THE COURT OF APPEAL

Record No. 171/2023

Edwards J.
McCarthy J.
Burns J.

Between/

THE PEOPLE

(AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS)

Respondent

V

NICHOLAS OLOINU

Appellant

JUDGMENT of the Court delivered (*ex tempore*) by Mr. Justice Edwards on the 26th of February 2024.

Introduction

1. Before this Court is an appeal brought by Mr. Nicholas Oloinu (i.e, "the appellant") against the severity of the sentence imposed on him on the 25th of May 2023 by the Western Circuit Criminal Court sitting in Galway. On that date, having previously entered a guilty plea in respect of one count (count no. 1 on Bill No. GYDP0098/2022) of money laundering contrary to s. 7(1)(a)(ii), 7(1)(b) and 7(3) of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (i.e., "the Act of 2010") and in respect of one count (count no. 2 on the same indictment) of possession of a controlled drug with aggregate market value in excess of €13,000.00 for the purposes of sale or supply contrary to ss. 15A and 27(3A) of the Misuse of Drugs Act 1977, as amended (i.e., "the Act of 1977"), the appellant was sentenced to a global term of 9 years' imprisonment, the final 12 months thereof suspended on certain conditions.

2. By Notice of Appeal dated the 12th of June 2023, Mr. Oloinu appealed to this Court against the severity of the said sentence, and he advanced six grounds in support of his appeal:

> "*1. The Headline sentence fixed by the learned Sentence Judge* (sic) *was excessive in all the circumstances of the case;*
>
> *2. The Actual, or effective, sentence imposed by the learned Sentence judge was excessive in all the circumstances of the case;*
>
> *3. The Sentence imposed by the Learned Sentencing Judge was unduly severe;*

4. *The Learned sentencing Judge failed to give appropriate weight to the items of mitigation in the case and in particular, the entering of a signed plea of guilty in the District Court and the extensive level of participation in Gardaí investigations, my age at the time of the offence and that it was my first conviction;*
5. *The learned Judge erred in determining that there were sufficient factors present, allowing him to derogate from the mandatory minimum sentence required in S15(a) of the Misuse of Drugs Act, 1977, and subsequently determining that the appropriate headline sentence should exceed the mandatory minimum tariff;*
6. *The Learned Sentencing Judge erred in determining the appropriate headline/ effective sentence S7(1)(a)(ii) and S7(1)(b) & S7(3) of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010*".

Factual Background

3. The sentencing hearing in the court below was held on the 25th of May 2023. On that date a Garda Pat Casey (otherwise "Garda Casey") gave evidence in relation to the factual background to the appellant's offending. In advance of Garda Casey's evidence, counsel for the prosecution reminded the sentencing court that the matter was last before the court on the 7th of December 2022 for arraignment and it was on this date that the appellant had entered a guilty plea in respect of count nos. 1 and 2 on the indictment. It was said that this plea was entered on a full-facts basis.

Garda search and seizure of controlled drugs

4. Garda Casey recalled his attendance on the 25th of June 2021 at a residential premises on the Newcastle Road in Galway on foot of a warrant obtained in respect of that property. He stated that the background to this attendance was that in June 2021 gardaí attached to the division drugs unit in Galway became aware of a male who was supplying cocaine in and around the city. An operation was devised by the unit, and the male in question was identified as a Mr. Nicholas Oloinu, the herein appellant. On the 25th of June 2021, a search warrant was obtained pursuant to s. 26 of the Act of 1977 in respect of the residential premises on the Newcastle Road. Upon arrival at the premises, the appellant, who was present at the back door to the property, was furnished with a copy of the search warrant and it was explained to him why gardaí were in attendance there.

5. In the course of the search of the premises, in particular the appellant's bedroom, gardaí found a quantity of cocaine, cannabis, dealing bags, and a digital weighing scales which was located within a jacket hanging on the back of the bedroom door. The quantity of cocaine found was weighed at 48 grammes. A further search of the bedroom yielded discovery of approximately €2,860 in cash which was concealed in a bedside locker. As gardaí continued their search of the property, the appellant informed them that he had more cocaine concealed in a wheelie bin at the rear of the property. When gardaí went to inspect this bin, they discovered that a black bag containing two bags of white powder was concealed therein, which substance was subsequently tested and found to be cocaine. The quantity of cocaine found in the wheelie bin was assessed at 1,886 grammes. Garda Casey stated that this quantity was valued at €132,041, which he further stated made it one of the largest seizures in Galway city in recent years.

6. Garda Casey would later state in his evidence that the appellant was one of the largest suppliers of cocaine in Galway city at the time of the search, and that a lot of Garda resources were used in connection with this matter. Garda Casey went on to describe the appellant as having been "*a considerable drain on the resources of the division drugs unit, within Galway*".

