



THE COURT OF APPEAL

[319CJA/18]

**The President
Irvine J.
Donnelly J.**

BETWEEN

THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS

APPELLANT

AND

RYAN CALLAGHAN

RESPONDENT

JUDGMENT (Ex tempore) of the Court delivered on the 15th July 2019 by Birmingham P.

1. This is an application brought by the Director of Public Prosecutions pursuant to s. 2 of the Criminal Justice Act 1993, seeking to review on grounds of undue leniency a sentence that was imposed in the Circuit Criminal Court in Meath. The sentences sought to be reviewed are sentences of three and a half years imprisonment with the final 12 months suspended that was imposed in respect of a s. 15A Misuse of Drugs Act offence and a concurrent 9-month sentence that was imposed for money laundering.
2. The background to the case relates to events that occurred on 14th March 2017 at a racing stables at Drumree, County Meath. The case was dealt with on the basis of a plea of guilty and on a full facts basis, in particular, on the basis that evidence would be adduced and taken into account in relation to the possession of a firearm, a semi-automatic machinegun, in suspicious circumstances.
3. The background to the case is that on the day in question, Gardaí had mounted a surveillance operation. As part of that operation, the respondent was photographed hiding a Tupperware box. When that box was subsequently retrieved, it was found to contain approximately €30,000 worth of heroin and approximately €35,000 worth of cocaine, along with a sum of €44,230 in cash. In the course of a subsequent search of the adjoining premises, an 8mm submachine gun and an empty magazine were located. The firearm was in a sock upon which the DNA of the accused was found. The accused was arrested, and upon arrest, made admissions. In the course of his evidence to the sentencing hearing, the investigating Garda accepted that the respondent was under an amount of duress arising from the loss of a previous quantity of drugs which he was attempting to pay off, though the Garda also felt that the respondent was receiving some personal reward for his involvement in this matter.

4. In terms of the respondent's background and personal circumstances, he was born on 1st April 1993. Significantly, he had a previous s. 15A Misuse of Drugs Act conviction, that offence had occurred in late 2016, and for that he was sentenced to a term of three years imprisonment with the final 12 months suspended on 8th October 2018. The Director says that one aspect of this matter, which means that the sentence imposed was clearly unduly lenient, is that the sentence which she now seeks to be reviewed was directed to be served concurrently with the earlier sentence, giving rise to what is said to be an effective sentence of just six months imprisonment. The Court heard that arising from the loss of the earlier consignment of drugs, that the respondent's father had paid over the sum of €10,000 on behalf of his son, that represented his life savings as a tailor. The respondent, the Court heard, was one of three sons and was himself the father of a young son. The Court heard that he had gone to Coolmine before entering into custody. There had been a history of drug use, but by the time of the sentence hearing, the Court was told that efforts of rehabilitation were underway and were bearing fruit.
5. The approach of the Judge in the Circuit Court was to identify a headline or pre-mitigation sentence of five years. The Director says that that headline was itself too low, that the error was then compounded by the reduction that was made and further compounded by the fact that it was made concurrent with the earlier sentence, so as, the Director says of this case, the effective sentence was one of six months imprisonment.
6. The Judge commented that he felt there was a basis for departing from the presumptive mandatory minimum. He went on to say that in a situation where he could depart from the mandatory presumptive minimum, that he was "at large". It is said by the Director that in this regard, the Judge fell into error and that that observation was incompatible with the established jurisprudence of the courts.
7. By any standards, this has to be regarded as a very serious case. It involved two different types of drugs; heroin and cocaine. The value of the drugs was significant. Certainly, it was not a case where it was marginal whether s. 15A was applicable. The finding of a firearm in proximity adds an additional dimension of seriousness. There would have been judges who would have debated long and hard as to whether there was a basis for departing from the presumptive minimum. The case has not been put before us on that basis. It has not been put on the basis that this was a situation where the mandatory presumptive minimum had to be imposed and where there could be no departing therefrom.
8. However, whatever about that, even if one takes the view of the facts most favourable to the respondent, this was a sentence which was lenient, and not just lenient, but unduly lenient and unduly lenient to a significant extent. A sentence of six or seven years could not have been regarded as harsh, particularly if it would have involved some element of sentences for serious offences being served concurrently.
9. Being of the view that we are, that the sentences were unduly lenient, we are obliged to resentence. In accordance with the normal practice of this Court, we find ourselves resentencing as of today's date. In that regard, we have received a considerable volume

of information about the progress made by the respondent since the original sentence hearing. He has now been placed by the prison authorities in open prison. We have been told about his contact with South West College with a view to pursuing a course in higher education. Documentary evidence has been put before us indicating that he has applied himself in an exceptionally diligent fashion while in custody, undertaking a large number of courses across a very wide range of activities.

10. In those circumstances, while obliged to intervene, we will impose a sentence less than we would have imposed had we been sentencing at first instance. In doing so, we take into account the fact that we are resentencing someone who is now well into their sentence and recognise that it must be a source of considerable disappointment to face the prospect of having his period in custody extended.
11. The Court will deal with the matter by quashing the sentence in the Circuit Court on the Misuse of Drugs offence. We will substitute for that a sentence of six years imprisonment with the final year suspended in a situation where matters have already been before the Circuit Court and we will not interfere in relation to the money laundering offence or with the decision to take into consideration the firearms matter.
12. So, the sentence will be one of six years imprisonment with the final year suspended and we will date that from the same day as the sentence in the Circuit Court.