



THE COURT OF APPEAL

9CJA/2016

**The President
McCarthy J.
Kennedy J.**

BETWEEN/

THE DIRECTOR OF PUBLIC PROSECUTIONS

APPLICANT

- AND -

VIDAS PETRAUSKAS

RESPONDENT

JUDGMENT of the Court (*ex tempore*) delivered on the 28th day of February 2019 by Ms. Justice Kennedy

1. In accordance with the established jurisprudence we now proceed to sentence Mr Petrauskas as of today's date. Judgment was delivered by this court on the 18th December 2018 concerning an application by the Director of Public Prosecutions pursuant to s.2 of the Criminal Justice Act 1993, in which we rehearse the facts in some considerable detail but for the purpose of this hearing and given that a period of time has elapsed, we will refer to certain aspects of the matter.

2. The sentence imposed by the Circuit Criminal Court is one of five years' imprisonment which was suspended almost in its entirety with the exception of a period of some five and a half months spent in custody by Mr Petrauskas prior to the imposition of sentence. That sentence was imposed on the 8th December 2015 in respect of an offence contrary to s.15B of the Misuse of Drugs Act 1977(as amended) to which Mr Petrauskas pleaded guilty on the 13th November 2015.

3. He returned to Lithuania on the 14th December 2015 and the matter was heard before this court by way of appeal against undue leniency on the 18th December 2018.

4. The background is to be found in the fact that on the 1st July 2015, a Lithuanian registered vehicle was stopped by custom officials at Rosslare Harbour, that vehicle was searched and a quantity of drugs in the sum of €144,272.00 was found concealed in the vehicle. There were four persons travelling in the vehicle. The appellant was arrested and when interviewed, he cooperated to a certain extent. He was interviewed by members of An Garda Síochána on five occasions and he made admissions in the final interview in relation to the journey and the collection of the illegal substances in question.

5. In mitigation the Circuit Court heard that the respondent was 47 years of age at the time of sentence, that he ordinarily resided with his mother, that he was a married man and prior to this offence he had been in gainful employment in Lithuania. He had one previous conviction which appears to be that of criminal damage which is not considered to be a relevant conviction for the purpose of the imposition of sentence in relation to this matter. We have heard today that he has acquired no new charges and it seems that he is in employment in Lithuania.

6. The court below, in sentencing Mr Petrauskas, placed significant emphasis on his conduct whilst incarcerated on remand in relation to the offence. The offence before the court is undoubtedly, a serious one. It involves a quantity of drugs to a value in excess of €144,000 and whilst it was accepted in the course of the sentencing hearing in the Circuit Court that the respondent was a cog in the wheel, he was nonetheless, an important one as the driver of the vehicle and had knowledge of the operation.

7. In resentencing the appellant, we recognise that Mr Petrauskas has been at large since sentence was imposed by the Circuit Court and, indeed returned to Lithuania on the 14th December 2015. We also recognise the disappointment factor in now receiving a custodial sentence and so we intend to impose a sentence which is somewhat less than that which we would have regarded as appropriate had we been sentencing in the first instance. We quash the sentence imposed and we impose in lieu of that sentence a sentence of five years' imprisonment with credit for time served.