



THE COURT OF APPEAL

**Ryan P
Birmingham J.
Irvine J.**

30/12

**The People at the Suit of the Director of Public Prosecutions
V
Aaron Maunsell**

Appellant

Judgment of the Court (ex tempore) delivered on the 10th day of November 2014 by Birmingham J.

1. This is a case where Mr. Maunsell appeals against the severity of the sentence imposed on him in the Dublin Circuit Court, the sentence being appealed is one of twelve months imprisonment in respect of an offence under s. 15 of the Misuse of Drugs Act, a s. 3 offence being taken into account. It is of some significance that the sentencing judge initially provided for a stay for fourteen days on the execution of the warrant and that was apparently designed to give Mr. Maunsell an opportunity to organise his affairs before going into custody, but that as it happened during the fourteen day period, there was a successful application for bail to the court of Court of Criminal Appeal, the predecessor of this Court. It has been indicated that in what must have been an unusual occurrence that the admission to bail was on consent.

2. The circumstances of the offence are that on the 1st March, 2010, the appellant was in a motor car with three others, when the vehicle was stopped and searched. A sum of cash was located in the course of that search in the possession of one of the other occupants of the vehicle. There was a second search then of the same car shortly after and on this occasion, the cash which had been there the first time, was no longer there. In those circumstances the appellant and others were brought to Ballyfermot garda station. There he was searched and found to be in possession of two white packages containing a brown substance, which on analysis, turned out to be heroin.

3. It will be noted that at the station he had to be restrained as he appeared to be trying to conceal something. The heroin in question has an estimated street value of €1,904.40 when broken down into €20 bags, but the appellant indicated that he had paid €400 for it during the course of the interview.

4. In the course of that interview, he admitted possession of the heroin and that he would sell it to people who called.

5. The appellant's circumstances are that he is from Clonmel, he had been in a relationship and had a child from that relationship.

6. So far as previous convictions are concerned, he has seventeen previous convictions, including offences of theft and public order. Of significance is that two convictions in 2009 related to s. 3 and s. 15 of the Misuse of Drugs Act and for those offences, he received a sentence of eight months imprisonment.

7. The evidence on behalf of the prosecution in the Circuit Court was given by Garda Eustace and the prosecuting member accepted in the course of that evidence that there had been a direction for summary disposal by the DPP, but that jurisdiction was refused, that the appellant had indicated that he would have paid around €400 for the drugs and that the appellant was at the lower end of the chain. Very significant is the fact that at the time of the offence that he was in the throes of addiction and in a striking phase, it was said that the proceeds would go straight into his arm. It was accepted that he and others had come to Dublin from Clonmel and that there was a naivety in the way they went about the offence. The drugs, it was accepted, were bought primarily for himself, but also that a portion would have been sold to friends who were addicts.

8. Evidence was presented of the fact that he had been attending Victory Outreach a residential programme, that he looked remarkably better, that he had turned his life around, that he was reconciled with his family and that he was back in regular contact with his young child.

9. In terms of the appellant's background, it was explained that he had started to smoke heroin at the age of twenty and thereafter he had spent two years on the street as a homeless person. A stage was reached where the garda was telling the court or appeared to be telling the court that it was his opinion that Mr. Maunsell would not come back before the court when he was discouraged from going down that route by the sentencing judge.

10. In the Circuit Court, the matters that I have referred were canvassed in the course of the plea and further details in relation to his involvement with Victory Outreach were provided. He had completed a twelve month programme, it is a residential programme and he had not come to garda attention since. A member of the organising committee from that organisation was present and it was explained that Mr. Maunsell had a further twelve months to complete, but by that stage he had reached a stage where he was assisting others with their drug addiction and that was a measure of the level of progress that he had attained. The court was informed that it had been the case that the appellant has lost contact with his partner and child, but that he was now back in contact with them, was part of their lives as it was put, and that he was seeing his child every second weekend.

