



THE COURT OF APPEAL

[10/2019]

**The President
Kennedy J.
Donnelly J.**

BETWEEN/

THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

- AND -

ROSALIND BARTON

APPELLANT

**Judgement of the Court (*ex tempore*) delivered on the 25th day of October, 2019 by
Ms Justice Kennedy**

1. This is an appeal against severity of sentence imposed in Cork Circuit Criminal Court on the 10th January 2019. The appellant pleaded guilty to two counts, namely; a count of possession of drugs with a value of €13,000 or more, contrary to s.15A of the Misuse of Drugs Act 1977 and received a sentence of six years' imprisonment with the final two years suspended and a count of possession of controlled drugs for unlawful sale or supply contrary to s.15 of the Misuse of Drugs Act 1977 and received a concurrent sentence of three years' imprisonment.
2. The offences in question took place on the 8th December, 2017. Members of an Garda Síochána commenced an intelligence-led surveillance operation on the outskirts of Kanturk, County Cork. Gardaí observed two vans travelling in convoy leaving Kanturk and heading in the direction of Boherbue. The vans pulled into to the side of the road, to a layby. The drivers, one of whom was Ms. Barton, got out of the vans and two black refuse bags were taken from one van and placed into the passenger side of the van Ms Barton was driving.
3. The Gardaí intercepted the vehicles at this location and on examination of the refuse sacks, discovered 7Kgs of cannabis herb with an estimated street value of €139,364. A follow up search of the home of Ms Barton resulted in the recovery of €8,500 worth of cocaine.
4. The appellant was arrested and taken to Mallow Garda Station. During interview, she fully admitted her part in the sale and supply of the drugs in question and she admitted that this was not the first occasion on which she took delivery of such a large consignment of drugs. In relation to the cocaine, Ms Barton admitted that this was also in her possession for the purpose of sale and supply to users of the drug in Kerry. She told the Gardaí that her sole reason for her participation was that of financial gain. She was paid €500.00 for the large consignment and she said €100 - €200 for the smaller amount.

She pleaded guilty on the 9th November, 2018 and was sentenced on the 10th January, 2019 along with two co-accused.

5. In sentencing, the trial judge accepted that there was an early plea of guilty and that there was a high level of co-operation with the Gardaí. Moreover, that admissions were made which were of benefit to the prosecution. In light of such, the trial judge departed from the presumptive mandatory minimum sentence of ten years' imprisonment in relation to the s.15A offence. However, the trial judge stated that the offences involved a large quantity of drugs, that the appellant was fully aware of what she was doing and was an active participant in the distribution of drugs on a county wide basis.
6. Given her culpability, the trial judge identified a sentence of six years' imprisonment. To take account of the appellant's background, the level of progress regarding insight on her part, and the potential for rehabilitation, the judge suspended the final two years of that sentence. In relation to the s.15 offence, a concurrent sentence of three years' imprisonment was imposed.
7. Concerning her co-offenders, Mr O'Donovan received a sentence of five years fully suspended on terms, and Mr McCann received a sentence of six years' imprisonment with the final three years suspended.

Personal Circumstances

8. The appellant was forty-eight years old at the time of sentencing. She had two previous convictions relating to road traffic matters. In mitigation it was stated that the appellant suffered from depression and had become involved in the drug trade in order to fund an animal sanctuary which she ran.

Grounds of Appeal

9. Whilst the appellant puts forward six grounds of appeal in her notice of appeal, Mr Hourigan BL, advances in essence two grounds on her behalf. No issue was taken at the hearing before this Court regarding the assessment of gravity at six years. The issues lie with the discount afforded for mitigation and the contention that the sentence imposed offends the principle of parity.
10. In the latter respect, Mr Hourigan focusses on the sentence imposed on Mr McCann, which it will be remembered was a sentence of six years with the final three years suspended on terms. He argues that as the appellant was frank and forthright in her admissions and co-operated to a high degree with the Gardaí she should have received greater discount in mitigation. Mr McCann's culpability, he argues, was found to be at the same level as Ms Barton, but he received greater discount by virtue of his medical condition.
11. Ultimately, it is said that Ms Barton's factors in mitigation were of an equal quality if not greater than that of Mr McCann.
12. We are not persuaded by this argument. It was accepted amongst other matters that Mr McCann had addiction issues for some considerable period of time and a tragic

background. The issue of the appropriate reduction for mitigation was one within the discretion of the judge and we can find no error in principle in this respect.

13. Moreover, whilst a headline figure of six years was nominated in both instances by the trial judge, we observe that Ms Barton's culpability was in our view at a high level, and perhaps greater than that of Mr McCann as she was, by her own admission, involved in the distribution of drugs on a county wide basis. Moreover, she was involved solely for the purposes of financial gain.
14. We now move to the issue as regards the reduction afforded for mitigation. Certainly, there were mitigating factors; she had no relevant previous convictions, she had entered a plea of guilty, she was co-operative, she made admissions, her personal circumstances were taken into account and she had a history of depression and other difficulties.
15. It is apparent from the, albeit brief, but complete remarks by the sentencing judge, that he addressed his mind to those factors and reduced the sentence accordingly by suspending the final two years of the sentence imposed on Ms Barton.
16. In the circumstances, we can find no error in principle and accordingly we dismiss the appeal.