



**THE COURT OF APPEAL**

**Record Number: 46/2021**

**Edwards J.  
Kennedy J.  
Ní Raifeartaigh J.**

**BETWEEN/**

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

**- AND -**

**JONATHAN BROOKS**

**APPELLANT**

**JUDGMENT of the Court delivered (ex tempore) on the 1st day of July 2022 by Ms. Justice Kennedy.**

1. This is an appeal against severity of sentence. The appellant pleaded guilty to an offence contrary to s. 15A of the Misuse of Drugs Act, 1977, as amended, being the possession of drugs with a value of €13,000 or more for the purpose of sale or supply. On the 24th February 2021, the appellant was sentenced to four and a half years' imprisonment.

**Background**

2. The background facts are that on the 24th May 2019, Gardaí attached to Tallaght Garda Station were on a mobile drug patrol in an unmarked car when they observed two males on bicycles, one being the appellant, cycling into a housing estate.
3. Gardaí noted that both males were carrying Adidas bags, one with white stripes and one with yellow stripes. At this point in time, both bags appeared empty. Gardaí followed them from a distance and contacted a colleague for assistance. When this Garda caught sight of the two males, their bags now appeared to be full. The Garda attempted to intercept one of the males, the appellant, the other man having run away.
4. At approximately 6:30pm, the appellant was arrested, and three plastic packages were discovered in the Adidas bag he was carrying. The bags contained 2.995 kilograms of cannabis with a value of €59,980. Following arrest and caution the appellant said: "I did it for money. I have my daughter's Communion tomorrow in Carlow. All for €200."

5. The appellant was conveyed to Tallaght Garda Station and detained pursuant to the provisions of s. 2 of the Criminal Justice (Drug Trafficking) Act of 1996. At approximately 10:30pm he was interviewed by Gardaí. At that point in time, he had prepared a statement with his solicitor in relation to the incident. He said that he was deeply sorry for what he had done, that he was doing it to reduce his drug debt and that he had a cocaine addiction. He claimed that his drug debt was €1800 and that there was an arrangement with those to whom he owed the debt that this would be reduced on completion of the drugs transaction that is the subject of the offending herein. The appellant also indicated that he would be pleading guilty in relation to the matter.

#### **Personal circumstances of the appellant**

6. The appellant has two children and is said to be rebuilding the relationship with the mother of his children. He has limited education and was in employment until December 2019. The appellant's introduction to drugs was through cannabis at the age of 14. It is said that he developed an addiction to crack cocaine and accrued a debt. It was accepted by the Prosecuting Garda that the appellant was no longer addicted to cocaine, but that he had a drug debt and was under threat relating thereto.
7. The appellant is a man with 18 previous convictions. Relevant previous convictions include four previous convictions in relation to s. 3 of the Misuse of Drugs Act, one previous conviction in relation to s. 15 of the Misuse of Drugs Act and another previous conviction for the supply of controlled drugs into a place of detention.

#### **The sentence imposed**

8. The judge acknowledged the appellant's remorse and his efforts to rehabilitate himself. In that respect, the appellant was attending a counselling programme and had not come to Garda attention for a period approaching two years. A Probation Report was furnished to the court which referred to the appellant's assertion that he was drug free and his willingness to demonstrate his drug free status. The Report expressed a high risk of re-offending, however, the judge felt that this was unduly pessimistic and was of the view that there was every chance the appellant could be rehabilitated. Letters from his family were also relied upon together with reports from the counselling programme. A sentence of 4 ½ years imprisonment was imposed, the judge taking account of the aggravating and mitigating factors. The judge was satisfied that this case warranted a departure from the presumptive mandatory minimum sentence of 10 years.

#### **Grounds of appeal**

9. The appellant appeals his sentence on two grounds, however, in essence it is said that the judge erred in failing to partially suspend the sentence. In that regard, at trial, counsel requested consideration be given to suspending some of the sentence whereupon the judge replied:-

".....[i] don't think it's necessary. I think you've made a good argument that this man can reform himself and I don't think a suspended sentence or probation or anything like that is necessary to reform."

