THE COURT OF APPEAL

Edwards J.
McCarthy J.
Kennedy J

Record No: CA150/2018

THE PEOPLE AT THE SUIT OF
THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

AND

MOLLY SLOYAN

APPELLANT

JUDGMENT of the Court delivered the 8th of October 2019 by Mr. Justice Edwards.

Introduction

1. On the 24th of April 2018, the appellant pleaded guilty to a count of unlawful possession of a controlled drug, to wit cocaine, with a market value of €13,000 or more, for the purpose of selling or otherwise supplying it to another, contrary to s. 15A of the Misuse of Drugs Act, 1977 ("the Act of 1977").

2. On the 8th of May 2018 the appellant was sentenced to imprisonment for a term of ten years to date from the 26th of November 2017, but with the final three years of that sentence suspended upon conditions.

3. The appellant's co-accused Sean McManus, Dean Gilsenan and William Gilsenan were all sentenced at the same time. Sean McManus, who had a previous conviction for a s.15A offence and who was described by the sentencing judge as being involved to *"an extraordinarily high degree"*, received a sentence of fifteen years imprisonment with the final three years suspended. Dean Gilsenan received a sentence of ten years with the final three years suspended (in effect the same sentence as the appellant) while William Gilsenan received a sentence of seven years with the final two years suspended

4. The appellant appealed against the severity of her sentence and the appeal was heard by us on the 23rd of July 2019. At the conclusion of the appeal hearing it was indicated on behalf of the court, in brief *ex-tempore* remarks, that we were prepared to allow the appeal in circumstances where we were satisfied that the appellant had established a clear error of principle, namely that the headline or pre-mitigation sentence nominated by the sentencing judge was simply too high in the circumstances of the case. We proceeded to quash the sentence imposed by the court below, and to re-sentence the appellant to five years imprisonment, once again to date from the 26th of November 2017, with the final eighteen months thereof suspended on conditions which we will elaborate upon later in this judgment. We further indicated that we would give more detailed reasons for our decisions in a written judgment to be delivered later. This judgment contains our detailed reasons.

The circumstances of the crime

5. In November 2017, as a result of confidential information and intelligence arising out of a Garda operation, Gardai were aware that Mr. Sean McManus and Mr. Dean Gilsenan were in possession of cocaine at a rented house at Seascape, Dromleigh, Bantry, County Cork. Gardai were further aware the appellant, Ms. Sloyan, had purchased a BMW on the 2nd of November 2017. It was further established that the appellant had rented the premises in Bantry. It was established that Mr. Dean Gilsenan and his father Mr. William Gilsenan were residing at the premises in Bantry and were using the BMW purchased by the Appellant.

6. On the 26th of November 2017 Gardai raided the premises. All four named persons were present. There was evidence of drug use in the kitchen. A cocaine extraction laboratory was discovered in a locked downstairs bedroom. A quantity of suspected cocaine along with containers of a solvent called isopropanol were found in this room. Several containers contained strips of fabric with a chalk-like residue. A number of facemasks and blue gloves were located near these containers, and a weighing scales and metal scraper. Fingerprint and DNA trace evidence subsequently linked all of the appellant's co-accused, but seemingly not the appellant, to items found in the room.

7. An empty brown cardboard package addressed to Chelsea Weldon, 2 Kilmahuddrick Green, Clondalkin, Dublin 22 was also found in this room. This package bore serial number EB135258447BR.

8. Gardai also discovered four additional one-litre cans of isopropanol in a garage adjoining the premises. A duvet was also located in a separate bedroom in the upstairs of the house, from which it appeared the lining had been cut out. Subsequent inquiries suggested that a flag, impregnated with cocaine, had been contained within the duvet.

