

[2021] IECA 42



THE COURT OF APPEAL

46/20

APPROVED

NO REDACTION NEEDED

Birmingham P.

Donnelly J.

Ní Raifeartaigh J.

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

APPLICANT

AND

SAMANTHA SINNOTT

RESPONDENT

37/20

BETWEEN

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

APPLICANT

AND

CIARÁN LONG

RESPONDENT

266/19

BETWEEN

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

APPLICANT

AND

BERNARD JOYCE

RESPONDENT

JUDGMENT of the Court delivered on the 4th day of February 2021 by Ms. Justice Ní Raifeartaigh

Nature of the case

1. This judgment deals with three applications brought by the Director of Public Prosecutions (“DPP”) pursuant to the provisions of s. 2 of the Criminal Justice Act 1993, seeking to review sentences on the grounds of undue leniency.
2. Each application concerns a respondent who pleaded guilty to a sole count of money laundering contrary to s.7(1)(a)(i), s.7(1)(b) and s.7(3) of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (“the Act of 2010”). The maximum penalty for an offence contrary to s.7 of the Act of 2010 is fourteen years.
3. Ms. Sinnott received a sentence of 12 months imprisonment wholly suspended. Mr. Long received a sentence of two and a half years imprisonment wholly suspended. Mr. Joyce received a sentence of 5 years with two years suspended.

Samantha Sinnott's case

Facts

4. On the 22 September, 2018, Gardaí from the Garda National Drugs and Organised Crime Bureau were involved in a money-laundering investigation in Wexford, which led to a number of men being arrested in Wexford Town.

5. A follow-on search took place later that evening at an address in Foulksmills, County Wexford, where Ms. Sinnott was present. She herself was not under investigation at that time. A number of Gardaí attended in order to search the property. During the search, a safe was located in the concrete in the floor of the hot press. The key was then located for this safe and it was discovered that the safe was empty. Detective Garda Dunne cautioned Ms. Sinnott and asked her about the empty safe. She told him that she had emptied the safe and taken the contents in two bags to her house which was approximately two miles away. Gardaí then went to her house in Ballymitty, County Wexford. She permitted them to enter and handed two rucksacks to the Gardaí. The rucksacks contained a large amount of cash totaling a sum of €109,890, which the Gardaí seized. In light of the fact that Ms. Sinnott had a four-week-old baby, they left at that stage and returned the following day.

6. Ms. Sinnott was arrested, taken to Wexford Garda Station, detained under s. 4 of the Criminal Justice Act 1984, and interviewed pursuant to caution. She made certain admissions. She said that she “had suspected that the cash that was in the safe was the proceeds of crime, or certainly illegal activity”. She admitted that she had discovered this money and removed it because she believed the money belonged to her partner. She said that she had heard on the radio that day that a number of men had been arrested in Wexford Town and had become nervous. She then removed the money from the premises in order to protect her partner.

7. To date, no charges have been brought against her partner in respect of this matter.

Sentence

8. Ms. Sinnott entered an early plea of guilty on the 16 May, 2019, at Wexford Circuit Criminal Court. She pleaded guilty to one count of money laundering contrary to s.7(1)(a)(i), s.7(1)(b) and s.7(3) of the Criminal Justice (Money Laundering & Terrorist Financing) Act 2010.

9. When considering the sentence, the sentencing judge set out the following mitigating factors:

- a) The respondent's age (40);
- b) Her personal circumstances (five children including a baby);
- c) The early guilty plea;
- d) The fact that the respondent is employed as a community midwife together with a very positive reference from Wexford General hospital which was furnished to the court;
- e) The fact that she "wasn't involved in criminal activity or in money laundering until she discovered the money or opened the safe and then decided she was going to move the money";
- f) Her co-operation with the Gardaí; she made full admissions to the Gardaí, brought them to the property where the money was then located, and gave them the rucksacks containing the money;
- g) The fact that the respondent was remorseful and had no previous convictions;
- h) The probation and welfare report, which classified her conduct as "a very serious error of judgment";

- i) The opinion of the probation officer that she was at very low risk of reoffending, as well as Garda Dunne's similar opinion.

