



**THE COURT OF APPEAL**

**Ryan P.  
Birmingham J.  
Sheehan J.**

**198/12  
319/12**

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

**Respondent**

**V**

**Jason Keogh and Niall O'Leary**

**Appellants**

**Judgment of the Court (ex tempore) delivered on the 26th day of November 2014, by Birmingham J.**

1. In this case the appellants appeal to this Court against the severity of a sentence imposed upon them. In each case the sentence appealed is one of thirteen years imprisonment with the final three years suspended. The sentence under appeal was imposed on Mr. Jason Keogh on the 23rd May, 2012, and on Mr. Niall O'Leary in November 2012.
2. The background facts are that on the 20th July, 2011, the Garda National Drugs Unit mounted a surveillance operation at a warehouse unit in Swords Business Park. There, Jason Keogh was seen to collect seven blue barrels and place them in a vehicle (a van) that he was driving. Thereafter he was joined in travelling in convoy towards Woodview Cottages in Bettystown by his co-appellant Niall O'Leary with them stopping on the way at a B & Q in order to purchase an electric saw. Soon after the arrival of the two men in Bettystown, the sound of an electric saw in operation was audible. In those circumstances, the gardaí sought and obtained a warrant and entered the premises. There the gardaí (National Drugs Unit) found approximately 100 kilos of cannabis vacuum packed, which by that stage had been removed from the blue barrels and there was also one unopened blue barrel still in the vehicle.
3. Both appellants were arrested and in the course of his detention Jason Keogh admitted that he had driven the van to Swords to collect the cannabis, that he had rented the van in advance, that he was aware of the likely street value of the drugs, the estimated value of the drugs seized, it should be said was €1.2 million and he said that he was being paid €5,000 in respect of his work. He said that he had become involved through an encounter with a third party. In essence his approach throughout his detention was to answer all the questions that were put to him.
4. Mr. O'Leary too made admissions in the course of his detention. In his case, the admissions came during the course of the third interview that was conducted with him. He said that he was to be paid €2,500 for his role and that he was also to receive approximately 400gms of cannabis. It is the case that some 418gms of cannabis was subsequently found in his home in a follow up search.
5. Both appellants entered an early plea. In the case of Mr. Keogh that was on his first appearance before the Circuit Court and in the case of Mr. O'Leary, while it was not on his first appearance, it is accepted that there was an early indication that a plea would be entered and that it is appropriate to treat the matter as an early plea at the first opportunity and that has never been a matter of controversy.
6. As I have indicated, Mr. Keogh was sentenced in May 2012 and Mr. O'Leary in November 2012. Of note is that both appellants were dealt with by the same Circuit Court judge and that both received the same sentence.
7. As far as the background and personal circumstances of the appellants is concerned, it may be said that they have much in common, though obviously there are some points of distinction.
8. In the case of Mr. Keogh, he was born in May 1964, and was 48 years old at the time of sentence. He was working as a supervisor with Dublin Port Tunnel earning a solid income. He found himself in financial difficulties, those difficulties followed a marriage break up, he found himself with debts, and those debts it should be made clear were ordinary domestic debts as distinct from drug debts. He was on sick leave from his employment with a diagnosis of bi polar depression. It is the case that there were prior instances of mental health difficulties in that it seems that he suffered a breakdown in 2003 following the death of his father in that year and then again, in 2008, there was another episode of difficulty. The matter that has to be noted is that Mr. Keogh had no previous convictions. A number of references and testimonials were produced to the Circuit Court and it must be said that they were powerful testimonials, including some speaking as to his involvement with the Society of St. Vincent de Paul. The judge imposing sentence identified a number of factors in his favour, these being his early plea, his cooperation from the time that the gardaí entered the premises and then continuing that attitude and approach at interview, his admissions, his remorse, his absence of previous convictions and the fact that he was assessed as being at low risk of re-offending. The judge saw as aggravating the situation the seriousness of the offence, the extent of the involvement in renting the van, driving it to and from Swords, the fact that he accepted that he was aware of the street value of the drugs and that he was involved for financial gain in that he was to get €5,000.
9. In terms of the background and circumstances of Mr. O'Leary, he was a 40 year old man and also had no previous convictions. In his case he had served in the FCA and that had opened the door for him to a career in the security industry. From there he moved on to setting up his own business as a driving instructor and originally that business was very successful, but subsequently it ran into difficulties. He is a family man, he is married with six children, two from a previous marriage and again the picture is one of financial pressure of domestic and business debts. In essence the trial judge identified the same mitigating factors, the early plea, previous good character, co-operation/remorse and the fact that Mr. O'Leary was identified as being at low risk of re-offending and broadly, on the other side of the coin, the same aggravating factors, the value of the drugs seized, the fact that the involvement was for financial gain, his role in moving the consignment and the effect drugs of such a quantity would have on society if they reached the streets.
10. The appeal to this Court focuses on the structure of sentencing, one might say the methodology of sentencing. In the written submissions the criticism is made of the sentencing judge that he engaged in an exercise in "weighing" rather than "balancing" aggravating and mitigating factors and it said that this meant that insufficient regard was had to the appellants own difficulties and to the circumstances that brought them before the court.
11. Two points in particular have been the focus of specific attention. Insofar as Mr Keogh is concerned, there has been reference to

the mental health issues already mentioned. It is argued that this was not sufficiently explored by the trial judge and that he did not ask himself the question as to how was it that a person, without previous convictions and of such good character in the past, would find himself involved in such an incident and was it the case that that explanation was to be found in the mental health history which is said in fact a likely explanation.

12. Again in the case of Mr. O'Leary, it said that the judge did not take sufficiently into account the fact that he was the father of a number of children, that he was very close to those children and that a sentence that was going to be imposed, which by any standards was going to have to be a substantial one, was going to impact very significantly on those children.

13. It seems to this Court and it is the view of this Court, and this Court holds that the approach that was actually followed by the learned trial judge, even if there was some infelicities of language with the reference to life imprisonment as being a starting base or the starting base, both formulas are used, one in each transcript, that might be seen as such an infelicity, but that in reality what occurred in the Circuit Court was that the approach that had been directed by Denham J. as she was in *DPP v Larnihan* [2007] IECCA 21 was followed. That is to say that the trial judge analysed the offence in the round, that he looked at the nature of the offence, at all the factors that surrounded the offence and that he looked in detail at the nature and background and the circumstances of the offenders that he was being asked to sentence. He recognised that there were factors present that were in favour of both appellants, as indeed there clearly were, as the absence of previous convictions, the cooperation that was forthcoming, the early pleas that were entered and so on, but he came to the conclusion that the sentence of ten years imprisonment was not unjust, indeed he concluded that a sentence in excess of ten years, albeit one that was partially suspended, would not only not be unjust, but was actually what was required in the circumstances of the case to meet the case that was before the court.

14. It is the view of this Court that the judge was entitled to come to the conclusion that he did. That being so, the court can find no error of principle and will therefore dismiss the appeals.