9. The cocaine recovery process that was being engaged in was described in evidence at the sentencing hearing by Detective Sergeant Joanne O'Brien. It involved treating a piece of fabric, which prior to importation into the State had been impregnated with a liquid containing dissolved cocaine and allowed to dry, to re-dissolve the cocaine and extract it from the fabric. The process is one that has been engaged in by drug traffickers for many years. This was acknowledged in admissions made by the appellant's co-accused, Sean McManus, and quoted in the written submissions filed on behalf of the appellant. He characterised it as "old school". While the process can be effective as a means of illegally importing cocaine, it is seemingly subject to the limitation that it is not suitable for the importation of very large quantities. The appellant's co-accused conceded as much, saying: "Its Mickey Mouse shit. It's too much work." Be that as it may, the total value of the cocaine involved in this case was €51,292.

10. All four named persons were arrested and detained. Following enquiries, isopropanol was identified by the investigation team as a solvent suitable for use in the extraction of cocaine from fabric.

11. The duvet containing the flag impregnated with cocaine was ascertained to have been shipped by post from Brazil to 2 Kilmahuddrick Green, Clondalkin. Using the serial

number on the package found in the house that was raided in Bantry gardai were able to obtain a copy of the tracking form relevant to that package from An Post. Subsequently, when Sean McManus's phone was seized following his arrest a photograph of the relevant tracking form was found on his phone. Also found on his phone was a WhatsApp video explaining and illustrating how to extract cocaine from cocaine impregnated fabric.

12. The sentencing court heard that Sean McManus was interviewed on six occasions. During the course of his interviews, he made certain admissions, namely that he had travelled extensively within the last six months, to Brazil, Colombia, Venezuela, St Lucia, Trinidad and Tobago, Spain and Ireland. He stated that he had travelled to Ireland from St Lucia with Dean Gilsenan, and that Molly Sloyan had picked them up in a rented Toyota Avensis. He stated they went to visit Dean's family in Clondalkin. There was subsequent evidence that 2 Kilmahuddrick Green, Clondalkin was the Gilsenan family home, and that amongst those who resided there was Dean Gilsenan's daughter Chelsea Weldon, to whom the aforementioned package had been addressed. Sean McManus further stated that he had showed Dean Gilsenan how to extract the cocaine from the flag contained within the package. He admitted to receiving 5,000 (euro, it is assumed) for his expertise in showing Dean Gilsenan how to extract the cocaine. He made admissions in relation to the rental of the house in Bantry and he admitted that a WhatsApp video and conversations found on his mobile phone were for explaining how the cocaine extraction process worked. There was evidence that this material had been sent to the appellant.

13. The sentencing court further heard evidence that the appellant made full admissions regarding her role in the scheme during five interviews conducted with her at Bantry garda station. She confirmed that she was not personally involved in the actual extraction process but rather had performed a support role. She admitted her involvement in renting the house at Seascape, Dromleigh, Bantry, stating that she had booked it personally and had paid a thousand euros cash to the landlord. She further outlined the arrangement by means of which rent was to be paid thereafter. She stated that the contract for the house was in the name of herself and Sean McManus. She confirmed that she received the video from Sean McManus in relation to how the cocaine extraction was to work. She admitted ordering the solvent isopropanol, which is used in the extraction process, and confirmed that it was ordered from Linehan's in Dublin. She admitted that, during their stay in Bantry, she had received money by Western Union transfer from Dean Gilsenan to enable her to make the logistical arrangements. She admitted that she had used her email address, i.e., mksloyan@gmail.com, to order the isopropanol, and she admitted phone data that was put to her following the seizure and examination of her own phone and the phones of her co-accused. Significantly, she admitted that the previously mentioned WhatsApp video was about the extraction process, and that other communications put to her during her interviews had been about the intended sale of the extracted cocaine to the market.

14. The sentencing court was told that Dean Gilsenan had made no admissions during interviews other than that the cocaine found during the raid on the rented house at

Seascape, Dromleigh, Bantry, County Cork was his. Dean Gilsesan had been interviewed on six occasions.