10. The sentencing judge then expressed the view that the appropriate headline sentence would be a sentence of two and a half years. Taking into account the mitigating factors, he imposed an actual sentence of 12 months imprisonment, suspended in its entirety on the respondent entering her own bond in the sum of €200 to keep the peace and be of good behaviour. In sentencing the accused, the Court noted that she had availed of counselling and for that reason did not impose any other conditions.

11. Although Mr. Joyce's case also arises out of the search by the Gardaí at Foulksmills as described above, the Court will deal with Mr. Long's case next because it considers it appropriate to deal with the cases in ascending order of gravity.

Ciaran Long's case

Facts

12. On the 27 March, 2017, members of An Garda Síochána searched an address at Barntown, County Wexford, the home of Mr. Long. They were in possession of a search warrant (issued for the purpose of searching for drugs). Mr. Long was present during the search. In one room they found a Centra shopping bag, among other items, and in the bag there were numerous bundles of cash which came to the sum of €201,000. Mr. Long was cautioned and questioned and he told Gardaí that he collected the money on behalf of another individual in Gorey and that this person was to collect the money from the dwelling that day. He made a cautioned statement to that effect at the scene.

13. Mr. Long was then arrested and taken to Wexford Garda Station where he was detained under s.4 of the Criminal Justice Act 1984. He was interviewed a number of times

and made certain admissions in relation to collecting the money and being given €400 to do so. He again said that he collected the money in Gorey at a shopping centre and brought it back to his home where the money was to be collected by an unnamed individual.

14. Evidence was given by Garda Burke that Mr. Long had travelled to Australia a number of years ago and returned approximately a year to a year and a half before this money seizure. He was working part-time. Garda Burke stated his belief that there was a drugs gang operating in the Wexford area and that Mr. Long became caught up in this gang, taking the opportunity to make easy money by collecting money on its behalf. He likened the role of the respondent to that of a drugs mule in that he was collecting money and bringing it to certain locations on behalf of people who generally keep away from the daily handling of the cash. The respondent was given €400 to pick up the money, which he brought back to his house and it was to be collected there. However, due to unknown circumstances, the money was not collected before the Gardaí arrived at the scene and discovered it. There was no suggestion that Mr. Long owned the money himself.

Sentence

15. The sentencing judge considered the following factors to be aggravating circumstances:

- a) The amount of money found - approximately €200,000;
- b) The fact that he was engaging in the transport of drugs money for a drugs gang, enabling more serious players to stay at arm's length from the handling of cash;
- c) The fact that Mr. Long appeared to have an ongoing involvement in such activity; and
- d) That by being entrusted with handling such a large amount of money. Mr. Long had clearly assumed a level of responsibility in his role.

16. The sentencing judge took into account a number of mitigating factors, which were as follows:

- a) The respondent's age (36);
- b) His personal circumstances;
- c) His early guilty plea;
- d) The absence of previous convictions (the court having decided to disregard a previous conviction for summary offence of dangerous driving);
- e) His co-operation with Gardaí and admissions;
- f) His lack of awareness of how much money there was;
- g) The opinion of Garda Burke that Mr. Long's role was at the lowest level of involvement with the cash (namely a role of transporting between other persons);
- h) The opinion of Garda Burke that he would not come to the attention of the Gardaí again;
- i) The respondent's drug-taking;
- j) The fact that was employed;
- k) The Probation and Welfare report; this stated that the respondent cooperated with all aspects of probation supervision, that he addressed his substance misuse and attended the substance misuse team, that he attended urine analysis and provided results, that he completed the 28-day residential programme and was attending aftercare.
- l) Clean urinalysis was provided.
- m) Mr. Long's own letter of apology.
- n) The fact that the respondent made a commitment to attend the two-year Continuum programme at Aiséirí.
- o) The forensic psychological report of Ms. Cornelia Sakali which set out the respondent's background and his past history of alcohol consumption and drugtaking, and his psychological assessment.
- p) Testimonial letters handed in albeit that some dated from 2012 and 2013.

q) FETAC certificate.

