



**THE COURT OF APPEAL**

**Record No: 35/2021**

**The President  
Edwards J.  
McCarthy J.**

**Between/**

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

**RESPONDENT**

**V**

**DARREN KING**

**APPELLANT**

**JUDGMENT of the Court (*ex tempore*) delivered on the 27th day of January, 2022 by  
Mr Justice Edwards.**

**Introduction**

1. The appellant appeared before Judge Codd in the Dublin Circuit Criminal Court on the 27th October 2020 on signed pleas of guilty to (a) offences contrary to s.15A of the Misuse of Drugs Act 1977 which relate to Counts 1 and 2, (b) offences contrary to s.15 of the Misuse of Drugs Act 1977 which relate to Counts 4, 6, 8, 10, and 12 and (c) offences contrary to s.3 of the Misuse of Drugs Act 1977 which relate to Counts 3, 5, 7, 9 and 11.
2. Following the hearing of evidence a probation report was ordered by the court and the matter was adjourned to the 29th January 2021 for sentencing when Judge Codd imposed a sentence of 7 years for each of Counts 1 and 2 for offences contrary to s.15A of the Misuse of Drugs Act 1977 which were to run concurrently. Offences relating to all other counts were taken into consideration.
3. The appellant now appeals against the severity of the sentence.

**Factual Background**

4. Evidence was given in court by Detective Garda Russell from the Garda National Drugs and Organised Crime Bureau detailing the circumstances of the case the subject of this appeal.
5. The witness explained that following confidential information which came into the possession of An Garda Síochána, the appellant was placed under surveillance in an operation that specifically targeted his movements.
6. At 17.30 hours on the 23rd of April 2019 surveillance of the appellant saw him drive a white Nissan Qashquai belonging to his partner, from her address at 42 Cherry Orchard

Parade to Gurteen Road Ballyfermot and then on to the appellant's home address at 38 Cole Park Road where he parked and went into his residence.

7. While still under surveillance at 18.10 hours he is seen leaving his residence and going to a black Ssang Yong Actyon car registered to his partner's brother and taking a large bag from it which he transferred to the rear of the white Quashquai. He then drove a short distance to Ballyfermot Road where he parked outside the Bank of Ireland premises.
8. Shortly after parking there a taxi pulled up adjacent to the appellant's car. Two males alighted from the taxi and went to the appellant's car where they were seen in conversation with him. One of the males took a bag from the rear of the appellant's car and brought it back to the taxi.
9. The two vehicles left the scene and shortly after were intercepted by the Gardaí. One of the males in the taxi was arrested at the scene and was subsequently charged and dealt with as a co-accused. The other male made his escape and avoided apprehension by the Gardaí.
10. The appellant's car was intercepted on the Ballyfermot Road and presenting as no difficulty to the Gardaí he was arrested for offences contrary to the Misuse of Drugs Act 1977 and detained at Ballyfermot Garda Station.
11. Evidence was given in court stating that the taxi driver was entirely innocent of any wrongdoing.
12. The bag that had been given to the two males by the appellant was later found to contain a quantity of cannabis valued at approximately €102,000.
13. When the appellant was arrested at Ballyfermot Road a small amount of cannabis was discovered in his pocket and he stated *"It's a sample. Met a fella with a sample to let him see what it's like."*
14. Following a search of the black Ssang Yong Actyon car parked outside the appellant's home address, 29 kilograms of cannabis valued at €590,000 and a quantity of cocaine valued at €15,000 were discovered.
15. Following the obtainment of a search warrant a search was conducted of the appellant's residence at Cole Park Road, where 42 grams of cannabis valued at €856 was discovered. Also recovered during the search was sterling to the value of £6,960 and €800 which, although found on a person known to the appellant, was admitted by the appellant as belonging to him. The appellant also admitted that £220 found in the kitchen area also belonged to him.
16. An application was made by the State for an order for forfeiture of the sum of money which the appellant was made aware of and consented to.

