



THE COURT OF APPEAL

[64/18]

Birmingham P.
Peart J.
McCarthy J.

BETWEEN/

THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

- AND -

VALERIJ SAFONOV

APPELLANT

Judgment of the Court (*ex tempore*) delivered on the 21st day of October 2019 by Mr. Justice Patrick McCarthy

1. This is an appeal against severity of sentence. The appellant pleaded guilty to counts one and two on an indictment for charging offences contrary to the Misuse of Drugs Acts, 1977 as amended being possession for the purpose of sale or supply of, and possession of a controlled drug; and a charge of cultivation was also taken into account. A *nolle prosequi* was entered in respect of an offence under s.15A of the same Act, as inserted.
2. Evidence of the offence was given by Detective Garda Philip O'Sullivan who said that he had carried out surveillance at Bourlum Wood, Green Road, County Carlow. The premises had sheeting on one window to control lighting and blinds were drawn on most windows. A search warrant was obtained and on entry into the premises pursuant to it a strong smell of cannabis was noticed. The appellant was found wearing gardening gloves. A phone and a list of items used for growing cannabis were found on the property.
3. Evidence was given of the layout of the house and of the equipment put in place to ensure that the smell of cannabis would go through the roof of the house or from the top of the house and not onto the street. There were two grow tents and the witness believed that the cannabis on one shelf was ready for bagging. Garda O'Sullivan described the scene as "a very professional very methodical set-up". In the course of the investigation, Detective Sergeant O'Meara had established that certain dried or harvested cannabis to the extent of 4.616 kilograms would have had a value of €92,320. In addition, some eighty-three plants were valued at a total sum of €66,400. Thus the amount involved, either in respect of harvested or growing cannabis was €158,320.
4. The appellant gave evidence to the effect that he did not grow the cannabis for sale. He expressed remorse for the offence and said he was cultivating it for scientific reasons in order to neutralise the effects of cannabis.
5. The trial judge determined that the appropriate headline sentence, absent a plea of guilty or mitigation was one of fifteen years. Reducing that to eleven years due to the plea of guilty, and further reducing it on the basis of the mitigation present she acknowledged

testimonials that showed Mr Safonov was an exemplary prisoner and was doing well in his education. She accepted that he was trying to keep his activities secret, and that he was not a scientist. The appellant had pleaded guilty at the earliest opportunity and saved the State the cost of what could have been a complex trial, which was also acknowledged and taken into account. He had no previous convictions. He had agreed to the disposal of the cannabis and he had engaged with the interview process to the extent that he had answered the questions put to him.

6. The aggravating factors were of course the seriousness of the offence and the appellant's activities in what was described as a huge operation; the appellant being at the top of the chain so to speak, to use the judge's term. The appellant is a Lithuanian national, he has four children, he has no previous convictions but was previously known to the Lithuanian authorities for minor matters as elicited by defence counsel. The Probation Report stated he was at low risk of reoffending. A letter from the chaplain's office in Cloverhill Prison showed that he was highly regarded and that the chaplain was of the opinion that he was sincere and remorseful. He registered with the educational centre in Cloverhill and evidence was tendered in respect of his progress there. He had also engaged in a course for the purpose of learning English and studies in music, art and computers. He apparently had made slow but steady progress in all the courses he had attended.
7. Counsel for the appellant submits that the trial judge erred in imposing a sentence of imprisonment that was excessive in all of the circumstances and places particular emphasis on the identified headline or pre-mitigation sentence which she says was far too severe, giving rise to an ultimate sentence which was excessive and out of line with a comparable sentences for comparable offences.
8. The appellant has referred to a number of authorities and ultimately submits, and the respondent submits in response, that the sentencing court had clear regard to the mitigating factors, reducing the headline sentence by over fifty percent for them.
9. It was submitted further by the respondent that the judge had not erred in imposing the relevant custodial sentence; that the sentence was proportionate having regard to the very serious nature of the offence, the personal circumstances of the appellant, and that the sentence was within the range of sentences open to the Court.

Discussion

10. What distinguishes this case from many of the other cases which come before this Court is that in many such cases, those involved are in a menial or a subservient position. However, we take the view that there was an error in principle, but the discount nonetheless for mitigation was to an ultimate sentence of less than half of the starting point. Whilst we think accordingly that the headline sentence was too high and gave rise to an error of principle. We think that the reduction or discount of some eight years was over-generous. We think that if one were to approach the matter on the basis of a pre-mitigation sentence of ten to twelve years it would have been appropriate to afford a reduction having regard to all mitigating factors, and we regard this at a relatively generous one of in to, in or about seven years, perhaps slightly more, perhaps slightly

less, so that we cannot say that even if there was an error the ultimate conclusion of the judge was wrong.

11. The sentence was therefore within the available range, and in all of the circumstances we accordingly dismiss this appeal.