15. The sentencing court further heard evidence that William Gilsenan had also been interviewed on six occasions. William Gilsenan is Dean Gilsenan's father. He admitted being in Bantry for two weeks. He made admissions in relation to being in the bedroom in Seascape in Dromleigh, Bantry, where the cocaine had been found. He further conceded that the package addressed to 2 Kilmahuddrick Green, was delivered to his address in Dublin.

The appellant's personal circumstances

16. The sentencing court heard that Ms. Sloyan had 9 previous convictions, one of which was for possession of drugs contrary to s. 3 of the Misuse of Drugs Act, 1977 (recorded on 1 June 2012 and relating to cannabis resin). The other matters involved offences under the Road Traffic Acts. It was conceded by the prosecution that in respect of the present matter she had been co-operative and that she had pleaded guilty at the earliest opportunity.

17. A report by a prison psychologist, Dr Timothy O'Higgins, was placed before the sentencing court, which elaborated further on the appellant's background and personal circumstances. Dr O'Higgins's psychological evaluation comprised a psychological interview, and the application of various assessment tools including the Personality Assessment Inventory; the Beck Depression Inventory -2; and the Burns Anxiety Scale. It merits quotation with some appropriate redactions:

> *Molly Sloyan is a 25 year old single woman who grew up with her mother and grandparents …. Her mother worked in the hospitality industry. Her father never lived in the family home and occasionally visited his daughter. She has one stepbrother who she recently met. She completed her leaving cert at 17 having dropped out of school at 16 to care for her grandparents. She reports having had persistent problems with emotional dyscontrol and her mother tried to get her to go for help with anger management. However, she denies ever having had problems with school attendance or behaviour. At 17 she [became the victim of a serious crime with life changing sequellae]. She never received professional emotional support after this event. Denies having had any suicidal ideation or self-injurious behavior. No history of mental health services or criminality prior to the index offence.*
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> *Her grandparents died when Molly was 18 and she left the family home due to conflicts related to her grandparents estate and in particular to the selling of their house. She moved into her boyfriend's house in the local area and started working in the hospitality industry. When she was 20 she started working in the insurance industry and worked in insurance sales for approximately two years before moving to Spain after breaking up with her boyfriend. She reports having experienced domestic violence and bullying. In Spain, she secured a job as a bar manager, a position she retained until approximately six months prior to the index offence. She*

left this job after a miscarriage after five months of pregnancy. She did not get professional help after this event. She broke up with her boyfriend with whom she had been living with for two years.

During this period her relationship with her mother deteriorated due to conflict with her mother's partner. Molly started abusing alcohol and drugs (primarily cocaine and prescription drugs). Two months later she started seeing a psychologist … who she saw four times. Unresolved emotional problems related to her sexual trauma and miscarriage at 17 was exacerbated by her miscarriage in Spain to which she reacted by leaving her financially secure position without giving notice. She started to behave irresponsibly. She started to abuse alcohol and cocaine, contrary to her previous lifestyle of being alcohol and drug free. During this period she started relationship with Sean McManus (her co-accused, who is 13 years older than Molly).

Molly displays symptoms of a borderline personality disorder which predisposes her to impulsive behaviour and is experiencing clinically significant psychological distress.

Molly Sloyan has been incarcerated in Limerick prison five and a half months. She is actively involved in the prison community. She attends school where she is pursuing the following courses: social studies, psychology, hairdressing and art. She has completed the following personal development courses: listeners course; AVP (Alternatives to Violence) phase one and phase two; Red Cross Programme. Molly has been appointed as a Listener to provide support to other prisoners. She is the spokesperson for the Women Prisoners Forum. She has had no P 19 disciplinary reports since being imprisoned. She is on enhanced level and works in the kitchen. She is engaged with the psychology service in individual psychotherapy. Molly Sloyan has characteristics of borderline personality disorder. She tends to have a pattern of intense, unstable relationships with family and friends swinging from extreme closeness and idealization to intense anger and dislike. She has an unstable sense of self. Molly has been experiencing significant emotional distress over many years which has further depleted her ability to make wise choices."

