



THE COURT OF APPEAL

Ryan P.
Birmingham J
Sheehan J.

262/13

263/13

The People at the Suit of the Director of Public Prosecutions

Respondent

V

Mark Mahony and Jason Brennan

Appellants

Judgment of the Court (ex tempore) delivered on the 24th day of November 2014, by Mr. Justice Sheehan

1. In this case Mark Mahony and Jason Brennan both pleaded guilty to offences contrary to s. 15A of the Misuse of Drugs Act 1977, as amended and were each sentenced to thirteen years imprisonment with final three years of the said sentence suspended on their entering into bonds to keep the peace and be of good behaviour for a period of three years.
2. The value of the drugs was estimated to be €3.5 million or thereabouts being €488,761 in respect of the cocaine found and just of €3.1 million in respect of the Diamorphine or heroin as it is commonly called.
3. Both appellants now appeal their respective sentences to this Court on the grounds that their sentences were excessive and oppressive and that insufficient credit was given for their respective mitigating factors and that the trial judge therefore erred in principle in his approach to their respective sentences.

Facts

4. On the 17th January, 2013, Mark Mahony and Jason Brennan met each other at the Texaco extra car park at Monread Road, Naas. Jason Brennan was observed transferring a number of boxes from his car to Mark Mahony's car. When the transfer was completed, both men sought to drive away from the car park, but were stopped and arrested as they attempted to do so. The drugs were seized and both men were taken into custody.

Personal circumstances of Mark Mahony

5. The prosecuting garda confirmed that Mark Mahony is a 31 year old man without previous convictions who has worked tirelessly and consistently as a metal fabricator from the age of 15 years when he left school until he was approximately 30 years old.
6. In 2005 he was in a relationship and he and his partner purchased a house that year. The house was purchased for €260,000 and the mortgage repayments were in the order of €1,300 per month.
7. Shortly after 2010, the relationship broke down and Mark Mahony having taken sole responsibility for the mortgage repayments found himself without a job. At that stage, he became seriously depressed and was abusing alcohol and drugs.
8. He attempted to self harm on no fewer than three occasions, resulting in admissions to James's Hospital and James Connolly Hospital where the records show that on one occasion he had taken an overdose of sleeping tablets and on another occasion he was admitted to hospital as a result of a serious attempt at self harm which included slashing his own wrists.
9. Since his admission to prison Mark Mahony has engaged proactively with the Samaritans and has become trusted within the prison regime. The court notes a letter from the Governor of Cloverhill Prison saying that Mark Mahony works in the officers' mess and is held in very high regard by the officers in charge. He is said to be a very good worker, his conduct is excellent and he is courteous and compliant in all his duties.
10. At the time of sentencing a urine analysis report also confirmed that he was drug free. There was also a report from Dr. Lambe, a consultant psychologist, as well as a letter from Ms. Barbara Byrne, an addiction counsellor who had seen Mark Mahony in 2012. There was a further statement from Mark Mahony's mother, in addition to a letter from Mark Mahony himself, explaining what had gone wrong in his life and also talking about his pride in being able to do well in prison. The letter also expressed his desire to make a valuable contribution to society when he is ultimately released.
11. While in custody in the garda station following his arrest, Mark Mahony volunteered that there was a further quantity of drugs held in a shed behind his house. He told the gardaí where they were and he was subsequently prosecuted in respect of these drugs.
12. These were the personal circumstances of Mark Mahony that were before the learned trial judge at the time of sentence.

Personal circumstances of Jason Brennan

13. Jason Brennan is a 32 year old man who has no previous convictions and whom the prosecuting garda said had not been previously known to the gardaí. He said that Jason Brennan had told him that if he had known he was involved in the possession of heroin, he would not have got involved as he himself had been addicted to heroin and had had struggled to get off it. The prosecuting garda confirmed that most of what had been said in relation to Mark Mahony could also be said in respect to Jason Brennan.
14. At the time of sentence, Jason Brennan had been in a relationship for twelve years and had a daughter aged 7. Notwithstanding

his addiction to heroin, he had managed to hold down a job and had been employed for most of his life. Since entering prison, he had a clean record, was attending school and drug aftercare programmes and was someone who had expressed remorse for what he had done.

15. The court had evidence before it that he had worked from 2003 to 2012 with the same firm and that his employers had described him as a popular and hardworking employee whose attendance record was good and who also showed initiative. Mr. Brennan had also obtained a number of certificates since entering prison and these matters were the personal circumstances that were before the learned trial judge.

16. Counsel for both appellants submitted in respect of their clients that there were specific and exceptional circumstances which would justify the court in going significantly below the minimum mandatory sentence provided for by statute.

17. The court has the benefit of comprehensive written submissions by both appellants and by the respondent and has considered these as well as the oral submissions that have been made during the course of this hearing. Essentially both appellants say that the error in principle in this case, is that the learned trial judge did not give adequate weight to the mitigating factors in the case and that this led in turn to sentences in respect of both accused that were unjust.

18. While the court accepts that the quantity of drugs involved is not in itself determinative, the court nevertheless holds that the quantity, value and type of drugs involved are relevant to sentence. The amount of drugs in this case, in our view justifies the learned trial judge at the very least in starting at a point above the minimum mandatory sentence, when considering where on the scale of available penalties the respective offences of each accused lay.

19. The court notes the significant rehabilitative steps taken by Mark Mahony and by Jason Brennan. This Court holds that these matters were before the learned trial judge and taken into account by him when he suspended the final three years of each sentence. We can see no reason to interfere with the headline sentence nor with the sentence actually imposed. Accordingly we dismiss both appeals.