17. The sentencing judge stated that the appropriate headline sentence in relation to the offence was a sentence of four years. Taking into account the mitigating factors, the actual sentence he imposed was one of two and a half years which he then suspended in its entirety.

Bernard Joyce's case

Facts

18. When, on the 22 September 2018, the Gardaí went to the premises in Foulksmills, Co. Wexford and met Ms. Sinnott as describe above, they noticed a camper van which was parked to the front of the premises. They thought it was unoccupied but while speaking to Ms. Sinnott, the camper van started up and took off at speed down the driveway. Gardaí gave chase around the local roads. The camper van then stopped. Gardaí spoke to the driver, Mr. Joyce, and asked him why he was in Wexford. He said that he was there to buy a boat. The respondent's teenage son was present at the time (age 13).

19. Gardaí conducted a search of the camper van and, in a hollow section under the bed in the camper van, discovered two gear bags. No fingerprint or DNA evidence was found on the bags or the cash. Inside the bags were parcels wrapped in brown Sellotape, which contained cash. There were also onions in the bags. Garda Burke was of the opinion that the purpose of the onions was to avoid detection by a sniffer dog.

20. The camper van was seized and brought to Wexford Garda Station. A small sum of money was found under the fridge during a later search. Garda Burke gave evidence that after the respondent was cautioned, he spoke briefly with him, but he made no comment other than to indicate that he "liked onions".

21. The cash was subsequently counted, and the total sum was €911,600. Garda Burke accepted that it would not be possible for someone to know how much money was in the bags because they were sealed with brown Sellotape.

Sentence

22. On 30 April, 2020, at Wexford Circuit Criminal Court, Mr. Joyce entered a plea of guilty to money laundering contrary to s.7(1)(a)(i), s.7(1)(b) and s.7(3) of the Criminal Justice (Money Laundering & Terrorist Financing) Act 2010.

23. Mr. Joyce had 7 previous convictions, including summary matters such as intoxication in a public place and obstruction of a Peace officer, and one Circuit Court matter from some considerable time before for possession of stolen property.

24. The sentencing judge took into account a number of mitigating factors, which were as follows:

- a) His age, the respondent being in his mid-40s
- b) The respondent's personal circumstances, he being a married man with two children and a wife, and that his wife had a serious illness;
- c) The early plea of guilty, which the judge said was particularly useful having regard to the potential difficulties of a trial with regard to the search of the camper van;
- d) His role, namely that he was transporting the money;
- e) The fact that he had various addiction problems, in particular a gambling addiction, which appeared to have led him to incur significant debt and in turn rendered him susceptible to pressure from others to commit the offence;
- f) The absence of any evidence that he was aware of the amount of cash, although the judge also commented that it must have been obvious from "the bags and size" that there was substantial amount of money;

- g) Evidence of his being an exemplary prisoner, including a positive prison governor's report and the fact that he was on the enhanced privilege regime.
- h) Various certificates in relation to courses attended and the fact that he was availing of numerous educational opportunities in prison;
- i) Medical documentation provided; and
- j) The fact that he had a job offer upon release (with a waste disposal company).

25. The aggravating factors, as discussed by the sentencing judge, are as follows:

- a) Possession of a substantial amount of cash, €911,600 in cash, which was deemed to be money laundering at quite a high level; and
- b) The essential assistance rendered by the respondent to those involved in laundering the proceeds of crime.

26. The sentencing judge identified a headline sentence of 7 years and then imposed a post-mitigation sentence of five years imprisonment, with two years suspended; and upon his release, to be under the supervision of the probation services for a period of 12 months and abide by all of their conditions.

Some Authorities on sentencing in money laundering cases

27. Although there have been a substantial number of sentencing decisions in money laundering cases over the years, emphasis was laid by counsel's submissions upon a number of recent decisions of the Court as follows.