Garda interviews with the appellant

7. The appellant was arrested at the residential premises the subject of the Garda search. He was thereafter conveyed to the North Western Regional Garda Headquarters and was there detained. In the course of his detention, he was interviewed on two occasions. Garda Casey stated that during these interviews the appellant was co-operative, and it was said that he gave an account which outlined how he had operated his drug dealing business. The appellant described to gardaí that he had approximately 300 customers who were mainly college students within the city of Galway. He stated that his drug dealing business had a potential to make up to €3,000 a day selling cocaine. He told gardaí that his intention with the cocaine that gardaí had seized at the Newcastle Road property was to double his money by selling it. He later told gardaí that he was not a user of cocaine himself, and that he had used the proceeds from his dealing to fund an indulgent lifestyle, and that he had sent a sum of money to his mother who lived in the south-east of the country. He further stated in interview that he was not in legitimate employment, and that he was in receipt of social welfare payments.

Personal Circumstances of the Appellant

8. At the time of the offending the appellant was aged approximately 21 years; he was aged approximately 23 years at the time of sentencing. He entered a guilty plea before the court below on the 7th of December 2022, having previously been returned on the 24th of October 2022.

9. The appellant is originally from Waterford where his family still resides. Garda Casey in cross-examination was not able to confirm the appellant's country of origin, though a Probation Report dated the 23rd of May 2023 indicated that he was born in Lagos, Nigeria and that his family had immigrated to Ireland when he was approximately 5 years of age. The Probation Report further spoke of the appellant's family circumstances, referred to the appellant's exposure to domestic violence and physical abuse at a young age, reported that the appellant had a close relationship with his mother, and stated that the appellant's parents are in poor physical health. It was further stated in the Probation Report in respect of this close relationship that the appellant felt as though he had left his mother down by his involvement in the present offending. The Probation Report further referred to the appellant's partner of four and a half years. The appellant advised the probation officer that she was his "*main support system*" and that she did not tolerate his offending. He further described her as "*his only friend*", self-describing himself as an introvert. He did not report being engaged in any hobbies.

10. Garda Casey stated that the appellant had arrived in Galway purportedly to study, though there was no record of him undertaking any education or training while there. The Probation Report spoke of the appellant having been educated to Leaving Certificate level and having completed a Post Leaving Certificate course in business. The appellant further advised the probation officer that he had commenced a Business Information Systems Bachelor of Science degree course at National University of Ireland Galway, but that he had struggled with finding

accommodation and managing finances in the first year, resulting in him failing his freshman year. The appellant further advised the probation officer that he had worked in two separate supermarkets and as a general operative. He had established an online business with his girlfriend selling contact lenses, and he stated that, at the time of the Probation Report, he was not in receipt of social welfare payments. He expressed a willingness to return to education.

11. Garda Casey stated that the appellant had come to adverse Garda attention in the past, but that he had no previous convictions to his name. However, Garda Casey did refer to an appearance on the 3rd of November 2021 before the Galway District Court on foot of a summons in relation to offending contrary to s. 3 of the Act of 1977, for which he was said to have received the benefit of s. 1 of the Probation of Offenders Act 1907. Garda Casey stated that the appellant had seven outstanding drug-related matters before the Galway District Court in respect of offending which pre-dated the incident the subject of the present case; these said matters comprised two charges in relation to possession for sale and supply contrary to s. 15 of the Act of 1977, four charges for possession contrary to s. 3 of the Act of 1977, and one charge for an obstruction contrary to s. 21(4) under the Act of 1977. The two s. 15 charges related to possession of cannabis and cocaine for sale and supply, which said drugs were seized by gardaí in March 2021; and two of the s. 3 possession charges involved possession of cannabis, one of which charges dated back to June 2020. It was stated by Garda Casey that the appellant had entered guilty pleas in respect of the said seven charges and that he was awaiting sentence in the District Court.

12. Garda Casey confirmed to the sentencing court that the appellant had come to adverse Garda attention since the date of the present offending, and that there were at least two matters coming before the Courts in relation to this.

13. Garda Casey was unaware of the extent of or the particulars of the appellant's drug use. The Probation Report outlined more detail regarding same. The appellant advised the probation officer that he began smoking cannabis at 14 years of age, and that when arrived in Galway at the age of 17 years he thereafter engaged in the regular use of the drug. The appellant stated that he was dependent on cannabis, that he was smoking between six to seven grammes of cannabis, and that this drug use costed him between €80 to €100 per week. The appellant advised that he smoked cannabis to cope with stress and court proceedings. He had expressed a willingness to attend a substance related programme during the adjournment between the 7th of December 2023 and the date of sentencing, but he was unable to do so owing to no availability until June 2023. He stated that he was amenable to attending counselling in relation to his drug use.

