



THE COURT OF APPEAL

**Birmingham J.
Sheehan J.
Mahon J.**

306/15

The People at the Suit of the Director of Public Prosecutions

Respondent

V

Dariusz Lelakowski

Appellant

JUDGMENT of the Court (ex tempore) delivered on the 10th day of February 2017 by Mr. Justice Sheehan

1. In this case the appellant is appealing the severity of a sentence imposed on him at the Circuit Criminal Court in Naas on the 2nd December, 2015, for an offence contrary to s. 15A of the Misuse of Drugs Act 1977.
2. That background to this offence which occurred on the 2nd June, 2014, is helpfully set out in the written submissions of the respondent and I propose to read directly from those submissions.
3. As a result of a surveillance operation by members of An Garda Síochána a cottage at Crossmorris outside Kildare Town which the appellant was renting at the time and living in with his wife and son, was searched by the gardaí at about 2.20 in the afternoon. When the gardaí arrived they met the appellant with his wife and 20 year old son and with the appellant's assistance searched a shed outside the cottage in which they found 52 boxes of cannabis resin with a weight of 38 kg and an approximate street value of €700,000. The appellant cooperated fully with the gardaí and told them that he was due to receive a payment of €2,000 for storing the cannabis. The appellant had recently lost his job, he had a previous conviction for speeding in 2010, but otherwise had not come to the attention of the gardaí before or since the finding of these drugs.
4. In the course of cross examination of the prosecuting officer Detective Garda Carroll, it emerged that the accused also handed over his mobile phone to the gardaí and it was accepted by Detective Garda Carroll that he had told them everything he knew.
5. The gardaí said that it was fairly evident from looking around the appellant's home that he was in financial difficulty. It was clear that he had lost his job from which he earned €1500 a month and Detective Garda Carroll also told the court that he believed the appellant's wife had cancer and had not been able to work for some time. His son also was not working and the family had been living in Ireland for ten years.
6. The main thrust of the legal submissions advanced on behalf of the appellant is that the trial judge placed excessive weight on the aggravating factors and allowed insufficient credit for the appellant's cooperation and personal circumstances including his wife's ill health. Counsel also drew the court's attention to the sentencing judge's misunderstanding as to the appellant's criminal record. While counsel for the Director of Public Prosecutions opposes the appeal, he nevertheless accepts that there was significant mitigation. However he rightly reminds us of the special focus of the legislature on s. 15A offending.
7. The issue regarding the appellant's record is of some concern to us. While the sentencing judge seems to have heard speeding as stealing, he went on in the course of his judgment to refer to the appellant having a previous conviction for theft. At the same time he said in the course of that judgment that he would treat that matter as neutral. This resulted in an error which although it was corrected following the announcement of the sentence did not lead to any variation in the outcome.
8. Generally speaking in a case such as this a conviction for speeding would be disregarded and the accused person would be treated as someone with no previous convictions, something positive in the accused's favour and to be factored into the sentence.
9. In a case such as this where the sentencing judge was clearly entitled to depart from the mandatory minimum sentence the appellant may well have a sense of grievance that he was not given sufficient credit for his hard working crime free past. In these circumstances we hold that the appellant is entitled to have this acknowledged albeit in a limited way and accordingly we propose to do this by suspending a further twelve months of the eight years sentence. Accordingly we will set aside the sentence of eight years imprisonment with two years suspended and impose in its place a sentence of eight years imprisonment with the final three years suspended on condition that the appellant enter a bond in the sum of €100 to keep the peace and be of good behaviour for a period of three years following his release from prison.