18. The sentencing court further received oral testimony from the appellant's former employer in Spain, who had travelled especially from Spain to testify on her behalf. This witness related that she had worked for him in his Bar in Benidorm for an eighteen-month period. He had found her to be very honest and reliable, and she became a key-holder who was trusted to open up, and lock up, his premises. He described how, while the appellant was working for him, she had become noticeably infatuated with a new boyfriend.

19. A testimonial was received from a prominent citizen in the Kinsale area, speaking to the fact that she comes from a very decent family and that she had impressed her referee and that he had offered her employment in his business at one point. In addition, a letter from the appellant's former G.P. was submitted, which also spoke in positive terms about the impression she had made upon her.

The sentencing judge's remarks

20. Following pleas in mitigation on behalf of each of the co-accused, the sentencing judge dealt with them, including this appellant, as follows:

> *"JUDGE: Now. This is a very significant case in which the matters before me came to the guard's attention as a result of an intelligence led operation. It is, as I say, is a most significant case. I've never come across anything like it before. It doesn't compare with the standard possession for supply; it doesn't compare with the grow house cases. This involves a level of sophistication, a level of organisation, which is particular in itself. I accept that all parties are entitled to the benefit of it being said on their behalves that they had entered early pleas. And then individually, some of them may have cooperated more or less than the others. It is undoubtedly the case that as I said, the level of organisation, sophistication, methodology that was required to think up, organise through a system whereby cocaine could be extracted from material. The knowledge that was required, the organising the various different factors of material, housing, movement, extraction chemicals, and the principal involved in all this appears on the evidence to being Sean. He had as far as I can see, significant help and organisation from Ms Sloyan, who was involved in the hiring, renting and general organisation. So, she was fully involved at a material level, a significant level from early on. Without her involvement, this matter could not have proceeded. And then you had Dean who was, as it were, if not the principal lab attendant, he was very much involved in the extraction. Now, they've all pleaded guilty.*
>
> *William Gilsenan appears to have involved himself in this escapade knowing what was going on, but having no, as far as can be identified, no position in the organisation, setting up of the extraction, even though he fully knew what was going on. That was his role. He was present, and he knew what was going on and he was assisting in the extraction. He has no previous convictions, he's at an age where this being a first conviction, any term of imprisonment will lie heavily on him. I understand that since he's been remanded in custody he has behaved himself in prison. He is working as is required and is showing some ability to rehabilitate himself. Given his early plea, given the level of his involvement, the extent of his cooperation and the statements made by him, I think it would be unjust in his circumstance to depart from or to impose a 10-year indicative mandatory sentence. But it is nonetheless a significant involvement that he had, and in his case, I think a sentence of seven years with two suspended, backdated to whenever he went to prison is appropriate.*
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> *Now, in the indictment, working backwards. The next person on the indictment, working backwards, is Molly Sloyan. She had, in my opinion, a significant part in the organisation, the renting of vehicles, the renting of B&Bs, and the setting up of this endeavour. She fully knew what was going on and was compliant. To say that she was the girlfriend of Sean McManus doesn't do justice to the criminality involved. I have read the most significant thing on her behalf is the psychological*

report from the prison. Definitely on release, she is a person who would need, in order to facilitate her rehabilitation, a structure. She is doing well in prison. She's behaving herself, she's compliant. And I think in her case, notwithstanding her early plea, given the level of her involvement, I think a sentence of 10 years backdated to whenever she went into prison, with the final three years suspended is merited. The three years in her case will be suspended on condition that on her release, she will remain under the care of the probation service for three years and obey all their directions.

