



THE COURT OF APPEAL

**Edwards J.
McCarthy J.
Donnelly J.**

Record No: 157/2019

**THE PEOPLE (AT THE SUIT OF
THE DIRECTOR OF PUBLIC PROSECUTIONS)**

RESPONDENT

V

SAMINA SAJJAD

APPELLANT

JUDGMENT of the Court (*ex tempore*) delivered on the 17th day of September 2020 by Mr Justice Edwards.

Introduction

1. On the 16th of May, 2019, the appellant came before the Dublin Circuit Criminal Court after having pleaded guilty to count 2 on the indictment at the first mention date of 15th of February, 2019, namely an offence contrary to section 15B(1) of the Misuse of Drugs Act, 1977, as amended. She was sentenced to 7 years' imprisonment, backdated to the 16th of November, 2018.

Factual Background

2. The court heard evidence from Detective Garda Gary Dunne, who was the investigating officer in relation to the case. Garda Dunne informed the court that on the 16th of November, 2018, on the basis of Garda National Drugs and Organised Crime Bureau intelligence, the appellant was monitored disembarking a flight with her 8-year-old niece at Dublin Airport. Prior to this she had flown from Lahore, Pakistan to Doha in the United Arab Emirates. The appellant was then seen on monitors retrieving two suitcases from the carousel, before heading to Terminal 1.
3. Having passed through the arrivals hall, the appellant continued outside where she met a male, who accompanied her in the direction of the multi-story carpark. It was at this point that the pair were approached and detained by a customs officer. The male was searched and found to be in possession of an envelope containing €2,000 in cash. He also had a van parked in the car park. He had journeyed from the UK by ferry via Belfast earlier that morning. He did not appear to have any other business in Ireland.
4. When searched, it was discovered that the luggage belonging to the appellant contained a hidden compartment which had been filled with 13.69 kilograms of diamorphine, with a value of approximately €1,916,600. It was packed tightly into a secret compartment in

the inner lining and frame of the suitcase and there was a strong smell of glue from the suitcase.

5. Whilst being briefly questioned by customs officers, the appellant claimed that she had traveled from Pakistan and was given this suitcase by a stranger with the instruction to pass it on to somebody else. Following her arrest, she was detained under section 2 of the Criminal Justice (Drug Trafficking) Act at Ballymun Garda Station. During the course of her detention, she was interviewed on four occasions and provided a version of events which was manifestly implausible. The appellant claimed that she had been given the suitcase by a stranger and brought it to Ireland, which is not her place of residence, to then give it to someone else.
6. Garda Dunne confirmed that the appellant had been in custody since the time of her arrest. No charges had yet been proffered against the male. Garda Dunne informed the court that several mobile phones had been found on the appellant's person, one of which recorded communication between her and the male.

Circumstances of the Appellant

7. The appellant entered a guilty plea at an early opportunity and had no previous convictions. Originally from Pakistan, the appellant has resided in the UK for several years where she had long-term employment running a post office until her retirement in 2012, at which point she was succeeded by her son. She was 51 years old at the date of sentencing and is a mother to two sons in their twenties and one daughter aged 19, adopted from her sister who was not in a position to care for her. She has no family in Ireland, but is a member of a large family, many of whom supported her in court and have furnished the court with documents attesting to her good character, pivotal family role and considerable lifelong work ethic.
8. The court was provided with medical evidence which confirms that the appellant suffers from chronic obstructive pulmonary disease, mild depression, and ongoing back and hip pain. The appellant has made good use of her time in prison, completing several courses.

Remarks of Sentencing Judge

9. When sentencing the appellant, the sentencing judge rehearsed the salient evidence, and then remarked, inter alia:

"This Court listened very carefully to all of the evidence in this case and I have taken a careful note of the evidence which was given. And I have to consider the aggravating factors and the mitigating factors. The aggravating factors I will deal with in a moment, but I should say in relation to the law, this Court is guided and must be guided by the Court of Appeal and the superior courts. And I'm referring to decision of the Court of Appeal ... in [The People (Director of Public Prosecutions) v. Desmond Ryan and Edward Rooney [2015] IECA 2].

