THE COURT OF APPEAL

Birmingham J.
Sheehan J.
Mahon J.

Appeal No.: 27/2015

The People at the Suit of the Director of Public Prosecutions

Respondent

- and -

Sunny Idah

Appellant

Judgment (ex tempore) of the Court delivered by Mr. Justice Mahon on the 2nd day of February 2016

1. The appellant pleaded guilty to a charge of soliciting another to commit an offence, namely the importation of a controlled drug, to wit cocaine, in contravention of Regulations made under s. 5 of the Misuse of Drugs Act 1977/1984, which act, if completed, would amount to an offence contrary to s. 15B of the Misuse of Drugs Act 1977, as inserted by s. 82 of the Criminal Justice Act 2006, contrary to s. 21(1) of the Misuse of Drugs Act 1977.

2. Section 27(9) of the Misuse of Drugs Act 1977 provides that any person guilty of an offence contrary to s. 21(1) of the Act is liable to the same sentence as if they were guilty of the substantive offence. The maximum sentence on conviction is a prison term of fourteen years.

3. The sentence imposed in this case was a term of ten years with the final twelve months suspended for a period of three years, on the appellants own bond of €200. The appellant has appealed against the sentence.

4. The appellant was arrested following a joint Swiss/Irish undercover operation in the course of which two undercover gardaí, posing as Polish drug mules, contacted the appellant by a telephone number provided by the Swiss police and which was obtained by them in the course of their enquiries. Twenty three telephone contacts and three face to face meetings followed between the undercover gardaí and the appellant in the course of which the appellant engaged the undercover gardaí to fly to Brazil, and there to eat or ingest cocaine in the form of pellets and then return to Ireland. The amount of cocaine involved was one kilogram in weight, and its total street value was in the region of €140,000. The undercover gardaí were to be paid €5,000 each and provided with airline tickets to Brazil. They were also provided with details of where they would stay while in Brazil and of the procedure for ingesting the cocaine pellets. They were also provided with funds to pay expenses incurred in Brazil and in Dublin.

5. In the course of her sentencing judgment, the learned sentencing judge described the circumstances of the offence as *"a very well planned and highly sophisticated crime".* While she accepted that the appellant was not a senior figure in an international drugs ring, she nevertheless took the view that he was clearly a central figure in the operation and had no difficulty in getting access to cash. The appellant had two previous convictions, both of a relatively minor nature, and both occurring twelve or so years previously. In her sentencing judgment, the learned sentencing judge took account of this fact, as well as other mitigating factors.

6. The learned sentencing judge noted that the maximum prison sentence for the offence was one of fourteen years and, evidently, considered that the offence as committed by the appellant warranted the imposition of the maximum sentence before discounting for the mitigating factors.. She stated that she would take two years off the maximum sentence in respect of the appellant's guilty plea and a further two years in respect of his good conduct in prison since his detention on 20th September 2010, and imposed a sentence of ten years. She suspended the final twelve months on conditions.

7. The appellant contends that the sentence was excessive in all the circumstances. Essentially, the appellant maintains that there was an error of principle on the part of the learned sentencing judge in that she unreasonably placed the offence at the highest possible level, and thereby justifying a headline sentence of fourteen years, being the maximum sentence for this offence, before proceeding to discount that headline sentence to ten years, with the final twelve months suspended, to provide for the mitigating factors, which were stated to be:-

- the plea of guilty
- the lack of previous convictions
- the lack of violence in the commission of the offence
- the impact of a lengthy sentence on the appellant, his wife and young son

8. There is also criticism of the fact that the learned trial judge considered the appellant to have been *"a central if not senior figure in an international drugs ring"*. It is submitted on the appellant's behalf that the appellant was a lesser figure in the operation and pointed to, in support of that contention, the absence of evidence to show that the appellant had the financial trappings that might be expected of a more senior figure in such an operation.

9. In relation to this latter issue, the court is satisfied that the learned sentencing judge was quite entitled to treat the appellant as a central figure in the operation. His role, as detailed to the sentencing court, was undoubtedly a critical and important one. In no way could he be described as a mere functionary in this sophisticated international drugs operation.

10. The learned sentencing judge considered the offence as being of the utmost seriousness. That view is shared by this court. The offence when analysed includes the following, all of which serve to emphasise its seriousness and its callousness;-

- A plan to import into this country €140,000 worth of cocaine with all the consequences that would follow if such an operation was to be successful, including the ensuing damage to the health and lives of young people and the promotion

of criminality in this jurisdiction.

• The utter disregard for those whom he intended would ingest these drugs and keep them inside their bodies for a considerable period as they made their way from Brazil to Ireland. The risk to their health and very possibly their lives would have been very significant had the operation proceeded as the appellant had planned. There have been many examples of individuals dying as a consequence of ingesting illicit drugs.

11. That being the case, was the learned trial judge entitled in her discretion to pitch the offence at the highest possible level, and having done so, identify the appropriate maximum term of fourteen years as being the correct headline sentence, prior to discounting for mitigating factors. The answer is, in the Court's view, yes. The legislature chose in its wisdom to provide for a fourteen year maximum sentence for this offence. It did so in order to provide for those cases, albeit few in number, that were so serious as warranting the imposition of the maximum penalty.

12. Having decided that the maximum fourteen year term was the correct headline sentence, the learned sentencing judge proceeded to substantially discount that headline term to suit the particular circumstances of the case, and she went on to allow for a reduction of two years for the plea of guilty, and a further two years reduction for the lack of previous convictions, the absence of violence being committed in the course of the offence, and the appellants good conduct in prison over the previous four years. The learned sentencing judge further suspended the final twelve months of the ten year term, without identifying any particular reason for so doing, thereby reducing the effect of custodial term to nine years.

13. Even if the headline sentence of fourteen years might be said to have been on the severe side, being at the top end of the appropriate range, the discounted period of, effectively, five years was generous in the circumstances of the case, particularly having regard to the fact that the plea of guilty was offered at a very late stage and in circumstances where the appellant faced almost certain conviction by a jury.

14. The Court is satisfied that the ten year term, with the final twelve months suspended, and having allowed for all mitigating factors in the case, was, and is, the appropriate sentence in the case. The appeal is therefore dismissed.