Going back further, you have the case of Dean who pleaded guilty, and he has no previous. He was a user of drugs and not an addict. He admitted to his own part in this escapade, and he was I'd describe him as maybe not the principal laboratory assistant, but he was fully engaged in the chemical process which was required. In his case I think he is doing well, he's showing signs of rehabilitating himself and I think in his case a similar sentence of 10 years with three suspended is merited, in view of the seriousness of the case. That sentence will be backdated to whenever he went into prison.

And coming back then to the person whom on the evidence has been identified as the principal involved in this escapade; Mr Sean McManus. Now, he has pleaded guilty. That plea was entered in early course and he made certain admissions to the garda when discovered. Now, in relation to this man, he was previously subjected to a section 15A for which in 2009 he received a seven-year sentence. Now, on hearing how that sentence was disposed of when his blood disorder was identified and he was allowed out to Beaumont hospital so that he could receive treatment and sign on either in Mountjoy or in the open prison, I mean, can you but say that he had every facility, every indication, every prompt to rehabilitate himself? Could the State could the system have been more lenient? Could it have put forward any more indicative response as to cause a person to rehabilitate themselves? He barely served the sentence that was imposed upon him due to leniency and the State's desire that he rehabilitate himself, medicate himself and put himself right. And the thanks for that? We're here today and he is the principal organiser. Now, the Courts at some stage are going to have to get off whatever stage they're on in relation to incentivising rehabilitation and look at the reality such as in cases like this. You cannot rehabilitate a person who does not want to be rehabilitated. I think in relation to Mr McManus, that he is involved to an extraordinarily high degree and has been at a level which is even for this Court, unusually involved and complicated, given the science, as it were, of his involvement. This couldn't have happened without him and I think in his case, now, Mr Creed has correctly put to me that in his case there must be a 10-year sentence, but a 10-year sentence goes nowhere near approaching the seriousness of his involvement in this case. In my view, the appropriate sentence for Mr McManus is a 15-year sentence backdated to whenever he went into prison, and I will suspend the final three years of that sentence on condition that on his release, he will keep the peace and be of good behaviour and be under the care of the

probation service for three years and obey all their directions. I acknowledge that he is well behaved in prison. He is well capable of rehabilitating himself if he so wishes, but it's up to himself to keep that going."

The Grounds of Appeal

21. Two grounds of appeal are pleaded, namely:

    (i) The sentencing judge erred in his characterisation of the appellant's role in the offence;

    (ii) The sentencing judge erred in passing a sentence which in all the circumstances of the case was unduly severe.

Submissions

22. Counsel for the appellant sought to emphasize that her client was neither the main mover in the scheme nor the mastermind of it. While it was incontrovertible that she had provided important logistical support for the cocaine extraction process being undertaken by the others, she had not participated in the actual process nor was there any evidence that she had handled the drugs personally. Significantly the appellant did not receive anything for her role in the matter nor was she expected to. Her apparent motivation for providing the assistance she did was her infatuation with Sean McManus, who was 13 years older than her, and with whom she had formed a relationship at a time when she was particularly vulnerable, as described in the report of Dr O'Higgins.

23. While the sentencing judge found as a fact that Mr. McManus was the main organizer of the scheme he went on to find:

    "He had as far as I can see, significant help and organisation from Ms Sloyan, who was involved in the hiring, renting and general organisation. So, she was fully involved at a material level, a significant level from early on. Without her involvement, this matter could not have proceeded."

    Counsel for the appellant took major issue with this characterization, and she submitted that while it was true that the appellant had helped in the hiring and renting of items, including the premises, the chemicals, and the car used by the Gilsenans, there was no evidence that she was involved in 'general organization' in a manner which materially advanced the scheme in a truly meaningful or unique fashion, i.e., that she provided meaningful assistance which no one else could have done. She simply was a public face when it came time to renting items or purchasing chemicals. She was used presumably because she would be less suspicious, and, in that sense, she certainly provided material assistance. That is not disputed. However, counsel submitted, to go further and to characterize this as providing *'significant help and organization'* to Sean McManus in advancing the scheme at such a level that *"without her involvement, the matter could not have proceeded"* was factually incorrect.