14. The Probation Report also addressed the appellant's mental and physical health. The appellant had advised that following his remand in custody he had attempted suicide by taking unprescribed medication, namely valium and ecstasy. He reported not attending a GP for assistance in this regard. He also complained of ongoing stomach complaints. No medical evidence in respect of same was tendered to the court below.

15. The appellant advised as to the circumstances which gave rise to his offending behaviour. He informed the probation officer that having arrived in Galway, and incurring the expenses he incurred in relation to rental accommodation and cannabis use, he was struggling financially and turned to criminality as a means to address his shortfall in money. He approached his supplier and offered to hold drugs for him in exchange for payment. This, he stated, provided him with a

weekly income of €300. He was thereafter asked to supply drugs, and he agreed, starting with cannabis in February 2020, and later supplying cocaine from August 2020 which provided him with a greater income until June 2021 when he was detected by gardaí. The appellant advised that over the course of this period, he had made approximately €100,000 and was receiving cannabis for free. He indicated that he operated his business through the social media and messaging service Snapchat and would arrange drug deals through that medium. He advised that he had expended his illicit earnings to fund an indulgent lifestyle. The appellant told the probation officer that he realised the seriousness of his offending and that he recognised that drug dealing is wrong. He stated that he regretted his actions, and he referred to threats he and his family had purportedly received since his arrest in connection with a drug debt he owed due to the loss of the cocaine product which was seized by gardaí.

16. The Probation Service's assessment of the appellant placed him at a moderate risk of re-offending within a 12-month period. It identified as primary risk factors the appellant's cannabis use, and his associates. Protective factors identified were his supportive partner, his accommodation situation, and employment. The assessment further acknowledged the appellant's willingness to attend counselling to address his drug use.

17. The Probation Report concluded by suggesting that should the sentencing court be disposed to incorporate a non-custodial element to the sentence, that a supervision order for a period of 12 months should be made, which such order should be subject to the following recommended conditions:

"● *Mr. Oloinu to attend addiction counselling.*
● *Mr. Oloinu refrains from any further offending behaviour or contact with persons with whom he was involved with in criminal activity in the past.*
● *Attend random drug screening as requested.*
● *Attend the Training and Employment Officer attached to the Probation Service*
● *Follow all directions of the Probation Service in relation to accessing services*".

Sentencing Judge's Remarks

Sentencing in respect of the s. 15A offending

18. The starting point of the sentencing judge's analysis considered the harm done by the appellant's offending and his level of moral culpability, stating:

> "*It is this Court's view having heard the evidence that obviously the harm done is significant to not only his 300 customers but to our very place, to our society, to where we live and his moral culpability, the level of his moral culpability is most certainly on the high end. He was in it for the money, he had nothing else to put pressure on him, there's no person or thing that influence his decisions* (sic) *save and with the exception in of his own greed and he was perfectly happy, and I used the word happy intentionally, to let his greed be fed on the destruction that he was importing onto the lives of other people*".

19. The sentencing judge would later identify the following aggravating factors:

> "*The aggravating factors in this case are plain to anybody to see, the amount of the drugs involved, his high-level involvement in the drugs trade within the city of Galway and in particular he's been described as one of the largest suppliers of cocaine in the city and we all know what cocaine is doing at the moment to, not just our city but our county and our*

> *country. Not only was he a principle organiser* (sic) *insofar but he also had the paraphernalia on site, he had cash, and he did so, he involved himself out of pure greed in this criminal activity. He had no other source of income, obvious source of income and certain pieces of information such as the idea that he was here for study just didn't stack up when investigated more deeply by An Garda Síochána*".

20. On the issue of genuine remorse, the sentencing judge further noted that the appellant, notwithstanding having received a visit by gardaí in March 2021 in connection with his drug offending, persisted with his illicit dealing and three months later the gardaí returned to him in connection with investigating the present offending. The sentencing judge remarked:

> "*So this man for some strange reason decides, I'll keep at it and to hell with those guards who called to me in March, I'm going to buy more drugs and keep at it. And then for some strange reason when the search was being carried out, he directs the guards to where the drugs are, presumably knowing they were going to be found anyway*".

21. The sentencing judge noted that "*technically speaking*" the appellant's past record was conviction-free, and he further acknowledged Garda Healy's evidence as to the appellant's co-operation with gardaí at an early stage in the investigation.

22. In respect of mitigation, the sentencing judge also acknowledged the guilty plea that the appellant had entered, that it was "*a very important guilty plea*" for which he was entitled to substantial credit. The sentencing judge further noted the contents of the Probation Report, the appellant's personal circumstances and background, and the appellant's co-operation with the Probation Service.