28. In *People (DPP) v Clive Kavanagh*,¹ the Court refused an application by the DPP on the grounds of undue leniency in respect of a partially suspended sentence for money-laundering, being a sentence of 3 years with 18 months suspended. The circumstances were that Mr. Kavanagh's vehicle was found to contain multiple mobile phones and a holdall bag

¹ [2020] IECA 13

containing €829,265 in 17 plastic-wrapped bundles which were accepted to be the proceeds of crime. He had arrived in his own car to a location where a lorry was parked. The money was in the process of being transferred to the lorry by its driver when the Gardaí, who were conducting a surveillance operation, intervened. The respondent had entered an early plea of guilty. He was a man in his mid-thirties who was married with two children and had a good employment record. He had 9 previous convictions, all road traffic in nature, with the exception of one conviction for possession of drugs for sale or supply in 2004 (when he was aged 21) for which he had received a 2-year suspended sentence and a fine. The sentencing judge nominated a headline sentence of 6 years, but reduced it to 3 years and then suspended the final 18 months. The DPP's primary submission on appeal was that the sentencing judge, in both reducing and suspending, had "double counted" the mitigation in the sense that the respondent was being rewarded twice for mitigating circumstances already taken into account.

29. The Court did not accept this submission and upheld the sentence. It accepted that the sentence was lenient, but not that it was unduly lenient, saying that the sentencing judge was entitled to adopt the approach of "going the extra mile" to promote desistance in circumstances where the available evidence supported this approach. The jurisdiction to reduce the sentence and then suspend part of the reduced sentence was a jurisdiction that was required to be exercised with care and "sparingly" having regard to the need to achieve proportionality both with respect to the gravity of the offending conduct and the personal circumstances of the offender. However, in this particular case the sentencing judge had not exceeded the parameters of his discretion and the sentence was upheld.

30. In *DPP v Ajibola*,² the Court refused an appeal against severity of sentence and upheld a sentence of 4 years with 2 years suspended. The appellant had pleaded guilty to one

² [2019] IECA 253

count of money laundering. The circumstances were that he was linked with a sum of €32,000 that was stolen from a company by means of a false email which interposed itself in communications between one company and another while a commercial transaction was being negotiated. The money was traced to a bank account with which he was connected and he was arrested at the airport with €8,000 in his possession. This money was given back to the injured party by way of restitution together with €1,900 that the appellant raised by way of loan. The remainder of the money had been dissipated. He gave a story to the Gardaí which, it is clear from the Court's *ex tempore* judgment, was not entirely consistent with the objective evidence and appears to have been viewed with some scepticism. He was a 51-year-old man who was separated from his wife and (adult) children. He had six previous convictions, one of which was for possession of child pornography, one for uttering a forged document, and the remainder for road traffic offences. He also had some health problems. The Court held that the sentencing judge had not erred in selecting a headline sentence of 4 years and that a reduction of 50% for the mitigating factors was entirely adequate.

31. In *DPP v Carew*,³ an appeal against severity of sentence, the Court upheld an 8-year sentence imposed by the sentencing judge as a “global sentence” in respect of two money laundering offences in circumstances where both of them had been committed during the suspended period of a sentence which had been imposed on the appellant in respect of a money laundering offence. The original offence involved a sum of approximately €68,000 while the second and third offences involved sums of approximately €191,000 and €351,000 respectively. The appellant was in his thirties and had a long work history as a haulage driver. Prior to the first money laundering offence, he had no previous convictions at all. The uncontested evidence at the hearing was that his work was intrinsic to the operations of what was described as a large organised crime operating both inside and outside the State, that he

³ [2019] IECA 77

was very much a trusted person, and that his extensive experience in the haulage business was of particular value to the gang in question. His vehicle had been specially adapted to contain a secret compartment for concealment of the cash.