24. Further it is complained that the suggestion that *"She was **fully** involved at a material level, a significant level from early on"* (this Court's emphasis) was not supported by the

evidence. Counsel has submitted that there is no evidence that the appellant organized the sourcing of the drugs, or their importation, or the manner of their importation, or that she advanced monies for the purchase of the drugs or indeed for any aspect of the scheme. There was certainly evidence that she knew what was going on and that she assisted in the logistical arrangements. However, anybody could have done that. To fix her level of involvement, as the sentencing judge did, as being such that the matter could not have proceeded without her, simply does not tally with the evidence as presented.

25. Counsel for the appellant further complains that the sentencing judge appears to have significantly overlooked the co-operation with the investigation provided by the appellant, which co-operation was acknowledged by Det Sgt O'Brien, and which would undoubtedly have been of material assistance. Unlike some of her co-accused she was forthcoming in her interviews and fully co-operative with the investigation. There is no mention anywhere in the sentencing judge's remarks of her co-operation and material assistance. Indeed, there is no mention anywhere in the sentencing judge's remarks concerning the appellant of the presumptive mandatory minimum sentence of 10 years and whether, in the presence of a plea of guilty and material assistance, the justice of the case would permit of a departure from the presumptive mandatory minimum sentence. While it is true that the last three years of the headline sentence of 10 years that he nominated were suspended to reflect mitigation, and it is therefore implicit that he felt that the circumstances allowed a departure from the presumptive mandatory minimum, the only mitigating circumstances mentioned were the plea of guilty and the contents of the psychological report from the prison psychologist.

26. It was also complained by counsel for the appellant that the sentencing judge attached too much significance to the sophistication of the operation. Sentencing law requires that gravity be assessed with reference to individual culpability and harm actually done, or that that might potentially be done. While this was a common design, and the enterprise involved some sophistication, it was relatively small scale and limited in terms of what it could produce. Moreover, those involved in it were not equally culpable, and the extent to which the individual culpability of the appellant was in fact aggravated by the fact that the operation involved some sophistication was not properly weighed or addressed. It was submitted that the headline sentence nominated in the case of this appellant was significantly out of kilter with the headline sentences in other s.15A cases involving some sophistication and of similar scale.

27. In that regard, significant reliance was placed on the related cases of *The People (Director of Public Prosecutions) v Sharon Flanagan* [2015] IECA 94 and *The People (Director of Public Prosecutions) v Warren Bowen* [2015] IECA 177 as representing the closest examples. In these cases, Ms Flanagan and Mr Bowen had been involved in a joint enterprise to distribute cannabis. The amount involved was c. €40,000. Their *modus operandi* was to conceal the drugs within 2" x 4" planks of timber. As described in our judgment in Sharon Flanagan's case, *"An ordinary piece of timber was sliced length ways, and one slice was then hollowed out in various chambers. The drugs were then placed in these chambers and expanded foam was placed around them to prevent movement. The*

other timber slice was then glued back on top of the hollowed-out piece and the whole thing was made to again look like a very ordinary piece of timber." While Sharon Flanagan, in the very exceptional circumstances of her case, received a wholly suspended sentence which was not interfered with in an undue leniency review, the significant point is that the headline sentence nominated both in her case, and in the case of her co-accused, Mr Bowen, and approved by this Court, was one of seven years.

28. In his submissions to the court counsel for the respondent maintains that the sentencing judge acted proportionately in imposing a sentence which accurately reflected the level of involvement of the appellant in a sophisticated and highly organised scheme to import and distribute cocaine for financial gain. He maintains that the sentencing judge's characterisation of the role of the appellant was measured, proportionate and in accordance with the evidence adduced.