23. The sentencing judge also had regard to the principles of deterrence and rehabilitation, and made the following comments in relation to same:

> "*Deterrents* (sic) *has to be an important issue when it comes to dealing with offences of this nature and not just deterrents specific to this man, to this individual offender but also general deterrents to society at large. I accept as Mr Madden has said the rehabilitation must also be factored in, where there is genuine evidence before the Court of an intention on his part to go along the road of rehabilitation there is some reference to it in the probation report but that's it, there's nothing else proffered by this man, there's nothing that he has done since his arrest in June of 2021 to show that he has taken steps himself to turn away from his criminal activity but there is some bit of hope that he might set out in the probation report but no place else*".

24. The sentencing judge's view was that custodial disposal was not only warranted but also mandatory. The sentencing judge then surveyed the jurisprudence of the Court of Appeal in relation to sentencing for s. 15A offending. He referred to the following authorities: *People (DPP) v. Samuilis* [2018] IECA 316, *People (DPP) v. Delacey* [2019] IECA 262, and *People (DPP) v. Sowa and Witkowski* [2020] IECA 10.

25. The sentencing judge then nominated a headline sentence of 12 years' imprisonment. He proceeded to deduct 25% (3 years) from the headline to account for the appellant's guilty plea. This left a remainder of 9 years' imprisonment to be served on the s. 15A count. The sentencing judge then considered the question of suspension and he held that, notwithstanding the doubts that the sentencing court had in relation to the appellant's likelihood of embarking on

rehabilitation, the sentencing court would "*still open the door for a little bit of hope*" that the appellant might just do so. The sentencing judge accordingly suspended the final 12 months of the custodial sentence imposed on the s. 15A count on certain conditions:

> "[that the appellant enter] *into his own bond to keep the peace and be of good behaviour while in custody and for a period of three years post-release, secondly that he should engage with and remain under the supervision of the probation services for a period of 18 months post-release during which period he should comply with all the directions of his assigned probation officer including attendance at any courses and or counselling. He should advise said probation service of any changes in his relevant circumstances, including such as contact telephone details and address and he should remain free from and abstain from all outgoing controlled drugs and make himself available whenever required to do so to undergo the appropriate toxicology tests*".

Sentencing in respect of money laundering offending

26. In sentencing for the appellant's money laundering offending, the sentencing judge had regard to "*a case coming out of Ennis*". In submissions to the Court of Appeal, the parties have deduced that this was, in fact, a reference to this Court's decision in *People (DPP) v. McInerney* [2023] IECA 221. The sentencing judge made the following remarks in respect of the said authority:

> "*Now, with regard to count number two, yes, the higher courts have only recently in fact, a case coming out of Ennis, have decided in their wisdom that a conviction for, under section seven, being in possession of money arising from drugs should be concurrent, it is this Courts strong view that it represents possession of money which is generated from previous criminal activity and not from the criminal activity set out in section 15A. The Court of Appeal have decided, this is an Ennis case, in their wisdom, that it should be considered all part of the same activity, I find that decision, to put it mildly and with great respect to my colleagues in the Court above, a most unusual stance to take. However, it's not one I can ignore* [...]".

27. The sentencing judge then proceeded to nominate a headline sentence of 7 years' imprisonment, having regard to the quantity of money seized and where it came from, which was someone who had no other source of income. He deducted from the headline 2 years taking into account the appellant's early plea of guilty. The sentencing judge accordingly imposed a post-mitigation sentence of 5 years' imprisonment to run concurrently to the sentence imposed on the s. 15A count.

Consequential Orders

28. The sentencing judge made a destruction order for the drugs seized, and further made a confiscation order in respect of the money seized.

29. The Director entered a *nolle prosequi* in respect of the remaining counts on the indictment, which said counts comprised a count of possession of a controlled drug contrary to s. 3 of the Act of 1977 and a count of possession of a controlled drug for the purpose of sale or supply contrary to s. 15 of the Act of 1977.

Additional Remarks by the Sentencing Judge

30. On the 26th of May 2023, the day after he had passed sentence on the appellant, the sentencing judge had the matter listed to clarify two points.

31. The first point the sentencing judge wished to clarify involved confirming to the parties that in directing that the appellant serves a sentence below the presumptive minimum of 10 years applicable to s. 15A offending, he had appropriately considered whether or not the said presumptive minimum should be imposed. The sentencing judge stated that there were exceptional circumstances in the appellant's case, namely his early assistance in the Garda investigation and his very early plea. Accordingly, the sentencing judge was of the view that the presumptive minimum should not apply in the appellant's case.

32. The second point related to the appellant's plea. He stated that the sentencing court had double-checked the situation in relation to the appellant's plea, and had learned that there was a situation in the District Court regarding the appellant's plea. As counsel for the defence would then explain, on the day that the appellant was intending to sign a plea of guilty in the District Court, the investigating Garda had served the book of evidence on the appellant thus precluding the appellant from entering a signed plea. The sentencing judge stated for the record that, in the circumstances, he regarded the appellant's plea as being made at a "*very, very early*" stage and that it was "*de facto a signed plea*".

