



## THE COURT OF APPEAL

**The President.  
Birmingham J.  
Sheehan J.**

**255/13**

**256/13**

**The People at the Suit of the Director of Public Prosecutions**

**Respondent**

**V**

**Ba Nguyen and Ha Nguyen**

**Appellants**

**Judgment of the Court (ex tempore) delivered on the 4th day of December 2014 by Mr. Justice Sheehan**

1. These are appeals against severity of sentence.

2. At Trim Circuit Court on the 7th June, 2013, Mr. Ba Nguyen and Ms. Ha Nguyen both pleaded guilty to the offence of cultivating cannabis contrary to s. 17 of the Misuse of Drugs Act 1977, as amended. They were both sentenced to six years imprisonment with the final two years suspended in each case on terms that they each keep the peace and be of good behaviour for a period of two years following their release from prison.

3. In their appeals to this Court both appellants argue that the learned trial judge erred in principle in holding that these offences were within the higher range.

### **Background**

4. On the 20th November, 2012, members of An Garda Síochána searched a commercial unit on a business campus in Co. Meath on foot of a search warrant and seized approximately 1,300 cannabis plants that had reached various stages of growth. The plants were said to have a potential street value in excess of €1 million when harvested. The two appellants were found to be living in this unit in what were described as rudimentary conditions. They were both arrested and detained at Drogheda garda station for interview where each of them accepted their role in the cultivation of the cannabis plants.

### **Personal circumstances of Mr. Ba Nguyen**

5. Mr. Ba Nguyen is 48 year old Vietnamese man whose wife and two children live in Vietnam. Before coming to Ireland, he worked as a pig and chicken farmer who had incurred debts of approximately €30,000 which he was endeavouring to repay. There was no evidence that that he had any previous convictions.

### **Personal circumstances of Ms. Ha Nguyen**

6. Ms. Ha Nguyen is 40 years of age and has a fourteen year old son. At the time that Ms. Nguyen was effectively trafficked into Ireland, her son was missing but this Court now understands that she has regained contact with him. There was no evidence that she had any previous convictions.

### **Sentence hearing**

7. Both appellants pleaded guilty and it was accepted that the first named appellant was at the lowest level in the organisation and had effectively been trafficked into this jurisdiction as an economic migrant. He was a person vulnerable to exploitation and might properly be described as a prisoner at the location where he was arrested.

8. It was also accepted that the second named appellant was unlikely to have made any significant money from her role in the enterprise and would possibly have been moved to another similar operation following the harvesting of the plants.

9. It was also accepted that given her lack of English and her lack of familiarity with the area where she was working, she effectively would have had nowhere to go.

10. In passing sentence the learned sentencing judge identified as aggravating factors the elaborate cultivation system that was in place, the potential street value of the drugs and the harmful effect of drugs on society.

11. The mitigating factors identified by the learned sentencing judge were the vulnerability of the appellants, the fact that they had both been trafficked into the jurisdiction and were both under the control of unidentified third parties. The conditions of their employment, the early plea, the cooperation that they both gave to the gardaí and their expressions of remorse were also taken into account.

12. In imposing a six year prison sentence, the learned sentencing judge identified the offence as being at the higher range. However, he noted the fact that both appellants were likely to experience difficulties in serving the said sentences as they were non nationals who spoke little or no English and he suspended the final two years of the sentence.

### **This appeal**

13. Both appellants focused their submissions on the correctness or otherwise of the learned sentencing judge's finding that the offending lay in the higher range. In response to this submission, counsel for the respondent submitted that it was the respondent's view that the offences probably lay at the lower end of the mid range.

14. The court considered these submissions and held that the learned sentencing judge erred in principle in finding that the offences were in the higher range. To that extent the court allowed the appeal, quashed the original sentence and proceeded to a new sentence hearing in which further submissions were made by counsel for the appellants in light of the court's finding.

### **Conclusion**

15. The court has considered what the appropriate sentence should be particularly in light of the impoverished circumstances of both appellants at the time these offences were committed and takes the view that a sentence of three years imprisonment is the appropriate place on the range where these offences lie, given again that the court emphasises the personal circumstances of both appellants.

16. The Court holds in light of these and other mitigating factors the proper course is to suspend unconditionally the balance of the 3 year sentence it now imposes in lieu of the original sentences