...

Now, the [then] President [of the Court of Appeal] conducted a review of a number of authorities in relation to drug trafficking offences, and at paragraph 18 stated:

'the quantity and value of drugs are critically important in assessing the gravity' and he referred there to The People (Director of Public Prosecutions) v. Long [2009] 3 IR 486. He also went on to say at paragraph 18 that: 'Couriers play an essential role in the illegal drugs trade and if they willingly go into it for financial reward, they cannot expect less than severe treatment from the courts in accordance with the clear and unambiguous policy of the legislature.'

Now, in relation to the matters which are before this Court, the mitigating factors are the very early plea which was flagged well in advance. While, of course, the accused person was caught red-handed, it is always of assistance in respect of saving State resources for a plea of this nature to be entered and it saves State resources when that occurs. This is a woman of previous good character. I have been given a number of documents, all of which have been considered by me and I have considered every document in great detail ... and I have received documents which include documents from her eldest son, Mr Ali, and I've considered, in particular, the contents of certain details contained in her eldest son's document. I've considered documents from her other son and from friends of her daughter, from Ms Stephenson, from Ms Pace, from Ms Ikra Ryas, from Ms Sheila Ryas. I've also been furnished with documentation from Dr Ramachandran dated the 29th of March 2019 which confirmed that the accused person is suffering from and has had a diagnosis of chronic obstructive pulmonary disease. It is noteworthy in relation to the documentation furnished to this Court that the behaviour of the defendant is considered by all of the persons I've referred to as being out of character. By way of further mitigation, Ms Sajjad has a background of hard work and of employment. And she has -- her family are living in a different jurisdiction including her sons and her daughter. No family member is living in this jurisdiction. She is using her time in custody in a positive way. She has a supportive family who are in court and none of her family has ever been in trouble. And I have referred to the fact that ill health on her part has been confirmed by a document seen by this Court.

The aggravating factors in relation to this matter are the premeditated nature of the offending carried out for personal gain. This was a very substantial quantity of diamorphine; a significant value just shy of €2 million. This Court regards the impact on society as being an aggravating factor and I will come to that in a few moments. The fact that her young niece was travelling with her, a young eight-year-old girl, this must have been a very frightening experience for a young child. The seriousness of this offending is reflected in the penalty created by the legislature which I have outlined already, life imprisonment with a presumptive minimum of 10 years' prison sentence has been created by the legislature. This Court can depart from the presumptive minimum in the event of there being specific and extraordinary circumstances. The very disturbing aspect of this case is

that the defendant involved herself in a form of criminality which causes such devastation and destruction to communities in our society. And daily, the courts see the human consequences of such actions: families torn apart, vulnerable people exploited and preyed upon, lives ruined. Most frequently, this is evident in - - and the impact of this type of offending is evident in respect of our most socially deprived areas of our community, often with people who have not had the advantages which the defendant has enjoyed. And I have to mark the seriousness of the offending.

I also take into consideration that the defendant is a person who is 51 years of age now and prison is not an easy environment for a person of that age, particularly in circumstances where her family do not live in this jurisdiction and where she has never come to any criminal attention by way of criminal activity in the past.

In all of the circumstances which I have outlined, I am satisfied that I can depart from the presumptive minimum in this case and depart from the presumptive minimum in respect of imposing a 10 years sentence of imprisonment. However, having stated all that I have stated this morning, I must mark the seriousness of the offending and I must impose a considerable custodial element in relation to the offending. I am going to state in open court that the headline -- I'm going to say that the headline sentence that this Court is of the view would be appropriate is one of 10 years' imprisonment. However, having referred to all the mitigating factors which I have referred to in detail, this sentence is going to impose a sentence of seven years' imprisonment. And I will backdate that date of imprisonment to the day Ms Sajjad went into custody which I think is the 16th of November 2018".

