

**Analysis of Sentencing for Possession or  
Importation of Drugs for Sale or Supply**

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## **Disclaimer**

While every effort has been made to ensure the accuracy and completeness of the information contained on the Judges' Intranet, it should not be relied on as a definitive statement of the law and is intended for reference purposes only. In particular, given the considerable difficulty in tracking amendments to legislation and in obtaining up to date judgments, we advise readers to double check that the law is correctly stated before relying on the information herein. Should you have any queries on whether the law has changed in a particular area, please contact the Judicial Researchers Office on (01) 888 6868 or [judicialresearchers@courts.ie](mailto:judicialresearchers@courts.ie).

## **Analysis**

This paper analyses 81 separate sentences handed down by the Court of Criminal Appeal. These cases were identified through searching court records, and not primarily from newspaper reports. Judgments of the Court, DAR, and ICMS were the tools used.

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## Commentary

### *Introduction*

This analysis examines the sentencing practice of the courts in relation to certain drug trafficking offences,<sup>1</sup> specifically the offences of possession or importation of controlled drugs for the purpose of sale or supply. There are four such offences which are detailed herein:

- Possession of controlled drugs for unlawful sale or supply (s. 15 of the Misuse of Drugs Act 1977, as amended).
- Possession of controlled drugs (valued at €13,000 or more) for unlawful sale or supply (s. 15A of the Misuse of Drugs Act 1977, as amended).
- Importation of controlled drugs for unlawful sale or supply (several provisions found in the Customs Acts, Misuse of Drugs Acts 1979-1984, as amended, and the Misuse of Drugs Regulations 1988).
- Importation of controlled drugs (valued at €13,000 or more) for unlawful sale or supply (s. 15B of the Misuse of Drugs Act 1977, as amended).

It is important to note that there is a different sentencing regime for the ordinary possession and importation for sale or supply offences and possession or importation for sale and supply offences where the value of the drug or drugs exceeds €13,000. Convictions under s. 15A or s. 15B automatically attract a “basic presumptive sentence”<sup>2</sup> of 10 years or more. This applies regardless of whether mitigating factors may exist meriting a lower sentence. A sentencing court may however impose a lower sentence where there are mitigating factors that amount to “exceptional and specific circumstances”, which would render the imposition of a sentence of 10 years or more “unjust in all the circumstances”.<sup>3</sup> “Exceptional and specific circumstances” can be said to set a higher threshold than mitigating factors generally in sentencing law: all “exceptional and specific circumstances” are mitigating factors, but not all mitigating factors constitute “exceptional and specific circumstances”.

In Part I, the legislative basis for these drug trafficking offences and the reserved judgments of the superior courts are analysed in order to articulate a sentencing framework. Part II examines the application of such sentencing principles to the hybrid sentencing regime for offences of possession or

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<sup>1</sup> Within the meaning of s. 3 of the Criminal Justice Act 1994, as amended.

<sup>2</sup> *Per* Denham J. in *The People (Director of Public Prosecutions) v. R.L.* [2007] IECCA 21, (Unreported, Court of Criminal Appeal, 18<sup>th</sup> April, 2007).

<sup>3</sup> Section 27(3D) of the Misuse of Drugs Act 1977, as amended.

importation for sale or supply where the controlled drugs are above a certain monetary value, *i.e.* whether the “basic presumptive sentence” should be imposed or whether to do so would be unjust in all the circumstances. Part III contains a précis of all judgments on sentencing—a total of 79 reserved and *ex tempore* decisions involving 81 offenders—of the Court of Criminal Appeal from 2009 to 2012. 20 judgments were analysed pertaining to the ordinary offence and 59 relating to the offences carrying the presumptive sentence.

The case law analysed herein shows that in the majority of s. 15A and s. 15B sentences (67% of those surveyed) the presumptive minimum sentence of 10 years imprisonment or more is not imposed by the courts despite the fact that this sentence is popularly described as a “mandatory minimum”. This does not however indicate that the presumptive minimum is disregarded because where a lesser sentence is imposed; such sentence is ordinarily constructed by reference to the applicable legislative provisions detailed in s. 27(3A)-(3N) of the Misuse of Drugs Act 1977, as amended. The Court of Criminal Appeal has repeatedly emphasised that the upper parameters of these offences are properly defined by reference to the maximum penalty of life imprisonment and not, as is often the case, to the presumptive mandatory minimum of 10 years. Although the offences regarding possession for supply are governed by different penalty mechanisms, the Court of Criminal Appeal has furthermore indicated that these offences ought not to be considered entirely independently of one another, this is because they share certain common elements and a common maximum penalty of life imprisonment.<sup>4</sup>

On the other hand, the statutory framework governing importation offences is less coherent. The ordinary offence exists under two legislative provisions, one of which carries a maximum penalty of 14 years imprisonment<sup>5</sup> and the other carries a maximum sentence of life imprisonment.<sup>6</sup> Discordance in the penalty provisions for drug trafficking offences can also be found between the drug supply offences already mentioned and s. 17 of the Misuse of Drugs Act 1977, as amended. Section 17 prohibits the cultivation of opium poppy, cannabis or coca plants and carries a maximum penalty of 14 years imprisonment.<sup>7</sup> In a recent case before the Court of Criminal Appeal, a notional sentence of eight years was deemed appropriate by reference to the

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<sup>4</sup> *E.g. The People (Director of Public Prosecutions) v. D.O’N.* [2012] IECCA 37, (Unreported, Court of Criminal Appeal, 12<sup>th</sup> February, 2012); *The People (Director of Public Prosecutions) v. A.A.* (Unreported, *ex tempore*, Court of Criminal Appeal, 6<sup>th</sup> July, 2009).

<sup>5</sup> Sections 5 and 21(2) of the Misuse of Drugs Act 1977, as amended, and art. 4 of the Misuse of Drugs Regulations 1988

<sup>6</sup> Section 186 of the Customs Consolidation Act 1876, as amended, and s. 9 of the Misuse of Drugs Act 1984.

<sup>7</sup> The penalty provision for s. 17 of the Misuse of Drugs Act 1977, as amended, can be found in s. 21(2), as amended by the Misuse of Drugs Act 1984.

upper limit of 14 years for an offender who was found with two crops of cannabis with a total value of €347,000.<sup>8</sup>

Prior to the introduction of the maximum sentence of life imprisonment in 1984, the upper limit of 14 years applied to importation and possession for sale and supply offences. Such maximum sentence was imposed in *The People (Director of Public Prosecutions) v. L.D.*<sup>9</sup> In the period between the commission of the offence and the date of sentencing, the legislature had increased the maximum penalty. In passing sentence, McMahon J. stated that the major players involved in drug trafficking could in future expect life imprisonment. To date however no convicted person has received the maximum sentence of life imprisonment. It is sometimes therefore popularly espoused that custodial sentences imposed are too short or that disparity exists from one sentence to the next. For example, among the cases analysed herein, one offender found with €300,500 of cannabis and cocaine was sentenced to the presumptive minimum of 10 years while another found with €329,301 of cocaine received a wholly suspended sentence; a man found with €43,000 of cocaine received a 1.5 year' custodial sentence while another man found with €287,050 of cannabis received 4 years. The Court of Criminal Appeal has frequently underlined the fact that in drug supply offences concerning drugs valued at €13,000 or more, the value is the most important factor in constructing a sentence. This sampling of cases demonstrates that the value is not however the sole determining factor. Cases should not simply be looked at from the perspective of value and closer examination of sentencing decisions reveals careful consideration of the circumstances of the individual offence and the individual offender which is consistent with general sentencing principles.

Having regard to all of the factors that influence the construction of a sentence by a court, there are four which feature most prominently in the construction of sentences for drug trafficking offences:

1. the quantity or value of the controlled drug or drugs;
2. the type of the controlled drug or drugs;
3. the role of the offender; and
4. the condition of the offender.

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<sup>8</sup> *Director of Public Prosecution v. G.C.* [2012] IECCA 31, (Unreported, *ex tempore*, Court of Criminal Appeal, 6<sup>th</sup> February, 2012).

<sup>9</sup> *Director of Public Prosecution v. L.D.* (Unreported, *ex tempore*, Central Criminal Court, McMahon J., 23<sup>rd</sup> May, 1985), and reported in *The Irish Times*, 25<sup>th</sup> May, 1985.

### ***Quantity or Value of the Controlled Drug or Drugs***

The quantity or value of the drugs is the most serious factor in calculating sentence for s. 15A and s. 15B offences due to the express inclusion of the drugs' value within the offence. The higher the quantity or value, naturally the graver the offence. For example, on the 2<sup>nd</sup> July, 2007, a smuggling operation to import what transpired to be the largest seizure of cocaine in the State to date—€440 million or 1.5 tonnes—was intercepted by authorities.<sup>10</sup> Three individuals were each sentenced to 30 years, 30 years and 25 years for their role in the operation following convictions under s. 15A. These are the longest sentences to date to be handed down for drug trafficking convictions. Where the quantity is at the lower end of the spectrum, the Court has acknowledged that such offences attract less severe sentences. Where the value of the drugs is on the cusp of the €13,000 threshold, the Court has warned that ordinary possession for supply offences approaching the threshold lie precariously close to the presumptive minimum of 10 years.<sup>11</sup>

### ***Type of the Controlled Drug or Drugs***

Until recently, the type of the drugs had a limited influence on sentencing for two reasons. First, drug sale or supply offences do not distinguish between types of drugs whereas other drug offences, such as possession *simpliciter* under s. 3 of the Misuse of Drugs Act 1977, as amended, identify cannabis as a less harmful drug. Secondly, offences under s. 15A and s. 15B make specific reference to the value of the drug but not to its type. In recent years, the Court of Criminal Appeal has however emphasised that the type of drug has an impact on sentencing because although the type of drug may not mitigate sentence, more dangerous drugs can aggravate sentence. For example, the Court was recently asked to compare two cases. In *The People (Director of Public Prosecutions) v. M.B.*,<sup>12</sup> €6.2m of heroin was found in the offender's possession while in *The People (Director of Public Prosecutions) v. P.L.*,<sup>13</sup> the offender was found with €12m of cannabis resin. A sentence of 18 years was deemed appropriate in both cases and while Murray J. noted that drugs in *P.L.* were more valuable, the drugs in *M.B.* posed "the most acute risks for those caught in the tragic lair of addiction."

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<sup>10</sup> The sentences were originally handed down by Cork Circuit Criminal Court, 23<sup>rd</sup> July, 2008. One of the sentences has been appealed for its severity and affirmed by the Court of Criminal Appeal: *Director of Public Prosecution v. J.D.* [2011] IECCA 104, [2012] 1 I.R. 476.

<sup>11</sup> *The People (Director of Public Prosecutions) v. D.O'N.* [2012] IECCA 37 (Unreported, Court of Criminal Appeal, 15<sup>th</sup> February, 2012).

<sup>12</sup> [2012] IECCA 72, (Unreported, Court of Criminal Appeal, 6<sup>th</sup> July, 2012).

<sup>13</sup> [2006] IECCA 49, (Unreported, Court of Criminal Appeal, 26<sup>th</sup> April, 2006).



### ***Role of the Offender***

The role of the offender can serve to mitigate or aggravate sentence. The offender's level of involvement can range from a low-level to a leading role. For example, in *The People (Director of Public Prosecutions) v. J.G. (No. 3)*,<sup>14</sup> the Supreme Court found that the applicant's role as a "prime mover" in the drug trafficking trade was an aggravating factor. While couriers, being at the lower end of culpability, do not attract sentences as high as those involved in the planning, organisation or management roles of drug trafficking, the Court will look at the offender's motivation for involvement. For example, in *The People (Director of Public Prosecutions) v. S.M.*<sup>15</sup> and *The People (Director of Public Prosecutions) v. E.B.*,<sup>16</sup> both offenders had been couriers and found in possession of cocaine valued at €210,119 and €159,000 respectively. In mitigation, both were foreign nationals and had entered early pleas of guilt and assisted the Gardaí. E.B.'s involvement had a commercial dimension in that he was paid €5,000. S.M. was sentenced to seven years imprisonment, with the final four suspended, while E.B. was sentenced to six years.

### ***Condition of the Offender***

The condition of the offender also impacts upon the severity of the sentence. A sentencing court may make distinctions between those involved in the offence due to the fact that they are drug-addicted and they now show a prospect of rehabilitation,<sup>17</sup> or if their participation occurs as a result of coercion<sup>18</sup> or exploitation.<sup>19</sup> These factors can mitigate the severity of the sentence.

### ***Presumptive Mandatory Sentencing***

Of the 61 sentences analysed herein, in which the presumptive mandatory sentence could have been imposed, it was imposed in 14 instances. Its non-

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<sup>14</sup> *The People (Director of Public Prosecutions) v. J.G. (No. 3)* [2006] IESC 42, [2006] 3 I.R. 273.

<sup>15</sup> *The People (Director of Public Prosecutions) v. S.M.* [2011] IECCA 99, (Unreported, *ex tempore*, Court of Criminal Appeal, 21st December, 2011).

<sup>16</sup> *The People (Director of Public Prosecutions) v. E.B.* [2010] IECCA 55, (Unreported, *ex tempore*, Court of Criminal Appeal, 24th June, 2010).

<sup>17</sup> E.g. *The People (Director of Public Prosecutions) v. W.D.* [2012] IECCA 11, (Unreported, *ex tempore*, Court of Criminal Appeal, 30<sup>th</sup> January, 2012); *Director of Public Prosecutions v. I.A.*; *The People (Director of Public Prosecutions) v. F.M.*

<sup>18</sup> E.g. *The People (Director of Public Prosecutions) v. E.A.F.*; *The People (Director of Public Prosecutions) v. J.K.* [2010] IECCA 43; *The People (Director of Public Prosecutions) v. D.S.* [2007] IECCA 123, (Unreported, *ex tempore*, Court of Criminal Appeal).

<sup>19</sup> E.g. *The People (Director of Public Prosecutions) v. G.A.* [2003] 3 I.R. 513; *The People (Director of Public Prosecutions) v. C.S.* (Unreported, *ex tempore*, Court of Criminal Appeal, 12<sup>th</sup> March 2008); *The People (Director of Public Prosecutions) v. S.M.* [2011] IECCA 99, (Unreported, *ex tempore*, Court of Criminal Appeal, 21st December, 2011).

application in the remaining 47 cases was not however the result of the Court of Criminal Appeal deviating from sentencing principles in the legislation but rather deriving from them. The legislation provides for “exceptional and specific circumstances” that would render the imposition of a sentence of 10 years imprisonment or more “unjust in all the circumstances”. Some of these “exceptional and specific circumstances” are enumerated in the legislation but this list is non-exhaustive in nature. One such enumerated circumstance is where the person convicted has pleaded guilty. In at least 45 of the 61 sentences examined there was a plea of guilty. Sentencing courts do not discount the presumptive minimum in every case where there has been a guilty plea but do examine the circumstances in which the plea was given, at what stage in proceedings, and if there are any other accompanying circumstances which taken together would render a sentence of 10 or more years unjust. It was deemed unjust in 70% of cases. This is not surprising when the entire criminal calendar is considered. Notwithstanding the fact that many offences carry a maximum sentence of life imprisonment, mandatory minimum sentences only exist for four categories of offence in Ireland: murder or treason; drug sale or supply offences where the drug is over a certain value; certain firearms offences; and the commission of a second or subsequent serious offence within the meaning of s. 25 of the Criminal Justice Act 2007. Indeed, only in the case of murder (or treason) is a sentencing judge not free to depart from the mandatory sentence, save in the case where the convicted person is a child.

The future of the bifurcal regime to sentencing drug supply offences primarily on the basis of the value of the drugs is uncertain. The Court of Criminal Appeal has described the sentencing regime for s. 15A and s. 15B as “draconian”.<sup>20</sup> It must also be borne in mind that the trade in drugs is subject to inflation like any other trade. The threshold value was set at £10,000 in 1999, and moderately rounded up to €13,000 in 2001 with arrival of the euro currency but this value was not revisited during the intervening decade. That is not to say that courts are not observing the intention of the Oireachtas to stem the harm to society caused by the illegal drugs trade. Courts are careful to decommission those involved in it for lengthy periods in order to prevent them from resuming such criminal activities. It should also be noted that there has been a discernible shift in the Oireachtas’ view of how the presumptive minimum sentence is to be applied in order to achieve its policy objectives. At the time of the introduction of s. 15B, the then Minister for Justice, Equality and Law Reform stated that the intentions of the Oireachtas were that it would “be perfectly clear that the mandatory minimum term of

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<sup>20</sup> *The People (Director of Public Prosecutions) v. D.L.* [2008] IECCA 133, [2009] 3 I.R. 486, at p. 492.

ten years must apply in all but the most specific and exceptional cases.”<sup>21</sup> More recently, the incumbent Minister for Justice has described mandatory minimum sentences for drug offences as a “blunt criminal-law instrument”, and expressed doubt as to the efficacy of such sentences in deterring those at a high-level in the illegal drugs industry and the achievement of much more than overcrowding in prisons.<sup>22</sup> Indeed, the recently published Law Reform Commission *Report on Mandatory Sentencing* has recommended that the provisions for the presumptive mandatory minimum sentence be repealed and a more structured, guidance-based sentencing system be introduced in its place.<sup>23</sup>

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<sup>21</sup> 634 *Dáil Debates* 2 (22 March 2007).

<sup>22</sup> ‘Squaring the Circle: Penal Policy, Sentencing Offenders, and Protecting the Community’ delivered at Irish Penal Reform Trust Annual Lecture (16 September 2011). Available at: <http://www.inis.gov.ie/ga/JELR/Pages/SP11000182> Last accessed: 20 June 2013.

<sup>23</sup> Law Reform Commission, *Report on Mandatory Sentences*, LRC108-2013 (Dublin, 2013), p. 41 and p. 183.

## **Part I. Statutory Framework and General Principles for Sentencing Drug Sale or Supply Offences**

### **1.1. Statutory Framework**

Offences relating to the unlawful sale or supply of controlled drugs are governed by ss. 15, 15A and 15B of the Misuse of Drugs Act 1977, as amended and s. 186 of the Customs Consolidation Act 1876. The elements of each of the offences are broadly analogous. Section 15 creates the ordinary offence of possession of controlled drugs for unlawful sale or supply. The ordinary offence of importation of controlled drugs for sale or supply can be found in s. 186 of the Customs Consolidation Act 1876 and s. 9(1) of the Misuse of Drugs Acts 1984. Section 15A, as inserted by s. 4 of the Criminal Justice Act 1999, creates the related offence of possession of controlled drugs for unlawful sale or supply where the value of the drugs amounts to €13,000 or more. Similarly, s. 15B, as inserted by s. 82 of the Criminal Justice Act 2006, creates the offence of importation of controlled drugs for unlawful sale or supply where the value of the drugs amounts to €13,000 or more.

All four offences share the common maximum penalty of life imprisonment.<sup>24</sup> Section 27(3)(b) and s. 27(3A)(a) provide the maximum sentences for s. 186 and s. 15, and s. 15A and 15B respectively. Both penalty sections also provide for the imposition of an unlimited fine. However, the construction of s. 27(3)(b) favours a fine over the imposition of a custodial sentence whereas s. 27(3A)(a) necessitates a term of imprisonment. Section 27(3A)(b) does permit a sentencing court to impose a monetary fine in addition to a custodial sentence.

Regarding the penalties for s. 15A and s. 15B, the Criminal Justice Act 2006 inserted the additional provision of what is now s. 27(3D)(c) which states that in considering whether it is appropriate to impose the presumptive minimum sentence, the court could have regard to whether the convicted person has any previous drug trafficking convictions and the public interest in preventing drug trafficking. In its *Consultation Paper on Mandatory Sentencing*, the Law Reform Commission noted on the introduction of this provision:

“While it remained within judicial discretion to determine whether regard should, in actual fact, be had to these factors and the weight to be attributed to them, the Oireachtas’s intention to narrow the aperture

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<sup>24</sup> Section 6 of the Misuse of Drugs Act 1984 substituted the maximum penalty for an offence under s. 15 and increased it from 14 years to life imprisonment. The Act of 1984 also applies the maximum sentence of life imprisonment to offences of importation of controlled drugs for sale or supply.

through which the judiciary could justify the imposition of lesser sentences was clear.”<sup>25</sup>

Finally, s. 28 of the Misuse of Drugs Act 1977 and s. 8 of Misuse of Drugs Act 1984 must be noted. They provide for a system of treatment, education, rehabilitation and social reintegration *in lieu* of the penal provisions under s. 27(3) of the Act of 1977 for ordinary supply offences. However, the mechanism provided by s. 28 and s. 8 is only applicable in the case of the ordinary possession and importation offences and in those circumstances, it is rarely used.

#### 1.1.1. Possession of Controlled Drugs for Unlawful Sale or Supply

Section 15 of the Misuse of Drugs Act 1977 provides:

- (1) Any person who has in his possession, whether lawfully or not, a controlled drug for the purpose of selling or otherwise supplying it to another in contravention of regulations under section 5 of this Act, shall be guilty of an offence.
- (2) Subject to section 29 (3) of this Act, in any proceedings for an offence under subsection (1) of this section, where it is proved that a person was in possession of a controlled drug and the court, having regard to the quantity of the controlled drug which the person possessed or to such other matter as the court considers relevant, is satisfied that it is reasonable to assume that the controlled drug was not intended for the immediate personal use of the person, he shall be presumed, until the court is satisfied to the contrary, to have been in possession of the controlled drug for the purpose of selling or otherwise supplying it to another in contravention of regulations under section 5 of this Act.