32. Whelan J., delivering the judgment of the Court, stated that the evidence before the court clearly demonstrated that the offences were planned and premeditated and that there were a number of significantly aggravating factors, including that the appellant's offending escalated in terms of gravity and frequency and that both offences were committed during the currency of a suspended sentence. She commented that by "facilitating the commission of further criminal offences, money laundering is an essential component of a criminal organisation's capacity to perpetuate the carrying out of serious criminal activities. The potential public harm caused by money laundering is heightened in the case of serious organised crime such as the drugs trade. Sight must not be lost of the fact that for money laundering to take place there must be a predicate offence or offences, since the money being laundered is the proceeds of criminal conduct." In those circumstances, she said, the sentencing judge had not been in error in identifying 9 or 10 years as the headline sentence in respect of the new offences. He would have been entitled to impose consecutive sentences and to re-activate the earlier suspended sentence, which might have led to an even greater sentence than the 8 years "global sentence" which he decided to impose and with which the Court would not interfere.

Comment

33. Having regard to the above authorities, it is clear that among the key factors which the sentencing court must consider when identifying a "headline" sentence are (a) the amount of money involved, (b) the role played by the accused in relation to the money, and (c) whether the conduct of the accused was intended to assist a criminal organisation and if so, the nature

and scale of that organisation. Frequently, the first two matters are linked insofar as the more central the role of a person within a criminal organisation (if the evidence suggests a criminal organisation was involved), the more likely it is that larger sums of money will be entrusted to his or her safekeeping either for storage or for delivery to another. Conversely, the more peripheral the involvement of the accused with the organisation, the less likely it is that he or she will be entrusted with large sums of money.

34. The above factors seem to be of particular relevance when selecting the headline sentence, bearing in mind that the maximum sentence is one of 14 years. So, for example, in the *Kavanagh* case, a 6-year headline sentence was identified where the sum of money was €829,000 and his role seems to have been limited to being that of a delivery person, and in the *Carew* case, the Court approved in principle of the identification of a 9- or 10- year headline sentence where the amounts in question (i.e. for the two new offences) were (the increasingly greater) sums of €191,000 and €351,000 respectively and the role of the appellant was central to a criminal organisation which was large and sophisticated. A headline sentence of 4 years was identified in the *Ajibola* case where the sum involved was €32,000 and there was no evidence of a wider criminal organisation with which he was operating. In all cases, as usual, the mitigation may operate to reduce the headline sentence to a greater or lesser degree. As pointed out in *Kavanagh*, the Court may be disposed to go the “extra mile” where it is persuaded that a suspensory portion of a sentence will be sufficient to deter the offender from re-offending. And as Edwards J pointed out in *Ajibola*, while the maximum sentence is one of 14 years for the offence of money laundering, there is a full spectrum of options, commencing with non-custodial options. This is of particular relevance to the first of the three cases, to which I now turn.

Discussion and decision regarding Samantha Sinnott

35. The sentencing judge imposed a sentence of 12 months wholly suspended in Ms. Sinnott's case. As the Court indicated on the day of the sentencing, it does not propose to quash and impose a custodial sentence in this case. The Court is of the view that the wholly suspended sentence in respect of Ms. Sinnott should be upheld. It is true that the amount of money concealed by her (by removing the money from one house to another) was a significant sum (€100,000) and that she did so, having heard on the radio about the Garda searches earlier, and therefore knew that the money was likely to have been illegally obtained. All the other factors in her case, however, point towards affording Ms. Sinnott considerable leniency. Her decision to move the money was sudden and in no way premeditated; its inspiration was her desire to protect her partner rather than personal gain; her intention to conceal was short-lived insofar as she almost immediately confessed what she had done to the Gardaí; her co-operation was full insofar as she let them into her house without a warrant, gave them the money, and followed up with admissions. She also entered an early guilty plea. Her general circumstances were those of a generally hard-working, law-abiding citizen, being a community midwife with an excellent reference from the local hospital and a complete absence of any previous convictions.