17. The appellant was interviewed by the Gardaí on three occasions. During the first interview which commenced at 22.10 hours and at the start of the second interview he exercised his right to silence. After consultation with his solicitor during a break period, he started to answer questions and made admissions to possessing the drugs in question for the purpose of sale or supply and in regard to their value. In relation to the questions which he didn't answer he stated his reason for not doing so was due to fear for his own safety.
18. The appellant signed pleas of guilty in the District Court and affirmed same on the 26th of June 2020.
19. Evidence was given in relation to the sentence imposed on the appellant's co-accused, a 20 year old male charged with an offence contrary to s.15A of the Misuse of Drugs Act 1977, who was given a wholly suspended sentence in respect to the €102,000 worth of drugs taken in the taxi. The co-accused's role was deemed as one of delivering the drugs and he had stated in interviews that he had been surprised at the quantity of drugs involved. The co-accused had no previous convictions.

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

20. The appellant was born on the 4th of February 1986 and was 33 years of age at the time the offences were committed. He is a father of five children aged between 13 years and 3 months of age and was expecting a further child at the time of the trial.
21. The appellant indicated during interviews that he had previously worked as a driver for Dublin Bus but had been medically retired in 2017 due to a serious back injury which required orthopaedic intervention.
22. During Garda interviews he stated that he had developed a cocaine addiction and had got into debt and that the offences committed were associated with that debt. However, no evidence was provided to verify this claim.
23. Evidence was provided to the court showing that the appellant had arrears on a mortgage with Dublin City Council totalling approximately €30,500.
24. The court read testimonials from his partner and parents as to his good character as a father and as a son and from his previous employer as to his good work history.
25. A Probation and Welfare Service Report directed by the sentencing court on the 27th of October 2020 indicated that the appellant was a moderate risk of reoffending and that he had engaged with the probation services.
26. The appellant had one previous conviction for robbery contrary to s.14 of the Criminal Justice (Theft and Fraud) Offences Act 2001, for an offence committed on the 11th of February 2007. He was sentenced by the Dublin Circuit Criminal Court to two years imprisonment which was suspended in its entirety for two years and a fine of €3,000.

#### **The Probation Report**

27. A Probation Report was furnished to the sentencing judge. We do not propose to quote it in full. However some passages should be quoted.

28. The probation officer notes that:

*"During interviews with this probation officer Mr. King accepted responsibility for his involvement in the offence is before the court today, and provided a similar narrative to the above. Mr. King reported that he was arrested on 23/04/2019 after Gardaí observed him being involved in the handover of a package between his Jeep and the passenger of a taxi. Mr. King informed me that he had been using cocaine and had accrued a debt beyond €10,000. He advised that the individual he had purchased cocaine from had offered him an opportunity to reduce his debt if he agreed to become involved in the sale and supply of cannabis in the community. Mr. King reported that he started using cocaine during a time that he was on sick leave from his long-term employment. He informed me that he was spending on average €400 a week on cocaine and was experiencing financial strains as a result. Mr. King admitted that Gardaí uncovered cocaine in the Jeep but advised that he was only selling cannabis. He indicated that an agreement was made which meant that the sum of his debt was paid off every time he completed a sale or delivery, and he advised that he would not usually receive any additional payment."*

29. The report also stated:

*"During interviews Mr. King reported that he has made significant progress in terms of his addiction issues and mental health since the index offences occurred. Mr. King indicated that he has not used cocaine or drunk alcohol in over a year. Mr. King is aware that he was directed by the court to provide urine analysis reports during the recent adjourned period. I confirmed that Mr. King provided at urinalysis screen with the Matt Talbot Center on 21st December 2020, and contact with the staff member, Ms. Grainne Jennings, on 25th January 2021 confirmed that this screen was drug-free for all substances.*

*... Unfortunately, Mr. King has been unable to provide any further screens since this date as the Matt Talbot Center has been closed in recent weeks due to the recent Covid 19 restrictions."*

30. The probation report assessed Mr King as being *"at a moderate risk of reoffending in the community over the next 12 months"* The primary risk factors were identified as including Mr. King's previous offending history, lack of current employment, structure or routine, and recent issues with addiction and mental health concerns. The main protective factors identified included Mr. King's stable accommodation, supportive family and peer relationships, history of long-term employment and his current abstinence and positive mental health.