#### 1.1.2. Possession of Controlled Drugs in Excess of Certain Value for Unlawful Sale or Supply

Section 15A of the Misuse of Drugs Act 1977, as inserted by section 4 of the Criminal Justice Act 1999 and amended by s. 1(3) and (4), Sch. 3 and Sch. 4 of the Euro Changeover (Amounts) Act 2001 and s. 81 of the Criminal Justice Act 2006, provides:

- (1) A person shall be guilty of an offence under this section where—
  - (a) the person has in his possession, whether lawfully or not, one or more controlled drugs for the purpose of selling or otherwise supplying the drug or drugs to another in contravention of regulations under section 5 of this Act, and
  - (b) at any time while the drug or drugs are in the person's possession the market value of the controlled drug or the aggregate of the market values of the controlled drugs, as the case may be, amounts to €13,000 or more.

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<sup>25</sup> Law Reform Commission, *Consultation Paper on Mandatory Sentencing*, (LRC CP 66-2011), p. 107.

- (2) Subject to section 29(3) of this Act (as amended by section 6 of the Criminal Justice Act, 1999), in any proceedings for an offence under this section, where—
- (a) it is proved that a person was in possession of a controlled drug, and
  - (b) the court, having regard to the quantity of the controlled drug which the person possessed or to such other matters that the court considers relevant, is satisfied that it is reasonable to assume that the controlled drug was not intended for his immediate personal use,
- he shall be presumed, until the court is satisfied to the contrary, to have been in possession of the controlled drug for the purpose of selling or otherwise supplying it to another in contravention of regulations under section 5 of this Act.
- (3) If the court is satisfied that a member of the Garda Síochána or an officer of customs and excise has knowledge of the unlawful sale or supply of controlled drugs, that member or officer, as the case may be, shall be entitled in any proceedings for an offence under this section to be heard and to give evidence as to—
- (a) the market value of the controlled drug concerned, or
  - (b) the aggregate of the market values of the controlled drugs concerned.
- (3A) In any proceedings for an offence under this section, it shall not be necessary for the prosecutor to prove that a person knew that at any time while the controlled drug or drugs concerned were in the person's possession that the market value of that drug or the aggregate of the market values of those drugs, as the case may be, amounted to €13,000 or more or that he or she was reckless in that regard.
- (4) No proceedings may be instituted under this section except by or with the consent of the Director of Public Prosecutions.
- (5) In this section—
- 'market value', in relation to a controlled drug, means the price that drug could be expected to fetch on the market for the unlawful sale or supply of controlled drugs;
- 'an officer of customs and excise' has the same meaning as in section 6 of the Criminal Justice (Drug Trafficking) Act, 1996.

### 1.1.3. Importation of Controlled Drugs for Unlawful Sale or Supply

The offence of importation of controlled drugs for unlawful sale or supply is a "complex composite"<sup>26</sup> of provisions found in the Customs Acts, Misuse of Drugs Acts 1979-1984, as amended, and the Misuse of Drugs Regulations. First, the offence exists under the Misuse of Drugs Act itself whereby s. 5 permits the making of ministerial regulations prohibiting the importation or exportation of controlled drugs:

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<sup>26</sup> Charleton, *Controlled Drugs and the Criminal Law*, (Dublin, 1986), p. 85. For a comprehensive overview of the constituents of controlled drug importation offences simpliciter, or for sale or supply and their relationship with one another, and other controlled drug offences, see Charleton, *ibid*, pp. 85-90, and McDonnell, *Misuse of Drugs: Criminal Offences and Penalties*, (Dublin, 2010) pp. 165-171.

(1) For the purpose of preventing the misuse of controlled drugs, the Minister may make regulations—

(a) prohibiting absolutely, or permitting subject to such conditions or exceptions as may be specified in the regulations, or subject to any licence, permit or other form of authority as may be so specified—

[...]

(ii) the importation or exportation of controlled drugs,

Article 4 of the Misuse of Drugs Regulations 1988 then creates the general prohibition on the importation or exportation of controlled drugs:

(1) Subject to the provisions of these Regulations a person shall not—

[...]

(c) import or export a controlled drug.

The offence of illegal importation of controlled drugs for sale or supply is encapsulated by the general prohibition of illegal importation of controlled or prohibited goods which is regulated by the Customs Acts.<sup>27</sup> The offence of illegal importation is created by s. 186 of the Customs Consolidation Act 1876. It is a *simpliciter* offence so where the court is satisfied that the controlled drugs were not imported for personal use, s. 186 must be read together with s. 7(1)(a) and s. 9(1) of the Misuse of Drugs Act 1984, which are detailed hereunder.

Section 186 of the Customs Consolidation Act provides that:

Every person who shall import or bring, or be concerned in importing or bringing into the United Kingdom any prohibited goods or any goods the importation of which is restricted, contrary to such prohibition or restriction, whether the same be unshipped or not [...]; or shall be in any way knowingly concerned in carrying, removing, depositing, concealing, or in any manner dealing with any such goods with intent [...] to evade any prohibition or restriction of or application to such goods [...]; or shall be in any way knowingly concerned in any fraudulent evasion or attempt at evasion [...] of the laws and restrictions of the Customs relating to the importation, unshipping, landing, and delivery of goods, or otherwise contrary to the Customs Acts [shall be guilty of an offence].

Section 7(1) of the Misuse of Drugs Act 1984 brings the penalties for this offence (where it involves the importation of controlled drugs for sale or supply) in line with those of an offence under s. 15 (see 1.1.5) *in lieu* of any penalties under the Customs Acts:

(1) Where a person is convicted of an offence to which this section applies, subject to section 8 of this Act, the person shall, in lieu of the penalties specified in the

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<sup>27</sup> Section 11 of the Customs Act 1956 defines “Customs Acts” as meaning all enactments relating to customs passed by the Oireachtas either before or after the introduction of the Customs Act 1954.

enactments relating to the customs which are for the time being in force, be liable to—

(a) where the court is satisfied that the relevant controlled drug was imported by the person for the purpose of selling or otherwise supplying it to another in contravention of regulations under section 5 of the Principal Act which are for the time being in force—

(i) on summary conviction, the penalty specified in paragraph (a) of subsection (3) (inserted by section 6 of this Act) of section 27 of the [Misuse of Drugs Act 1977],

(ii) on conviction on indictment, the penalty specified in paragraph (b) of the said subsection (3),

Section 9(1) provides a rebuttable presumption that the importation was for supply and not for immediate personal use:

[...] in any proceedings for an offence to which section 7 of this Act applies, where it is proved that a person imported a controlled drug and the court, having regard to the quantity of the controlled drug which the person imported and to such other matter as the court considers relevant, is satisfied that it is reasonable to assume that the controlled drug was not intended for the immediate personal use of the person, then for the purposes of section 7(1)(a) of this Act, he shall be regarded by the court, until the court is satisfied to the contrary, as having imported the controlled drug for the purpose of selling or otherwise supplying it to another in contravention of regulations referred to in that section.

This presumption, like that found in s. 15(2) of the Misuse of Drugs Act 1977, does not form a constituent element of the offence.

#### 1.1.4. Importation of Controlled Drugs in Excess of Certain Value for Unlawful Sale or Supply

Section 15B of the Misuse of Drugs Act 1977, as inserted by s. 82 of the Criminal Justice Act 2006, provides:

- (1) A person shall be guilty of an offence where—
  - (a) the person imports one or more controlled drugs in contravention of regulations under section 5 of this Act, and
  - (b) at or about the time the drug or drugs are imported the market value of the controlled drug or the aggregate of the market values of the controlled drugs, as the case may be, amounts to €13,000 or more.
- (2) If the court is satisfied that a member of the Garda Síochána or an officer of customs and excise has knowledge of the unlawful sale or supply of controlled drugs, that member or officer, as the case may be, shall be entitled in any proceedings for an offence under this section to be heard and to give evidence as to—
  - (a) the market value of the controlled drug concerned, or
  - (b) the aggregate of the market values of the controlled drugs concerned.
- (3) In any proceedings for an offence under this section, it shall not be necessary for the prosecutor to prove that a person knew that at the time the person imported the controlled drug or drugs concerned that the market value of that drug or the aggregate of the market values of those drugs, as the case may be, amounted to €13,000 or more or that he or she was reckless in that regard.



- (4) No proceedings may be instituted under this section except by or with the consent of the Director of Public Prosecutions.
- (5) In this section 'market value' and 'an officer of customs and excise' have the meanings they have in section 15A of this Act.

#### 1.1.5. Penalties

Section 27(3) of the Misuse of Drugs Act 1977, as substituted by s. 6 of the Misuse of Drugs Act 1984 provides the penalties for offences contrary to s. 15 of the Act of 1977 or the Customs Acts where s. 7(1) of the Misuse of Drugs Act 1984 applies (see 1.1.3 above):

Subject to section 28 of this Act, every person guilty of an offence under section 15 of this Act shall be liable—

- (a) on summary conviction, to a fine not exceeding €1,269.70 or, at the discretion of the court, to imprisonment for a term not exceeding twelve months, or to both the fine and the imprisonment, or
- (b) on conviction on indictment, to a fine of such amount as the court considers appropriate or, at the discretion of the court, to imprisonment for life or such lesser period as the court shall determine, or, at such discretion, to both such fine and such lesser period of imprisonment.

Section 27 (3A)-(3N) provide the penalties for offences under ss. 15A and 15B, as inserted by section 5 of the Criminal Justice Act 1999 and substituted by s. 33 of the Criminal Justice Act 2007:

(3A) Every person guilty of an offence under section 15A or 15B of this Act shall be liable, on conviction on indictment—

- (a) to imprisonment for life or such shorter term as the court may determine, subject to subsections (3C) and (3D) of this section or, where subsection (3F) of this section applies, to that subsection, and
- (b) at the court's discretion, to a fine of such amount as the court considers appropriate.

(3B) The court, in imposing sentence on a person for an offence under section 15A or 15B of this Act, may, in particular, have regard to whether the person has a previous conviction for a drug trafficking offence.

(3C) Where a person (other than a person under the age of 18 years) is convicted of an offence under section 15A or 15B of this Act, the court shall, in imposing sentence, specify a term of not less than 10 years as the minimum term of imprisonment to be served by the person.

(3D) (a) The purpose of this subsection is to provide that in view of the harm caused to society by drug trafficking, a court, in imposing sentence on a person (other than a person under the age of 18 years) for an offence under section 15A or 15B of this Act, shall specify a term of not less than 10 years as the minimum term of imprisonment to be served by the person, unless the court determines that by reason of exceptional and specific circumstances relating to the offence, or the

person convicted of the offence, it would be unjust in all the circumstances to do so.

(b) Subsection (3C) of this section shall not apply where the court is satisfied that there are exceptional and specific circumstances relating to the offence, or the person convicted of the offence, which would make a sentence of not less than 10 years imprisonment unjust in all the circumstances and for that purpose the court may, subject to this subsection, have regard to any matters it considers appropriate, including—

(i) whether that person pleaded guilty to the offence and, if so—

(I) the stage at which he or she indicated the intention to plead guilty,  
and

(II) the circumstances in which the indication was given,<sup>28</sup>

and

(ii) whether that person materially assisted in the investigation of the offence.

(c) The court, in considering for the purposes of paragraph (b) of this subsection whether a sentence of not less than 10 years imprisonment is unjust in all the circumstances, may have regard, in particular, to—

(i) whether the person convicted of the offence concerned was previously convicted of a drug trafficking offence, and

(ii) whether the public interest in preventing drug trafficking would be served by the imposition of a lesser sentence.

(3E) Subsections (3C) and (3D) of this section apply and have effect only in relation to a person convicted of a first offence under section 15A or 15B of this Act (other than a person who falls under paragraph (b) of subsection (3F) of this section), and accordingly references in those first-mentioned subsections to an offence under section 15A or 15B of this Act are to be construed as references to a first such offence.

(3F) Where a person (other than a person under the age of 18 years)—

(a) is convicted of a second or subsequent offence under section 15A or 15B of this Act, or

(b) is convicted of a first offence under one of those sections and has been convicted under the other of those sections,

the court shall, in imposing sentence, specify a term of not less than 10 years as the minimum term of imprisonment to be served by the person.

(3G) The power conferred by section 23 of the Criminal Justice Act 1951 to commute or remit a punishment shall not, in the case of a person serving a sentence imposed under subsection (3A) of this section, be exercised before the expiry of the minimum

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<sup>28</sup> Section 27(3D)(i) uses consistent language to that of s. 29(1) of the Criminal Justice Act 1999 which articulates what a Court must be mindful of at the sentencing stage of a case where the convicted person had pleaded guilty:

In determining what sentence to pass on a person who has pleaded guilty to an offence, other than an offence for which the sentence is fixed by law, a court, if it considers it appropriate to do so, shall take into account -

(a) the stage in the proceedings for the offence at which the person indicated an intention to plead guilty, and

(b) the circumstances in which this indication was given.

term specified by the court under subsection (3C) or (3F), as may be appropriate, of this section less any reduction of that term under subsection (3H) of this section.

(3H) The rules or practice whereby prisoners generally may earn remission of sentence by industry and good conduct shall apply in the case of a person serving a sentence imposed under subsection (3A) of this section and the minimum term specified by the court under subsection (3C) of this section shall be reduced by the amount of any remission so earned by the person.

(3I) Any powers conferred by rules made under section 2 of the Criminal Justice Act 1960 to release temporarily a person serving a sentence of imprisonment shall not, in the case of a person serving a sentence imposed under subsection (3A) of this section, be exercised during the term for which the commutation or remission of his or her punishment is prohibited by subsection (3G) of this section unless for a grave reason of a humanitarian nature, and any release so granted shall be only of such limited duration as is justified by such reason.

(3J) In imposing a sentence on a person convicted of an offence under section 15A or 15B of this Act, a court—

(a) may inquire whether at the time of the commission of the offence the person was addicted to one or more controlled drugs, and

(b) if satisfied that the person was so addicted at that time and that the addiction was a substantial factor leading to the commission of the offence, may list the sentence for review after the expiry of not less than one-half of the term specified by the court under subsection (3C) or (3F), as may be appropriate, of this section.

(3K) On reviewing a sentence listed under subsection (3J)(b) of this section, the court—

(a) may suspend the remainder of the sentence on any conditions it considers fit, and

(b) in deciding whether to exercise its powers under this subsection, may have regard to any matters it considers appropriate.

(3L) Paragraph (a) of section 13(2) of the Criminal Procedure Act 1967 shall not apply in relation to an offence under section 15A or 15B of this Act, but each of those offences shall be deemed for the purposes of paragraph (b) of section 13(2) of that Act to be an offence to which section 13 of that Act applies.

(3M) The reference in subsection (3I) of this section to section 2 of the Criminal Justice Act 1960 shall be construed to include that section as applied by section 4 of the Prisons Act 1970 .

(3N) In subsections (3B) and (3D) of this section ‘drug trafficking offence’ has the meaning it has in section 3(1) of the Criminal Justice Act 1994 and in subsection (3D) of this section ‘drug trafficking’ has the meaning it has in the said section 3(1).

Section 27(6) provides the penalties for offences under s. 21(2) of the Act of 1977, as amended, *i.e.* importation of drugs *simpliciter*.

(6) Every person guilty of an offence under section 21 (2) of this Act shall be liable—

- (a) in case the regulation in relation to which the offence was committed is a regulation made pursuant to section 5 (a) of this Act, other than a regulation regulating the transportation of controlled drugs,
- (i) on summary conviction, to a fine not exceeding €2,500 or, at the discretion of the court, to imprisonment for a term not exceeding twelve months, or to both the fine and the imprisonment, or
- (ii) on conviction on indictment, to a fine of such amount as the court considers appropriate or, at the discretion of the court, to imprisonment for a term not exceeding fourteen years, or to both the fine and the imprisonment,

## **1.2. General Sentencing Principles**

The Supreme Court in *The People (Director of Public Prosecutions) v. M.*<sup>29</sup> while expressly dealing with the issue of sentencing in respect of sexual offences, provided an instructive account of a number of the core sentencing principles in Irish law.

The correct approach to be taken in this regard was summarised by Denham J. in the following manner:-

“The nature of the crime, and the personal circumstances of the appellant, are the kernel issues to be considered and applied in accordance with the principles of sentencing [...]”

Denham J. also outlined a number of useful principles as follows:-

- the fundamental principle of proportionality; the sentence should be proportionate to the crime committed but also to the personal circumstances of the accused;
- the general impact on victims is a factor to be considered by the court in sentencing;
- a grave offence should attract a severe sentence but attention must also be paid to individual factors such as remorse, which may in principle reduce the sentence;
- in considering the sentence, it is appropriate to consider the offence and the circumstances of the accused but not in order to determine whether the accused should be incarcerated to prevent future offending.

Denham J. described the requirement to take account of the personal situation of the accused as “the essence of the discretionary nature of sentencing”.

To calculate the notional sentence—*i.e.* where on the range of penalties the offence before the court falls—for an offence generally, Egan J. made the following points:

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<sup>29</sup> [1994] 3 I.R. 306

- Reduction in mitigation is not necessarily calculated directly with regard to the applicable maximum sentence;
- First look at range of penalties available under that offence;
- Decide where the particular case lies in that range;
- Only then should one consider the mitigating circumstances and make the appropriate reduction.<sup>30</sup>

The general principle of proportionality was stated thus in *The People (Director of Public Prosecutions) v. McC.*:-

“Each case must depend upon its special circumstances. The appropriate sentence depends not only upon its own facts but also upon the personal circumstances of the accused. The sentence to be imposed is not the appropriate sentence for the crime, but the appropriate sentence for the crime because it has been committed by that accused.”<sup>31</sup>

This principle was expressly applied in the context of s. 15A offences in *The People (Director of Public Prosecutions) v. G.A.*<sup>32</sup> and recently in *The People (Director of Public Prosecutions) v. B.W.*<sup>33</sup>

The Court of Criminal Appeal has reemphasised these principles and applied them specifically to the context of drugs offences. Finnegan J. stated it thus in *The People (Director of Public Prosecutions) v. E.A.F.*:-

“A sentencing court must first establish the range of penalties available for the type of offence and then the gravity of the particular offence, where on the range of penalties it would lie, and thus the level of punishment to be imposed in principle. Then, having assessed what is the appropriate notional sentence for the particular offence, it is the duty of the sentencing court to consider the circumstances particular to the convicted person. It is within that ambit that the mitigating factors fall to be considered. On the one hand, a grave crime should generally be reflected in a long sentence and in this respect, this Court is satisfied to endorse the opinion of Lord Griffiths in *Re: [H.]* [1987] A.C. 352 at 378, that ‘offences involving the misuse of hard drugs are among the most serious in the criminal calendar’. On the other hand attention must be paid to factors relevant to the individual offender such as a plea of guilty, the time at which it was indicated, the personal circumstances of the offender, an absence of propensity to reoffend, a

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<sup>30</sup> [1994] 3 I.R. 306, at 315.

<sup>31</sup> [2000] 4 I.R. 356, at 359.

<sup>32</sup> [2013] 3 I.R. 513.

<sup>33</sup> [2011] IECCA 45, (Unreported, Court of Criminal Appeal, 9<sup>th</sup> July, 2011).

genuine expression of remorse, a real prospect of rehabilitation, all of which serve to mitigate the sentence.”<sup>34</sup>

This principle has been developed into a two-step approach by the Court of Criminal Appeal when sentencing persons convicted of drug offences:

1. the Court identifies the scale of seriousness for this type of crime and place the particular offence on that scale; and then
2. the Court identifies any mitigating factors and reduces the notional sentence appropriately so as to give the accused the benefit of such credit.<sup>35</sup>

A useful summary of the principles that apply to sentencing offences which carry the presumptive minimum sentence can be found in the recent judgment of *The People (Director of Public Prosecutions) v. J.D.*<sup>36</sup> McKechnie J. held—affirming the principles cited above—that the correct approach to sentencing “requires that the imposed sentence be proportionate to the gravity of the offence and to the personal circumstances of the offender.”<sup>37</sup> McKechnie J. further held:

“[Section 27 of the Misuse of Drugs Act 1977, as amended, seems] to mandate a minimum ten year sentence unless: (i) exceptional and special circumstances, relative to the crime or the convict, are found to exist: if no such finding is made, the sentence shall be not less than ten years unless some submission is successfully advanced which heretofore has not been the case; (ii) if such a finding is made, the sentence shall still be not less than ten years unless such a sentence is unjust. Therefore, a reduction in the specified sentence cannot occur, unless having established such circumstances, the same renders the presumptive minimum unjust. However, the sentence imposed should still reflect the gravity of the offence.

The presumptive minimum period is but one aspect of the relevant statutory provision and, whilst dominant, is not exclusionary. The

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<sup>34</sup> [2010] IECCA 116, (Unreported, Court of Criminal Appeal, 21<sup>st</sup> December, 2010), at p. 2.

<sup>35</sup> *Per Keane C.J.* in *The People (Director of Public Prosecutions) v. J.D.* (Unreported, Court of Criminal Appeal, 21<sup>st</sup> December, 2001) and *The People (Director of Public Prosecutions) v. J.D.* (Unreported, Court of Criminal Appeal, 15<sup>th</sup> July, 2005); and recently applied in *The People (Director of Public Prosecutions) v. J.B.* [2012] IECCC 2, (Unreported, Central Criminal Court, Sheehan J., 11<sup>th</sup> June, 2012). The court took a varied approach to sentencing in *The People (Director of Public Prosecutions) v. J.D.*, (Unreported, Court of Criminal Appeal, 21<sup>st</sup> December, 2001) where it started at the upper end of life imprisonment when calculating the notional sentence and then applied mitigating factors. Notice was then taken of the presumptive mandatory minimum and whether it should be applied. The Court of Criminal Appeal held that this approach did comply with the principle as it was stated in *The People (Director of Public Prosecutions) v. E.A.F.* [2010] IECCA 116, (Unreported, Court of Criminal Appeal, 21<sup>st</sup> December, 2010) but noted that other approaches to the construction of a sentence exist.

<sup>36</sup> [2011] IECCA 104, [2012] 1 I.R. 476.