Grounds of Appeal

10. The following are the grounds of appeal pleaded in the Notice of Appeal:

The sentencing judge erred in law and/or in principle and/or in fact in the following ways in imposing sentence:

- a. by failing to give sufficient weight to the fact that the appellant is not a recidivist drug trafficker;
- b. by failing to give sufficient weight and balance to the appellant's plea of guilty;
- c. by failing to give sufficient weight and balance to the evidence adduced and submissions made in mitigation of sentence;
- d. by imposing a sentence which was, in the circumstances, unduly severe;
- e. such further grounds of appeal as may be submitted at the hearing of the appeal

Submissions

11. We received detailed written submissions from both sides in support of their respective positions, and these made reference to numerous comparators. However, we regard it as disappointing that neither side's submissions made any reference to the single most

important authority in this area, namely this Court's guideline judgment in relation to sentencing in s.15A cases in *The People (Director of Public Prosecutions) -v- Stephen Sarsfield* [2019] IECA 260.

12. The appellant's written submissions have referred us to *The People (Director of Public Prosecutions) -v- McGinty* [2006] IECCA 37; *The People (Director of Public Prosecutions) -v- Carol Vardacardis* [2003] WJSC-CCA 4597; *The People (Director of Public Prosecutions) -v- Grant Alexiou* [2003] 3 IR 5123 *The People (AG) v Michael O'Driscoll & Thomas O'Driscoll*, Vol 1, Frewen, Judgements of the Court of Criminal Appeal 1924-1978, p 351-363.
13. Counsel for the appellant has submitted, *inter alia*, that although the 7 years' imprisonment imposed on the appellant may serve as a deterrent to others, it is unnecessary with regard to the appellant herself, given the character evidence accepted by the court.
14. It was further submitted that the sentence imposed was excessive and failed to attach appropriate weight to the mitigating factors present and amounted to sentencing without due regard to the principles of sentencing.
15. Counsel for the respondent has sought to engage with the comparators relied on by the applicant and to differentiate these cases from the present case on various grounds. He points to the fact that Ms. Sajjad's involvement required planning, extensive travel and subterfuge, that she initially gave versions that were manifestly implausible and that she was accompanied by a minor to deflect possible detection. Ms. Sajjad's niece was separated from her after Ms. Sajjad's arrest until she was reunited with her family, which of itself must have been distressing for the child.
16. Counsel for the respondent submitted that the sentencing judge fully took into account of the appellant's early plea of guilty, her personal circumstances and lack of previous convictions, evident in the 25% discount given from the headline sentence of 10 years.
17. Counsel for the respondent also referred us *The People (Director of Public Prosecutions) -v- Andrew Dermody* [2006] IECCA; *The People (Director of Public Prosecutions) -v- Andrea Rossi and Craig Hellewell* [2003] WJSC-CCA 4499, p. 4502); and *The People (Director of Public Prosecutions) -v- James Chipi Renald*, a case for which no specific citation was provided but which we were told is referenced in Garnet Orange SC's book entitled "Drugs Offences in Ireland". The latter case, together with the case of *The People (Director of Public Prosecutions) -v- John Duffy* [2001] WSJC-CCA 1809 (at 1817) was offered as authority for the proposition that the statutory penalty as provided is perhaps "the single most important factor in determining the appropriate sentence". It is said to comprise the deterrent element which, in accordance with legislative policy, is a very important objective in sentencing for a s.15A offence. In that regard we were further referred to *The People (Director of Public Prosecutions) -v- David Spratt* [2007] IECCA 123. The respondent maintains that the deterrent component of the sentence in the present case properly reflected the prescribed statutory sentence.