29. While it was accepted on behalf of the respondent that the appellant had pleaded guilty, and that moreover she had no previous convictions for drug trafficking offences, it was nevertheless the case that the appellant had pleaded guilty in circumstances in which she was caught "red handed" operating a sophisticated cocaine factory and in circumstances where there was ample evidence tying her to the operation.

30. As regards the sophistication of the enterprise at issue it was submitted that *"the scheme developed by the appellant and her co-accused was remarkable in its sophistication and alarming in its potential"*. Counsel went on to submit that:

> "The scheme involved the impregnation of cocaine in fabric and … differs from more standard schemes for the importation of drugs in that the drugs in question were not merely concealed but rather were dissolved in liquid and thereafter impregnated into fabric such that, from a physical perspective, the drugs no longer exist as a separate distinct substance but rather are sublimated into an innocuous material undetectable to the eye.
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> It is respectfully submitted that this method of drug importation is particularly insidious … and it is further submitted that engagement in so sophisticated an enterprise is a significant aggravating factor."

31. Counsel for the respondent also referred us to the ex tempore judgment of this Court in *The People (Director of Public Prosecutions) v. Devlin and Devlin* [2016] IECA 125 wherein sentences for s15A offences of 12 years with two suspended, and 12 years with four suspended, were upheld in circumstances where the court regarded the *modus operandi* of the crime as being sophisticated in terms of its planning and the organisation of relevant logistics. In delivering the judgment of the court, Birmingham J, stated:

> *"11. This was a very serious offence. The quantities of drugs involved were very considerable indeed. There were aspects of the offence which distinguished it from many other s. 15A offences. This was not a case of someone being asked perhaps against a background of addiction or debt to transport a consignment from place A*

to place B. Neither was it a case of a so called "mule" still less was it a case remotely comparable to the situation of so called "gardeners" where offences are sometimes charged as ones of cultivation rather than s. 15A offences.

12. But here in contrast this was a sophisticated operation. The lorry with the overseas registration was met and was escorted to Bohill Store and Heating Yard. There were other individuals at the yard to receive the delivery, including one who was there to operate a fork lift."

Discussion and Decision

32. There is no doubt but that this was a serious offence. That possession of controlled drugs with the value of more than €13,000 is to be treated as a serious offence is reflected firstly by the fact that the Oireachtas has provided for a maximum potential penalty of up to life imprisonment, secondly by it making provision for a presumptive mandatory minimum sentence of 10 years imprisonment, and thirdly by stating expressly in the legislation, in s. 27(3D)(c) thereof, that legislative recourse was being had to a presumptive mandatory minimum sentence *"in view of the harm caused to society by drug trafficking"*.

33. Be that as it may, the Oireachtas having thus afforded to s.15A offending a significant ranking in terms of what sentencing scholars would refer to as its cardinal seriousness, i.e., how it is to be ranked amongst other types of offending, by the enactment of those significant penalty provisions, it remains a matter for the courts in each individual case to determine the ordinal seriousness of any particular instance of s.15A offending, i.e., how it ranks amongst other instances of the same type of offending.

34. In any individual case the sentencer must in the first instance assess the gravity of the offending conduct. This is done by taking account of the cardinal ranking of the seriousness of the offence by noting the spectrum or range of available penalties. It is then necessary to locate the offence on that spectrum or range by reference to the moral culpability of the offender and the harm actually caused, or that might potentially have been caused, by the offending behaviour. That initial positioning might then be subject to some fine tuning to take account of aggravating or mitigating factors bearing on culpability. In this way a headline sentence is nominated for the offence that reflects its appropriate ordinal ranking in terms of its gravity or seriousness. Once an appropriate headline sentence has been determined, there will then be a discounting from that to reflect any additional mitigation not already taken into account.