<sup>37</sup> [2011] IECCA 104, [2012] 1 I.R. 476, at 491, para. 28.

section provides for a maximum period, which is life. Both in their own way, demonstrate how serious the Oireachtas regard this type of offence; indeed, prescribing a minimum sentence is perhaps even the more instructive. Neither the minimum nor the maximum, however, should be regarded as a starting point in determining what in any given case the appropriate sentence should be. [...] Subject to the presumptive minimum where applicable, the actual sentence imposed must be appropriate to the crime and to the convicted person or, as is sometimes put, proportionate to both.<sup>38</sup>

Below the relationship between the minimum and the maximum sentence shall be considered further.

### 1.2.1. The Gravity of the Offence: The Minimum and Maximum Sentence

The presumptive minimum sentence certainly signals the inherent gravity of drug trafficking offences but the superior courts have been cautious to read both the presumptive minimum and maximum sentences together when considering the severity of each offence. In *The People (Director of Public Prosecutions) v. R.L.*, Denham J. for the Court set out some guiding principles with regard to the grave nature of the offence when approaching the structuring of a sentence for a conviction under s. 15A or s.15B, *i.e.* where the presumptive minimum applies:-

“The gravity of the offence may be seen by the sentencing provisions made, which set a maximum sentence of imprisonment for life. In addition, the Oireachtas has created a presumptive sentence of ten years. Although widely referred to as a mandatory minimum sentence it is not a true mandatory sentence, such as is provided for in the crime of murder. Rather, the Oireachtas has created a basic presumptive sentence of ten years, but has explicitly provided that it shall not apply where there are exceptional and specific circumstances. Further, the Oireachtas has given a non-exhaustive list of such exceptional and specific circumstances, as including: (a) a plea of guilty, and (b) whether the person materially assisted in the investigation of the offence.”<sup>39</sup>

The existence of the presumptive mandatory minimum has been noted by the Court of Criminal Appeal in relation to s. 15 offences as well, particularly in cases where the value of the drugs approaches the threshold of €13,000.<sup>40</sup> Indeed, the Court has stated that s. 15 should be read in conjunction with s.

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<sup>38</sup> [2011] IECCA 104, [2012] 1 I.R. 476, at 486-487, paras. 16-17.

<sup>39</sup> [2007] IECCA 21 (Unreported, Court of Criminal Appeal, 18<sup>th</sup> April, 2007).

<sup>40</sup> *The People (Director of Public Prosecutions) v. D.O’N.* [2012] IECCA 37, (Unreported, Court of Criminal Appeal, 15<sup>th</sup> February, 2012).

15A and its provision of the minimum 10 year sentence in order to ascertain the “appropriate position on a scale of seriousness” for a particular offence.<sup>41</sup> Furthermore in the case of any of these offences, the critical factor in constructing sentence is the maximum penalty: life imprisonment.

In *The People (Director of Public Prosecutions) v. J.C.R., Murphy J.*, giving the judgment of the Court, noted that in relation to the offences carrying the presumptive minimum sentence, it should remain a consideration for the Court even where it is not imposed:-

“Even where exceptional circumstances exist which would render the statutory minimum term of imprisonment unjust, there is no question of the minimum sentence being ignored.”

The Court continued:-

“Perhaps the most important single factor in determining an appropriate sentence is the ascertainment of the gravity of the offence as determined by the Oireachtas. Frequently an indication as to the seriousness of the offence may be obtained from the maximum penalty imposed for its commission. This is particularly true in the case of modern legislation. What is even more instructive is legislation which, as in the present case, fixes a mandatory minimum sentence. Even though that sentence may not be applicable in a particular case, the very existence of a lengthy mandatory minimum sentence is an important guide to the Courts in determining the gravity of the offence and the appropriate sentence to impose for its commission. That is not to say that the minimum sentence is necessarily the starting point for determining the appropriate sentence. To do so would be to ignore the other material provision, that is to say, the maximum sentence. It would be wrong to assume that the offence of importing controlled drugs in excess of the prescribed amount or value will attract only the mandatory minimum sentence, long though it may be.”<sup>42</sup>

[Emphasis added]

O’Malley remarks on this statement of the law, which has been restated by the Court of Criminal Appeal in many subsequent cases,<sup>43</sup> “[f]irst and foremost,

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<sup>41</sup> *The People (Director of Public Prosecutions) v. P.O’C.* (Unreported, *ex tempore*, Court of Criminal Appeal, 17<sup>th</sup> December, 2009).

<sup>42</sup> (Unreported, Court of Criminal Appeal, 23<sup>rd</sup> November, 2001).

<sup>43</sup> *The People (Director of Public Prosecutions) v. J.D.* [2011] IECCA 104, [2012] 1 I.R. 476; *The People (Director of Public Prosecutions) v. B.O.* [2011] IECCA 46, (Unreported, Court of Criminal Appeal, 29<sup>th</sup> July, 2011); *The People (Director of Public Prosecutions) v. P.F.* [2010] IECCA 60, (Unreported, *ex tempore*, Court of Criminal Appeal, 24<sup>th</sup> June, 2010); *The People (Director of Public Prosecutions) v. R.L.* [2009] IECCA 54, (Unreported, Court of Criminal Appeal, 14<sup>th</sup> May, 2009); *The People (Director of Public Prosecutions) v. P.B.* [2004] 2 I.R. 375; *The People (Director of Public Prosecutions) v. M.G.* (Unreported, Court of Criminal Appeal, 23<sup>rd</sup> July, 2003)



in a sentencing system guided by proportionality, the maximum sentence is an important, if not indispensable, guide when deciding where to locate the particular offence on the scale of available punishment.”<sup>44</sup> The Court of Criminal Appeal continued by plainly stating on that and subsequent occasions that the presumptive mandatory minimum sentence is not to be regarded as the maximum sentence for offences under s. 15A or s. 15B, even where exceptional and specific circumstances exist to justify its non-imposition.<sup>45</sup> Furthermore, the Court noted that the statutory provision:-

“does not expressly authorise the use of the minimum sentence as a ‘benchmark’ in the sense of providing a figure by reference to which particular reductions or discounts should be afforded having regard to material circumstances existing in the particular case. On the other hand the sentencing limitations imposed by the Oireachtas are [...] of the utmost importance in recognising the gravity of the offence and determining the appropriate punishment.”

In *The People (Director of Public Prosecutions) v. P.B.*,<sup>46</sup> the Court of Criminal Appeal affirmed this approach where it held that even where it would be unjust to impose the presumptive mandatory sentence, there could be no question of ignoring it because “both the maximum and the minimum sentence continue to exist as clear and definite guidance to the Court.” For example, in *The People (Director of Public Prosecutions) v. G.D.*,<sup>47</sup> the court increased a sentence of two years to five years on the basis that insufficient weight had been given to the presumptive mandatory sentence.

Finally, it should be noted that while drug trafficking offences attract severe sentences due to the gravity of their nature, which also serves to deter others, “deterrence is never a basis for punishing an accused for crimes which may have been or may be committed by others.”<sup>48</sup>

### 1.2.2. Sentencing is not an Arithmetical Process

In line with general sentencing principles stated above, sentencing for drug supply offences is premised on the principle of proportionality and is not an exact arithmetical process. Thus, the construction of sentencing is not based on a detailed and precise mathematical formula.<sup>49</sup> However, when calculating

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<sup>44</sup> O’Malley, *Sentencing Law and Practice* (2<sup>nd</sup> ed., 2006), p. 336.

<sup>45</sup> *The People (Director of Public Prosecutions) v. J.C.R.* (Unreported, Court of Criminal Appeal, 23<sup>rd</sup> November, 2001); *The People (Director of Public Prosecutions) v. H.* (Unreported, Court of Criminal Appeal, 21<sup>st</sup> December, 2001); *The People (Director of Public Prosecutions) v. R.D.* [2003] 4 I.R. 87.

<sup>46</sup> [2004] 2 I.R. 374.

<sup>47</sup> [2010] IECCA 46, (Unreported, *ex tempore*, Court of Criminal Appeal, 21<sup>st</sup> June, 2010).

<sup>48</sup> *The People (Director of Public Prosecutions) v. G.A.* [2003] 3 I.R. 513, at 523.

<sup>49</sup> For examples of this principle being applied in the context of drug trafficking offences, see *The People (Director of Public Prosecutions) v. R. & H.* (Unreported, *ex tempore*, Court of Criminal Appeal, 18<sup>th</sup>

the notional sentence for possession and importation offences for sale or supply, the Court of Criminal Appeal has sometimes provided notional sentences which may be of limited guidance. For example, in *The People (Director of Public Prosecutions) v. J.C.*, the notional sentence for drugs (amphetamines) valued at €45,000 was considered to be at the lower end of the spectrum thus warranting a sentence of 12 years.<sup>50</sup> In *The People (Director of Public Prosecutions) v. J.D.*, for possession of cannabis resin for sale or supply with a street value of IR£130,000, as well as 135 ecstasy tablets, a sentence of 15 years was considered appropriate which was eventually mitigated to six years in light of the plea of guilty to a charge which had not yet been returned and the lack of any prior convictions. In the recent case of *The People (Director of Public Prosecutions) v. I.A.*,<sup>51</sup> a notional sentence of 10 years imprisonment was considered appropriate. However, the extraordinary degree to which the accused had rehabilitated himself and changed his attitude towards society between the commission of the offence and the time of trial merited a suspension of six years imprisonment. The Court however emphasised that, notwithstanding the unique personal circumstances of the accused, the particular offence fell at the more serious end of the spectrum (possession of cocaine valued at €178,000) and warranted the imposition of a 10-year sentence. Recent comments from the Court of Criminal Appeal would indicate that the length of the term could be aggravated if the type of the drug is one which has been the cause of much social harm, e.g. diamorphine (heroin).<sup>52</sup>

Furthermore, the Court of Criminal Appeal has noted that factors that constitute 'exceptional and specific circumstances' or those of mitigation may sometimes overlap and a sentencing court may make a single deduction for multiple factors rather than separate deductions in certain circumstances. For example, in the context of drugs offences, this commonly happens in relation to the provision of pleas of guilty and material assistance. In *The People (Director of Public Prosecutions) v. M.G.*, Fennelly J. held:-

"In some cases, sentencing judges attribute separate values to individual mitigating factors. That may, on occasion be justified to the extent that they can be clearly segregated. [...] The judge should, however, bear in mind that there may be an element of overlap between the specified circumstances. This is such a case. The inevitability that the applicant would have to plead guilty, because he

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November, 2002); and *The People (Director of Public Prosecutions) v. S.F.* (Unreported, *ex tempore*, Court of Criminal Appeal, 26<sup>th</sup> April, 2010).

<sup>50</sup> [2009] IECCA 28, (Unreported, Court of Criminal Appeal, 2<sup>nd</sup> April, 2009).

<sup>51</sup> [2010] IECCA 46, (Unreported, *ex tempore*, Court of Criminal Appeal, 18<sup>th</sup> May, 2010).

<sup>52</sup> *The People (Director of Public Prosecutions) v. P.L.* [2011] IECCA 104, [2012] 1 I.R. 476; *The People (Director of Public Prosecutions) v. J.D.* [2011] IECCA 104, [2012] 1 I.R. 476; *The People (Director of Public Prosecutions) v. M.B.* [2012] IECCA 72, (Unreported, Court of Criminal Appeal, 6<sup>th</sup> July, 2012).

was caught red handed, and the partial assistance given to the Gardaí by disclosing a further cache of drugs were closely causally linked. In the latter respect also, the fact that the Gardaí had already found the bulk of the forbidden material rendered it pointless for the applicant to fail to disclose the rest. In this case both elements related to the offence rather than the person. For these reasons, the court thinks the learned trial judge was correct to assess the extent of any mitigation in one reduction, without differentiation, of three years. Indeed in many cases, this will be the preferable approach, provided the judge identifies, as is required by the section the exceptional circumstances upon which he relies to justify departure from the specified minimum sentence.”<sup>53</sup>

In *The People (Director of Public Prosecutions) v. J.D.*, McKechnie J., for the Court, noted that:-

“The Irish courts have no formal provision for the amount of adjustment merited by a guilty plea, preferring instead to uphold judicial discretion, to be exercised in light of the specific circumstances.”

The Court continued:-

“Whilst there is no mathematical formula by which any such reduction may be arrived at, mention has been made in some cases of an adjustment of up to a third. [*The People (Director of Public Prosecutions) v. K.B.* (Unreported, *ex tempore*, Court of Criminal Appeal, 14<sup>th</sup> January, 2002)], is a case in point; it involved a South African woman convicted of a s. 15A offence, the court referred to a one-third discount as being appropriate in cases where an early plea was entered and maintained consistently afterwards. Other cases will show less, such as [*The People (Director of Public Prosecutions) v. P.L.* [2006] IECCA 49, (Unreported, Court of Criminal Appeal, 7<sup>th</sup> April, 2006)] where the reduction was four years, but rarely will they show more. In any event what must be stressed is that a plea is but a mitigating factor, admittedly quite an important one, and that at the end of the process the overriding obligation is to ensure that the sentence actually imposed reflects the crime and respects the convict.”<sup>54</sup>

### 1.2.3. Suspension of Sentence

Case law analysed herein demonstrates that the suspension of a sentence in its entirety occurs in the most exceptional circumstances and where, on the facts of each case, the particular burden a custodial sentence would impose on

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<sup>53</sup> (Unreported, Court of Criminal Appeal, 23<sup>rd</sup> July, 2003), p. 6.

<sup>54</sup> [2011] IECCA 104, (Unreported, Court of Criminal Appeal, 20<sup>th</sup> October, 2011), para. 100.

the offender would be unjust.<sup>55</sup> In *The People (Director of Public Prosecutions) v. G.A.*, the Court held in light of the unique personal circumstances of the offender that:-

“[I]n this case the court is satisfied that the trial judge approached the question of sentencing with meticulous care. He took into account the nature and gravity of the offence and the fact that foreign couriers of drugs should be subject to the severe sanction of the law just as much as any other offender in possession of drugs for the purposes of sale. He also had careful regard, as he was bound to, to the particular circumstances of the case including those of the accused himself. He took account of the severe effect of the period, although short, which the accused spent in jail, given his limited intellectual capacity to cope with the fact that he was in a foreign country cut off from his own family and from anybody he knew. Of more importance was the consideration which he gave to the accused’s low intellectual capacity and history of attending remedial schools from his early years. He was also entitled to take into account that the one thing the accused wished to do, having fully acknowledged the wrongness and gravity of the offence, was to leave Ireland and return to his own country and in particular to his mother’s home because of his limited intellectual abilities and his dependence on her.”<sup>56</sup>

Suspension of a sentence in full only occurs where there has been demonstrated progress in rehabilitation and the strongest prospect that the offender will not re-offend. In *The People (Director of Public Prosecutions) v. I.McG.*, it was held:-

“While a custodial sentence would serve certain objectives such as deterrence and punishment it is clear that [the sentencing judge] had to consider whether it was in the interest of society that the proven substantial progress in rehabilitation and strong prospects of full rehabilitation [...] would be at risk by removing the respondent from that programme and putting him into a prison environment for a significant period”.<sup>57</sup>

Murray C.J. further held that the rehabilitation of drug addicted offenders is “an important part of penal policy since if successful it reduces dramatically the risk of repeating offences and imprisonment of addicts.” In *The People (Director of Public Prosecutions) v. B.W.*, it was held that suspended sentences are “particularly suitable in the cases of first offenders where there is little likelihood of re-offending.”<sup>58</sup>

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<sup>55</sup> [2003] 3 I.R. 513.

<sup>56</sup> [2003] 3 I.R. 513.

<sup>57</sup> [2007] 1 I.R. 633, para. 29.

<sup>58</sup> [2011] IECCA 45, (Unreported, Court of Criminal Appeal, 9<sup>th</sup> July, 2011).

1.2.3.i. *Order to Leave the State*

The Court of Criminal Appeal has held that the condition sometimes imposed, particularly with regard to couriers importing drugs into the State that the accused leave the State is “not an executive act in the nature of the deportation order but [is] a condition of a suspended sentence which [is] within the discretion of the trial judge to impose.” However, such a condition can not be open-ended as this would be disproportionately punitive and also trammel the executive power of the Minister for Justice to grant non-nationals leave to enter the State for specific purposes. Thus, a condition requiring a person to leave must be for a specified period of time.<sup>59</sup>

1.2.4. *The Value, Quantity, or Weight of the Drugs*

The value of the drug or drugs in question being valued at €13,000 or over predicates the offences provided by s. 15A and s. 15B. The value, which is based upon weight or quantity, is also a material factor in the construction of a sentence. McDonnell explains the entwined relationship between the value of seized drugs and the weight or quantity of the drugs as follows:-

“The monetary value of the drug is a pivotal consideration in determining the seriousness of the particular offence. Although an offence under s 15A is expressed in monetary terms, the value attributed to a controlled drug is generally arrived at by reference to its quantity or to the weight of a product or substance containing a portion of a controlled drug. Consideration of quantity and value are therefore inextricably linked. The weight of a drug correlates to the monetary market value. In general terms the greater the weight or quantity the higher the value it will attract.”<sup>60</sup>

In *The People (Director of Public Prosecutions) v. I.McG.*, Murray C.J. emphasised the significance of the quantity of drugs being material, where he stated:-

“There is no doubt that the possession of illegal drugs for the purpose of sale or supply, particularly in any significant quantity, is a very serious offence which of itself would normally warrant a custodial sentence.”<sup>61</sup>

[Emphasis added]

In *The People (Director of Public Prosecutions) v. D.L.*,<sup>62</sup> the Director of Public Prosecutions appealed a two-year sentence on the basis that it was unduly

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<sup>59</sup> *The People (Director of Public Prosecutions) v. G.A.* [2003] 3 I.R. 513, at p. 527. This principle was applied in *The People (Director of Public Prosecutions) v. J.P.L.* [2010] IECCA 62, (Unreported, *ex tempore*, Court of Criminal Appeal, 23<sup>rd</sup> June, 2010).

<sup>60</sup> McDonnell, *Misuse of Drugs: Criminal Offences and Penalties* (Dublin, 2010), p. 240.

<sup>61</sup> [2007] 1 I.R. 635, at p. 637.

<sup>62</sup> [2008] IECCA 133, [2009] 3 I.R. 486.

lenient because of the substantial value of the drugs, namely cocaine with a value of €111, 370. The Court held that it had:-

“no hesitation in concluding that the quantity and value of drugs seized are critical factors to be taken into account in evaluating the overall seriousness of the offence. That is implicit from the terms of s.15(A) itself which provides a separate and more draconian regime of sentencing for a person found in possession of controlled drugs which exceed a certain value.”<sup>63</sup>

The Court continued by stating that were sentencing courts to discount entirely the value of the drugs from considering the overall seriousness of the offence and the construction of a notional sentence then such an approach:-

“would lead to some startling consequences, including the possibility that the importer of several million euro worth of heroin could legitimately expect to be treated in exactly the same fashion as a person acting as a storeman or minder of an extremely modest amount of drugs having a small street value.”<sup>64</sup>

The Court of Criminal Appeal has thus held that the quantity and value of drugs seized are critical factors to consider when determining where on the scale of gravity the particular offence lies. However, that is not to say that large volumes of controlled drugs automatically result in higher sentences. The value of the drugs is not determinative of sentence and the gravity of the offence truly rests upon the facts particular to each case.<sup>65</sup>

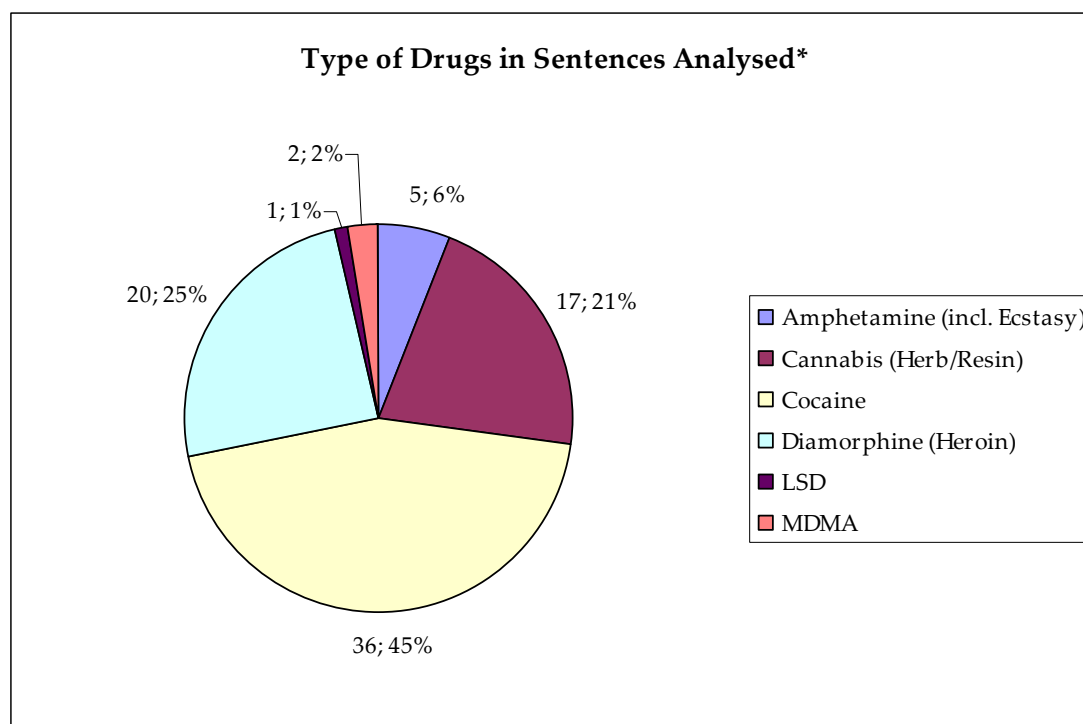
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<sup>63</sup> [2009] 3 I.R. 486, at 491.

<sup>64</sup> [2009] 3 I.R. 486, at 492.

<sup>65</sup> [2009] 3 I.R. 486, at 492.

### 1.2.5. The Type of the Drugs



\*71 cases. More than one controlled drug involved in 21 cases and 9 sentences excluded due to lack of information regarding type of drugs.