Submissions to the Court of Appeal

Submissions on behalf of the appellant

33. While counsel for the appellant lauded the sentencing judge for his clearly conscientious approach to sentencing in the present case, he submitted that the sentencing judge nonetheless stepped into error when nominating the headline sentence in respect of the s. 15A offence. Counsel referred this Court to the judgment of Birmingham P. in *People (DPP) v. Sarsfield* [2019] IECA 260, wherein the President, at para. 15, set out in table-format sentencing patterns in s. 15A cases relative to the value of drugs seized. Counsel submitted that a review of this table's contents suggested that the headline sentence of 12 years' imprisonment, and the resulting post-mitigation sentence, imposed in the present case was relatively severe in the circumstances. Counsel argued that while it was accepted that a degree of caution is required to avoid rigid adherence to statistical information as a basis to criticise the sentencing judge, the sentence which was imposed in the present case represented a significant departure from the norm and from the jurisprudence of this Court.

34. Counsel for the appellant further submitted that the authorities *Samuilis* and *Delacey* (both cases previously cited) were of limited assistance in the present case, inasmuch as there were a number of significant factual distinctions which could be drawn. Similarly, counsel criticised reliance by the sentencing judge on the *Witkowski and Sowa* judgment (previously cited), and he once again emphasised that while there may be certain factors which would tend to increase or mitigate moral culpability in s. 15A offending, there was no factor present in the instant case that could have justified the court below in nominating the headline sentence which it did, having regard to the *Witkowski and Sowa* judgment.

35. Counsel further criticised the sentencing judge's remarks on the issue of genuine remorse, set out at para. 20 above, as misguided. He submitted that the only evidence before the court

below in relation to the question of remorse was the fact of the appellant's guilty plea. In circumstances where the court below could not even gain an insight into the appellant's remorse, it was suggested that same should not have featured in the sentencing judge's analysis.

36. In respect of the headline sentence nominated for the money laundering offence, counsel for the appellant's main point of contention was that notwithstanding the dicta of this Court in *McInerney* (previously cited) and notwithstanding the imposition of a sentence in respect of s. 15A offending, the sentencing judge in nominating a headline sentence of 7 years' imprisonment proceeded on the basis of considering the money seized from the appellant as a "*separate, distinct or standalone offence*", despite that money being clearly connected to the sale of drugs.

37. Further to this, counsel asked this Court to consider the approaches taken in *McInerney* and also in *People (DPP) v. Sinnott, Long, and Joyce* [2021] IECA 42. In respect the latter authority, Ní Raifeartaigh J.'s observations at para. 33 of her judgment in that case were cited by counsel *ad longum*:

> "***33.*** *Having regard to the above authorities, it is clear that among the key factors which the sentencing court must consider when identifying a "headline" sentence are (a) the amount of money involved, (b) the role played by the accused in relation to the money, and (c) whether the conduct of the accused was intended to assist a criminal organisation and if so, the nature and scale of that organisation. Frequently, the first two matters are linked insofar as the more central the role of a person within a criminal organisation (if the evidence suggests a criminal organisation was involved), the more likely it is that larger sums of money will be entrusted to his or her safekeeping either for storage or for delivery to another. Conversely, the more peripheral the involvement of the accused with the organisation, the less likely it is that he or she will be entrusted with large sums of money*".

38. Counsel submitted that the amount of money seized in the present case was on the lower end of the scale of offending, though he conceded that his client's role in drug dealing was not a minor one and that his involvement would have been of great assistance to the drug trade in Galway. However, it was emphasised that in the light of the Court's dicta in *McInerney*, caution should be taken to avoid double-counting the appellant's behaviour in selecting the headline sentence for the money laundering offence. It was said that, contrary to this, the sentencing judge's comments to the effect that "*we know what it means and where that money came from*" tended to imply that the court below treated the money laundering offence as a standalone offence, and in this regard it was said that the sentencing judge stepped into error.

39. In relation to mitigation, counsel for the appellant complained that insufficient credit was awarded. He noted that in sentencing for both the s. 15A and the money laundering offences, the sentencing judge awarded 25% credit for mitigation, and further suspended 12 months to incentivise rehabilitation. Counsel submitted that the early plea alone would have justified a more significant reduction from the headline sentence regardless of what other mitigating factors were present. Counsel emphasised that the sentencing judge had accepted that the matter had proceeded in the court below on the basis of a signed plea of guilty. On this observation, counsel referred this Court to its previous decision in *People (DPP) v. Cambridge* [2019] IECA 133 wherein McCarthy J. remarked *inter alia*:

> "**8.** [...] *The plea of guilty in this instance was signed in the District Court and affirmed in the Circuit Court. We again take this opportunity of emphasising the special weight which should be attached to signed pleas whatever the state of the evidence. We think in the circumstances that the appropriate reduction from the headline sentence, because of the signed plea, should be in or about a third* [...]".