36. Her case has all the hallmarks of a normally law-abiding citizen who made one extremely foolish and rash error of judgment but who followed up with responsible behaviour in her co-operation with the Gardaí and dealings with the courts. Notwithstanding the grave nature of the offence of money-laundering and the amount of money involved, the Court is of the view that this is one of those rare cases which falls into the exceptional category of cases in which a wholly suspended sentence was within the appropriate range of the trial judge's discretion. The Court does not consider that the application meets the threshold set out in the

“undue leniency” cases and will refuse the application for review of the sentence on grounds of undue leniency in the case of Ms. Sinnott.

Discussion and decision regarding Ciaran Long

37. The headline sentence identified in the case of Mr. Long was 4 years, and he received an actual post-mitigation sentence of two-and-a-half years suspended.

38. The amount of money involved in Mr. Long’s case was the sum of €201,000. This was not a once-off, impulsive act, such as had occurred in Ms. Sinnott’s case; on the contrary, the evidence was that he had become caught up with a criminal gang, taking the opportunity to make easy money by collecting money on its behalf. His role was at a very low end of the activity but it was helpful to the gang nonetheless. In the circumstances, the Court is of the view that the identification of a 4-year headline sentence was too lenient and the Court would not have had a difficulty if the headline sentence was identified as one of 6 years.

39. In addition to the sentencing judge’s identification of a lenient 4-year headline sentence, Mr. Long then received a discount of 18 months for mitigating factors together with a suspension of the balance, yielding a sentence of 2-and-a-half years sentence suspended in its entirety. The Court is of the view that in view of the seriousness of the offence, this sentence was unduly lenient and will quash that sentence.

40. In resentencing the respondent Mr. Long, the Court will set the headline sentence at 6 years having regard to the sum of money involved and the fact that the appellant was providing assistance to a drugs gang, albeit that his role with the gang was very limited and at a low level. The Court will take account the mitigating factors described above and will also have regard to the fact that the imposition of a custodial sentence on appeal when the appellant received a non-custodial sentence at first instance, and given the passage of time, carries an extra dimension of disappointment and impact upon an appellant. In the

circumstances, the Court proposes to impose a sentence of 2 and a half years imprisonment in this case and will hear submissions as to the commencement date of sentence.

Discussion and decision regarding Bernard Joyce

41. The sentencing judge, having identified a headline sentence of 7 years, imposed a sentence of 5 years imprisonment and then suspended a further 2 years of the sentence.

42. In Mr. Joyce's case, the sum of money was very significant indeed (€911,600). He initially sought to flee the scene when the Gardaí arrived and the money was subsequently found, without his assistance, in a concealed area in his camper van. There were onions with the cash, suggesting an attempt to hide the money from Garda sniffer dogs. The presence of a minor aged 13 years at the time he was engaging with the Gardaí must also be noted. These factors would suggest that an appropriate headline sentence was at least one of the order of that identified by the trial judge, namely 7 years, and could well have been considerably higher, in the 8-10 year bracket.

43. The respondent's plea of guilty was a significant mitigating factor, and there were various other mitigating factors including his significant post-conviction attempts to address some of his personal difficulties (including his gambling addiction) in prison; the availability of a job offer upon his release; and his family circumstances. Notwithstanding that mitigation, the Court is of the view that the appellant was given an unduly lenient sentence insofar as the judge reduced the headline sentence of 7 years to one of 5 years and then additionally suspended the last 2 years. The Court will quash that sentence on the basis of undue leniency.

44. In resentencing the respondent, notwithstanding that the Court takes the view that the headline sentence could have been higher, the Court will accept the headline sentence imposed by the sentencing judge, namely 7 years, as the starting point. Taking into account

the mitigating circumstances, and also taking into account the passage of time since the sentence at first instance together with the fact that Mr. Joyce is close to release or may even have been released in recent times, the Court will reduce the actual sentence from the headline of 7 to an actual custodial sentence of 4 years. The sentence must of course take into account time actually served.

Una Ní Raifeartaigh
11 May 2021