The type of drugs was of restricted significance in determining sentence until recent years. This was due to the fact that the Oireachtas had drawn a distinction between certain types of drugs, *i.e.* cannabis, and others for possession *simpliciter*.<sup>66</sup> No such distinction exists however for the more serious offences of possession or importation of drugs for sale or supply.<sup>67</sup> The Court of Criminal Appeal has nonetheless given consideration to the fact that the type of drug can be of assistance in determining the gravity of the offence before the court, particularly where the type of drug constitutes an aggravating factor. In *The People (Director of Public Prosecutions) v. D.L.*, the Court held that:-

“The court would also be of the view that the type of drugs is also a consideration to which the sentencing court may have regard. The more dangerous the drug the more that factor may be seen as playing some limited role in the matter of sentencing.”<sup>68</sup>

The Court continued by reaffirming the earlier findings of Murphy J. in *The People (Director of Public Prosecutions) v. J.C.R.*, where he stated that the type of

<sup>66</sup> See, for example, the penalty under s. 27(1) for an offence under s. 3.

<sup>67</sup> See, for example, the penalty under s. 27(3) and (3D) for an offence under s. 15, 15A or 15B of the Misuse of Drugs Act 1977, as amended, and s. 186 of the Customs Consolidation Act, as amended by s. 7 of the Misuse of Drugs Act 1984.

<sup>68</sup> [2008] IECCA 133, [2009] 3 I.R. 486, at p. 492.

the drugs “is a factor to which a sentencing judge in his or her discretion might attach some limited significance”<sup>69</sup>:-

“[T]he extent that a particular drug may be shown to be actually or potentially more harmful than another is a factor of some value to which a sentencing judge may have regard in an appropriate case. The critical factor, however, in determining sentence is clearly the value of the drugs in question.”

In *The People (Director of Public Prosecutions) v. E.A.F.*, the Court affirmed the sentencing court’s consideration of the fact that the drug at issue, namely diamorphine (heroin), “has caused, or has been the cause of enormous damage, suffering and lawlessness in the State” as a valid factor in determining sentence while also noting that the value and the quantity of the drug are the governing factors concerning the seriousness of the offence.<sup>70</sup>

*Director of Public Prosecutions v. J.D.* is authority for the proposition that while the type of the drug is of limited relevance as an “exceptional and specific circumstance”, it is instructive in determining the gravity of the offence. Furthermore in *Director of Public Prosecutions v. M.B.*,<sup>71</sup> the Court considered the quantity, value and type of drugs when comparing the instant case (heroin, €6.2m, 32kg) with that of *The People (Director of Public Prosecutions) v. P.L.*<sup>72</sup> (cannabis resin, €12m, 1 metric tonne):-

“[P.L.] clearly considered that a sentence of 18 years (or even longer) would have been appropriate, save for the fact that the accused had pleaded guilty and co-operated at the earliest opportunity. Once allowance is made for the guilty plea in [P.L.], the circumstances of that case have a distinct resonance for the present one. In both cases the accused became involved at a relatively high level in the drugs trade. This was not done out of desperation, vulnerability, debt, acute poverty or addiction, but rather for illicit commercial gain. It is true that the cache in [P.L.] was more valuable, but the nature of the drugs found in the present case (heroin) pose the most acute risks for those caught in the tragic lair of addiction.”<sup>73</sup>

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<sup>69</sup> *The People (Director of Public Prosecutions) v. J.C.R.* (Unreported, Court of Criminal Appeal, 23rd November, 2001). See also *The People (Director of Public Prosecutions) v. P.F.* [2010] IECCA 60, (Unreported, *ex tempore*, Court of Criminal Appeal, 24<sup>th</sup> June, 2010).

<sup>70</sup> [2010] IECCA 116, (Unreported, Court of Criminal Appeal, 21<sup>st</sup> December, 2010), at pp. 9-10.

<sup>71</sup> [2011] IECCA 72.

<sup>72</sup> [2006] IECCA 49.

<sup>73</sup> [2011] IECCA 104.



In *The People (Director of Public Prosecutions) v. M.B.*, the Court stated—echoing earlier authorities in *The People (Director of Public Prosecutions) v. J.G. (No.2)*<sup>74</sup> and *The People (Director of Public Prosecutions) v. P.L.*<sup>75</sup>—that:-

“[T]his Court has stated that the type of drug seized may be material as an aggravating factor, but not a mitigating factor, for sentencing purposes [...]. [T]he Court can take judicial notice of the fact that heroin is commonly regarded as among the most addictive of controlled drugs and one which has had the most devastating consequence for individuals and society as a whole.”<sup>76</sup>

Thus, it can be said that the type of drug or drugs has no bearing upon mitigating sentence while more harmful types serve to aggravate sentence.

#### 1.2.6. Role of the Offender

The level of the offender’s involvement and their motivation for committing the offence is a factor that the court considers in assessing the gravity of the offence. Where the level of involvement is low or the offender is involved as a result of exploitation or duress, his or her role may be considered to be an exceptional and specific circumstance.

The harshest sentences are meted out to those in a leading role in the distribution chain. For example, the “prime mover” in an importation cartel from which the offender made significant profits was originally sentenced to 28 years.<sup>77</sup> Similarly, in *The People (Director of Public Prosecutions) v. L.D.*,<sup>78</sup> the offender was described as “the controlling force in a major drugs importing activity” and was sentenced to the maximum sentence of 14 years imprisonment at that time for an offence under s. 15. In *The People (Director of Public Prosecutions) v. R.H.* (Unreported, *ex tempore*, Court of Criminal Appeal, 15<sup>th</sup> May, 2002), the Court of Criminal Appeal increased the sentence imposed under s. 15A from four to six years on the basis that, among other reasons, the accused had played a critical role in the operation.

#### 1.2.7. Prior Involvement in the Drugs Trade

In *The People (Director of Public Prosecutions) v. J.G. (No. 2)*,<sup>79</sup> the Court of Criminal Appeal held that events or activities which could form the basis of separate charges cannot be taken into account in the construction of a sentence. While it was conceded that there might other instances where the accused had imported the drugs in question, it was stressed that he had not

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<sup>74</sup> [2004] 3 I.R. 87, at 94.

<sup>75</sup> [2006] IECCA 49.

<sup>76</sup> [2011] IECCA 72.

<sup>77</sup> *The People (Director of Public Prosecutions) v. J.G. (No. 3)* [2006] 3 I.R. 273, at 288-289.

<sup>78</sup> *Director of Public Prosecution v. L.D.* (Unreported, *ex tempore*, Central Criminal Court, McMahon J., 23<sup>rd</sup> May, 1985), and reported in *The Irish Times*, 25<sup>th</sup> May, 1985.

<sup>79</sup> [2004] 3 I.R. 87.

actually been convicted of such importation. On appeal to the Court of Criminal Appeal, McCracken J. acknowledged that it was important that a sentencing court “cannot act in blinkers”. He continued thus:-

“While the sentence must relate to the convictions on the individual counts, and clearly the applicant must not be sentenced in respect of offences with which he was neither charged nor convicted and which he has not asked to be taken into account, nevertheless the court in looking at each individual conviction is entitled to, and possibly bound to take into consideration, the facts and circumstances surrounding that conviction.”<sup>80</sup>

McCracken J. continued by stating that a sentencing court must scrupulously respect the line between considering surrounding circumstances and in effect sentencing for criminal activities of which the offender has not been convicted:-

“[T]he court does think it important to emphasise that in many cases there may be a very narrow dividing line between sentencing for offences for which there has been no conviction and taking into account surrounding circumstances, which may include evidence of other offences, in determining the proper sentence for offences of which there has been a conviction. It is important that courts should scrupulously respect this dividing line.”<sup>81</sup>

An example where the court overstepped this dividing line is the case of *The People (Director of Public Prosecutions) v. P.Mc.D.*<sup>82</sup> where the trial judge intervened during the cross-examination at the sentencing hearing to ask one of the prosecuting garda how long the offender and a co-accused were “involved in the trade”. The garda answered that prior to the date of the offence committed, one of the accused was known to the Gardaí for a number of years. The Court of Criminal Appeal held that the question went beyond what was permissible because it suggested that the applicant had been involved in selling or supplying drugs in the past, and consequently involved in crimes of which he had not been charged, tried or convicted. Similarly, in *The People (Director of Public Prosecutions) v. G.D.* where the trial judge had asked a witness on a scale of one-to-ten where was the accused’s involvement in the drug trade, such a question was held to be “highly prejudicial and neither related to the offence of which [the offender] had been convicted or to past convictions to which the judge might have regard.”<sup>83</sup>

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<sup>80</sup> [2004] 3 I.R. 87 at 91.

<sup>81</sup> [2004] 3 I.R. 87 at 91, and recently reaffirmed in *The People (Director of Public Prosecutions) v. D.O’N.* [2012] IECCA 37, (Unreported, Court of Criminal Appeal, 15<sup>th</sup> February, 2012).

<sup>82</sup> [2009] IECCA 16, [2009] 4 I.R. 105.

<sup>83</sup> [2010] IECCA 46, (Unreported, Court of Criminal Appeal, 28th February, 2010).

The principle was stated thus in *The People (Director of Public Prosecutions) v. D.O'N.*:-

“While the sentencing judge is entitled to receive hearsay evidence and opinion evidence, he or she must also be astute to ensure that extraneous matters whose evidential value is inherently more prejudicial than probative so far as the accused is concerned are thereby excluded. Should this not prove possible, a trial judge should then expressly state the extent to which such material is being disregarded in the course of the sentencing process.”<sup>84</sup>

Where the offender has previously been convicted of a drug trade offence, the court often can, and indeed must,<sup>85</sup> take these convictions into account. Furthermore, convictions for drug trade offences in other jurisdictions may be treated as an aggravating factor or as a matter to be taken into account in relation to the particular circumstances of the offender.<sup>86</sup>

#### 1.2.8. Mitigating and Aggravating Factors

Reports of the Law Reform Commission have noted general mitigating and aggravating factors, which are referenced in previous analyses of sentencing for certain offences.<sup>87</sup> The following factors have been identified, in particular, as mitigating or aggravating factors in drug trafficking offences:

<b>Mitigating Factor</b>	<b>Aggravating Factor</b>
Guilty plea	-
Low level of involvement in drug trade	High level of involvement in drug trade
Duress	Motivated by financial gain
Low quantity or value of drugs	High quantity or value of drugs
-	Type of drugs
Lack of previous convictions	Past criminal record
Expression of remorse	Lack of remorse
Drug addiction	No drug addiction
Age of the offender	Age of the offender
Health of the person	Large-scale operation
Low risk of re-offending	
Vulnerability of the person	

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<sup>84</sup> [2012] IECCA 37, (Unreported, Court of Criminal Appeal, 15<sup>th</sup> February, 2012).

<sup>85</sup> E.g. In relation to a conviction for an offence s. 15A or s. 15B, there is express legislative direction for the court to have regard to prior convictions for drug trade offences under s. 27(3D)(c)(i) and s. 27(3F).

<sup>86</sup> *The People (Director of Public Prosecutions) v. T.U.* [2010] IECCA 13, (Unreported, *ex tempore*, Court of Criminal Appeal, 18<sup>th</sup> February, 2010).

<sup>87</sup> “Recent Rape Sentencing Analysis: The *W.D. Case & Beyond*”, pp. 9-11; and “Analysis of Manslaughter Sentencing 2007-2012”, pp. 20-22. These are available on the ISIS website: [www.irishsentencing.ie](http://www.irishsentencing.ie).

## **Part II. Application of the s. 15A/15B Sentencing Regime**

### **2.1. Introduction**

As previously noted, an appropriate notional sentence must be assessed first. The Court of Criminal Appeal has emphasised that 10 years is not to be taken as indicative of the most serious custodial sentence. A sentence independent of what is provided for in the Act of 1977, *i.e.* in excess of the presumptive minimum, may be merited and then mitigating factors may be applied.<sup>88</sup>

The Criminal Justice Act 2007 consolidated the various amendments made theretofore to s. 27 concerning penalty arrangements for s. 15A convictions and also inserted a 'construction clause' by way of s. 27(3D)(a) which sets out the purpose behind the policy of the presumptive mandatory minimum sentence, *i.e.* that the severity of the presumptive mandatory minimum sentence exists due to the "harm caused to society by drug trafficking".<sup>89</sup>

### **2.2. Imposition of sentence of 10 years or more**

Section 84 of the Criminal Justice Act 2006 amended s. 27 of the Act of 1977 by inserting a provision restricting the imposition of a sentence of less than 10 years. Section 27(3E) stipulates that the concession to the presumptive minimum where "exceptional and specific circumstances" exist does not apply where the person is convicted for a second or subsequent offence under s. 15A or 15B, or is convicted under either and already holds a conviction under the other.

The presumptive mandatory minimum does not apply where the offender is under the age of 18 years. The maximum sentence of life imprisonment does however continue to apply to such persons.<sup>90</sup>

As the Court of Criminal Appeal noted in *The People (Director of Public Prosecutions) v. P.B.*:-

"[I]t is clear that the effect of the statutory provision is significantly to encroach on the otherwise untrammelled discretion of the sentencing court. If there are no specific and exceptional circumstances rendering

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<sup>88</sup> *The People (Director of Public Prosecutions) v. M.R.* (Unreported, *ex tempore*, Court of Criminal Appeal, 27<sup>th</sup> May, 2009) at p. 2.

<sup>89</sup> Section 27(3D)(a) of the Misuse of Drugs Act 1977, as amended.

<sup>90</sup> Section 27(3C) of the Misuse of Drugs Act 1977, as amended.

it unjust to impose the minimum sentence then that sentence must be imposed, if indeed a greater one is not considered appropriate.”<sup>91</sup>

### 2.2.1. Review and Suspension of Sentence

Section 27(3J) and (3K), as inserted by section 5 of the Criminal Justice Act 1999 and substituted by s. 33 of the Criminal Justice Act 2007, provides the power to review a sentence, whereby the court imposes a sentence with the power to suspend the balance following a review after the expiry of one-half of the sentence. The court may at that time suspend the remainder of the sentence on such conditions as it deems appropriate.

This provision is only applicable to sentences pursuant to a conviction under either s. 15A and s. 15B where the presumptive mandatory minimum of 10 years or more has been imposed. For sentences where the presumptive minimum has not been applied, it is clear that a reviewable sentence cannot be imposed without a statutory basis.<sup>92</sup> Further, the power to review is only applicable where the court is satisfied that the offender was addicted to drugs at the time of the offence and that the addiction was “a substantial factor leading to the commission of the offence”.<sup>93</sup> Thus in *The People (Director of Public Prosecutions) v. D.H.*, a 10-year sentence was upheld for an applicant who had neither pleaded guilty nor cooperated with the Gardaí but the Court expressed the view that due to the 55-year old applicant’s poor health as a result of a lengthy dependency on drugs and alcohol ought to serve five years while being incentivised to be in a position to address his addiction problems when half of his sentence expires.<sup>94</sup>

It must be noted that it is possible to suspend sentences where “exceptional and specific circumstances” are found to exist but not where the mandatory minimum of 10 or more years is applied. Section 99(1) of the Criminal Justice Act 2006 prohibits the suspension of sentence where a mandatory sentence has been imposed, whether it is a mandatory minimum or maximum. A minimum of 10 years imprisonment is absolutely mandatory in the case of a second or subsequent conviction under section 15A or section 15B.<sup>95</sup>

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<sup>91</sup> [2004] IECCA 1, [2004] 1 2 I.R. 375, at 384.

<sup>92</sup> Such reviewable sentences, known as ‘Butler orders’, were considered to offend the principle of separation of powers by the Supreme Court in *The People (Director of Public Prosecutions) v. P.F.* [2001] 2 I.R. 25. In *The People (Director of Public Prosecutions) v. R.D.* [2003] 4 I.R. 87, the Court of Criminal Appeal affirmed that the review power was only exercisable in circumstances where the presumptive mandatory minimum has been imposed and in circumstances where ‘exceptional and specific circumstances’ resulted in a non-mandatory sentence.

<sup>93</sup> Section 27(3J)(b) of the Misuse of Drugs Act, as amended.

<sup>94</sup> [2010] IECCA 45, (Unreported, *ex tempore*, Court of Criminal Appeal, 18<sup>th</sup> May, 2010).

<sup>95</sup> If a person has a conviction under s. 15A and is later convicted under s.15B, the latter conviction is to be treated as a second or subsequent offence for the purposes of s. 27(3F).

### **2.3. “Exceptional and specific circumstances”: When the Presumptive Mandatory Sentence does not apply**

The court may depart from the presumptive minimum sentence of 10 or more years imprisonment where it is satisfied that there are “exceptional and specific circumstances” relating to the offence or the convicted person which would render such sentence “unjust in all the circumstances”. As previously stated, such “circumstances” can be considered mitigating factors but not all mitigating factors constitute “exceptional and specific circumstances”. Section 27 (3D)(b) of the Act of 1977, as amended, provides the basis for this exception and offers two enumerated examples of what may constitute such “exceptional and specific circumstances”, namely where the convicted person has pleaded guilty and where the person has materially assisted in the investigation of the offence. Section 27(3D)(b) provides that the Court may “have regard to any matters it considers appropriate” so the legislation does not preclude unenumerated circumstances. Indeed, the Court of Criminal Appeal has identified several other circumstances that would result in the application of the presumptive mandatory minimum sentence being “unjust in all the circumstances”. These enumerated and unenumerated circumstances are detailed below.

The Court of Criminal Appeal has emphasised the exception is a conjunctive formula, *i.e.* that the circumstances are exceptional *and* specific:-

“[I]t appears clear from the wording of the statutory provision that unenumerated circumstances relied upon as putting the case into a category where it would be unjust to impose the minimum sentence must be *both* exceptional and specific: the conjunctive form of words leaves no other conclusion open.”<sup>96</sup>

Section 27(3D)(c) provides that the sentencing court when deciding whether or not to impose statutory minimum may have regard, among other considerations, to whether the convicted person has previously been convicted of a drug trafficking offences;<sup>97</sup> and whether the public interest in preventing drug trafficking would be served by the imposition of a lesser sentence.<sup>98</sup>

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<sup>96</sup> *The People (Director of Public Prosecutions) v. P.B.* [2004] IECCA 1, [2004] I.R. 375, para. 26.

<sup>97</sup> Section 27(3D)(c)(i), See also s. 27(3E) which provides that a sentence of at least 10 years or more must be imposed upon a convicted person who has previously been convicted of an offence under s. 15A or 15B.

<sup>98</sup> Section 27(3D)(c)(ii).

### 2.3.1. Plea of guilty

A plea of guilty is an enumerated exceptional and specific circumstance by virtue of s. 27(3D)(b)(i) of the Act of 1977, as amended. While a plea of guilty may serve as a mitigating factor for sentencing, not every plea in and of itself will be treated as an exceptional and specific circumstance warranting the non-application of s. 27(3C). The Court of Criminal Appeal expressed this view in *The People (Director of Public Prosecutions) v. J.D.*, where it held:-

“First of all there is nothing exceptional about a plea of guilty, it is one of the commonest occurrences in any criminal trial. Secondly, it seems to be at least implied in the judgment of this court delivered by Hardiman J. in *Botha* cited above that importance must be attached to the conjunctive “and, if so,” in the statutory provision so that a plea of guilty can only be relevant to an escape from the mandatory minimum sentence if there are other circumstances which effectively can render the combination of the plea of guilty and those circumstances to be exceptional circumstances. These can include the stage at which the accused indicated the intention to plead guilty, the circumstances in which the indication was given and whether that person materially assisted in the investigation of the offence.”<sup>99</sup>

O'Malley notes that a guilty plea may, however, “justify a downward departure” when combined with one or more other factors,<sup>100</sup> such as the provision of assistance to law enforcement authorities or other unenumerated factors (detailed below).

Where a guilty plea is tendered, the legislation obliges the court to consider at what the stage the intention to plead guilty was given<sup>101</sup> and the circumstances in which it was given<sup>102</sup> in order to assess the significance of the plea and the weight to be attached to it. There is however no formal provision for the amount of adjustment merited by a guilty plea, preferring instead to uphold judicial discretion, to be exercised in light of the specific circumstances. McKechnie J. in *The People (Director of Public Prosecutions) v. J.D.* noted this fact and referred to earlier cases of the Court of Criminal Appeal in which a reduction of up to, but never greater than, one-third of the sentence had been considered appropriate for an early plea. McKechnie J. continued:-

“A plea [is] but a mitigating factor, admittedly quite an important one, and at the end of the process the overriding obligation was to ensure

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<sup>99</sup> [2005] IECCA 92, (Unreported, Court of Criminal appeal, 15<sup>th</sup> July, 2005).

<sup>100</sup> O'Malley, *Sentencing Law and Practice* (2<sup>nd</sup> ed., 2006), p. 338.

<sup>101</sup> Section 27(3D)(b)(i)(I).

<sup>102</sup> Section 27(3D)(b)(i)(II).

that the sentence actually imposed reflect[s] the crime and respect[s] the convict.”<sup>103</sup>

The Court of Criminal Appeal noted in *The People (Director of Public Prosecutions) v. D.C.* that “[i]n considering the credit which has to be given for a plea regard is had to the nature of the trial but specifically regard is had to an early plea.”<sup>104</sup> In that case, the court found that a plea of guilty entered on the date of trial merited less credit than it would have had it been tendered at an earlier stage. Similarly, in *The People (Director of Public Prosecutions) v. P.K.*<sup>105</sup> and *The People (Director of Public Prosecutions) v. J.C.*,<sup>106</sup> pleas of guilt entered 18 months after the commission of the offence and on the second day of trial were found to have progressively lost value in mitigation than if they had been entered at the earliest opportunity.