40. Counsel for the appellant placed emphasis on McCarthy J.'s words "*whatever the state of the evidence*", and he submitted that the implications of this dictum are that even though the appellant was caught in circumstances where the search was going to be conducted regardless, he was nonetheless entitled to maximum credit for the signed plea. It was also emphasised that the plea, being *de facto* entered as a signed plea in the District Court, was undoubtedly of significant help to the State, inasmuch as it obviated the necessity to organise witnesses, or to serve any additional evidence. It was submitted that had the dicta of McCarthy J. been applied by the sentencing judge in the present case, a lesser sentence would have resulted.

41. Further to the foregoing submissions on mitigation, counsel for the appellant stressed the fact of his client's youth, and he sought to characterise him as a first-time offender. Reference was also made to the appellant's drug use problems, and his domestic and family background and history. While itwas conceded that the appellant's role or involvement in the drug trade in Galway was not at a low level, it was nonetheless submitted by counsel that his client's young age should serve to heighten the significance of rehabilitation in the present case.

Submissions on behalf of the Director

42. The starting point of written submissions made on behalf of the Director focused on the sentencing judge's approach to the nominating of a headline sentence, and the jurisprudence relied upon by the court below in so doing. Counsel submitted that the sentencing judge was alive to features distinguishing the present case from the respective circumstances in *Samuilis*, *Delacey*, and *Witkowski and Sowa* (all previously cited), and that the utility of these comparator cases was limited to their being general indicators as to how to approach the issue of setting a headline sentence by identifying relevant considerations which may be factored into an assessment of the gravity of offending and an offender's culpability.

43. Counsel for the Director submitted that the quantity and value of the drugs seized was an important factor in the determination of the seriousness of the appellant's offending, as were the nature of the drugs seized, the role of the appellant in the drugs trade, the significance of the appellant's operation in the eyes of Galway-based gardaí, the vulnerabilities of the appellant's customers, and his admitted and simple financial gain which he derived from his criminal activity. Counsel argued that the foregoing factors justified the sentencing judge's arrival at a headline sentence of 12 years' imprisonment, and that the appellant's admitted reason for his involvement in the drugs trade warranted a heavier sentence in the present case. On this point, counsel referred this Court to its previous decision in *People (DPP) v. Ryan & Rooney* [2015] IECA 2, wherein this Court had held that those who deal in drugs solely for financial gain should be subject to heavier sentences; and it was further observed by counsel for the Director that the dicta of this Court in *Ryan & Rooney* was in keeping with the approach of the former Court of Criminal Appeal in *People (DPP) v. Patrick Long* [2006] IECCA 49.

44. Counsel for the Director emphasised the importance of deterrence as a sentencing principle when sentencing for s. 15A offending. It was noted that the fact that the Oireachtas had deemed that an offence contrary to s. 15A of the Act of 1977 should be subject to a presumptive minimum sentence of 10 years' imprisonment was clearly indicative of how serious the legislature regarded such offending as being. It was argued that in the light of the appellant's role in the drugs trade, the value of the drugs seized, the nature of the drugs seized, his financial gain derived from his dealing in drugs, and his identification by gardaí as a key person in the Galway drugs trade, the headline sentence nominated by the sentencing judge was warranted.

45. While counsel for the Director accepted that this Court's judgment in *Sarsfield* (previously cited) surveyed sentencing patterns for s. 15A offending, it was observed by counsel that this survey did not consider, beyond the value of drugs seized, other factors relevant to a determination of the appropriate headline sentence. It was submitted that the *Sarsfield* judgment recognised that the culpability of accused persons may vary depending on their respective roles or levels of involvement in illegal activity; and it was observed that this Court in *Sarsfield* further recognised that while the value and quantity of drugs was a critical factor, same was not determinative of the sentence to be imposed, and that each case had to be decided on its own particular facts. It was further submitted, indeed emphasised, by counsel that this Court in *Sarsfield* repeated the position that involvement in the drugs trade for financial gain served to increase an offender's culpability. Counsel thus argued, in refutation of the appellant's point, that the value of drugs, and the difference in value relative to other cases, was not the determinative consideration.

46. Counsel for the Director also noted that the *McInerney* case (previously cited) was informative in the present case, inasmuch as this Court had held therein that a headline sentence of 12 years' or 12 ½ years' imprisonment would have been appropriate in a case involving possession of approximately €50,000 of cocaine and €2,000 in cash.