Discussion & Decision

18. To deal with the first ground of appeal pleaded, it would potentially be an aggravating factor if there was evidence that the appellant was a recidivist drug trafficker. However, the fact that the appellant was not a recidivist drug trafficker is not a mitigating factor. It is simply the position that her culpability is not aggravated by history of recidivism. What is of significance is that the appellant had no previous convictions and was of previous good character. However, this was expressly acknowledged by the sentencing judge and it is clear from her remarks that this factor was taken into account. We interpret the substance of the complaint under this heading as being a complaint that previous good character was not adequately taken into account. The sentencing judge gave a most careful judgment and we are not persuaded that such a complaint is made out. Apart from previous good character, the only other major mitigating circumstance was the appellant's plea of guilty. Moreover, it was a plea offered in circumstances where the appellant had been caught red-handed and she had little choice but to plead if she was to salvage anything from the situation. The discount for mitigation in this case was one of 25% from the headline sentence. That discount made allowance for the plea of mitigation, the fact that she was of previous good character and other personal circumstances of somewhat less significance, but which it was proper nonetheless to take into account. Amongst the latter were the fact that she was a foreign national, and the fact that she has some health difficulties. We see no evidence to suggest that the mitigating circumstances in the case were not afforded sufficient weight and we find that there has been no error of principle in that respect.
19. In regards the second ground of appeal which specifically complains about the allowance made for the appellant's plea of guilty, we have already alluded to the fact that she was caught red-handed. Moreover, while she was cooperative to a degree, she was not fully cooperative and put forward an account that was manifestly unbelievable. She was certainly not someone who was entitled to maximum credit for having pleaded guilty. We are satisfied that she received adequate recognition of this plea and appropriate discount for it and that there was no error of principle in that regard.
20. The third ground of appeal pleaded is in truth covered by the first and second, save for perhaps for the nuance that it refers specifically to submissions made in mitigation sentence. The suggestion is that counsel's plea in mitigation did not receive adequate weight. We acknowledge the excellence of the plea made in mitigation which placed considerable weight on her background and family circumstances, her record of hard work, her current health difficulties, the regard with which she is held in her community and the fact that the offence is regarded by those who know over as being very much out of character - indeed, "*extraordinarily out of character*" as counsel put it in the course of his plea in mitigation. However, it is clear from the sentencing judge's remarks that she took all of that into account.
21. This was very serious offending. It was done for commercial reasons, it was pre-meditated, the drug involved was heroin, the quantity was very sizeable, and it is clear from the circumstances that the appellant knew exactly what she was doing and what she

was involved in. Moreover, there was the additional aggravating factor of bringing a child with her to deflect the attention of customs officials, without any apparent regard for the distress that might be caused to the child in the event that she was intercepted as in fact occurred.

22. While the appellant was entitled to have her previous good character and the regard with which she is held in her community, and her medical difficulties, taken into account as part of her personal circumstances, none of these things served to reduce her personal culpability for her involvement in this crime or to reduce the potential harm that might have been caused had the drugs that she was trafficking reached the street. These personal circumstances to which we have alluded would have entitled her to be treated somewhat more leniently than a person who could not point to such circumstances, but the extent to which they could operate in that regard in the overall circumstances of this case was limited. It is clear to us that they were fully taken into account by the sentencing judge and we find no error in that regard.
23. The final complaint is that the sentence was, in the circumstances, unduly severe. We have had full regard to the comparators to which we have been referred, but we are not persuaded that they amount to a sufficiently representative sample so as to provide reliable guidance. We would further remark that they are all quite old cases. It is in this context that the guideline judgment in the *Sarsfield* case is particularly relevant. It is recent and contains a much more extensive survey of sentencings in s.15A cases. It is clear to us from consideration of that judgment that the ultimate sentence imposed in this case was in line with the trend disclosed by the survey conducted in the *Sarsfield* case. It is important to note that the tabulated figures in the *Sarsfield* judgment takes account only of effective sentences, i.e. sentences to be served and does not take account of any suspended or part suspended elements. Given the value of the drugs in this case the ultimate sentence imposed here was consistent in our view with the type of sentences that have frequently been imposed for s.15A and s.15B offending. In offering that view we have taken due note of the caveats expressed by the President in his judgment in the *Sarsfield* case. Finally, we would remark that the headline sentence of 10 years selected in this case might well have been higher, and if it had been higher it is far from certain that it would have been interfered with on appeal.
24. In conclusion, we are satisfied that the appellant has failed to demonstrate any error of principle on the part of the sentencing judge. In the circumstances we must dismiss the appeal.