Not every plea of guilty that is entered early, however, will carry the same weight. The Court of Criminal Appeal has repeatedly emphasised that where a plea of guilty flows from the person having been caught ‘red handed’, as occurs in many drug offences which come before the courts, it is considerably less ‘exceptional’ than an early plea in other circumstances.<sup>107</sup> In *The People (Director of Public Prosecutions) v. I.A.*, the Court stated:-

“An early plea of guilty is of value in every case but the extent to which it is of value will depend on the circumstances of the case and very often will depend on the nature of the evidence available against an accused person. If he is caught red-handed such a plea is of less value than it might be in other cases. There are also particular cases, such as sexual assault, rape and so forth, where a plea spares the victim the ordeal of giving evidence and appearing in court, where a plea is almost always of value.”<sup>108</sup>

Where an accused is caught red-handed, a plea of guilty will not be emptied of its value and, although its value will be reduced, it will nevertheless carry some weight.<sup>109</sup>

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<sup>103</sup> [2011] IECCA 104, [2012] 1 I.R. 476, at para. 100.

<sup>104</sup> [2009] IECCA 144 (Unreported, *ex tempore*, Court of Criminal Appeal, 7<sup>th</sup> December, 2009).

<sup>105</sup> [2011] IECCA 48, (Unreported, Court of Criminal Appeal, 27<sup>th</sup> July, 2011).

<sup>106</sup> [2009] IECCA 28, (Unreported, Courts of Criminal Appeal, 2<sup>nd</sup> April, 2009).

<sup>107</sup> *The People (Director of Public Prosecutions) v. I.A.* [2010] IECCA 46 (Unreported, *ex tempore*, Court of Criminal Appeal, 18<sup>th</sup> May, 2010); *The People (Director of Public Prosecutions) v. G.D.* (Unreported, *ex tempore*, Court of Criminal Appeal, 21<sup>st</sup> June, 2010); *The People (Director of Public Prosecutions) v. M.G.* (Unreported, Court of Criminal Appeal, 23<sup>rd</sup> July, 2003).

<sup>108</sup> [2010] IECCA 46, (Unreported, *ex tempore*, Court of Criminal Appeal, 18<sup>th</sup> May, 2010).

<sup>109</sup> *The People (Director of Public Prosecutions) v. B.O.* [2011] IECCA 45, (Unreported, Court of Criminal Appeal, 9<sup>th</sup> July, 2011); *The People (Director of Public Prosecutions) v. J.McG.* (Unreported, *ex tempore*, Court of Criminal Appeal, 8<sup>th</sup> February, 2010); *The People (Director of Public Prosecutions) v. M.G.* (Unreported, Court of Criminal Appeal, 23<sup>rd</sup> July, 2003).



Where the offender's plea saves time and expense which would have been invested in investigation or trial time, it will carry greatest weight and in particular where it is proffered at the earliest opportunity.<sup>110</sup> In *The People (Director of Public Prosecutions) v. B.O.*, the applicant's voluntary and early plea along with his cooperation and lack of previous convictions warranted the non-application of s. 27(3C) on the grounds that it "obviated the lack of prosecution evidence of his sale of heroin other than by his own admissions".<sup>111</sup> Similarly, in *The People (Director of Public Prosecutions) v. D.O'D.*, the immediacy of the applicant's guilty plea was held to be a significant degree of cooperation because it relieved the prosecution of its duty to establish that the accused was indeed in possession of the drugs seized, in circumstances where the accused shared a room with another person.<sup>112</sup>

An accused who does not plead guilty or co-operate does not automatically receive the presumptive mandatory minimum.<sup>113</sup> In *The People (Director of Public Prosecutions) v. S.M.*, the applicant cooperated fully with the Gardaí and customs authorities but had not pleaded guilty due to the fact that she contested knowledge of having possession of the drugs at issue. The Court of Criminal Appeal found that sufficient "exceptional and specific circumstances" were present in the case to displace the presumptive mandatory minimum.<sup>114</sup>

In *The People (Director of Public Prosecutions) v. J.D.*, the Court of Criminal Appeal upheld the process of construction of the sentence conducted by the Circuit Court where it had first determined a notional sentence of 15 years. The accused's plea of guilty had merited "a deduction of slightly less than one third" which resulted in a sentence of nine years imprisonment.<sup>115</sup> In *The People (Director of Public Prosecutions) v. A.D.*, the Court of Criminal Appeal found that in a case where the applicant had admitted to the offence at an early stage and consistently but had offered no other material assistance, a deduction of three years from a notional 10-year sentence was the largest which could be given for the plea of guilty.<sup>116</sup>

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<sup>110</sup> *The People (Director of Public Prosecutions) v. B.O.* [2011] IECCA 46; *The People (Director of Public Prosecutions) v. Edward Anthony Farrell* [2010] IECCA 116, (Unreported, Court of Criminal Appeal, 21<sup>st</sup> December, 2010); and *The People (Director of Public Prosecutions) v. A.D.* [2006] IECCA 164, [2007] 2 I.R. 622.

<sup>111</sup> [2011] IECCA 46, (Unreported, Court of Criminal Appeal, 9<sup>th</sup> July, 2011).

<sup>112</sup> [2009] IECCA 140 (Unreported, *ex tempore*, Court of Criminal Appeal, 14<sup>th</sup> December, 2009)

<sup>113</sup> *The People (Director of Public Prosecutions) v. J.D.*, (Unreported, *ex tempore*, Court of Criminal Appeal, 21<sup>st</sup> December, 2001).

<sup>114</sup> [2011] IECCA 99, (Unreported, *ex tempore*, Court of Criminal Appeal, 21<sup>st</sup>, December 2011).

<sup>115</sup> *The People (Director of Public Prosecutions) v. J.D.*, (Unreported, *ex tempore*, Court of Criminal Appeal, 21<sup>st</sup> December, 2001), p. 3.

<sup>116</sup> [2006] IECCA 164, [2007] 2 I.R. 622, at 626.

As previously mentioned, a plea of guilty may overlap with the provision of material assistance and will therefore not always result in a separate deduction in sentencing.<sup>117</sup> In *The People (Director of Public Prosecutions) v. J.McG.*, the court noted that guilty pleas often coincided with cooperation with the Gardaí, a form of material assistance, but this would not necessarily result in a separate discount unless it involved the provision of information regarding others involved in the offence:-

“One gets the maximum discount for a plea of guilty where there is an early indication of a plea and that normally entails co-operation with the Gardaí from an early stage. It does not necessarily mean that in any case where early co-operation results in a plea of guilty that something more than the normal discount for the early plea should result. There will be circumstances where co-operation with the Gardaí merits a considerable separate and additional discount, where for example the co-operation entails disclosure of information in relation to others involved and so may entail a risk to life, but at first sight certainly this is not one of those cases.”<sup>118</sup>

In *The People (Director of Public Prosecutions) v. J.D.*, McKechnie J. provided a brief overview of sentences that resulted from a plea of guilty but attracted hefty sentences:

“From a brief look at the case law, it can be seen that, in a number of s. 15A cases, some involving substantial amounts of drugs, but others less so, sentences of in or around the ten year mark have been handed down on a plea of guilty. In *The People (D.P.P.) v. [F.]* (Dublin Circuit Criminal Court, 11<sup>th</sup> March 2005), a man said to have had a history of serious crime, who pleaded guilty to having €50,000 worth of Cocaine, was sentenced to ten years imprisonment as there were no exceptional circumstances to justify a lesser sentence. A ten year sentence was also imposed on the 52 year old accused in *The People (D.P.P.) v. [L.]* (Naas Circuit Court, 15<sup>th</sup> February 2005) who was found in possession of €615,000 worth of Cocaine. In *The People (D.P.P.) v. [J.]* (Dublin Circuit Criminal Court, 3<sup>rd</sup> May 2005), the accused received a ten year sentence with the last two suspended for importing €300,000 worth of Cocaine. He had pleaded guilty, had no previous convictions and would be serving his sentence in a foreign country. There are multiple other cases where, like those cited herein, the variants are numerous.”<sup>119</sup>

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<sup>117</sup> See 1.2.2. Sentencing is not an Arithmetical Process.

<sup>118</sup> [2010] IECCA 8 (Unreported, *ex tempore*, Court of Criminal Appeal, 8<sup>th</sup> February, 2010).

<sup>119</sup> [2011] IECCA 104, [2012] 1 I.R. 476, para. 99.

### 2.3.2. Material Assistance

Section 27(3D)(b)(ii) of the Act of 1977, as amended, enumerates material assistance as a potential “exceptional and specific circumstance”. The legislation does not define what form material assistance may take. In *P.D. v. Director of Public Prosecutions*, Denham J. observed three forms that material assistance may take:-

“The issue of ‘material assistance’ may take many forms. The most basic is to admit the offence. Secondly, an admission may be made together with showing the Gardaí drugs, etc, relating to the specific offence in issue. Thirdly, there is much more significant material assistance where an accused assists the Gardaí in relation to other offences and criminality. This latter is a matter of great public interest, and has been given significant weight in other cases.”<sup>120</sup>

#### 2.3.2.i. *Plea of guilty*

See discussion above at 2.3.1 above.

#### 2.3.2.ii. *Admissions made*

Like a plea of guilty, admissions made and statements given voluntarily are accepted generally in the law of sentencing to be mitigating factors. Whether the presence of such cooperation constitutes an “exceptional or specific circumstance” depends—like a plea of guilty—on the circumstances in which they were made, *i.e.* less value shall attach to admissions made where the person was caught red-handed. Such caution was articulated by the Court of Criminal Appeal in *The People (Director of Public Prosecutions) v. D.C.*:-

“[A]dmissions are not necessarily matters to which regard can be had for the purposes of section 15A and in particular where a sentence less than the presumptive statutory minimum is being considered. What the court is concerned with is material assistance. There are a number of cases where significant material assistance was given and comparatively modest sentences then attached to the offender. In particular assistance above and beyond one's own involvement will be relevant and where someone at risk of life or at risk of serious injury or exposing themselves to danger co-operates and assists the Gardaí, clearly they should get every consideration when it comes to sentence. But merely to admit one's own part may not merit a great deal of consideration in terms of sentence and particularly as here, where the applicant was caught red-handed.”<sup>121</sup>

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<sup>120</sup> *P.D. v. Director of Public Prosecutions* (Unreported, *ex tempore*, Court of Criminal Appeal, February 19<sup>th</sup>, 2008).

<sup>121</sup> [2009] IECCA 144, (Unreported, *ex tempore*, Court of Criminal Appeal, 7<sup>th</sup> December, 2009).

However, where admissions assist with the matter avoiding trial or relieve the prosecution of the burden to prove knowledge of the presence of drugs by the accused,<sup>122</sup> possession of the drugs in question,<sup>123</sup> or that the person charged was selling or supplying the drugs in question,<sup>124</sup> they have been held to amount to material assistance. In *The People (Director of Public Prosecutions) v. A.D.*,<sup>125</sup> the applicant's admission to his own role in the offence did not amount to "exceptional and specific circumstance" because he had refused to provide information on his suppliers. In *The People (Director of Public Prosecutions) v. J.McG.*, the Court of Criminal Appeal considered that the applicant's full and frank admissions constituted "exceptional and specific circumstances" but noted their diminished value because the applicant had been caught red-handed.<sup>126</sup> Finally, in *The People (Director of Public Prosecutions) v. M.R.*, the court found that immediate admissions to possession of concealed drugs made by the applicant coupled with his early plea of guilty constituted "exceptional and specific circumstances".<sup>127</sup>

### 2.3.2.iii. *Provision of information*

The provision of information which will assist Gardaí with the investigation or prosecution of an offence, such as information which would assist in the identification or apprehension of persons further up the chain of supply, can serve to mitigate sentence. For example, the provision of a tick list of customers coupled with explanations for text messages on an offender's phone have been held to be material assistance.<sup>128</sup> In *The People (Director of Public Prosecutions) v. K.B.*, the Court of Criminal Appeal found that the applicant was entitled to a reduction of one-third of her sentence of 10 years for her early plea and cooperation with the Gardaí, which had resulted in the apprehension and conviction of a major drug dealer.<sup>129</sup> Similarly, credit was given to the applicant in *The People (Director of Public Prosecutions) v. S.M.*, the applicant provided a list of names and identifying information of people she was due to meet once she arrived in Ireland. The fact that some of the information related to persons in other jurisdictions was not held to diminish the value of such assistance and the Court held:-

"The learned trial judge considered this to be of limited value as the persons named were persons she had met in Africa. However they were persons of European origin or persons who had previously

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<sup>122</sup> *The People (Director of Public Prosecutions) v. P.O'C.* [2006] IECCA 21, (Unreported, *ex tempore*).

<sup>123</sup> *The People (Director of Public Prosecutions) v. A.B.* [2008] IECCA 127, (Unreported, *ex tempore*).

<sup>124</sup> *The People (Director of Public Prosecutions) v. B.O.* [2011] IECCA 46.

<sup>125</sup> [2006] IECCA 164, [2007] 2 I.R. 622.

<sup>126</sup> [2010] IECCA 8.

<sup>127</sup> [2009] IECCA 9, (Unreported, *ex tempore*, Court of Criminal Appeal, 27<sup>th</sup> May, 2009).

<sup>128</sup> *The People (Director of Public Prosecutions) v. G.D.* [2010] IECCA 46, (Unreported, *ex tempore*, Court of Criminal Appeal, 21<sup>st</sup> June, 2010).

<sup>129</sup> (Unreported, *ex tempore*, Court of Criminal Appeal, 14<sup>th</sup> January, 2002).

travelled to Europe transporting drugs. The information will be of value to European authorities and may well lead to the apprehension, trial and conviction of such persons in the future. The court is satisfied that the learned trial judge underestimated the value of the information which the applicant provided.”<sup>130</sup>

Finally, it should be noted that Court of Criminal Appeal has held that regard should be had to the general atmosphere of threat in the drug industry and the difficulty this poses for the person charged with providing material assistance.<sup>131</sup> In *The People (Director of Public Prosecutions) v. T.H.*, the Court of Criminal Appeal held that the level of fear that may be present was a matter “that has to be put into the balance [...] in connection with the degree of co-operation and assistance in the investigation”.<sup>132</sup>

### 2.3.3. Any other Matters the Court considers Appropriate

Section 27(3D)(b) provides that a non-exhaustive list of “exceptional and specific circumstances” may be applicable and permits the court to have regard “to any other matters it considers appropriate” in its consideration of whether the imposition of a sentence of not less than 10 years would be “unjust in all the circumstances”. In *The People (Director of Public Prosecutions) v. D.L.*, the Court commented on the relationship between such enumerated factors and the legislative framework:

“That is not to say that the Court does not have due regard to the factors to which, in a wide number of cases covering many different circumstances, the courts have had regard in deciding not to apply the provisional mandatory minimum sentence. These factors include such features as an early plea of guilty, the rendering of material assistance, the fact that the offender is a foreign national and other factors which from time to time are taken into account to by the court so as to disapply the provisional minimum sentence. Other considerations might include the fact that the respondent was a vulnerable person, that it was a ‘one off’ offence where the offender was unlikely to re-offend, that the offender was an addict himself or owed debts to the gang for whom he was holding drugs or that he was under duress or in fear of his own safety.”<sup>133</sup>

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<sup>130</sup> [2011] IECCA 99, (Unreported, *ex tempore*, Court of Criminal Appeal, 21<sup>st</sup>, December 2011).

<sup>131</sup> *The People (Director of Public Prosecutions) v. I.A.* [2010] IECCA 46 (Unreported, *ex tempore*, Court of Criminal Appeal, 18<sup>th</sup> May, 2010); *The People (Director of Public Prosecutions) v. T.H.* [2010] IECCA 64, (Unreported, *ex tempore*, Court of Criminal Appeal, 23<sup>rd</sup> June, 2010).

<sup>132</sup> [2010] IECCA 64, (Unreported, *ex tempore*, Court of Criminal Appeal, 23<sup>rd</sup> June, 2010).

<sup>133</sup> [2008] IECCA 133, [2009] 3 I.R. 486, at 490.

2.3.3.i. *Unenumerated "exceptional and specific circumstance" identified by the Court of Criminal Appeal*

The Court of Criminal Appeal has identified the following mitigating circumstances that may reach the threshold of "exceptional and specific circumstances":

- Absence of Previous Convictions
- Unlikely to reoffend
- Remorse
- Foreign Nationality
- Role of the Offender
- Duress
- Health problems
- Intention to reform/Low risk of re-offending
- Age
- Vulnerability of the Accused
- Rehabilitation
- Humanity

Noteworthy features of some of these circumstances are detailed below.

2.3.3.ii. *Absence of Previous Convictions*

In *The People (Director of Public Prosecutions) v. M.G.*, it was held that a convicted person with previous convictions may be treated as a first time offender in circumstances where those prior convictions are for minor offences of an unrelated nature to the serious offence of drug trafficking. In that case, the offender had prior convictions for minor road traffic offences. The Court held:-

"There is, however, the important fact that, in practical terms, the applicant should be treated as a first offender. As already explained, the Court does not consider, on the facts of this case, that his previous conviction for certain road-traffic offences are relevant. That is an essential feature in many, if not all, sentencing decisions. Whether or not the court is dealing with a first offence is not one of the two named 'exceptional and specific circumstances' mentioned in sub-section 3C, but it is clearly capable of being one. It is a matter relating to the person rather than the offence"<sup>134</sup>

2.3.3.iii. *Foreign Nationality*

The significance of nationality as a mitigating factor will depend upon the significance of the cultural or socialisation difficulties that the convicted

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<sup>134</sup> *The People (Director of Public Prosecutions) v. M.G.* (Unreported, Court of Criminal Appeal, 23<sup>rd</sup> July, 2003). Recently re-affirmed in *The People (Director of Public Prosecutions) v. B.O.* [2011] IECCA 46, (Unreported, Court of Criminal Appeal, 9<sup>th</sup> July, 2011).

person is likely to face while imprisoned in the State, such as separation from family or racism, *e.g.* in *The People (Director of Public Prosecutions) v. J.C.R.*, the Court acknowledged the South African applicant's "very different cultural and political background".<sup>135</sup> The importance to be accorded to the fact that an applicant is a foreign national can vary considerably from case to case.<sup>136</sup> For example, in *The People (Director of Public Prosecutions) v. S.M.*, the Court noted that "prison will be somewhat more difficult for [the applicant] than would be the case for an Irish National" due to the limitations a custodial sentence in Ireland would impose on access to family and friends.<sup>137</sup> Whereas in *The People (Director of Public Prosecutions) v. J.D.*, the Court acknowledged that the applicant would not have the benefit of frequent visits from his close family who were resident in the United Kingdom but held "it cannot be said that he will encounter the significant cultural or socialisation difficulties that are endured by those foreign prisoners who have come from further afield."<sup>138</sup>

### 2.3.3.iv. *Role of the Offender*

Low level of involvement does not *per se* amount to an exceptional and specific circumstance. The Court of Criminal Appeal has expressed reluctance in describing an offender as "merely a courier" due to the essential role that couriers play in shielding those in the upper echelons of the drugs trade from detection and conviction.<sup>139</sup> The court has made similar pronouncements in relation to the important role that 'mules'—perhaps the lowest, and often vulnerable and exploited, operators in the supply chain—play in the drugs industry due to the fact that they shield those involved at a much higher level.<sup>140</sup> Indeed, in *The People (Director of Public Prosecutions) v. E.B.*, the Court went so far as to describe the applicant's role as a courier as being an "aggravating factor" because it places a person as a "barrier between the

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<sup>135</sup> (Unreported, Court of Criminal Appeal, 23<sup>rd</sup> November, 2001).

<sup>136</sup> *The People (Director of Public Prosecutions) v. M.C.*, (Unreported, *ex tempore*, Court of Criminal Appeal, 25<sup>th</sup> July, 2002), cited in *The People (Director of Public Prosecutions) v. J.D.* [2011] IECCA 104, [2012] 1 I.R. 476.

<sup>137</sup> [2011] IECCA 99, (Unreported, *ex tempore*, Court of Criminal Appeal, 21<sup>st</sup> December, 2011).

<sup>138</sup> [2011] IECCA 104, [2012] 1 I.R. 476, at para. 41.

<sup>139</sup> *The People (Director of Public Prosecutions) v. J.McG.* (Unreported, *ex tempore*, Court of Criminal Appeal, 8<sup>th</sup> February, 2010); *The People (Director of Public Prosecutions) v. E.B.* [2010] IECCA 67, (Unreported, Court of Criminal Appeal, 24<sup>th</sup> June, 2010); *The People (Director of Public Prosecutions) v. A.W.* (Unreported, *ex tempore*, Court of Criminal Appeal, 28<sup>th</sup> June, 2010); *The People (Director of Public Prosecutions) v. A.McE.* (Unreported, *ex tempore*, Court of Criminal Appeal, 29<sup>th</sup> June, 2009); *The People (Director of Public Prosecutions) v. D.H.* (Unreported, Court of Criminal Appeal, 21<sup>st</sup> December, 2001).

<sup>140</sup> *The People (Director of Public Prosecutions) v. J.C.* (Unreported, *ex tempore*, Court of Criminal Appeal, 2<sup>nd</sup> April, 2009).

Gardaí and the drugs barons.”<sup>141</sup> In *The People (Director of Public Prosecutions) v. D.H.*, Keane C.J. held for the Court:-

“Couriers play an essential role in the illegal drugs trade and [...] those who willingly enter into that trade for financial reward, as the applicant unhappily did, simply cannot expect to receive anything but severe treatment from the courts. That is the policy plainly and unambiguously laid down in the Misuse of Drugs Acts 1977, as amended by the Criminal Justice Act 1999, a policy which this court is bound to uphold.”<sup>142</sup>

Furthermore, in *The People (Director of Public Prosecutions) v. A.A.*,<sup>143</sup> the Court held:-

“The fact that she was a courier only and not an organiser is something that obviously must be taken into account. [...] Just because it is a courier does not mean that it is not a serious offence. In fact I think courts in the past have indicated rightly or wrongly that it is very unlikely the Oireachtas did not have couriers in mind in enacting the mandatory sentence in the Act.”