11. Again the court was told that he had been estranged from his family and that against the background of the progress that I have referred to, that he was now reconciled and that he was being supported in court by a number of family and extended family members.

12. It was a case of an early plea on the first mention date and the argument was made that a custodial sentence would involve removing him from the treatment regime in which he had been participating and where he was making progress and would involve him going back into a prison system or going into a prison system where the reality is that drugs were available.

13. The submissions on behalf of the appellant here to day reiterated the matters that had been canvassed in the Circuit Court and it was said that the sentencing judge had failed to take into account the efforts at rehabilitation at that point, that he had failed to encourage the further rehabilitation and that he had failed to balance effectively mitigating and aggravating factors.

14. A number of cases had been referred to in particular the cases of *DPP v McGinty* and the case of *DPP v. Eccles*. However, in his submissions counsel for the DPP respondent, says that these cases are distinguishable in that McGinty was a first time drugs offence

albeit that it was a s. 15A and that in Eccles the rehabilitation process had gone much further, in that Mr. Eccles had completed three rehabilitation courses and was within one week of completing another.

15. The respondent submits that the judge in the Circuit Court fully considered the efforts by the appellant to rehabilitate himself, a possibility of a relapse into drugs dependency if a custodial sentence was imposed, but the sentencing court was acting within its discretion in deciding not to suspend the sentence either in whole or in part and that the sentencing judge had been careful to balance all the mitigating factors and aggravating factors and it concluded as he was fully entitled to conclude, that the sentence that he had imposed was the minimum that he could.

16. It is said that the sentencing judge was correctly of the view that given the gravity of the offence and it is an offence that carries a maximum sentence of life imprisonment and the background of a previous s. 15 MDA conviction that a custodial sentence was necessary.

17. The judge in the Circuit Court was obviously very significantly influenced by the fact that this was a second s. 15 offence. He specifically commented

“Unfortunately for Mr. Maunsell this is a second s. 15 offence and I think with his record unfortunately, I cannot avoid a custodial sentence and I think the minimum that I can give to Mr. Maunsell in this case is a custodial sentence of one year from today’s date and that is the very minimum I feel I can give to him.”

18. That the judge in the Circuit Court would have been focused on the seriousness of a s. 15 offence is entirely understandable and the sentencing list in the Circuit Court in Dublin on a daily basis is confronted with the effects of the scourge that is the drugs situation in our capital city.

19. The judge was conscious that Mr. Maunsell, as he put it, “seems to have reformed his life and seems to have attempted to rehabilitate himself”. It seems to us that the evidence that was before the court as to the efforts of rehabilitation were very significant. There was first of all the physical evidence of his appearance. It seems that in the past when in the throes of drugs, that Mr. Maunsell’s physical appearance displayed that, but the progress that he had made was reflected in a changed appearance, there was the fact that he had attended at a residential programme, that he had committed himself to that programme for twelve months, that he had done so to the extent that he was now assisting others because he had made such significant progress, there was the fact that he was reconciled with his partner, that he was now involved with his partner and his young child and that he was reconciled with his family from whom he had become estranged and was now receiving their active support with members of both immediate family and extended in court to support him.

20. All those matters seem to us to indicate that there was scope available to the judge in the Circuit Court to take a chance on Mr. Maunsell and to refrain from imposing an immediate custodial sentence and in the circumstances it is the court’s view that as of the sentencing date, that is what he ought to have done and in those circumstances, the court will set aside the sentence imposed in the Circuit Court.

21. Having given the parties the opportunity to update the court on developments since the sentence date, the court commented:-

The court has had an update on the progress, the fact that there has been what Mr. Condon his counsel has referred to as a “slip” is worrying and disturbing, but overall the pattern is one of significant progress and it is the court’s view that it is appropriate to suspend the sentence at this stage, in particular that is so, given the very significant period that he has in fact spent at liberty which really would make it very difficult to withdraw liberty and to put him back into custody, but in the circumstances, the court will suspend the sentence on his entering into his own bond in the sum of €100 to keep the peace for two years.