



THE COURT OF APPEAL

237/20

**The President
Edwards J.
Kennedy J.**

BETWEEN/

THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

- AND -

KEVIN LAWLOR

APPELLANT

JUDGMENT of the Court (*ex tempore*) delivered on the on the 19th day of October 2021 by Ms. Justice Isobel Kennedy.

1. This is an appeal against severity of sentence imposed on the appellant in Cork City Circuit Court on the 19th November 2020. The appellant pleaded guilty and received a sentence of five years' imprisonment, with one year suspended, in respect of an offence contrary to section 15A of the Misuse of Drugs Act 1977, as amended.

Background

2. On the 7th June 2019, a warrant under s. 26 of the Misuse of Drugs Act 1977 was executed by Gardaí at 29 Shannon Lawn, Mayfield, Cork. The male occupant of the house was present when the property was entered, and, when Gardaí forcibly entered a downstairs room of the house they discovered a bag containing 21 bars of cannabis resin and 5,452 Alprazolam tablets (4,025 white, 1,427 blue). The total street value of the drugs was estimated at €22,982.
3. Evidence was adduced from Garda Tom Crowley. He testified that the appellant arrived at the house while the Gardaí were questioning the male occupant of the house. Mr. Lawlor was arrested that afternoon and made admissions as to his ownership of the drugs, and that he had them for the purpose of sale and supply. He also stated that the occupant of the particular room where they were found was his friend, who was unaware that they were present; the appellant lives in a house nearby. Garda Crowley described the occupant of the room as a "vulnerable person".

4. The appellant was sent forward on signed pleas of guilty which he affirmed before the Circuit Criminal Court. He was sentenced on the 19th November 2020.

The sentence

5. In imposing sentence, the sentencing judge departed from the presumptive mandatory minimum of ten years' imprisonment in view of the guilty plea, the cooperation and admissions of the appellant. The sentencing judge considered the combination of different types of controlled substances to be a significant aggravating factor, as well as the appellant's previous conviction pursuant to s. 15. A headline sentence of seven years was therefore considered appropriate. Taking into account the mitigation present, the judge reduced the sentence of five years with one year suspended.

Personal circumstances

6. The appellant was born on the 13th March 1995. He has 21 previous convictions, the most relevant being a conviction for an offence contrary to s.15 of the Act for which he was sentenced to two months in 2015. Mr. Lawlor has six children with his partner, with whom he lives, and it is understood that the youngest children; twins, were born prematurely and as such need some amount of medical attention.

Submissions of the appellant

7. The grounds of appeal relate to both the sentencing judge's identification of seven years as the headline sentence, and the insufficient regard given to the appellant's pleas of guilty, as well as to his assistance to the State in his cooperation and admissions.
8. Firstly, the appellant submits that the quantity of drugs seized is at the lower end of the scale for offences under s. 15 of the 1977 Act, citing the judgment of Birmingham P. in *DPP v. Sarsfield* [2019] IECA 260. In that case, it was said that 10% of sentences for that offence received effective sentences of five years, with valuations of drugs seized ranging from €34,000 to €700,000. It is said that this survey indicates that the sentence in the instant case diverged significantly, and indicated a marked departure.
9. The appellant argues that greater credit should have been given to him insofar as his admissions were concerned and in relation to the appellant's pleas of guilty, *DPP v Cambridge* [2019] IECA 133 is cited, where it was stated that special weight should be attached to signed pleas, and a reduction of sentence in or about a third should be given as a result.

Submissions of the respondent

10. The Director submits that the headline sentence given to the appellant was measured, proportionate, and in accordance with the jurisprudence, noting that the maximum sentence for s. 15 offences is life imprisonment. It is said that the sentencing judge must have regard to the mandatory minimum sentence of ten years' imprisonment, and that the appellant's use of a vulnerable person to store the drugs is an aggravating factor in sentencing, and, as such, the headline sentence was appropriate.

Discussion and Conclusion

11. The aggravating factors in this appeal are readily apparent. Significantly, the appellant has a previous conviction for sale and supply of a controlled substance. Whilst it is

argued on his behalf that this offence occurred some time ago, nonetheless the fact of a previous conviction under the misuse of drugs is an aggravating factor. The combination of illegal substances is a further aggravating factor. Moreover, the evidence of the prosecuting garda was that the bedroom in which the drugs were found was that of a person whom he described as vulnerable.

12. There was certainly material before the judge justifying a departure from the presumptive mandatory minimum sentence, however, Mr O'Sullivan BL for the appellant says that the headline sentence of seven years is too high having regard to what is said to be the relatively low value of the drugs. We do not agree. The value of the substance is but a factor to be considered in conjunction with the other aggravating factors and when we assess those factors, we are entirely satisfied that the judge did not err in identifying a headline sentence of seven years.
13. Insofar as it is said that the reduction for mitigation, in particular the signed pleas of guilty, was insufficient, again we do not agree. The judge reduced the pre-mitigation sentence to five years and then proceeded to suspend the final year, leaving an actual custodial term of four years imprisonment. We are satisfied that such a reduction constitutes generous credit and accords with the jurisprudence of this Court.
14. Accordingly, the appeal is dismissed.