Whether the offender’s low level of involvement justifies a downward departure from the presumptive minimum will also depend on the motivation behind their involvement. In *The People (Director of Public Prosecutions) v. P.L.*,<sup>144</sup> the applicant, who had driven a truck containing 1 metric tonne of cannabis resin and cannabis from Belgium to Ireland, was found to be motivated by financial gain and to possess none of the typical mitigating factors usually found in the personal circumstances of couriers or ‘mules’, e.g. financial indebtedness, very young or very old age, escaping difficult circumstances in their own country, etc. His role was thus held to be that of “a very important and essential cog, in a significant drugs importation venture, even if not the mastermind behind the venture” and a sentence of 14 years was imposed. Similarly, in *The People (Director of Public Prosecutions) v. J.D.*, the fact that the accused, a drug transporter, was not a ringleader in the operation could be considered more of an aggravating than a mitigating factor because the applicant was “no outsider asked to do an isolated job, he was an insider doing an insider’s job.”<sup>145</sup>

### 2.3.3.v. Duress

In *The People (Director of Public Prosecutions) v. J.K.*, the applicant’s possession of the drugs was found to be as a result of fear rather than any other

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<sup>141</sup> [2010] IECCA 67, (Unreported, *ex tempore*, Court of Criminal Appeal, 24<sup>th</sup> June, 2010)

<sup>142</sup> (Unreported, Court of Criminal Appeal, 21<sup>st</sup> December, 2001).

<sup>143</sup> (Unreported, *ex tempore*, Court of Criminal Appeal, 6<sup>th</sup> July, 2009).

<sup>144</sup> [2006] IECCA 49, (Unreported, Court of Criminal Appeal, 26<sup>th</sup> April, 2006).

<sup>145</sup> [2011] IECCA 104, [2012] 1 I.R. 476, para. 38.



motivation. The Court accepted that there was an element of duress, which had not been contested by the prosecution. A sentence of seven years with three suspended was held to be an appropriate sentence.<sup>146</sup>

2.3.3.vi. *Health problems*

The fact that an offender suffers from serious health problems may constitute an exceptional and specific circumstance. For example, in *The People (Director of Public Prosecutions) v. W.H.*, the Court suspended the final two years of a five year sentence on the basis of the applicant's serious lung condition which was unlikely to improve while he was in prison.<sup>147</sup> Similarly in *The People (Director of Public Prosecutions) v. S.H.*, a sentence of five years was substituted for one of 10 years because the applicant's lifespan would likely be shortened due to physical and psychological health problems if he were to be imprisoned for a long time.

2.3.3.vii. *Intention to reform/Low risk of re-offending*

In *The People (Director of Public Prosecutions) v. I.McG.*, an appeal against an entirely suspended sentence on grounds of undue leniency was dismissed on the basis that the imposition of a custodial sentence would have removed the respondent from his drug rehabilitation programme, which he was close to completing and likely to complete successfully. Murray C.J. stated that:-

“The dilemma faced by the trial judge was that the offence in question was undoubtedly grave enough to normally warrant a custodial sentence, as argued in this appeal by the prosecutor, while on the other hand any meaningful custodial sentence, by removing him from the rehabilitation programme in which he was at an advanced aftercare stage, ran the real risk of seriously damaging his prospects of rehabilitation. This was in the context that the trial judge had concluded, as he was entitled to do on the evidence before him, that there was a high probability that if he continued with the advanced stages of that programme his rehabilitation would be complete and successful. Complete rehabilitation of drug addicts is notoriously difficult while at the same time an important part of penal policy since if successful it reduces dramatically the risk of repeating offences and imprisonment of addicts.”<sup>148</sup>

2.3.3.viii. *Vulnerability of the Accused*

In *The People (Director of Public Prosecutions) v. P.B.*, the Court held that:-

“[i]t must particularly be borne in mind that, most unfortunately, people in very reduced financial circumstances and who are,

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<sup>146</sup> [2010] IECCA 43, (Unreported, Court of Criminal Appeal, 17<sup>th</sup> May, 2010).

<sup>147</sup> [2011] IECCA 20, (Unreported, *ex tempore*, Court of Criminal Appeal, 7<sup>th</sup> March, 2011).

<sup>148</sup> [2006] IECCA 37, [2007] 1 I.R. 633, at para. 31.

additionally foolish, old or very young and impressionable, are particularly sought to act as couriers, often for a pathetically small reward. The position of such persons must of course be distinguished from those who are more calculatedly involved in the supply of drugs. There is every scope to do this, since the maximum sentence is life imprisonment.”<sup>149</sup>

2.3.3.ix. *Rehabilitation*

Where an offender is addicted to drugs and seeking to overcome it, the offender’s attempts to rehabilitate may be considered an exceptional and specific circumstance. In *The People (Director of Public Prosecutions) v. I.A.*, the Court considered that some consideration ought to be given to rehabilitation in the construction of the sentence in order to “enhance or reinforce the applicant’s efforts in that regard by giving incentive to the applicant to continue to rehabilitate, to clear himself of his drug habit and to stay away from criminal pursuits.”<sup>150</sup> In that case, a notional sentence of 12-14 years was considered appropriate but a sentence of 11 years was imposed as there was some mitigation for a guilty plea and cooperation and the final five years were suspended in order to facilitate the offender’s rehabilitation. Similarly, in *Director of Public Prosecutions v. F.M.*,<sup>151</sup> the manner in and degree to which the offender had turned his life around between the commission of the offence and the trial were described by the Court to be “extraordinary, unusual and even unique circumstances”. The original sentence of 10 years was upheld but the final six were suspended.

2.3.3.x. *Humanity*

The unusual outcome in an appeal against leniency in *The People (Director of Public Prosecutions) v. E.A.F.* was described by the Court to be “extraordinary, specific and, it is hoped never to be repeated”.<sup>152</sup> The Director of Public Prosecutions appealed against a sentence of eight years with six suspended and the Court of Criminal Appeal agreed that the suspension of six years was unduly lenient. However, due to the fact that the offender had fully served his custodial sentence and been released for almost two years by the time of the appeal, the Court found that “it would be an unacceptable disregard for the humanity of the respondent if this Court were now to direct that he must serve the remainder of the sentence of eight years imprisonment”.

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<sup>149</sup> [2004] IECCA 1, [2004] I.R. 375, at para. 26.

<sup>150</sup> [2010] IECCA 46, (Unreported, *ex tempore*, Court of Criminal Appeal, 18<sup>th</sup> May, 2010).

<sup>151</sup> [2010] IECCA 44, (Unreported, *ex tempore*, Court of Criminal Appeal, 18<sup>th</sup> May, 2010).

<sup>152</sup> [2010] IECCA 116, (Unreported, Court of Criminal Appeal, 21<sup>st</sup> December, 2010).

## **Part III. Tables of Sentences from the Court of Criminal Appeal: 2009-2012**

### **3.1. Introduction**

In this part, 79 judgments on sentence of the Court of Criminal Appeal<sup>153</sup> during the period 2009-2012 arising from appeal by the person convicted for undue severity or a review by the Director of Public Prosecutions for undue leniency are analysed.<sup>154</sup> 20 of these cases relate to s. 15, and 59 of these sentences all arise from convictions under s. 15A or s. 15B<sup>155</sup> during the period 2009-2012. There were no appeals against sentence arising from convictions from the ordinary importation for sale or supply offence. A total of 81 individuals were sentenced in these decisions.

The type of sentence, *i.e.* life imprisonment, that would reflect the harmful impact of drugs on society which was envisaged by McMahon J. for future drug supply offenders in passing sentence in *The People (Director of Public Prosecutions) v. L.D.*<sup>156</sup> has yet to be imposed by any court. In that case, a sentence of 14 years—the maximum sentence possible for a conviction under s. 15 at that time—was imposed on an offender who was found to be “the controlling force in a major drugs importing activity” and who had “supplied the major part of the heroin and cocaine used” in Dublin for most of the year of 1980. McMahon J. was referring to the revision of penalties from a maximum of 14 years to life imprisonment which had occurred shortly before passing sentence but which penalty was not applicable in the instant case. Similarly, in *The People (Director of Public Prosecutions) v. J.G. (No. 2)* [2004] 3 I.R. 87, the Supreme Court took note of the introduction of s. 15A and its fortified penalty provisions and although they could not apply in the instant case, they were useful in calculating a proportionate sentence. The applicant was convicted of six counts under s. 15 for charges relating to a haul of 180 kilogrammes of cannabis valued at over IR£1,000,000 and sentenced, on appeal, to 20 years’ imprisonment. A sentence that was considered appropriate in light of the seriousness of the offence and the applicant’s involvement as a major player in organised crime, lack of remorse and the fact that he was of no assistance to the Gardaí. Such weighty sentences had rarely

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<sup>153</sup> The majority of judgments were delivered *ex tempore* and many do not carry a neutral citation number *i.e.* IECCA XX, as they are not documented in written format.

<sup>154</sup> Review by Director of Public Prosecutions, pursuant to s. 2 of the Criminal Justice Act 1993, as amended by s. 23 of the Criminal Justice Act 2006, on the grounds that the sentence imposed by the sentencing court was unduly lenient.

<sup>155</sup> It should be noted that there was only one sentence for a conviction under s. 15B during this period.

<sup>156</sup> *Director of Public Prosecution v. L.D.* (Unreported, *ex tempore*, Central Criminal Court, McMahon J., 23<sup>rd</sup> May, 1985), and reported in *The Irish Times*, 24<sup>th</sup> May, 1985.

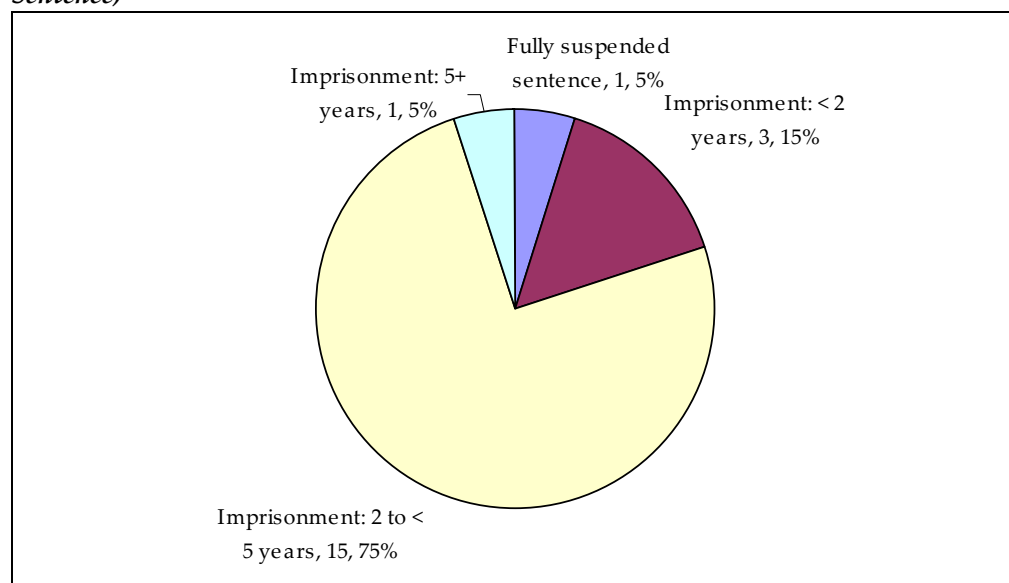
been seen in the intervening years even for convictions under s. 15A with its bolder penalty provisions but in 2011, a sentence of 25 years was upheld by the Court of Criminal Appeal.<sup>157</sup> Indeed, two co-accuseds of that offender received similarly heavy sentences of 30 years for their role in the operation following convictions under s. 15A.

### **3.2. Overview of Sentences for Convictions under s. 15**

The most commonly imposed or affirmed sentence by the Court of Criminal Appeal for the ordinary possession for sale or supply offence was three years. Three-quarters (75%, or 15 of 20 sentences) of all sentences handed down ranged from two years to less than five years. The longest sentence handed down was for five years and there was only one such instance.

13 sentences were partially suspended and one was wholly suspended. In four cases, the suspension amounted to two-thirds or more of the overall sentence.<sup>158</sup> This was to facilitate rehabilitation for drug addiction where the offender had already demonstrated progress or to acknowledge family commitments where there is a very low likelihood of re-offending.

**Figure 2: Sentencing for s. 15 Convictions before the Court of Criminal Appeal: 2009-2012 (20 Sentence)**



<sup>157</sup> *Director of Public Prosecution v. J.D.* [2011] IECCA 104, [2012] 1 I.R. 476. The sentences were originally handed down by Cork Circuit Criminal Court, 23<sup>rd</sup> July, 2008.

<sup>158</sup> *The People (Director of Public Prosecutions) v. G.M.* (Unreported, *ex tempore*, Court of Criminal Appeal, 27<sup>th</sup> April, 2009); *The People (Director of Public Prosecutions) v. P.B.* [2011] IECCA 1, (Unreported, *ex tempore*, Court of Criminal Appeal, 10<sup>th</sup> February, 2011); *The People (Director of Public Prosecutions) v. J.M.* [2009] (Unreported, *ex tempore*, Court of Criminal Appeal, 19<sup>th</sup> October, 2009); and *The People (Director of Public Prosecutions) v. F.H.* [2010] IECCA 70, (Unreported, *ex tempore*, Court of Criminal Appeal, 28<sup>th</sup> June, 2010).

### 3.3. Overview of Sentences for Convictions under s. 15A or s. 15B

For offences carrying the presumptive mandatory minimum sentence, the most commonly imposed or affirmed sentence was 10 years (9 sentences) while the average sentence of imprisonment was actually lower and ranged from five to eight years (23 cases). There were 14 sentences where the custodial period imposed was 10 years or more, 28 where the sentence fell between 5 years and up to 10 years, 11 where the sentence fell between 2 years and up to 5 years, and 2 where the sentence was less than two years.<sup>159</sup> There were 32 instances where the sentence was suspended in part and 6 cases where the sentence was suspended in full. In 23 cases, no suspension of sentence was issued.

Figure 4 below shows the breakdown of sentences imposed from 2009 to 2012 by length of sentence in individual years.

*Figure 4: Sentencing for s. 15A/15B Convictions before the Court of Criminal Appeal: 2009-2012 (61 Sentences)*

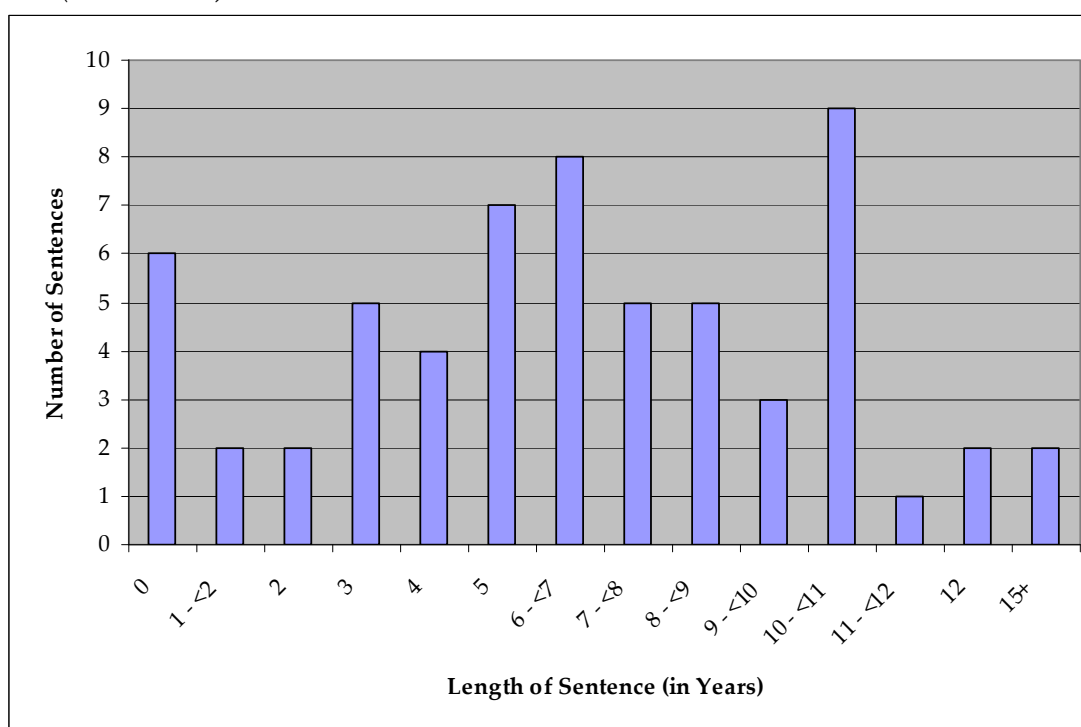
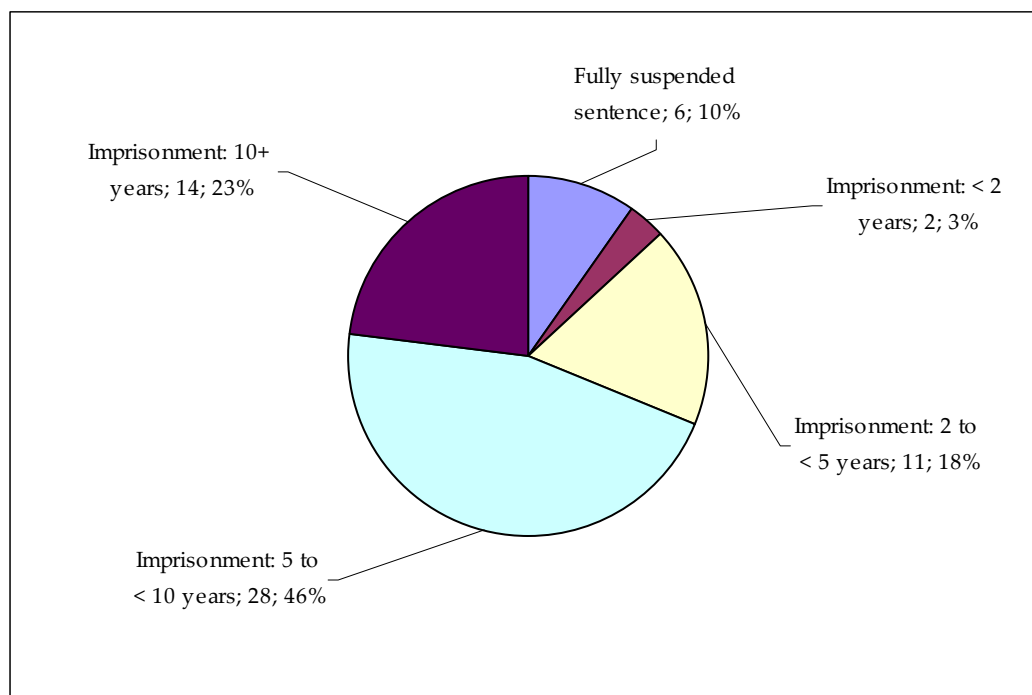


Figure 5 illustrates sentences in what could be called lenient (0 to <2 years), ordinary (2 to <10 years), or upper (10+) punishments. 69% of those convicted were sentenced to five years or more and almost one-quarter (23%) were sentenced to at least the presumptive mandatory minimum of 10 years or more.

<sup>159</sup> Where there was a suspended portion of the sentence, the suspended portion was not calculated as part of the total custodial sentence for the purpose of this analysis.

Figure 5: Sentencing for s. 15A/15B Convictions before the Court of Criminal Appeal: 2009-2012 (61 Sentences)



Section 15A introduced what the Court of Criminal Appeal has described as a “drastic alteration of the principles of sentencing as they formerly applied”.<sup>160</sup> The Court of Criminal Appeal, *per* Hardiman J., has however stated that the right of appeal by either the prosecutor or the convicted person represents an essential safeguard against undue leniency or undue severity which was “especially necessary in dealing with a revolutionary alteration superimposed on the conventional principles of sentencing.”

“Another feature of the sentencing regime to which little attention has been devoted is that in each and every case the Director of Public Prosecutions has a right to apply for review by this court if he considers the sentence to be unduly lenient. This has not happened in the present case. However, in the period 2002 to 2005, 23 such applications were lodged by the Director. Three await hearing, but of the balance, thirteen or 65% were successful. This does not, in any way, indicate that each of these cases represents a malfunction of some sort in the sentencing court. [...] In no case, according to the figures, was a sentence of more than six years immediate imprisonment made the subject of an application for review by the Director of Public Prosecutions, and there was only one case of an attempt to review an immediate custodial sentence of six years.”<sup>161</sup>

<sup>160</sup> *The People (Director of Public Prosecutions) v. A.D.* [2006] IECCA 164, [2007] 2 I.R. 622, at 628.

<sup>161</sup> *The People (Director of Public Prosecutions) v. A.D.* [2006] IECCA 164, [2007] 2 I.R. 622, at 628.

### **3.4. The Nature of Ex Tempore Judgments**

The Court of Criminal Appeal has emphasised that each case must be decided on its own particular facts and the personal circumstances of the accused.<sup>162</sup> Further, the Court has expressed the view that when structuring an appropriate sentence reference to other sentencing decisions is of limited import due to the fact that each case is “always dependent on the particular facts of the particular cases and do not always transcribe helpfully from one of set of facts to another set of facts.”<sup>163</sup> This is particularly pertinent in the context of sentencing for offences arising from the drugs trade due to the fact that the vast majority of the judgments examined in this analysis were delivered *ex tempore* and the Court of Criminal Appeal has cautioned that:-

“*ex tempore* judgments by their very nature are given when well established principles can be applied to facts in a particular case in order to resolve the issues which have been raised in the appeal. They are therefore of limited value as precedents for other cases”.<sup>164</sup>

In *Director v. of Public Prosecutions v. R.S.*, Murray C.J. noted that there may be exceptions to this rule where *ex tempore* judgments address a particular issue from a particular perspective but cautioned:-

“Even then it has to be borne in mind that the particular facts and circumstances of each criminal case relating to a particular offence tend to differ in some important respect from one case to another. It is the totality of the circumstances that are usually important in determining issues in criminal cases and the fact that some elements in one case are the same as some elements in another does not necessarily mean that they must be decided in the same way. Issues in criminal cases are not decided in the abstract. For this reason even cases which decide or uphold an important principle of law may fall to be considered or interpreted in the context of other leading cases on the same issue rather than in isolation.”<sup>165</sup>

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<sup>162</sup> *The People (Director of Public Prosecutions) v. McC.* [2000] 4 I.R. 356, at p. 359; *The People (Director of Public Prosecutions) v. B.W.* [2011] IECCA 45 (Unreported, Court of Criminal Appeal, 9<sup>th</sup> July, 2011).

