



THE COURT OF APPEAL

Neutral Citation Number: [2015] IECA

**Sheehan J.
Mahon J.
Edwards J.**

Appeal No. 73/2012

Between

The People at the Suit of the Director of Public Prosecutions

Respondent

- and -

James Farmer

Applicant

Judgment (ex tempore) of the Court delivered by Mr. Justice Mahon on the 11th day of June 2015

1. This is an appeal against the severity of sentences imposed for drugs offences on 27th February 2012 at Dublin Circuit Criminal Court. Some three months previously, the appellant pleaded guilty to two offences contrary to s. 15(A) of the Misuse of Drugs Act 1997 (as amended), and on the date of sentence he pleaded guilty to an offence contrary to s. 15 of that Act. In respect of the two s. 15(A) offences, the appellant was sentenced to seven years on each, the sentence to date from 27th February 2012. The s. 15 offence was taken into consideration.
2. The appellant's co-accused was sentenced to five years imprisonment.
3. The facts are briefly that the two men were observed transferring two cardboard boxes between two cars in the car park of Aldi Supermarket in Newlands Cross, Dublin. Both vehicles then drove away but were intercepted by gardaí. In the appellant's vehicle, gardaí found cannabis resin to the value of €122,083. In a later search of the appellant's home, drugs' paraphernalia was found. A car parked outside the house, the key of which was found on the appellant's person, was searched and drugs with a street value of €289,164 were located, (cannabis herb). Also found were cannabis resin and cocaine to a value of €23,000.
4. The appellant, who was in his early thirties at the time of the commission of these crimes, acknowledged his involvement at an early stage. Gardai believed that he was a "gilly", or a low level player involved in the movement and storage of illicit drugs for others.
5. The appellant has serious medical problems. His medical history over recent years includes kidney failure requiring dialysis, a severe bowel disorder and, in 2011, a kidney transplant. Prior to these health difficulties, the appellant was an accomplished soccer player and coach and was involved in coaching children in soccer. Because of his illnesses and the resulting dependency on medication he had to give up his sporting activities, and he lost his job.
6. The court has been advised that in general terms the appellant's medical condition is manageable in prison. It has also been informed that the appellant's daily bodily functions present an element of difficulty for him while in prison, on a personal level, because of his bowel condition, and that there is also an increased risk of infection while in prison.
7. The criminality in this case is very serious. There is the significant value of the illicit drugs involved; over €400,000, and the havoc and devastation which they would have caused to vulnerable victims of drug abuse in society – probably in the Dublin area – had not good police work resulted in their seizure. While the appellant's role in this criminal activity was, as indicated by the gardaí, at the lower end of the spectrum, the appellant's involvement was crucial to the entire enterprise. Also, the appellant did have previous convictions – five in total. None were particularly serious, although one involved illicit drugs.
8. Because the drugs involved had a value exceeding €13,000, it is provided for in s. 27 of the Act of 1977 (as amended), that a prison sentence of at least ten years must be imposed, save in exceptional and specific circumstances. This provision was addressed comprehensively in two recent decisions of this court, namely *DPP v. Desmond Ryan* on 19th January 2015, and *DPP v. John Ryan* on the same date.
9. In his sentencing judgment, the learned judge indicated that there were circumstances in this case which permitted him to depart from the requirement to impose the mandatory minimum of ten years, specifically, his plea of guilty and his co-operation with the gardaí. This court agrees with that view.
10. Serious ill health or significant disability are matters which in the ordinary way may act to reduce to some degree the period to be spent in prison, because of the extent to which either or both would significantly add to the difficulties and discomfort imposed by the restrictions of prison life. Indeed, in some exceptional circumstances, it may be appropriate for a court to suspend an entire sentence for such reasons, and where it would not otherwise consider doing so. In this case, the learned sentencing judge did refer to the medical issues in the course of his sentencing judgment, but did not specifically state if he was making any particular allowance for it in relation to the sentence he imposed on the appellant; it may well be that he did so.
11. In any event, the court is satisfied that insufficient weight was afforded by the learned sentencing judge to the appellant's medical problems and the added difficulty they would cause him while in custody, and to this extent there was an error of principle. Leaving aside those medical problems, the seven year prison term without any suspended element was an entirely appropriate sentence in the circumstances. However, and because of these medical problems, and in particular the practical consequences of his serious bowel condition, and which the court recognises causes the appellant particular difficulties on a daily basis while in prison, the court will allow the appeal to the extent that it will direct that the final eighteen months of the seven year concurrent sentences will be suspended on the usual conditions, for his remaining period in custody, and for a period of two years post release.

