.
3. The appellant now appeals against the severity of his said sentence.

The circumstances of the crime

4. The sentencing court heard evidence from Detective Garda Paul Leahy that in late 2015, the divisional drugs unit of An Garda Síochána in Cork set up an operation based on confidential information received concerning the suspected drug activities of Peter Hanley ("the appellant"), and Philip Cronin ("the co-accused"). On the 11th of December 2015, Detective Garda Leahy obtained a search warrant pursuant to section 26 of the Misuse of Drugs Act 1977 to search the home of Philip Cronin at 31 Fitzgerald's Place, Old Blackrock Road in Cork. On the 11th of December 2015, the appellant and the co-accused were seen by gardaí leaving this address by car and were stopped subsequently on Rockboro Road in Cork. A quantity of cannabis was seized during a search of the car. In a follow-up search of 31 Fitzgerald's Place, Garda also discovered a further quantity of cannabis, as well as a quantity of cocaine and of cannabis resin. The total street value of the drugs seized being €42,414. Both accused were arrested and detained at the Bridewell Garda Station.
5. In the course of being interviewed the appellant admitted that the drugs seized were in his possession and control and that he was involved in the sale and supply of these drugs to pay off a drug debt which he maintained he had incurred as a result of losing a certain amount of drugs.
6. The appellant's co-accused stated in his interview that all the drugs were his and that they did not belong to the appellant, and the appellant had nothing to do with them. Detective Garda Leahy testified that the gardaí did not believe the co-accused's story.
7. Both were subsequently charged with an offence contrary to s.15A of the Misuse of Drugs Act 1977, and pleaded guilty. It was accepted that the pleas which were entered on the first return date in the Circuit Court were early ones.
8. When it came to the sentence hearing counsel for the co-accused put it to Detective Garda Leahy in cross-examination that the co-accused had participated in the crime out of friendship to the appellant and that, notwithstanding that the co-accused had sought to take responsibility when interviewed by An Garda Síochána, the co-accused's role in the matter was in fact a lesser one than that of the appellant. Detective Garda Leahy stated that that was correct.

The appellant's personal circumstances

9. The sentencing court was told that the appellant was born on the 19th of March 1984. He lives with his father in Cork City. At the time that he was arrested he was unemployed, but by the 3rd of March 2017, the date on which the sentencing court heard evidence in relation to his circumstances, he had secured employment with a waste disposal company.
10. It appears from the Probation Report, to which further reference will be made later in this judgment, that he was in an eight-year relationship with a former partner, from whom he is now separated, and they have a teenage daughter together. He claims to now have an amicable relationship with his ex-partner and to be in contact with his daughter. He has limited educational attainments, having left school at 16 after the Junior Certificate. He subsequently embarked on a block-laying apprenticeship which he did not complete, and worked intermittently thereafter as a block-laying labourer, and subsequently as a truck driver, having obtained a truck driver's licence. Periods of employment were apparently punctuated with periods of unemployment.
11. The appellant was said to be a long standing drug addict, with a total of twelve previous convictions, eight of which were for drugs offences committed between 2006 and 2014. Of those eight, the majority were dealt with in the District Court and six of these related to unlawful possession of drugs contrary to s.3 of the Misuse of Drugs Act, 1977, and one related to cultivation of cannabis, contrary to s.17 of the Misuse of Drugs Act 1997. In addition he had one more serious previous conviction for a drugs matter that was prosecuted on indictment before the Circuit Criminal Court, namely a conviction recorded on the 24th of February 2006 for being in unlawful possession of a controlled drug, namely cannabis, for the purpose of sale or supply. The appellant received a sentence of

two years imprisonment for that offence, which was wholly suspended for a period of two years.

12. The sentencing court further heard that the appellant had suffered a serious accident early in his life in which he had been burned with petrol and badly injured, and in respect of which he suffers continuing sequelae. He was awarded substantial compensation for his injuries, but had gone off the rails and spent his compensation monies on drink and drugs. In the light of this background, and at the request of counsel for the appellant, the sentencing judge requested a report on the appellant from the Probation Service.

The Probation Report

13. The sentencing judge was subsequently furnished with a probation report dated the 28th of June 2017.

14. Dealing with the offending behaviour the report states that the appellant gave a history of having *"no choice but to act as a drugs courier for a third party due to a drug debt."* He asserted that he had never engaged in drug dealing, which the Probation officer noted was at odds with his criminal history.