### **Submissions of the appellant**

10. The appellant cites the case of *The People (DPP) v Sarsfield* [2019] IECA 260 to the effect that each s. 15A case must be decided upon its own particular facts and by having regard to the individual circumstances of an offender. It is submitted that the instant facts place the appellant at the lower range for a s. 15A offence. It is said that the fact of appellant receiving so little by way of monetary gain highlights his "subservient" role, which is relevant in terms of mitigating his culpability, as per *Sarsfield*.
11. *The People (DPP) v WM* [2018] IECA 81 and *The People (DPP) v Morrow* [2019] IECA 268 are similarly cited. The appellant submits that the refusal by the trial judge to suspend a portion of the appellant's sentence with conditions directed to his rehabilitation was not consistent with the obligation of the trial judge to fit the appropriate penalty to the offence and the offender and to uphold the public interest.
12. The appellant says the instant case is a "classic case for a partially suspended sentence" and that the judge's refusal to suspend was not consistent with the evidence. The appellant further draws attention to the fact that the judge did not adopt the staged approach to sentencing but this was not pursued on appeal.
13. Reliance is placed on *The People (DPP) v McGinty* [2006] IECCA 37 wherein this Court substituted a fully suspended sentence for a s. 15A charge in circumstances where the appellant rehabilitated himself to a drug free life. The amount of drugs in that case was smaller than the amount in the instant case, however, the point is made that the appellant in *McGinty* was a profit-taking dealer.

### **Submissions of the respondent**

14. The respondent focuses on para 11 of the *Sarsfield* judgment wherein this Court refers to lower ranking operatives "whether they involve storing or transporting drugs may still be very important" and that without them, "major drug dealing and trafficking could hardly occur." The respondent outlines the guidance as set out in *Sarsfield* but notes that this Court has previously said that "there is no question of a standard tariff for any given offence."
15. The respondent relies on *The People (DPP) v O'Dwyer* (10/12/2020), wherein Edwards J stated, "A judge has a range from within which he or she may legitimately select a sentence...provided the sentence is within the range it is unassailable."
16. Insofar as a partially suspended sentence is concerned, it is submitted that there is no entitlement on the part of the accused to have a portion of his sentence suspended, and that mitigating circumstances are taken into account when determining sentence and so to do so again in order to suspend a portion of the sentence could be regarded as double counting.
17. It is further submitted that the sentence imposed was the result of an analysis of all the mitigating and aggravating circumstances, each of varying weight in the measuring of the appropriate sentence and structure of same and that deference must be had to the trial

judge's discretion as regards sentencing and whether or not to suspend a portion of a sentence. *The People (DPP) v O'Brien* (17/5/2021) and *Sarsfield* are cited in this regard.

### **Discussion**

18. No issue is taken with the sentence of 4 ½ years, the battleground rests with the issue of partially suspending the sentence where the appellant has made efforts to address his addiction difficulties and has not offended for a period of approximately 2 years. Moreover, that letters were furnished from family members attesting to his change of attitude together with the material from the counselling service.
19. It must be recalled that the appellant is a man with relevant previous convictions for offences contrary to the Misuse of Drugs Act. These convictions serve to aggravate the current offence. Whilst the value of the controlled substance is not determinative, it is certainly a factor which must be considered and in the present case, the value is considerable, just shy of €60,000. The appellant was acting as a courier and it was accepted that he owed a debt for which, it seems he was under pressure to discharge. These were factors of which the judge properly took account. Whilst the appellant initially said that he was to receive €200 for his role, it was accepted that consideration for his service was the alleviation of his drug debt.
20. The appellant has undoubtedly made strides in addressing his addiction difficulties, and there was considerable mitigation before the court. The judge was of the view that the prospect of rehabilitation was good and ultimately, considered the appropriate sentence to be one of 4 and ½ years. In coming to that sentence, the judge considered all relevant factors both aggravating and mitigating the offending conduct. He clearly decided not to suspend any portion of the sentence, and indeed had he been minded to do so, it could be said that a higher sentence may have been nominated. The judge chose a different course and was clearly of the view that the appellant was capable of continued rehabilitation without an element of suspension. We can find no error in this respect.
21. In order for this Court to intervene there must be an identified error of principle, the fact that the judge did not consider it appropriate to suspend any element of the sentence does not give rise to such an error. The sentence was entirely within the judge's margin of appreciation, and we are not at all persuaded that the judge erred in any respect.
22. Accordingly, the appeal is dismissed.