



THE COURT OF APPEAL

[238/20]

The President

McCarthy J

Kennedy J

BETWEEN

THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

AND

EDDIE OSAGIE

APPELLANT

JUDGMENT of the Court delivered (electronically) on the 30th day of July 2021 by Birmingham P

1. This is an appeal against severity of sentence. The sentence under appeal is one that was imposed on 23rd November 2020 at Cork Circuit Criminal Court. It was a sentence of two years imprisonment with the final year of the sentence suspended in respect of an offence of possession of drugs. There was also provision made for a disqualification from driving for a period of four years. It is this disqualification order which is the focus of this appeal.
2. The background to the matter dealt with in the Circuit Court is to be found in events that occurred on 3rd January 2020 at Mallow. On that occasion, Gardaí had mounted a routine checkpoint. They stopped a vehicle driven by the appellant and Gardaí noticed what they thought was a smell of cannabis. They searched the vehicle and two packages were located with a combined weight of just over 1kg. Gardaí were uncertain what they had recovered, in that the packages seemed to have a cannabis smell, but the contents were a paste-like substance and did not have the usual consistency of cannabis herb. Subsequently, when questioned in relation to it, the appellant said that he had the substance for medicine and for mixing and making soup. It appears that the paste-like substance involved cannabis, beans, and perhaps other substances. On the basis that the packages weighted a kilo, a value of €20,414 was placed on the seizure and a s. 15A Misuse of Drugs Act was proffered. However, the defence challenged the valuation and the arguments they advanced persuaded the prosecution to drop the s. 15A, and so, a plea was entered to the s. 15 simpliciter.

3. In terms of the appellant's background and personal circumstances, he was 50 years of age, originally from Nigeria and had been living in Ireland since 2003. He had a number of children, one of whom is a very talented soccer player, representing Ireland at U-13 level, the relevance of this being that the player requires transport to games and training sessions. The appellant is a barber, running a barber's shop in Cork city, but he himself lives in rural County Cork.
4. In terms of previous convictions, the appellant has none in relation to drugs, but what is of note is that when the investigating Garda was asked whether the accused had any previous convictions, he responded "nothing for drugs, he has a couple of road traffic convictions over the years, but nothing for drugs". At that point, the judge intervened to ask "what was the road traffic? It may be relevant in this case because he is driving the vehicle in the course of the commission of a crime and the car was being used to transport drugs, so the question of whether or not he should be disqualified as a consequence has to be considered". The investigating Garda responded to this query from the judge by saying that there was a conviction for no insurance back in 2015, which resulted in a disqualification from driving for two years. He also mentioned parking issues, parking in a disabled bay and parking in a bus lane.
5. The plea in mitigation, in the course of what was a short sentence hearing, did not specifically address the question of disqualification. However, before this Court, it has been argued that the disqualification has a very serious impact on somebody trying to run a business in Cork city while living in rural Cork, an area not well served by public transport. It is also said that the disqualification presents difficulties for the appellant in offering support to his family in their various activities, including support to the talented young soccer player.
6. The appropriateness of the disqualification order is challenged in a number of ways. It is said that there was no proper or adequate enquiry into the effect that the disqualification from driving would have. It is said that disqualification does not promote, but rather, hinders rehabilitation, and it is said that the judge erred in not inviting submissions on the question of whether this was a case where there should be a disqualification order. We are satisfied that this last point is not a point of substance in the context of the case where the judge's intervention made clear to all that it was a case where he felt the question of disqualification fell to be considered, and the question of to disqualify or not was therefore placed on the agenda.
7. The statutory provision in issue is s. 27 of the Road Traffic Act 1961 (as amended). So far as material, it provides:

"27.—(1) (a) Where a person is convicted of an offence under this Act or otherwise in relation to a mechanically propelled vehicle or the driving of any such vehicle (other than an offence in relation to which section 26 of this Act applies) or of a crime or offence in the commission of which a mechanically propelled vehicle was used, the court may, without prejudice to the infliction of any other punishment authorised by law, make an order (in this Act referred to as an ancillary

disqualification order) declaring the person convicted to be disqualified for holding a driving licence.”

It is accepted that the provision in the section which was in the judge’s mind was that which provides that of a person convicted “of a crime or offence in the commission of which a mechanically propelled vehicle was used may be disqualified. It is submitted on behalf of the appellant that the judge fell into error because they say the appellant’s vehicle use was incidental to the commission of the offence at issue rather than one where it could be said that the vehicle was used in the commission of the offence.

8. In the course of his sentencing remarks, the judge dealt with the issue of disqualification as follows: “I’ll disqualify him from driving for a period of four years. He was using this car to transport drugs and he had a previous run-in with the road traffic legislation because of no insurance, so he knew, he was fully aware of the restraints and constraints about driving your car, and I think that’s an appropriate consequence”.
9. This Court was of the view that this was a case where the Court was dealing with an offence in the commission of which a mechanically-propelled vehicle was used. It follows that we believe that this was a case where it was open to the sentencing judge to consider disqualifying from driving. Indeed, we would go further and say that we are of the view that it was appropriate that he should give consideration to the issue. We draw attention to the fact that the judge’s intervention while the Garda was giving evidence can have left nobody in any doubt about the fact that the question of disqualification was under consideration.
10. Once a decision was taken to disqualify, it seems to us that a significant margin of appreciation must be afforded to a sentencing judge as to the period of disqualification. Here, the judge was faced with the fact that the person he was contemplating disqualifying had had already been the subject of a disqualification order, albeit one that was ordered in a very different context. It does not seem to us that the appellant has established that the order of the Circuit Court fell outside the available range. Undoubtedly, the judge might have decided on a somewhat shorter period of disqualification, and another judge, on another day, might have decided on a shorter period of disqualification. However, in our view, that is not sufficient to require, or indeed, permit an intervention by this Court. We have not been persuaded that the order of the Court was not one that was available to the Circuit Court judge, and in the circumstances, we must dismiss the appeal.