47. It was submitted that, in the light of the circumstances of the present case, and the various aggravating factors identified, the sentencing judge had acted within his margin of discretion and had nominated a headline sentence which was within the available range.

48. In reply to the appellant's submissions on the sentencing judge's approach to sentencing for the money laundering offence, counsel for the Director simply submitted that the sentencing judge was entitled to take into account the criminal conduct that led to the money seized being seen as the proceeds of crime. It was stressed that the court below was aware of the pivotal role that the appellant had played in obtaining this sum of money, and Ní Raifeartaigh J.'s dicta in *Sinnott, Long & Joyce* (quoted at para. 37 above) were referred to by counsel for the Director in this regard. It was submitted that the sentencing judge did not engage in double-counting of the appellant's behaviour, and that he was entitled to consider the offending behaviour in the light of the circumstances that gave rise to the proceeds of crime being in the appellant's possession.

49. In relation to the issue of credit afforded for mitigation, counsel for the Director submitted that while the sentencing judge accepted that the appellant had made a plea at a very early stage, the mitigatory value of the plea was diminished by the fact of his being caught red-handed by gardaí. Counsel in this regard referred the Court to its previous decisions in *People (DPP) v. O'Dwyer* [2020] IECA 353 and *People (DPP) v. Konar* [2023] IECA 145. While it was accepted that

the appellant was at the time of sentencing a first-time offender, as he had not been convicted of an offence, he had entered guilty pleas in relation to a number of offences at District Court level, and he was awaiting sentence for those offences at the time the court below passed sentence in relation to the present offending. Further it was observed that in the interim period between offending and sentencing in the present case, the appellant had come to adverse Garda attention. It was therefore said that the apprehension of the appellant in respect of the present offending did not deter him from continuing his offending behaviour, and it was submitted that this was a relevant consideration in assessing the extent to which rehabilitation should be promoted through reduction of the sentence, or by suspending a portion of same. It was submitted that in the light of the particular circumstances of the appellant, appropriate credit for mitigation was afforded by the sentencing judge.

50. Finally, counsel for the Director emphasised that the court below enjoyed a margin of appreciation in relation to sentencing; that this Court should only interfere where there is a sufficient error in principle or a substantial departure from the norm, and; that this Court cannot intervene simply because it might have imposed a somewhat different sentence than the one actually imposed at first instance. In this regard, counsel referred the Court to *People (DPP) v. Cunningham* [2015] IECCA 2 and *People (DPP) v. Maughan* [2018] IECA 343. It was submitted that the question on appeal is whether the sentence imposed in the court below fell outside the available range. Counsel for the Director argued that it did not in the present case, that the sentencing judge had acted within his margin of discretion, and that he had appropriately weighed the particular circumstances of the offending behaviour and the personal circumstances of the appellant in passing sentence.

Court's Analysis and Decision

51. At the oral hearing of the appeal just two points were argued by counsel for the appellant, namely that the headline sentence for the s. 15A drugs offence was too high (encapsulated by ground of appeal nos. 1 to 3, inclusive) and that the sentencing judge failed to give an adequate discount for the plea of guilty in circumstances where, although not technically a signed plea, everyone was in agreement that it ought to have been treated as such (ground of appeal no. 4). Ground of appeal nos. 5 and 6 were not pressed at all, and we are treating them as having been abandoned.

52. In truth, while it was contended that the headline sentence of 12 years' imprisonment set for the s. 15A offence was too high, this argument was not presented with great enthusiasm or vigour. We think that this was a realistic approach. We can say without hesitation that we are satisfied that there was no error of principle in setting the headline sentence at that level. While it is true that the value of the cocaine was less than has been encountered in some other cases where lesser headline sentences were nominated, the appellant's culpability in this particular instance was very high indeed. He was engaged in the sale and supply of cocaine at a high level. He was exploiting students in that respect in the college in which he was, or at least at one point had been, a registered student. He had admitted to being engaged in the activity for commercial reward. He had admitted to having over 300 customers. He was found in possession of the paraphernalia used by those engaged in drug dealing. He was not motivated by the need to feed an addiction, or to fund some legitimate need. He was in it entirely for profit. He was out to double

his money, as he had freely admitted to gardaí. He told gardaí that on a good day could make up to €3,000. Despite this, he was also drawing social welfare. He said that he had used the money that he had received from selling drugs to supplement his lifestyle, which included eating out and the purchase of clothes. He had also said that he had sent a sum of money to his mother.

53. The Court of Appeal has made clear in its guideline judgement in the *People (DPP) v. Sarsfield*, previously cited, that where a s. 15A offence is characterised by significant or high-level involvement in the drugs trade, the headline or pre-mitigation sentence is likely to be well in excess of the statutory presumptive minimum. The offending by this appellant falls into that category, and we find nothing wrong with the headline sentence of 12 years' imprisonment that was nominated by the sentencing judge. Accordingly, we reject ground of appeal nos. 1, 2 and 3.

