



THE COURT OF APPEAL

[215/19]

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

**BETWEEN
THE PEOPLE [AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS]**

RESPONDENT

AND

JASON POWER

APPLICANT

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

1. This is an application for enlargement of time in which to appeal against severity of sentence.
2. On February 27th 2019 in the Cork Circuit Criminal Court, the applicant entered a plea of guilty to seven offences under the Misuse of Drugs Acts. We have not been furnished with any details of the facts of these offences. One of the offences pertained to the possession of cocaine contrary to Section 15 of the 1977 Act and six in relation to possession of diamorphine. One of these latter was a charge pursuant to section 15A of that Act in that the value of the drugs was in excess of E 13,000. The applicant's address at that time was 99 Leedale, Model Farm Road, Cork and it seems from the order of the circuit court that the offences had occurred there. The applicant was sentenced on May 7th 2019 to a period of six years imprisonment with the final eighteen months suspended on the latter count and the remaining counts were taken into consideration.
3. The applicant's Notice of Appeal is dated the 16th of October 2019. A Notice of Appeal against sentence must of course be filed within 28 days of the date of sentencing. The Court has received two affidavits in support of the application; one sworn by the applicant Mr Power dated January 14th 2020, and one sworn by his solicitor Mr Cuddigan, dated March 23rd 2020.
4. The notice of the application to enlarge time contains the following grounds:-
 - i) That the applicant was not fully cognisant of the time limit in which to appeal
 - ii) That he only became aware of the time limit after contacting his solicitor to enquire as to the status of his appeal

5. While the applicant accepts that he had been properly advised by his legal team in consultation after sentence on the question of appeal, including the applicable time limits, he states that due to the "state of shock" in which he was after imposition of sentence, he did not fully appreciate the advice given to him and he has little recollection of the consultation with his legal team after sentencing.
6. Mr Cuddigan says that on October 14th 2019, the applicant contacted him" enquiring into the status of his appeal". During their conversation it emerged that the applicant had not yet signed the Notice of Appeal, and Mr Cuddigan advised the applicant to do so immediately. On the 16th of October 2019 Mr Power signed the Notice, which was witnessed by the Governor of Cork Prison and subsequently lodged in this Court. It is clear, accordingly, that the notice of appeal was not entered, or any contact had with the applicant's solicitor for in excess of four months after the expiry of the time prescribed by the rules for entering an appeal.

Grounds of Appeal

The grounds on which the applicant seeks to base his appeal if the time is enlarged are as follows:-

- i) The learned sentencing judge failed to attach sufficient weight to the applicant's signed plea of guilty;
 - ii) The judge failed to attach sufficient weight to the applicant's cooperation in the investigation of the offence;
 - iii) The judge failed to attach sufficient weight to the applicant's particular circumstances.
7. The applicant has simply failed to adduce any legal or factual basis to support any ground of appeal, and, in particular, that there was an error of principle of the kind set out in the grounds or indeed any grounds. There is no engagement with the facts, the sentence imposed, or the merits of the proposed appeal. Furthermore, the applicant has failed to identify, similarly, any basis to the Court as to how the interests of justice would be served in allowing the enlargement of time. In addition, the applicant does not address the fact that the purpose of the rules is to bring finality to proceedings.
 8. The law in relation to enlargement of time applications is well established. The Supreme Court in *The People (Director of Public Prosecutions) v Kelly* [1982] IR 90 elaborated what we might describe as the modern rule to the effect that when the court is determining whether or not time should be enlarged it must consider the justice of the case, in light of all of the circumstances. This Court, in *DPP v Walsh (Court of Appeal, ex tempore, 7th April 2017)* (per Edwards J.) reiterated that:-

"We consider that where a putative appellant is out of time, and is seeking enlargement of time within which to appeal, it is incumbent on him to do more than simply demonstrate that he wishes to pursue intelligibly grounds of appeal that appeared to be arguably principle. He must, it seems to us, engage with the actual

evidence given and the rulings made, as disclosed in the transcript of the trial, in relation to any intended ground of appeal, show that the matter complained of sufficiently ground to just fire some optimism that the appeal, if allowed, would succeed.”

Where the transcript is unavailable as is usually the case (and so here), the consideration of this Court of the matter will be based upon evidence adduced, almost invariably by affidavit, as to what occurred at the trial (including details of any relevant evidence). None of this has been done here.

9. We therefore refuse this application.