31. The report concluded:

*"Given that Mr. King is assessed as being at a moderate risk of reoffending over the next 12 months and that various risk factors have been identified, it is assessed that he would benefit from continued support of the Probation Service."*

32. The report then went on to propose a number of conditions that might be attached to any period of supervision that the sentencing court might propose.

33. In response to counsel for the appellant's request that consideration be given to the caselaw of *DPP v. Broe*, *DPP v. O'Callaghan* and *DPP v. Cambridge* [2019] IECCA 133 which held that a court may go under the mandatory minimum 10 year sentence for s.15A offences where there is a plea of guilty, co-operation from the accused and where there is a drug debt, the sentencing judge sought clarification as to evidence of such a debt stating;

*"He states that he has a cocaine issue and this was the precursor to his involvement. He'd money problems and debt—and debt. He said he stated this, but I have no evidence of that. That was the –that was the garda saying that."*

34. In proceeding to impose sentences in respect of charge 1 and 2 relating to the two s.15 counts the sentencing judge stated that the two offences were linked where *"the second portion of drugs was taken from where the first portion of drugs was stashed."*

35. In establishing that the court was dealing with "very serious offences" in respect of "a very significant total quantity of drugs" with a combined value of €700,000, the court noted that the appellant was "actively involved in dealing—dealing in [drugs] i.e. distributing them."

36. The judge stated;

*"...the court must consider in the context of measuring a sentence for an offence in respect of which the street value of the drugs was so high, the grave social harm caused by drugs, including the addiction of addicts and their lives, the impact of that on their lives and on those of their families, all of which is associated with offending of this nature and the adverse effect on society and on garda resources caused by addicts, not alone dealing in drugs themselves but also committing other offences to feed their addiction... It also leads to other criminality, as I've said, and it profoundly adversely effects the addict and inter familial relationships and can often destroy both of them. It's clear from the evidence of the prosecuting garda that the accused's involvement in this distribution operation was not a subordinate role, he was actively storing large quantities of drugs, knew what they were and was actively distributing them."*

37. In relation to the appellant's culpability, the sentencing judge noted that the evidence provided to the court as to the quantity and value of the drugs, indicated that the appellant was *"a mere mule and was actively storing and distributing large quantities of drugs."*

38. In considering the headline sentence as one of 12 years imprisonment the court held that the most significant aggravating factor was the value of the drugs and the attendant social harm associated with this. In referencing the need for deterrence in sentencing she

noted that evidence of distribution of the drugs by the appellant, established that he was involved in more than just storage of them and had allowed his residence to be *“used to keep cash and smaller quantities of drugs.”* She continued in stating that while the *“appellant’s previous conviction aggravated the offences to some degree, it did not significantly aggregate the offending conduct.”*

39. By way of mitigation the judge took into account the appellant’s guilty plea which was of assistance to the prosecution in relation to proving possession, the jurisprudence put forward by the defence in relation to signed pleas and the admissions made by the appellant at the scene where he took responsibility for the drugs and the cash. She also took account of the financial pressures the appellant was under, that he had been in full time employment in the past, his remorse, his addiction to a Class A drug and the steps he had taken towards self-rehabilitation. She also noted the impact that a significant custodial sentence would have on his young family.
40. Stating that there were *“exceptional and specific circumstance based on the accused’s co-operation and guilty plea and the personal circumstances”*, the judge held that it would be *“unjust to impose a presumptive minimum of 10 years”* and so imposed a sentence of seven years with no part suspended for the two counts relating to the section 15A offences. She took the remaining affirmed pleas into consideration.
41. In response to counsel’s request that consideration be given to the Probation Report which stated that the appellant would benefit from the continuing support of the probation service the judge stated;

*“JUDGE: Yes, but I’m not – I’m not considering it as part—because he’s at moderate risk of reoffending. He’s done well in terms of self-rehabilitation.”*