15. The report notes that the appellant is known to the Probation Service since 2001. While his engagement was fair he had failed to be proactive in addressing his offending. He had poor insight into his behaviour and decision making and he had no real commitment to gain insight or change his lifestyle choices at the time. It was said that the appellant exhibits little understanding or empathy of the impact of drug dealing on the community. Rather, he identifies himself as the victim. He did have some insight into the consequences of his behaviour for his daughter.

16. A risk assessment indicated that he was at the high end of moderate risk of re-offending in the next 12 months. The risk factors identified were his substance abuse issues, offending history and his attitudes to same. His daughter was identified as a protective factor.

17. The report then set forth his personal circumstances, before specifically addressing his addiction issues. It records that he began drug taking at age 13 in the form of smoking cannabis, and that by age 18 he was abusing ecstasy, alcohol and other substances. He was 18 when he received his compensation award, which would have been circa 2002. He stated to the Probation officer that he spent this on drink and drugs. In 2005 he went to Tabor House for residential treatment for his substance abuse issues but did not stay the course, rather he was in fact asked to leave by the staff there due to his lack of engagement and other issues. Although he had seen an addiction counsellor on three occasions since his remand in custody for the offence with which this Court is now concerned, he was considered to have poor insight into his substance misuse and he had no constructive plan to assist him manage in the community.

18. The report concluded as follows:

"Conclusion:

Mr Hanley accepts minimal responsibility for the offences before the Court. He attributes his behaviour to his own addictions. While there is evidence that Mr Hanley has had substance misuse issues since his mid-teens there is no evidence of any genuine commitment to address these issues.

It is concerning that he demonstrates no victim empathy for those effected by the drug industry and fails to take responsibility for his role. He does demonstrate concern for his daughter and the consequences his behaviour will have on her. He identifies this as a factor which could lead him to lead a prosocial life.

Mr Hanley does need to address his substance misuse, lifestyle choices and criminal attitudes if he is to reduce his risk of re offending. His current level of insight and motivation to do this is poor. However if he is to reduce his risk of re offending this is what he must do.

This Service remains available to the Court."

The sentencing judge's remarks

19. In sentencing the appellant, following a plea in mitigation presented on his behalf, and having on a previous date sentenced the co-accused to six year's imprisonment but with the final three years thereof suspended, the sentencing judge said:

"JUDGE: Very good. This matter, it's not Philip Hanley's first time before the Court on a drugs offence and he's pleaded guilty to the section 15A for the combination of drugs to the total value of just in excess of €42,000. These drugs, the guards had a warrant to search the house and having found the drugs, they interviewed him. He accepted his own responsibility and he told them and they knew or they accepted that he is and was a drug addict. With some reluctance, but on the basis of his early plea and the level of cooperation that he gave and he avoided a trial, there is probably enough to depart from the indicative statutory 10-year maximum. However, his history of continuous drug abuse and failure to respond to chances given to him is lamentable. Given his record going back to 2001 of drug convictions, I differentiate him from the co-accused and I feel at large, subject to the constraints of not going up to 10 years, I feel at large in relation to the sentence I'm going to impose on him and I'm not going to be confined by the co-accused's sentence.

Now, the probation report is -- it's elucidating and it's disappointing. Even at this stage, while he was in prison, he feels himself almost as the victim in that he had no choice but to act as a courier because he owed money. Now, the probation report goes through a whole list of his engagement with services and the constant feeling and finding by those services that he had no real commitment, no real insight, no willingness to change his lifestyle. I mean remember he was dealt with on a section 15 very leniently by this Court in 2006 and it's about time for him now to be taking advantage of the chances he gets because he is not the victim and by placing himself as the victim, he is ignoring the reality of the damage that drugs do. There are victims; he's not one of them but he's involved in a trade that has more victims than anything else. The Probation Service put him at the high end of the moderate risk of reoffending because of his abuse, his offending history. I appreciate that he wants to keep a relationship with his daughter but I mean he failed to complete programmes in Arbour House in 2005, Tabor Lodge at some other stage and when he went to Tabor Lodge, he was asked to leave because of his failure to engage.