54. The second point ultimately relied upon at the oral hearing was pressed with more vigour than the first. The argument made by counsel for the appellant was that his client should have received an extra degree of discount for mitigation in circumstances where his plea ought to have been treated as being a signed plea. While the sentencing judge did treat his plea as being a very early plea, it was claimed that he did not get the extra discount that he ought to have received had the plea had been treated as being a signed plea.

55. We are satisfied that the sentencing judge gave adequate discount for the plea in this case. It is true that the courts have in recent decades, as a matter of sentencing policy, sought to incentivise the entering of pleas of guilty by adopting a policy of rewarding such pleas with generous discounts. It is also true that it has been made known that the greatest level of discount will attach to a signed plea of guilty, because it represents an accused taking responsibility at the earliest point in time, and also because it usually saves the State the expense of preparing a book of evidence, making disclosure, and taking other preparatory steps in anticipation of the trial. The practice of granting maximum discount for a signed plea of guilty began in the Central Criminal Court in the 1980s, primarily in the context of a backlog of rape cases developing in a situation where many victims of historical sexual abuse were, for various reasons, motivated to come forward and make disclosures. Subsequently, the policy that was adopted in that context began to be applied more widely across the courts.

56. It was urged upon us that the typical discount which tends to be applied for a signed plea, regardless of the circumstances in which it is offered, is in the order of 30%. That may or may not be so, but we are of the view that there can be no hard and fast rule as to the application of such policy in the context of offending contrary to s. 15A of the Misuse of Drugs Act 1977. We hold his view for the following reasons. We consider that any judicial sentencing policy with respect to discounting for a signed plea cannot be applied so as to undermine sentencing policy set by the Oireachtas. While, in general, the legislature in this jurisdiction adopts a very hands-off approach to the setting of sentencing policy, it has unusually in the case of s. 15A offending set quite detailed legislative sentencing policy with regard to how the courts are to treat such offending. The legislature has said that these offences are to be treated as being of great seriousness, so serious indeed as to attract a presumptive mandatory minimum sentence. The necessary incentive to encourage pleas of guilty in the case of such offences is built into the legislation. In the vast majority of s. 15A cases a sentencing judge will be asked to depart from the presumptive mandatory minimum that the Oireachtas has provided for. It is a statutory precondition to being

able to ask a sentencing court to take such a step that the accused should have pleaded guilty. Moreover, the legislation specifically references the stage at which a plea is offered as being an important factor in a sentencing court's consideration of whether or not to depart from the presumptive minimum. Accordingly, the vast majority of s. 15A cases do not require the additional incentive to plead guilty at the earliest possible stage that has, in recent years, been provided in respect of other offences by judicially created sentencing policy.

57. It is also the case that in our system of criminal justice, and sentencing in the context of that system, that offenders are sentenced on an individualised basis according to their particular circumstances. It would be inimical to any system of individualised sentencing that a sentencing court would be unable to take into account the circumstances in which a plea (including a signed plea) was offered. In many cases the plea may be an indication of remorse, the taking of responsibility, and the facing up by an accused person to the consequences of his or her misconduct. In other cases, particularly where the accused has been caught red-handed and has really no choice but to plead if he/she wants to obtain the discount that goes with pleading guilty, the plea may be self-serving. The circumstances in which the plea is offered require to be taken into account at sentencing. While we accept that an extra discount is, in general, afforded for having signed a plea in the District Court, we do not accept that there is any hard and fast rule as to the level of extra discount that must be afforded.

58. In the circumstances of this case it is true that the appellant was entitled to be treated as though he had signed a plea in the District Court. In those circumstances he was entitled to the normal discount which he would get for having pleaded guilty at an early stage and in addition some level of extra discount, but we suggest that it would have to have been modest in the circumstances of this case. Those circumstances were that he was effectively caught red-handed, and that the evidence against him was very strong; moreover, if he wanted to have any prospect of avoiding a presumptive mandatory minimum sentence he was going to have to plead guilty in any event in order to satisfy the statutory precondition. We therefore think it is wholly unrealistic to suggest he was entitled to an automatic discount of 30% before consideration of any other mitigation. We think that the discount for mitigation, to include the early plea, provided by the sentencing judge in this case was sufficient and appropriate in the circumstances of the case. We find no error in the sentencing judge's approach. This discount was reasonably generous. While another court might have granted a somewhat greater level of discount we do not believe that the failure to do so was in error in principle. The level of discount actually afforded was within the sentencing judge's margin of appreciation.

59. In the circumstances we dismiss ground of appeal no. 4.

Conclusion

60. The appeal against severity of sentence must be dismissed.