*COUNSEL: Very good.*

*JUDGE: I’m not considering probation supervision as necessary in this case.”*

#### **Grounds of appeal**

42. The appellant appeals the severity of his sentence on the following grounds;
- a. The learned Sentencing Judge erred in her interpretation of the Probation Report, in finding that the Appellant was at *“moderate”* risk of re-offending.
  - b. The learned Sentencing Judge failed to give adequate weight to what are referred to in the Appellant’s submissions as *“protective factors finding in the (probation) report which...were corroborated by the testimonials presented on behalf of the Appellant.”*
  - c. The learned Sentencing Judge erred in not considering probation supervision to be necessary for the Appellant post-release.
  - d. The sentence was excessively focused on deterrence and failed to achieve the objective of rehabilitation, in not incorporating a suspended element.

### **Submissions of the appellant**

43. Counsel points to *DPP v. O'Driscoll and O'Driscoll*, Court of Criminal Appeal 3rd March 1972 Frewen Vol. 1, in arguing that in failing to suspend any part of the sentence imposed, the judge erred in her interpretation of the Probation Office Report's finding that the appellant was at moderate risk of reoffending. It is submitted that notwithstanding the appellant's unrelated previous conviction, the judge failed to give adequate weight to the appellant's successful efforts at self-rehabilitation and that by ruling out probation supervision she erred in failing to provide on his release for the protective guidance and assistance of the Probation Services in the area of addiction, victim awareness education and employment attainment.
44. In reliance of caselaw *DPP v. Thomas McCormack*, Court of Criminal Appeal, [2004] 4 I.R. counsel submit that the absence of evidence of vast wealth on the part of the appellant suggests that he was very much a middle man rather than a major figure at the top of the pyramid of dealing and that reliance on his role as supplier was given too much weight during sentencing. Counsel argue that the sentence imposed was excessively informed by a need for deterrence.
45. Pointing to *The People (DPP) v. Jennings*, (Unreported Court of Criminal Appeal, 15th February, 1999) counsel submit that notwithstanding the judges positive comments on the appellant's effort at self-rehabilitation, the sentences subsequently imposed were excessive and unduly severe.
46. In relation to the appellant's previous conviction counsel point to *The People (DPP) v. GK* Court of Criminal Appeal [2008] IECCA 110 in submitting that the previous convictions of the appellant were given undue weight.

### **Submissions of the respondent**

47. In relation to the appellant's contention that the judge erred in her interpretation of the Probation Report's findings that the appellant was at moderate risk of re-offending, counsel point to the fact that senior counsel for the appellant acknowledged that this indeed is what the report said.
48. Counsel argues that the case law of *DPP v. O' Driscoll* (CCA 3rd March 1972) and *DPP v. Thomas McCormack* (2004) 4 IR 356 are of no specific assistance to the appellant in establishing that the sentence was unduly severe by reason of not incorporating a suspended element or that it was excessively informed by the object of deterrence.
49. Counsel distinguishes *The People (DPP) v. Jennings* (CCA, 15th February 1999) from the present case in that the appellant the subject of this appeal was not someone involved in a large number of minor offences who had arrived at a "make or break" point, but rather was someone involved in very significant criminality which warranted a custodial sentence of considerable duration.
50. In relation to the appellant's previous conviction counsel submit that his reliance on *DPP v. GK* (2008) IECCA 110 is misconceived in that the judge noted it as an aggravating factor but not as a significant aggravating factor.

51. In reliance of *The People (DPP) v. Sarsfield* [2019] and *The People (DPP) v. O'Connell* [2019] IECA 213 counsel for the respondent submit that the high value and planned distribution of the drugs establishes that the offending behaviour was intentional, was part of a plan to distribute drugs on a commercial scale and that the appellant was more than a mere courier, and as such, the judges identification of a headline sentence of 12 years was aligned to the evidence and supported by the above caselaw.
52. Notwithstanding the entitlement of a reduction on a sentence by one third where the appellant has signed pleas as identified in *DPP v. Cambridge* [2019] IECCA 133, counsel submits that in reducing the headline sentence by 5 years to reflect the totality of mitigation, the judge exhibited a careful and methodical approach to identifying the mitigating factors in a comprehensive fashion.
53. In reliance of Professor O'Malley in "*Sentencing Law and Practice*" (3rd edition), *The People (DPP) v. Moyne* [2020] IECA 15, *The People (DPP) v. Naylor & Goddard* [2020] IECA 166, *The People (DPP) v. Wanden* [2019] IECA 221 and *The People (DPP) v. O'Brien* [2018] IECA 2, counsel submit that caselaw demonstrates that there is a particular need for a meaningful deterrent element to be incorporated in cases of this nature to address the harm done to society as a result of drug dealing and that the sentencing judge was not in error in prioritising the objective of deterrence.

