



THE COURT OF APPEAL

[47/21]

Neutral Citation No: [2021] IECA 331

**The President
McCarthy J.
Kennedy J.**

BETWEEN

THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

AND

TANYA BREEN

APPELLANT

JUDGMENT of the Court delivered on the 6th day of December 2021 by Birmingham P.

1. This is an appeal against severity of sentence. The sentence under appeal is one of three and a half years imprisonment with the final six months suspended, imposed on 4th February 2021 in the Dublin Circuit Criminal Court in respect of two counts of money laundering contrary to s. 7 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010. The total amount involved was approximately €123,000.

Background Events

2. On 11th February 2020, a surveillance operation was set up outside the home of the appellant in Ballyfermot in Dublin. Gardaí were aware of confidential information regarding

the appellant's involvement in the storage and movement of cash, and it was expected that cash was going to be moved that day.

3. At 7.35pm that evening, Gardaí observed the appellant drive away from the property in a white Audi, and drive towards Ballyfermot Parade where she collected another person. The appellant was then observed making an illegal right turn on the Naas Road, and then turning off the Naas Road and into the forecourt of the Maxol filling station at the junction of the Long Mile Road and the Naas Road. A member of An Garda Síochána subsequently followed the vehicle into the forecourt, and observed the appellant get out of her car, open the rear passenger door, take out a paper bag, walk over to the driver's side of another car (the car of the co-accused) which was parked to the left of the Audi in the forecourt, and hand the bag to the person who was sitting in the driver's seat of that car. At that stage, Gardaí intervened and observed a small blue shopping bag, containing what looked like bundles of cash, sitting on the floor in the passenger footwell. Both drivers were then arrested. The bag was subsequently found to contain the sum of €59,710 in cash.

4. The appellant's home was then searched on foot of a search warrant, and a further sum of cash amounting to €63,550 was found, along with a tick-list.

5. The appellant subsequently pleaded guilty to two counts of money laundering on 7th December 2020.

The Sentence

6. In the course of her sentencing remarks, the judge indicated first that the aggravating factor in this appellant's case was "the seriousness of the offence in and of itself". The judge then went on to address the factors present by way of mitigation and made reference to the appellant's background and personal circumstances, noting that she was of previous good character and the sole parent of a ten year old boy. The judge noted the early plea of guilty

and the appellant's long history as a productive member of society. The sentencing court was told by the Probation Services that the appellant was remorseful and that she was at a low risk of reoffending in the future. The judge acknowledged the "difficulties associated with serving a term of imprisonment during this pandemic", referencing the restrictions on family visits and other services that would normally be available to those serving sentences.

7. The judge then went on to say that she did not see it as a case where vulnerability was at issue. The two accused before the sentencing court had no previous convictions, they were not addicts, and they had work available to them. The judge viewed them as "important links in a chain to facilitate the gains of criminality" and the movement of funds "from the lower rungs to the kingpins". She commented that the offending in the case of this appellant was mid-level, and that the appropriate sentence, absent mitigation, would be one of five years on both counts to run concurrently. However, taking mitigation into account, the judge reduced that to three and a half years, and then proceeded to suspend the final six months of the sentence.

The Grounds of Appeal

8. The following grounds have been advanced on appeal:

- (i) The judge erred in fact and in law in considering the seriousness of the offence to be an aggravating factor, and thus placed undue weight on the seriousness of the offence, firstly, in itself, and secondly, by also considering it to be an aggravating factor.
- (ii) The judge gave insufficient credit to the appellant for a plea of guilty, which was an early plea of guilty, and the other mitigating factors in her case, such as her personal and family circumstances, lack of previous convictions, low risk

of reoffending and difficulties likely to be encountered by her in dealing with a first term of imprisonment during the Covid-19 pandemic.

- (iii) The judge gave insufficient weight to the benefits of suspending a greater portion of the sentences in circumstances where this would have the benefit of incentivising rehabilitation and/or discouraging reoffending.

9. The Director, by way of response, maintains: (i) that the judge's comment regarding the seriousness of the offending was effectively a short hand way of referencing the aggravating factors that had been identified and was not, as suggested, a stand-alone factor; and (ii) that the judge gave sufficient consideration and credit to all of the mitigating factors present in this case in arriving at the sentence ultimately imposed. It is submitted on behalf of the Director that this appellant knew of the antecedence of those for whom she was working, and that she was not an addict, did not have debt, and was not acting under duress or threat.

Discussion

10. At the outset, it should be noted that while there may have been a certain looseness of language, this Court has no doubt that the sentencing judge did not fall into the mistake of treating the inherent seriousness of the offence as an aggravating factor. Therefore, we have no hesitation in dismissing this ground of appeal. However, there remains for consideration whether the gravity of the offence was over-assessed.

11. As noted previously in this judgment, the appellant was the focus of a Garda surveillance operation, as a result of which she was observed handing over a bag which was subsequently found to contain the sum of €59,710 in cash. A search of her home revealed a further sum of cash amounting to €63,550 and a tick-list. The sentencing court was told that she did not own the cash, but that she was being paid a sum of money in order to hold on to it and then distribute it on behalf of others.

12. This Court begins its consideration of the sentence imposed by commenting that it regards this as serious offending indeed. If there were no individuals willing to provide services of this nature to criminal gangs, then those gangs would find it difficult to operate. In this case, the fact that the appellant was linked to funds at two locations, at the service station and at her home, indicates that this was not a once-off or spontaneous involvement. The situation is therefore quite different from the case of the appellant's co-accused.

13. In the course of both written and oral submissions, reference has been made to the decision of this Court in the case of *DPP v. Maguire* [2015] IECA 350. However, we are of the view that the cases are not comparable as this case involved a conscious decision to become involved in serious criminality for financial reward. While making that observation, it must also be recognised that the sentencing court in this case was dealing with someone without previous convictions who was going to experience imprisonment for the first time. The nature of the offending certainly required that any term of imprisonment not be insignificant, however the personal circumstances of the accused were such that the period of imprisonment should not be longer than necessary.

14. In our view, the headline or pre-mitigation sentence identified in this case was an appropriate one, and we have no quarrel with the decision to reduce the sentence to one of three years and six months, or with the decision to part-suspend. However, we feel that the balance struck between the portion of the sentence to be suspended and the portion to be actually served constituted an error. It is this Court's view that it would have been appropriate to suspend fifteen months of the sentence rather than the six months selected by the sentencing judge. It seems to us that a sentence so structured would acknowledge the seriousness of the offending, while more fully reflecting the factors present by way of mitigation in terms of the appellant's personal circumstances.

15. Therefore, the Court will quash the sentence imposed in the Circuit Court, and will substitute for the sentence there imposed a sentence of three and a half years imprisonment, and we will suspend the final fifteen months of that sentence.