35. The ordinal ranking of different instances of an offence, and where each may fall to be located on the spectrum of available penalties, may vary considerably for obvious reasons. Some will be more morally culpable than others, while some will have caused more harm, or have the potential to cause more harm than others, while some may be more serious than others because of both of those considerations. It is the function of the sentencer, particularly in the case of a common design, to consider the gravity of the offending conduct of the individual offender.

36. In the case of s.15A offending there are many different circumstances in which the offending may be committed. Culpability will depend on the individual offender's role in the matter; and if he/she was part of a common design it must be assessed with reference to their place in the organisational hierarchy if there was one, the overall degree of pre-planning and sophistication involved, the scale of the enterprise, their actual contribution to the enterprise, their state of knowledge and the extent to which they had actually benefitted or stood to benefit. Moreover, the circumstances of the individual's involvement might require additional aggravating or mitigating factors bearing on culpability to be taken into account.

37. In assessing the harm caused, or potentially to be caused, the principal considerations are likely to be nature of the controlled drug, it's addictive propensity and other dangers associated with it, and the quantity involved.

38. In the present case the sentencing judge was correct in highlighting the degree of pre-planning and the sophistication of the criminal enterprise. However, for all that, the scale of the enterprise was modest, and the quantity of drugs involved was not particularly large by reference to many other cases to have come before us. In that regard, we would make the point that the *Devlin* case referred to by the respondent is clearly distinguishable from the present case, as the drugs involved there were valued at €1.3million, many times the value of the drugs involved here. Moreover, it was inherent in the particular *modus operandi* being employed that the scale of the operation would always be modest.

39. There is no doubt but that the appellant's culpability was significant. She was not the mastermind behind the scheme, nor was she at the top of the hierarchy, but she was fully aware of what was being undertaken, and willingly participated in it by providing important logistical support to the person or persons who had planned the enterprise and to those directly involved in its execution. While it is correct to say that it was an overstatement to have suggested that *"without her involvement, the matter could not have proceeded"*, we would not be prepared to find an error of principle in the sentencing judge's approach solely on that account. It was a sophisticated operation and the appellant was involved to a significant extent, albeit that she was not directly involved in the actual cocaine extraction process. In general, we agree with the respondent that the sentencing judge's characterisation of the role of the appellant was measured, proportionate and, taken in the round, in accordance with the evidence adduced.

40. We do, however, believe that having regard to the scale of the operation and the quantity of drugs involved, the headline sentence of ten years was excessive (if one ignores for a moment the presumptive mandatory minimum sentence), and that it was out of kilter with sentences imposed for other offences of approximately equivalent ordinal seriousness. In our estimation the appropriate headline sentence should have been one of seven years, and that to have nominated a headline sentence of ten years was an error of principle.

41. The sentencing judge was obliged, as this Court would be on any re-sentencing, to consider whether in the circumstances of the case it would be unjust to impose the presumptive mandatory minimum sentence of ten years. Although he does not expressly say so, it is clear that the sentencing judge felt that it would be unjust to impose the presumptive mandatory minimum. We consider that he was correct in believing that to be the case. The appellant had pleaded at the earliest opportunity and had provided material assistance.

42. In circumstances where we were satisfied as to the existence of an error of principle we then proceeded, as described earlier in this judgment, to quash the sentence imposed in the court below. In re-sentencing the appellant, we nominated a headline sentence of seven years and, being satisfied that it would be unjust to impose the presumptive mandatory minimum sentence in the circumstances of the case, discounted from our headline sentence of seven years by two years to reflect the mitigation to which the appellant was entitled. In addition, we had been impressed with the evidence concerning the progress she is making towards rehabilitation and therefore felt justified in suspending a further eighteen months of the remaining five years to incentivise her continued rehabilitation. The partial suspension is on the same conditions as applied to the suspended portion in the court below, namely that the appellant should keep the peace and be of good behaviour for a period of two years following her release, and the further condition that during that two-year period she must submit to supervision by the Probation Service, and cooperate fully with them.