#### **Decision**

54. Very sensibly, counsel for the appellant accepts that the 12 year headline sentence nominated by the sentencing judge was one that was within her range of discretion. Although the sentencing judge characterizes the appellant at one point as being a mere mule, in the same breath she refers to him "*actively storing and distributing large quantities of drugs.*" In our assessment that represents the reality of this case and the headline sentence nominated was entirely appropriate.
55. The main ground of complaint relates to the extent to which the headline sentence was discounted. Counsel for the appellant again accepts that a substantial discount was afforded. However, he says that notwithstanding the fact that there was a substantial discount, the amount of discount was not enough. He suggests for example that the signed pleas alone would have entitled his client to a discount of one third which would have reduced the headline sentence from 12 years to 8 years. He says there was significant other mitigation in the case and that all that his client got for that was a further year off the headline sentence. Indeed, the focus of his complaint was not so much that only a year was ostensibly allowed for other factors, but that the sentencing judge had not properly considered progress towards rehabilitation to date and had not sought to incentivise continued rehabilitation.
56. The appellant complains that the sentencing judge sought to justify her unwillingness to part suspend the 7 year post mitigation sentence that she had arrived at on the basis that "*he's at moderate risk of reoffending and has a number of protective factors.*"



57. We are not impressed with the appellant's arguments. A very substantial discount was afforded in this case. The sentencing judge did not break down how she arrived at a discount of 5 years. She may or may not have afforded up to a one third discount for the signed pleas. We simply do not know how she weighed the individual mitigating factors. Counsel for the appellant is right that his client was entitled to a significant discount on account of the signed pleas but the judge would have had some margin of discretion in regard to the exact level of discount and she was not obliged to specify what component of her overall discount was to be attributed to the signed pleas. We think that the discount afforded of 5 years from the headline sentence of 12 years was generous overall, and no criticism of it can legitimately be entertained.
58. It was within the discretion of the sentencing judge to go the extra mile as it is sometimes described to reward progress towards rehabilitation to date, and to incentivise continued progress towards rehabilitation, but she was not obliged to do so. We have said many times that before a sentencing judge will be justified in taking such a step there requires to be a sound evidential basis for doing so. There was evidence in the Probation Report that the appellant had had a substance abuse problem and that he had sought to address this through engagement with the Matt Talbot centre. Moreover, he seems to have achieved some success in that regard in that on the one occasion on which he was able to provide urine analysis it was clear of drugs. However, there was little or no evidence before the sentencing judge to suggest a causal link between the appellant's substance abuse difficulties in the past and his possession and distribution of a very large quantity of drugs on the date on which he was apprehended. According to his own account, he had accrued a drug debt while in the throes of substance abuse and was required to perform distribution of drugs as a means of paying off that debt. It is an explanation but it is hardly to his credit. We do not think that it would have provided the sentencing judge with an adequate justification for suspending an additional portion of the 7 year sentence that she had determined upon. The appellant here was not in the same situation as an addict who commits a crime out of chemical compulsion, i.e., the desperate need to feed his or her habit, and who might be amenable to turning away from crime if he/she received treatment for his/her drug addiction. This was a commercial decision taken by the appellant to seek to pay off his debt by engaging in further crime, no doubt under some degree of duress because the debt was owed to sinister people. However, it was not criminal conduct born of a factor that could be corrected through any program of rehabilitation. In our view the sentencing judge cannot be criticized for legitimately exercising her discretion not to suspend an additional portion of the sentence.
59. The appeal is therefore dismissed