<sup>163</sup> *The People (Director of Public Prosecutions) v. G.G.* (Unreported, *ex tempore*, Court of Criminal Appeal, 13<sup>th</sup> July, 2009).

<sup>164</sup> *The People (Director of Public Prosecutions) v. M.R.* (Unreported, *ex tempore*, Court of Criminal Appeal, 27<sup>th</sup> May, 2009).

<sup>165</sup> *The People (Director v. of Public Prosecutions) v. R.S.* [2010] IECCA 83, (Unreported, Court of Criminal Appeal, 28<sup>th</sup> July, 2010).

### **3.5. Sentencing for Ordinary Offence under s. 15**

#### **3.5.1. Wholly Suspended Sentences**

1. *The People (Director of Public Prosecutions) v. G.M.* (Unreported, *ex tempore*, Court of Criminal Appeal, 27<sup>th</sup> April, 2009)—**3 years, 3 suspended**—Appeal against leniency  
Drugs were found on the offender's person and in his car. The trial judge identified the case as being on the margins of meriting a custodial sentence. The offender had engaged fully in his rehabilitation. The offender's drug debt had been cause of his involvement but the debts had been cleared by the offender since the offence.  
**Sentence at Trial:** 3 years, 3 years suspended.  
**Drugs:** Cocaine valued at €15,000.  
**Guilty Plea:** Unknown but presumed to be 'yes'.  
**Material Assistance:** Unknown.  
**Previous Conviction of Drug Trafficking Offence:** No.  
**Mitigating/Aggravating Factors:** Drug and alcohol addiction which motivated his involvement in drug trade due to drug debts; and engagement with rehabilitation.  
**Aggravating Factors:** Role as mover of drugs along chain to customers was an aggravating factor; drug preparation equipment was also found (weighing scales, knife, bags).  
**Decision on Appeal:** Appeal rejected.

#### **3.5.2. Imprisonment: Up to 2 years**

2. *The People (Director of Public Prosecutions) v. P.B.* [2011] IECCA 1, (Unreported, *ex tempore*, Court of Criminal Appeal, 10 February, 2011)—**3.5 years, 3.25 years suspended (3 months)**—Appeal against leniency  
The applicant, 40, signed two pleas of guilt for an offence of possession of cocaine and possession of cocaine for sale or supply. The respondent was sentenced to 3.5 years imprisonment. His sentence was backdated 4 months for time already served and the balance was suspended so that he could attend a residential rehabilitation programme. The offence was identified as being in the middle range downwards on the spectrum of severity for drug supply offences.  
**Sentence at Trial:** 3.5 years, 3.17 years suspended in order for the applicant to attend a residential rehabilitation course.  
**Drugs:** Cocaine valued at €16,575.  
**Guilty Plea:** Yes, at early stage.  
**Material Assistance:** Cooperated with Gardaí  
**Previous Conviction of Drug Trafficking Offence:** Yes, including a conviction under s. 15A.  
**Mitigating factors:** Early plea of guilt; cooperated with Gardaí; and had taken steps towards rehabilitation for addiction to drugs.  
**Aggravating Factors:** Previous s. 15A conviction; Link in the sale and supply of drugs.  
**Decision on Appeal:** Appeal dismissed. If the treatment programme did not work out, the remainder of his sentence hung over him like a 'sword of Damocles'.
3. *The People (Director of Public Prosecutions) v. J.M.* [2009] (Unreported, *ex tempore*, Court of Criminal Appeal, 19<sup>th</sup> October, 2009)—**5 years, 4.25 years suspended (9 months)**—Appeal against leniency  
The offender sold drugs from his car in the vicinity of a Garda station.  
**Sentence at Trial:** 3 years, 1 year suspended



**Drugs:** Amphetamines (3,271 ecstasy tablets) valued at €16,000.

**Guilty Plea:** Unknown but presumed to be 'yes'.

**Material Assistance:** Unknown.

**Previous Conviction of Drug Trafficking Offence:** No

**Mitigating factors:** Tragic situation in family background; previous good behaviour; Low risk of re-offending; and had received an offer of employment.

**Aggravating Factors:** /

**Decision on Appeal:** The Court noted that appellant could have been charged under s. 15A. Held that the sentencing judge wrongly fettered his discretion and substituted the sentence with one of 5 years imprisonment with 4.25 years suspended. Usual conditions attached as well as the conditions that he take up the offered employment and reside in a place approved by the Probation Services.

4. *The People (Director of Public Prosecutions) v. F.H.* [2010] IECCA 70, (Unreported, *ex tempore*, Court of Criminal Appeal, 28<sup>th</sup> June, 2010)—**3 years, balance suspended (1 year)**—Appeal against severity

The applicant, 57, was convicted of two counts: one under s. 15 and one under s. 17 for cultivating cannabis plants. 80 plants were found in his home. He pleaded guilty to cultivating the plants and was found guilty of the s. 15 count by jury. A notional sentence of 5 years was considered appropriate by the trial judge for the s. 15 offence which was mitigated to 3 years.

**Sentence at Trial:** 2 years for the s. 15 offence and 1 year for the s.17 offence.

**Drugs:** Cannabis plants valued at €30,000.

**Guilty Plea:** No but did plead guilty to s. 17 charge.

**Material Assistance:** Yes. Immediately cooperative with Gardaí during search of his home and at interview.

**Previous Conviction of Drug Trafficking Offence:** No

**Mitigating factors:** Previous good character and unlikely to reoffend; foreign national with an elderly mother living in his country-of-origin who he continued to assist and accompany when she travelled overseas for medical treatment.

**Aggravating Factors:** None.

**Decision on Appeal:** Insufficient weight had been given to the fact that the applicant was very unlikely to re-offend and the period already spent in prison had acted as a sufficient deterrent. Appeal allowed and sentence substituted to three years with the balance (approximately 2 years) suspended.

5. *The People (Director of Public Prosecutions) v. P.M.* [2010] IECCA 16, (Unreported, *ex tempore*, Court of Criminal Appeal, 19<sup>th</sup> October, 2009)—**2 years**—Appeal against leniency

The respondent, 43, was convicted of two counts of offences under s. 15 of the Misuse of Drugs Act 1977, as amended, as well as one count of robbery.

**Sentence at Trial:** 2 years

**Drugs:** Diamorphine valued at €1,880 and €2,546 respectively in each count.

**Guilty Plea:** Yes.

**Material Assistance:** Unknown.

**Previous Conviction of Drug Trafficking Offence:** No

**Mitigating Factors:** Addicted to heroin.

**Aggravating Factors:** Prior convictions in Ireland (6) and abroad (11) and could not therefore be considered a person "young in crime".

**Decision on Appeal:** The structuring of both the robbery and drugs convictions was unduly lenient, particularly with regard to the sentence for the robbery offence (4 years). Therefore, the sentence of 4 years for the drugs offences was unaltered but the robbery sentence was to run consecutively to it. The Court considered the sentences for the drugs offences lenient and stated that “[h]ad the matter come before this court in the first instance they would probably have been made consecutive but we will not interfere with the learned trial judge's disposition of the case to that extent.”

### 3.5.3. *Imprisonment: 2 years to up to 5 years*

6. *The People (Director of Public Prosecutions) v. Z.M.* (Unreported, *ex tempore*, Court of Criminal Appeal, 30<sup>th</sup> March, 2009)—**2 years**—Appeal against leniency

The respondent, while on release from prison, was intercepted by Gardaí wearing cling film on his face and hood outside a convenience store and found carrying drugs and a glass bottle on his person. He was convicted of consecutive sentences under s. 3 and s. 15 of the Misuse of Drugs Act 1977, and of possessing an article with intent cause injury contrary to s. 9 of the Firearms and Offensive Weapons Act 1990.

**Sentence at Trial:** 2 years, as part of overall sentence of 5 years to run consecutively to the sentence currently being served.

**Drugs:** Ecstasy valued at €1,000.

**Guilty Plea:** Yes.

**Material Assistance:** Unknown.

**Previous Conviction of Drug Trafficking Offence:** No.

**Mitigating Factors:** /

**Aggravating Factors:** 64 previous convictions for burglary, larceny, malicious damage, assault, breach of the peace, offensive weapon, public order and road traffic.

**Decision on Appeal:** The trial judge erred where he believed he was obliged to impose consecutive sentences however the sentence imposed was not disproportionate. A sentence of 5 years was substituted to run consecutive to the sentence already being served.

7. *The People (Director of Public Prosecutions) v. C.B.* (Unreported, *ex tempore*, Court of Criminal Appeal, 9<sup>th</sup> June, 2009)—**2 years**—Appeal against severity

The gravity of the offence was placed at the low-medium end of the scale of seriousness. The offender ran a successful business which generated an income of about €70,000 per annum.

**Sentence at Trial:** 2 years.

**Drugs:** Cannabis resin valued at €5,295.

**Guilty Plea:** Yes.

**Material Assistance:** Unknown.

**Previous Conviction of Drug Trafficking Offence:** No

**Mitigating factors:** /

**Aggravating Factors:** Offender's involvement in selling drugs was commercially motivated and not by addiction to drugs.

**Decision on Appeal:** Appeal refused.

8. *The People (Director of Public Prosecutions) v. L.C.* [2010] IECCA 56, (Unreported, *ex tempore*, Court of Criminal Appeal, 21<sup>st</sup> June, 2010)—**5 years, 3 suspended (2 years)**—Appeal against leniency

The respondent, 22, had received sentences ranging from two-to-five years imprisonment for five drugs and firearms offences, which were all to run concurrently. She had been storing the items for another person in return for payments in drugs. Two of the counts concerned possession of drugs for sale or supply, for which the respondent was sentenced to two years.

**Sentence at Trial:** 5 years, 3 suspended.

**Drugs:** Cannabis herb and cocaine (106g) with a total value of €8,000.

**Guilty Plea:** Yes.

**Material Assistance:** Yes.

**Previous Conviction of Drug Trafficking Offence:** No.

**Mitigating factors:** Suffered severe psychological problems such as depression, which relates to the fact that she was abused by an uncle; had problems with alcohol and drug abuse but had addressed these matters; the governor of the prison in which she was incarcerated gave evidence that had excellent worker, well-motivated and very capable of working on her own without the need of supervision; and had been threatened and harassed to hold the items.

**Aggravating Factors:** Probation report stated that she had distanced herself from her role in the offences and she was at moderate risk of re-offending.

**Decision on Appeal:** Appeal dismissed.

9. *The People (Director of Public Prosecutions) v. P.McD.* [2009] IECCA 16, (Unreported, Court of Criminal Appeal, 3<sup>rd</sup> March, 2009)—**3 years, 1 suspended (2 years)**—Appeal against severity

Applicant and another man had been intercepted in a car with €1,000 of cocaine. A search of a house in which they had earlier been observed revealed €7,080 worth of cocaine. A co-accused was sentenced to 3 years, wholly suspended. Appealed against disparity in sentences on basis that the sentencing judge received evidence that could have formed basis of other charges which were not before the court.

**Sentence at Trial:** 3 years, final 1 year suspended for period of 3 years.

**Drugs:** Cocaine valued at €8,080.

**Guilty Plea:** Yes.

**Material Assistance:** Unknown.

**Previous Conviction of Drug Trafficking Offence:** No.

**Mitigating factors:** No previous convictions; drug addiction which had amassed a drug debt; cooperated with Gardaí in interview; not found in possession of same amount of drugs as his co-accused; hard worker; and had one child for whom he was responsible.

**Aggravating Factors:** Weighing scales found.

**Decision on Appeal:** It was permissible for a sentencing judge to enquire from a Garda as to which co-offender played a greater or lesser role in the particular offence. The sentencing judge's enquiry as to how long the applicant had been involved in the "trade" however went beyond what was permissible because it clearly suggested that the applicant had played a more culpable role than his co-accused. Appeal dismissed.

10. *The People (Director of Public Prosecutions) v. S.F.* [2010] IECCA 31, (Unreported, *ex tempore*, Court of Criminal Appeal, 26<sup>th</sup> April, 2010)—**5 years, 2 suspended for 2 years (3 years)**—Appeal against severity

The applicant, 22 but 17 at time of offence, was convicted of four counts involving two separate sets of offences pursuant to ss. 3 and 15 of the Misuse of Drugs Act, 1977 as amended.

**Sentence at Trial:** 5 years, 2 suspended but no allowance for time spent in custody awaiting trial.

**Drugs:** Cannabis resin valued at €6,800.

**Guilty Plea:** No.

**Material Assistance:** /

**Previous Conviction of Drug Trafficking Offence:** A “deplorable sequence of 15 convictions, some of them for relatively serious offences and in respect of which he received prison sentences, some of which were suspended in whole or in part”.

**Mitigating factors:** Unfortunate family history.

**Aggravating Factors:** Previous convictions; and value of drugs.

**Decision on Appeal:** Appeal dismissed.

11. *The People (Director of Public Prosecutions) v. D.R.* [2011], (Unreported, *ex tempore*, Court of Criminal Appeal, 15<sup>th</sup> April, 2011)—**5 years, 2 suspended (3 years)**—Appeal against severity

The appellant, 31, had sold quantities of cocaine to undercover Gardaí on four occasions over the course of one year (May/June 2008 to July 2009). He was not dealing drugs at a high commercial level but nonetheless was involved in dealing.

**Sentence at Trial:** 5 years, 2 year suspended.

**Drugs:** Cannabis resin valued at €875.

**Guilty Plea:** Yes.

**Material Assistance:** Yes.

**Previous Conviction of Drug Trafficking Offence:** /

**Mitigating factors:** Early plea of guilt; and rehabilitation from drugs and gambling addictions.

**Aggravating Factors:** Dealing drugs for a lengthy period which shows a pattern and not an isolated incident; and dealing for profit.

**Decision on Appeal:** Appeal dismissed.

12. *The People (Director of Public Prosecutions) v. K.W.* [2011] IECCA 26, (Unreported, *ex tempore*, Court of Criminal Appeal, 7<sup>th</sup> February, 2011)—**5 years, 2 suspended (3 years)**—Appeal against severity

Some quantities of drugs were found on the applicant: cocaine valued at €1,200; cocaine valued at €1,080; and diamorphine valued at €20. While a single member of the Garda Síochána was effecting his arrest, the applicant incited others to interfere with this attempt, and the applicant assaulted the Garda and used a vehicle without insurance.

**Sentence at Trial:** 5 years, 2 suspended.

**Drugs:** Cocaine valued at €1,280 and diamorphine valued at €20.

**Guilty Plea:** Yes.

**Material Assistance:** Unknown.

**Previous Conviction of Drug Trafficking Offence:** No but some under s. 3 of the Misuse of Drugs Act 1977, as amended.

**Mitigating factors:** Guilty plea; almost clear urine tests; and family circumstances.

**Aggravating Factors:** 19 previous convictions between 1996 and 2008 for offences under the Larceny Act, the Theft Act, Road Traffic Acts, and s. 13 Criminal Justice Act

1984 (failure to appear). The assault on a police officer contrary to s. 19 of the Criminal Justice (Public Order) Act 1994 and driving without insurance were taken into account.

**Decision on Appeal:** The sentencing judge had not set out the manner in which he arrived at sentence, *e.g.* the aggravating and mitigating factors. Thus there was an error of principle. The sentence actually arrived at was considered appropriate and so was not altered.

13. *The People (Director of Public Prosecutions) v. P.O'C.*, (Unreported, *ex tempore*, Court of Criminal Appeal, 17<sup>th</sup> December, 2009)—**4 years, 1 suspended (3 years)**—Appeal against severity

The applicant and his co-accused attempted to evade Gardaí while under surveillance and this resulted in a high-speed chase. His co-accused received a sentence of 5 years with 4 years suspended.

**Sentence at Trial:** 4 years, 1 year suspended.

**Drugs:** Cannabis resin valued at €4,275.

**Guilty Plea:** Yes.

**Material Assistance:** Unknown.

**Previous Conviction of Drug Trafficking Offence:** /

**Mitigating Factors:** Previous good character (no previous convictions).

**Decision on Appeal:** The court found the sentence for the applicant's co-accused was unduly lenient in light of the "amount of drugs, nature of offence and conduct of the offender" but that error was not to be replicated in the treatment of the applicant. Appeal dismissed.

14. *The People (Director of Public Prosecutions) v. M.O'C.*, (Unreported, *ex tempore*, Court of Criminal Appeal, 10<sup>th</sup> May, 2010)—**3 years**—Appeal against severity

**Sentence at Trial:** 3 years.

**Drugs:** Unknown.

**Guilty Plea:** Yes but caught red-handed.

**Material Assistance:** Yes but very little.

**Previous Conviction of Drug Trafficking Offence:** Unknown.

**Mitigating Factors:** Guilty plea and material assistance although their value was low.

**Aggravating Factors:** Dealing in drugs.

**Decision on Appeal:** Appeal dismissed.

15. *The People (Director of Public Prosecutions) v. D.B.*, (Unreported, *ex tempore*, Court of Criminal Appeal, 10<sup>th</sup> February, 2011)—**5 years, final 2 suspended (3 years)**—Appeal against severity

**Sentence at Trial:** 5 years, final 2 suspended.

**Drugs:** Diamorphine valued at €5,185.

**Guilty Plea:** Yes.

**Material Assistance:** Unknown.

**Previous Conviction relevant to Sentencing:** Unknown.

**Mitigating Factors:** Addiction to drugs; Early plea of guilt; and troubled family circumstances.

**Aggravating Factors:** 12 previous convictions.

**Decision on Appeal:** Appeal dismissed

16. *The People (Director of Public Prosecutions) v. P.O'M.*, (Unreported, *ex tempore*, Court of Criminal Appeal, 27<sup>th</sup> July, 2011)—**5 years, 1 suspended (4 years)**—Appeal against severity
- Sentence at Trial:** 5 years, 1 year suspended.
- Drugs:** Unknown valued at €2,000. Presumably diamorphine due to the fact that the drugs found were for sale; and to feed his own habit and the judgment makes reference to the applicant's heroin addiction.
- Guilty Plea:** Unknown.
- Material Assistance:** Unknown.
- Previous Conviction of Drug Trafficking Offence:** Unknown.
- Aggravating Factors:** Had poor insight into his offending; no remorse; attitude of self-pity; and failed to show "motivation necessary to genuinely tackle his heroin addiction."
- Decision on Appeal:** Appeal dismissed.
17. *The People (Director of Public Prosecutions) v. B.O'S.* [2010] IECCA 42 (Unreported, *ex tempore*, Court of Criminal Appeal, 17<sup>th</sup> May, 2010)—**5 years, 1 suspended (4 years)**—Appeal against severity
- The appellant, 25, was sentenced for two counts related to drugs offences pursuant to s. 15 and s. 21 of the Misuse of Drugs Act 1977. His home had been searched on foot of a Garda surveillance operation and he was found trying to dispose of packets of heroin which were later recovered. €12,900 in cash was also recovered, for which only €3,000 could be accounted.
- Sentence at Trial:** 5 years, with review at 3 years.
- Drugs:** Diamorphine valued at €2,800.
- Guilty Plea:** Yes. Caught red-handed.
- Material Assistance:** Minimal cooperation although it was acknowledged to be as much as he could provide.
- Previous Conviction of Drug Trafficking Offence:** Yes.
- Mitigating Factors:** Addiction to heroin; had amassed drug debt; and appellant's father was willing to support him.
- Aggravating Factors:** Two prior drug-related convictions, including one for s. 15, for which he received a two-year suspended sentence. The instant convictions had occurred within that two-year period but there was no evidence that attempts had been made to reactivate the sentence.
- Decision on Appeal:** The legislative basis for the penalties for the offence did not provide for a review. It was held that there was an error in principle insofar as the sentencing judge had not given complete consideration of the possibility of rehabilitation in the form of a suspended sentence. A sentence of 5 years with the final year suspended, upon a number of conditions pertaining to treatment and rehabilitation, was substituted.
18. *The People (Director of Public Prosecutions) v. D.O'N.* [2012] IECCA 37, (Unreported, Court of Criminal Appeal, 15<sup>th</sup> February, 2012)—**5 years, 1 suspended] (4 years)**—Appeal against severity
- The applicant appealed the severity of the sentence and, in particular, on the grounds that the sentencing judge erred when asking he opinion evidence of the Garda in

respect of extraneous matters to the offence to which the applicant had pleaded guilty, *i.e.* his involvement in other drug dealing.

**Sentence at Trial:** 5 years, 1 year suspended

**Drugs:** Cocaine (135g) valued at €10,000.

**Guilty Plea:** Yes

**Material Assistance:** /

**Previous Conviction of Drug Trafficking Offence:** No.

**Mitigating Factors:** Previous good character.

**Decision on Appeal:** The sentencing judge fell into error in soliciting the hearsay evidence. However, the applicant was not materially prejudiced by this error. There was sufficient evidence before the judge to consider the case at hand and no need to canvass other possibilities. The judge had not erred in imposing the sentence he did. Appeal dismissed.

19. *The People (Director of Public Prosecutions) v. B.F.* [2011] IECCA 42, (Unreported, *ex tempore*, Court of Criminal Appeal, 7<sup>th</sup> July, 2011)—**6 years, final 2 suspended (4 years)**—Appeal against severity

**Sentence at Trial:** 6 years.

**Drugs:** Cocaine valued at €18,000.

**Guilty Plea:** Yes.

**Material Assistance:** Unknown.

**Previous Conviction relevant to Sentencing:** Unknown.

**Mitigating Factors:** Strong evidence of rehabilitation entered before the court, and of “remarkable insight in what he had done and its wrongness”.

