



**THE COURT OF APPEAL**

**Record Number 87/2020**

**The President.  
McCarthy J.  
Donnelly J.**

**BETWEEN/**

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

**RESPONDENT**

**- AND -**

**DEAN THORNTON**

**APPELLANT**

**Judgment (*ex tempore*) of the Court delivered on the 20th day of July 2020 by Mr Justice McCarthy**

1. This is an appeal against the severity of the sentence of four years' imprisonment with the final six months suspended in respect of an offence contrary to s.15 of the Misuse of Drugs Act which was imposed on the appellant at Dundalk Circuit Court on April 28th 2020.
2. On August 24th 2017 the family residence of the appellant where he resided with his mother and younger sibling in Drogheda was searched by Gardaí under warrant and a black sports bag which contained cannabis split into individual deals and a weighing scales was found in the living room. The value of the drugs was €5,654 and 282 grams in weight. The appellant has signed admissions at the scene taking responsibility for the bag and its contents. The DPP directed summary disposal on a plea of guilty but the judge in the District Court refused jurisdiction.
3. The appellant was born in October 1977. At one stage he had been a drug user but it is not suggested that he was an addict who was committing the crime to feed his addiction. He was clearly co-operative with the Gardaí. He is the father of a very young child. He has nine previous convictions – all road traffic offences and relating to three distinct incidents and these post-dated this drugs offence. In effect, he came before the Court as someone of previous good character.
4. In the course of the sentence hearing he was described as a "follower rather than a leader" and accordingly the offence is not aggravated by virtue of the fact of previous convictions for drugs offences. Neither he nor his home had the trappings the wealth and

he was described as having a good employment record but with limited education achievement.

5. A Governor's Report was available to the trial judge which indicated that he had not come to adverse attention and apparently wishes to put his time in custody to good use by working in the prison laundry.
6. The trial judge took the view that the case fell into the low to medium range of offending. She selected a headline sentence of six years affording a reduction of two years for mitigating factors amongst which was, of course, the relatively early plea of guilty and then suspended the last six months thereof, no doubt to encourage rehabilitation.
7. The number of grounds of appeal some generic are pleaded but to us the principle ground of appeal is that the judge made an error of principle by setting a headline sentence of six years with the consequence that the final outcome after appropriate reduction for mitigating factors was a sentence which was excessive.
8. The location on a scale of seriousness of an offence of this kind will depend to a significant degree on the type and quantity of the control drug in question. Here, the value of the cannabis was relatively modest in the greater scheme of things. Accordingly, we think that the offence falls into the lower range of offence and hence, sentencing range. The prosecuting counsel contended that the offence was in the middle range of such offences and hence while the sentence may not, was by no means lenient, our words, it was within the judge's discretion.
9. The mitigating factors are his age, previous good character, good work record, admissions at the scene, accepting responsibility for the substance even though other persons were present and hence which were of particular importance and the plea of guilty.
10. We are of the view that this offence falls within the lower range. We think that in taking the view that the offence fell between the low and medium range the trial judge fell into an error of principle and that this had the consequence that an excessive headline sentence was chosen which ultimately gave rise when mitigating factors were taken into account to a sentence which was also excessive.
11. We therefore quash the sentence imposed in the Circuit Court and must therefore proceed to resentence.
12. We think that a headline or pre-mitigation sentence of four years' imprisonment is appropriate. We think that the mitigating factors to which we have referred should give rise to a reduction to a sentence of two and a half years. We think that an incentive should be given to the appellant to rehabilitate himself. Accordingly, we suspend the last six months of that sentence for a period of twelve months on the terms that the appellant enter a Bond to keep the peace and be of good behaviour for a period of twelve months after his release from custody.