Now, as I say, other places seem to think that rehabilitation can be imposed on a person. I think that's entirely

wrongheaded and a Court should look, in the first instance, to the accused and see where is the sign that this man first of all wants to rehabilitate himself and secondly that he is going to last the course. There is very little, if anything, in this man that suggests that he wants to change. As the Probation Service says in their conclusion, he accepts minimal responsibilities for the offences and he just attributes his behaviour to his own addictions and there's no evidence of any genuine commitment to address these issues. I accept what Mr Sheehan tells me, that he's on a drug-free landing and maybe, maybe but it will be a long time down the road. Notwithstanding his plea and the level of his cooperation, I think the appropriate sentence is eight years and I'll suspend the final two years on the basis of on his release he will remain under the care of the Probation Service for two years, obey all their directions."

The Grounds of Appeal

20. The appellant now appeals against the severity of the sentence imposed upon him on the grounds that:

I. The sentencing judge failed to give any or any adequate weight to the mitigating factors and placed too much weight on aggravating factors when measuring the sentence imposed.

II. The sentencing judge placed too much reliance on the previous convictions and failed to have adequate regard to the fact the accused was a drug addict, to the fact that the offence was committed to pay off a drugs debt, and to the fact that the appellant had made no monetary gain from his activities and no section 4 enquiry was required in relation to proceeds of crime.

Discussion and Decision

21. No issue is taken with the headline sentence of eight years' imprisonment, a sensible stance in this Court's view, in circumstances where the evidence was that the appellant was the more culpable of the two accused involved in this matter, and there existed the serious aggravating circumstance of a previous conviction for a s. 15 offence.

22. In seeking to make the case that the sentence in this case was excessive, counsel for the appellant has concentrated on the reflection of mitigation and the need to incentivise rehabilitation by the suspension of the final two years of the sentence, which represents an effective discount of 25% in terms of prison time to be actually served providing the appellant adheres to the terms on which the sentence was partially suspended.

23. Counsel for the appellant has argued that a 25% discount was not enough in the circumstances of this case, and places great emphasis on the adversities in the appellant's life, and in particular the accident in which he was seriously injured, his efforts to deal with the sequelae to his injuries, including his facial scarring, the need for him to wear a partial mask for much of his time at secondary school, and the fact that he was taunted and bullied at school on that account, all of which it is said precipitated his descent into drug use, and ultimately drug addiction.

24. In addition, the appellant had pleaded guilty, had been co-operative and was, it is suggested, remorseful.

25. It was also argued, though given perhaps a light rub, that the extent of the differentiation between the appellant and his co-accused was not justified.

26. The difficulty that the sentencing judge faced, however, was that the appellant had developed no insight into the harm caused by his offending and no victim empathy for those affected by the drugs industry. He had little insight into the effects of these offences, and indeed his previous offending, on society. He did exhibit some limited insight into how it may be impacting on his daughter with whom he hopes to sustain and grow the father/daughter relationship. However he had poor insight into his own substance abuse problem and no constructive plan to address it. Moreover, there was no track record in terms of milestones achieved on the road to rehabilitation. To the extent that a desire to rehabilitate had been put forward on his behalf, it was no more than an aspiration based on being accommodated on a drug free landing in the prison and on his attendance with an addiction counsellor on three occasions while on remand. There was no evidence of active participation in any treatment programme, or of participation in any planned treatment programme, or of undergoing urinalysis and achieving clear results, or concerning how he would manage in the community in the event of being released.

27. Moreover, he had previously been given a chance by the Circuit Court but had not taken it. He was assessed as being at the high end of moderate in terms of risk of re-offending, and none of the risk factors identified in the probation report had been addressed.

28. We are satisfied that the trial judge did have full regard to the appellant's personal circumstances. They are fully set out in the Probation Report, and the sentencing judge had facilitated the appellant with an adjournment to allow this report to be obtained. We consider that the sentencing judge's comment that it was necessary to "look, in the first instance, to the accused and see where is the sign that this man first of all wants to rehabilitate himself and secondly that he is going to last the course" as apposite. The omens were not good on either count, and we consider that the sentencing judge's remark that "There is very little, if anything, in this man that suggests that he wants to change", to have been justified on the evidence.

29. Moreover, the differentiation between the appellant and his co-accused was clearly justified, given the appellant's more significant role and his previous conviction for a relevant offence.

30. In the circumstances we can find no error of principle and would uphold the discount allowed for mitigation and to incentivise rehabilitation as being sufficient and within the sentencing judge's legitimate margin of appreciation.

31. In the circumstances the appeal must be dismissed.