**Decision on Appeal:** The sentencing judgment did not refer to rehabilitation. The final two years of the applicant’s sentence were therefore suspended.

#### 3.5.4. *Imprisonment: 5 years or more*

20. *The People (Director of Public Prosecutions) v. J.F.* (Unreported, *ex tempore*, Court of Criminal Appeal, 27<sup>th</sup> July, 2011)—**5 years**—Appeal against severity

The applicant, 33, was tried under s. 15 and not s. 15A due to unspecified procedural reasons.

**Sentence at Trial:** 5 years.

**Drugs:** Cocaine valued at €18,940.

**Guilty Plea:** Unknown.

**Material Assistance:** Unknown.

**Previous Conviction relevant to Sentencing:** Yes. One previous conviction under s. 15, Misuse of Drugs Act 1977 which attracted a fine of €500 before the District Court.

**Mitigating Factors:** The applicant claimed to have H.I.V. but no evidence other than his own statement was tendered to the court.

**Aggravating Factors:** Significant quantity of drugs and significant quantity of cash found (€31,000) which were considered indicia of drug dealing.

**Decision on Appeal:** Appeal dismissed.

### **3.6. Sentencing for Offence where the Drug is valued at €13,000 or more under s. 15A/ 15B**

#### **3.6.1. Wholly Suspended Sentence**

1. *The People (Director of Public Prosecutions) v. N.L.* [2012] IECCA 4, (Unreported, Court of Criminal Appeal, 25<sup>th</sup> January, 2012)—**4 years, wholly suspended**—Appeal against leniency

The respondent was found in a van with six bags of cocaine. As a result of the respondent's admissions, drugs were found at another location. There were 9 counts against him, 4 of which related to drugs found as a result of his admissions. The value of the drugs initially found on him was considerably less than those originally found on him. The Gardaí considered that it was more likely that he was being used by others rather than he having any control or direction in the operation.

**Sentence at Trial:** 4 years, wholly suspended

**Drugs:** MDMA and cocaine valued at €17,664

**'Exceptional and specific circumstances':** Yes

**Guilty Plea:** No

**Material Assistance:** Yes he was "cooperative to an unusual degree". Answered questions put to him but also volunteered information.

**Previous Conviction of Drug Trafficking Offence:** No

**Mitigating Factors:** Played only a minor part in transportation of drugs and had no direction or control in the operation; had taken considerable strides to rehabilitate his drug addiction; suffered from ADHD and experienced education difficulties; young age of 23; and lived with parents who are supportive of him.

**Aggravating Factors:** /

**Decision on Appeal:** Appeal refused.

2. *The People (Director of Public Prosecutions) v. B.W.* [2011] IECCA 45, (Unreported, Court of Criminal Appeal, 29<sup>th</sup> July, 2011)—**6 years, wholly suspended**—Appeal against leniency

The offender, 26, was observed placing heroin at the foot of an electricity pole. He was apprehended in a car a short time later and a smaller amount of heroin (1 ounce) was found in the car.

**Sentence at Trial:** 6 years, wholly suspended for a period of 3 years. Conviction was under s. 15A and 3 other counts under s. 3 and s. 15 were taken into consideration.

**Drugs:** Diamorphine (726.996g) valued at €145,600

**'Exceptional and specific circumstances':** Yes

**Guilty Plea:** Yes

**Material Assistance:** Cooperated with Gardaí but did not disclose who he was working for or who owned the drugs.

**Previous Conviction of Drug Trafficking Offence:** No

**Mitigating Factors:** Guilty plea; cooperation with Gardaí; expressed remorse, probation report indicated he was very unlikely to reoffend; role of storeman or courier and not higher up the chain in drugs trade; and had a long-term partner and 18-month old child.

**Aggravating Factors:** /

**Decision on Appeal:** Appeal refused.



3. *The People (Director of Public Prosecutions) v. D.H.* [2010] IECCA 45, (Unreported, Court of Criminal Appeal, 20<sup>th</sup> June, 2010)—**3 years, wholly suspended**—Appeal against leniency  
**Sentence at Trial:** 3 years, fully suspended.<sup>166</sup>  
**Drugs:** Unknown drug valued at €30,000.  
**'Exceptional and specific circumstances':** Yes. The amount and value of the drugs, the applicant's youth, personal and family circumstances, lack of drug addiction.  
**Guilty Plea:** /  
**Material Assistance:** /  
**Previous Conviction of Drug Trafficking Offence:** No.  
**Mitigating Factors:** Age (youth); family circumstances; and no drug addiction.  
**Decision on Appeal:** Suspension upheld but terms were altered.
  
4. *The People (Director of Public Prosecutions) v. A.W.* [2010] IECCA 74, (Unreported, Court of Criminal Appeal, 28<sup>th</sup> June, 2010)—**6 years, wholly suspended**—Appeal against leniency  
**Sentence at Trial:** 6 years, fully suspended.  
**Drugs:** Cocaine valued at €34,370.  
**'Exceptional and specific circumstances':** Yes.  
**Guilty Plea:** Yes.  
**Material Assistance:** Yes. Cooperated with Gardaí and furnished names.  
**Previous Conviction of Drug Trafficking Offence:** No.  
**Mitigating Factors:** Low intellectual ability (clinical psychologist reported on respondent's intellectual functioning); involvement was for modest gain; volunteered with a homelessness organisation; and had poor educational level but sought to further his education prior to trial.  
**Decision on Appeal:** Application refused.
  
5. *Director of Public Prosecution v. J.R.*, (Unreported, *ex tempore*, Court of Criminal Appeal, 27<sup>th</sup> April, 2009)—**5 years, wholly suspended**—Appeal against severity  
The Gardaí searched the applicant's flat and found multiple packages of cocaine – "a very substantial amount of drugs, such that in the absence of truly exceptional circumstances a custodial sentence required to be imposed. Really what we are talking about here is the length of the sentence to be imposed." The applicant was 39 years old at time of sentencing and worked as a hackney taxi driver. He was the second eldest of eight children and both his parents were deceased. Following the death of his father, he had "gone off the rails" and become addicted to alcohol.  
**Sentence at Trial:** 7 years  
**Drugs:** Cocaine, valued at €329,301  
**'Exceptional and specific circumstances':** Yes.  
**Guilty Plea:** Yes, made full admission upon arrest  
**Material Assistance:** Yes  
**Previous Conviction of Drug Trafficking Offence:** No, but one for possession.  
**Mitigating/Aggravating Factors:** The applicant's troubled background explained the applicant's situation but didn't excuse it in any way. Two matters were considered: 1. material assistance was furnished. At trial the extent of such assistance was not as clear as it was before the Court of Criminal Appeal; and 2. The applicant had turned his life around since conviction. This was an exceptional circumstance.  
**Decision on Appeal:** Appeal allowed.

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<sup>166</sup> Data concerning length of sentence found on DAR, 18<sup>th</sup> June, 2012.

6. *The People (Director of Public Prosecutions) v. P.G.* [2009] IECCA 6, (Unreported, *ex tempore*, Court of Criminal Appeal, 16<sup>th</sup> January, 2009)—**6 years, wholly suspended**—Appeal against leniency

The respondent was convicted for an offence under s. 15A following a package of cocaine being found in his pocket during a ‘stop and search’.

**Sentence at Trial:** 6 years, wholly suspended.

**Drugs:** Cocaine valued at €16,000.

**‘Exceptional and specific circumstances’:** Yes.

**Guilty Plea:** Yes.

**Material Assistance:** Yes, his admissions were described as a “mild form of cooperation”.

**Previous Conviction of Drug Trafficking Offence:** No. Some minor previous convictions, including one for possession.

**Mitigating Factors:** The respondent was left unsupervised since his mid-teens due to the illness of a family member and came to be under the influence of people who caused him to become a drug user. A custodial sentence was not imposed due to the fact that the respondent had shown strong evidence of his commitment to rehabilitate, *e.g.* stopped using drugs, and cooperated with welfare and probation services.

**Decision on Appeal:** Appeal refused. The sentencing judge was entitled to take the view that there was a real chance that the respondent would rehabilitate.

### 3.6.2. *Imprisonment: up to 2 years*

7. *The People (Director of Public Prosecutions) v. J.P.L.*<sup>167</sup> [2010] IECCA 62, (Unreported, *ex tempore*, Court of Criminal Appeal, 23<sup>rd</sup> June, 2010)—**5 years, final 18 months suspended (3.5 years)**—Appeal against leniency

The respondent, 47, was detected bringing drugs into the State from another European nation with her son, 17. Both had swallowed cocaine pellets, worth almost €45,000, before flying to Ireland.

**Sentence at Trial:** 5 years sentence backdated 1.5 years, final 3.5 years suspended. Remain outside the State for 5 years.

**Drugs:** Cocaine valued at €45,000.

**‘Exceptional and specific circumstances’:** Yes.

**Guilty Plea:** Yes.

**Material Assistance:** Yes. Cooperated to the best of her abilities.

**Previous Conviction of Drug Trafficking Offence:** No.

**Mitigating factors:** Expressed great degree of remorse; vulnerability (The Court of Criminal Appeal described the respondent as a “very, very unfortunate and uniquely disadvantaged person”. She was a national of the Dominican Republic who came from an extremely impoverished background, had a low level of natural intelligence, and had been denied education by her father. She had also been a victim of rape and abuse). The fact that she brought her 17-year old son with her was not regarded as an aggravating factor because it was countered by the fact that her son spoke English and Dutch whereas she could speak only Spanish but poorly. Reference was also made to the fact that she had several children.

**Decision on Appeal:** “More than ample circumstances” for sentencing judge to impose the sentence he did in light of the respondent’s “remarkable personal circumstances” which were “extraordinary” and “without precedent”. Further, there

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<sup>167</sup> Additional background information sourced from: <http://www.irishtimes.com/news/dpp-s-bid-to-appeal-leniency-of-drug-sentence-extraordinary-1.682184>

was “no advantage” in requiring the respondent to be brought back to Ireland to serve a higher sentence.

8. *The People (Director of Public Prosecutions) v. D.O'D.* [2009] IECCA 140, (Unreported, *ex tempore*, Court of Criminal Appeal, 14<sup>th</sup> December, 2009)—**3 years, final 18 months suspended (18 months)**—Appeal against leniency

DPP submitted that mandatory 10 years ought not to apply. Trial and appeal court agreed. The drugs were discovered in the bedroom of the respondent’s home, which he shared with his brother. The discovery was made on foot of a visit arising from information given to the Gardaí.

Came from a good background and had “terrific support from his family”. It was “unclear, and nowhere sufficiently explained why he had this amount of drugs together with lists of persons with names, or nicknames, and weights attaching to each of these names.”

**Sentence at Trial:** 5 years, wholly suspended

**Drugs:** Cocaine (1/2 kg) valued at €43,000.

**‘Exceptional and specific circumstances’:** Yes.

**Guilty Plea:** Yes, at an “immediate stage”. Plea was of assistance to prosecution because room in which the drugs were found was shared with one other person so there was no need to establish actual possession.

**Material Assistance:** “significant degree of cooperation”

**Previous Conviction of Drug Trafficking Offence:** No.

**Mitigating Factors:** Early plea; assistance; and the applicant was also described as a “youngish twenty-one year old”.

**Decision on Appeal:** Appeal allowed because even allowing for the mitigating factors, the sentence was unduly lenient. Court noted that the respondent had enrolled in a training programme and was first in his class.

### 3.6.3. *Imprisonment: 2 years to up to 5 years*

9. *The People (Director of Public Prosecutions) v. J.M.* [2010] IECCA 125, (Unreported, *ex tempore*, Court of Criminal Appeal, 29<sup>th</sup> January, 2010)—**4 years, final 2 suspended (2 years)**—Appeal against severity

A large quantity of cannabis was found in a van in which the applicant was a passenger. The applicant and the driver of the van, his co-accused, D.M. (see below, no. 26), were convicted for possession for sale or supply. This appeal was heard together with that of D.M.

**Sentence at Trial:** 6 years, final 2 suspended.

**Drugs:** Cannabis (24kg) valued at €287,050.

**‘Exceptional and specific circumstances’:** Yes. The Court of Criminal Appeal noted “the nature of his background; what he has done since the commission of the offence, and the number and range of people who were prepared to come to Court to speak on his behalf”.

**Guilty Plea:** /

**Material Assistance:** Yes.

**Previous Conviction of Drug Trafficking Offence:** No.

**Mitigating Factors:** Suffered a traumatic event in late 2009/early 2010; and had made efforts to distance himself from others involved in organising the offence.

**Aggravating Factors:** The quantity of drugs involved required a custodial sentence.

**Decision on Appeal:** Appeal allowed and sentence varied.

10. *The People (Director of Public Prosecutions) v. A.B.* [2010] IECCA 110, (Unreported, *ex tempore*, Court of Criminal Appeal, 18<sup>th</sup> November, 2010)—**7 years, final 2 suspended (5 years)**—Appeal against severity
- The applicant appealed the severity of his sentence on the basis that the value of the drugs ought to have been a mitigating factor meriting further reduction in addition to two other mitigating factors which had been accepted by the court, namely, the fact that the applicant had no previous convictions and his plea of guilt.
- Sentence at Trial:** 7 years, final 2 suspended.
- Drugs:** Unknown valued at €16,000.
- 'Exceptional and specific circumstances':** Yes. Guilty plea and no previous convictions.
- Guilty Plea:** Yes.
- Material Assistance:** /
- Previous Conviction of Drug Trafficking Offence:** No. One previous conviction of possession under s. 3 but the Probation of Offenders Act 1907 had been applied.
- Mitigating Factor:** Plea of guilt; and absence of previous convictions.
- Aggravating Factors:** The applicant's role in cutting the drugs into small packets indicated active involvement in the drugs trade and could be considered to be a similar role to that of a courier.
- Decision on Appeal:** The sentencing judge had given proper consideration to the value of the drugs. The sentence imposed already represented a substantial departure from the presumptive minimum. Appeal dismissed.
11. *The People (Director of Public Prosecutions) v. E.A.F.* [2010] IECCA 116, (Unreported, *ex tempore*, Court of Criminal Appeal, 21<sup>st</sup> December, 2010)—**8 years, final 6 suspended (2 years)**—Appeal against leniency
- The respondent, 31, was convicted under s. 15A. Customs Officers searched the van he was driving as he entered the State via a Ferry-Port. Two hidden compartments containing heroin were found.
- Drugs:** Diamorphine (8.0175kg) valued at €1.6m.
- 'Exceptional and specific circumstances':** Yes.
- Guilty Plea:** Yes. Reduced value because caught red-handed.
- Material Assistance:** Yes but in first 3 of 5 interviews the respondent denied knowledge of the drugs.
- Previous Conviction of Drug Trafficking Offence:** No. 20 previous convictions of a minor nature involving road traffic, public order and theft offences. 1 s. 21 (attempts, *etc.*) drug-related offence.
- Mitigating Factors:** Rehabilitated from heroin addiction; remorse; cooperation with Gardaí; guilty plea; fear for personal safety; and not involved for personal profit.
- Aggravating Factors:** The quantity and type of drugs involved; and role as a transporter, *e.g.* more significant than that of a courier.
- Decision on Appeal:** The sentence imposed was not unduly lenient although it was at the lower end. An appropriate notional sentence of 12-14 years would have been appropriate. The suspended portion was unduly lenient. The respondent had served his custodial sentence and been released almost two years prior to the date of appeal. It would be an unacceptable disregard of the humanity of the respondent to order his reincarceration and therefore the sentence was not varied.
12. *The People (Director of Public Prosecutions) v. W.H.* [2011] IECCA 20, (Unreported, *ex tempore*, Court of Criminal Appeal, 7<sup>th</sup> March, 2011)—**5 years, final 2 suspended (3 years)**—Appeal against severity

The applicant was a national of an African state, 42 years old, who was intercepted while bringing drugs into the State. His family status, separated with one child, was noted.

**Sentence at Trial:** 6 years

**Drugs:** Cannabis valued at €88,380

**'Exceptional and specific circumstances':** Yes

**Guilty Plea:** Yes

**Material Assistance:** Cooperated with Gardaí and Customs Officers and gave details of recipient's identity and address.

**Previous Conviction of Drug Trafficking Offence:** One for housebreaking.

**Mitigating Factors:** Guilty plea, cooperation with Gardaí, foreign nationality, and serious health problems. His status as a courier and the value of the drugs were a factor in assessing gravity of the offence and placed him as a "person at the end of the scale of seriousness of persons coming before the court".

**Decision on Appeal:** Appeal allowed.

13. *The People (Director of Public Prosecutions) v. S.M.* [2011] IECCA 99, (Unreported, *ex tempore*, Court of Criminal Appeal, 21<sup>st</sup> December, 2011)—**7 years, final 4 suspended (3 years)**—Appeal against severity

The offender, a 32-year old national of a European state, was intercepted upon arrival to the State with a suitcase containing drugs. She asserted that she believed she was smuggling gold dust into Ireland.

**Sentence at Trial:** 10 years on 2 counts (contrary to s. 21(2) and 15A) to run concurrently. Two other counts (s. 15 and s. 3) were taken into consideration.

**Drugs:** Cocaine (3.16kg) valued at €210,119

**'Exceptional and specific circumstances':** Yes, based on the offender's cooperation.

**Guilty Plea:** Yes.

**Material Assistance:** Yes, she fully cooperated with Gardaí and Customs officials. She provided a list of people she was supposed to meet in Ireland with addresses, and the names of those who gave her suitcase.

**Previous Conviction of Drug Trafficking Offence:** No.

**Mitigating factors:** Her age, naivety, absence of criminal record and precarious position in a foreign country (her family lived in her native country) were noted as well as her guilty plea, and strong cooperation. She had no history of addiction, good employment references, had been a model prisoner to date and was unlikely to trouble the courts again. It was also noted that given her age she would be unlikely to have children of her own if the original sentence was upheld.

**Decision on appeal:** Appeal allowed.

14. *The People (Director of Public Prosecutions) v. R.E.* [2010] IECCA 11, (Unreported, *ex tempore*, Court of Criminal Appeal, 18<sup>th</sup> February, 2010)—**7 years, final 4 suspended (3 years)**—Appeal against severity

The applicant was minding the drugs for a third party. He was 16 years old at the time the offence was committed and 17 at the time of sentence. Thus, the presumptive mandatory minimum sentence *per s. 27(3C)* did not apply as he was under 18 years of age but the maximum sentence remained life imprisonment.

**Sentence at Trial:** 7 years, final 4 suspended.

**Drugs:** Diamorphine valued at €150,000.

**'Exceptional and specific circumstances':** N/A.

**Guilty Plea:** Yes.

**Material Assistance:** Yes.

**Previous Conviction of Drug Trafficking Offence:** No. The existence of many previous convictions of a minor character noted.

**Mitigating Factors:** His age, absence of discipline and troubled family background; and his low natural intelligence.

**Aggravating Factors:** The value of the drugs; and the type, *i.e.* “a very damaging drug that creates havoc in the community”.

**Decision on Appeal:** The sentencing judge pointed out that a relatively short custodial sentence would benefit the offender who prospered in structured environments. Further, the presence of a ‘Sword of Damocles’ by way of a suspended sentence would enable his post-release integration. Appeal refused.

15. *The People (Director of Public Prosecutions) v. P.K.* [2009] IECCA 39, (Unreported, *ex tempore*, Court of Criminal Appeal, 31<sup>st</sup> March, 2009)—**5 years, final 2 suspended (3 years)**—Appeal against severity

Gardaí found two electronic weighing scales and a black bag containing ecstasy tablets under the front seat. There was another stash of drugs elsewhere in the car. Following his arrest, he made “straight up admissions”. “He indicated he had run up significant drug debts amounting to €6,000. He was acting as a courier and he got himself into a stupid mess as a drug dependent individual himself”. He was 26, a painter by profession and father of two children. Testimonials describing the applicant as “quite exceptional” were tendered to the court on the applicant’s behalf.

**Sentence at Trial:** 8 years, final 2 suspended.

**Drugs:** “Sizeable quantity” of Ecstasy tablets, valued at €86,000.

**‘Exceptional and specific circumstances’:** Yes.

**Guilty Plea:** Yes.

**Material Assistance:** Yes.

**Previous Conviction of Drug Trafficking Offence:** No, but one for possession.

**Mitigating Factors:** Guilty plea; cooperation; and drug-free since time of conviction and had provided 52 drug free samples.

**Decision on Appeal:** “Failure to adequately take into account the indication of co-operation given to the sentencing court by the garda witness does indicate there may have been an error of principle in the imposition of the original sentence”. Appeal allowed.

16. *The People (Director of Public Prosecutions) v. A.A.* (Unreported, *ex tempore*, Court of Criminal Appeal, 6<sup>th</sup> July, 2009)—**5 years, final 2 suspended (3 years)**—Appeal against severity

**Sentence at Trial:** 7 years.

**Drugs:** Unknown but value was not “a huge amount” in the context of s. 15A offences.

**‘Exceptional and specific circumstances’:** Yes.

**Guilty Plea:** Yes.

**Material Assistance:** Yes but did not tell Gardaí who sent her.

**Previous Conviction of Drug Trafficking Offence:** No.

**Mitigating Factors:** “The fact that she was a courier only and not an organiser is something that obviously must be taken into account.” On the other hand, the offence must be viewed as a serious one. Her personal circumstances were described as “extreme”, *e.g.* homeless, had a child in care in her country of origin, an African state (although she was in “constant contact” while in prison in Ireland), and was

“obviously a person with no money.” She fully admitted her involvement but did not tell Gardaí who had sent her but the Court accepted that she may not have known. Prison authorities attested to her positive attitude to work and education. Expressed considerable remorse in “a well worded letter” which she had submitted to the Court.

**Decision on Appeal:** Appeal allowed. Shorter sentence with suspended portion substituted.

17. *The People (Director of Public Prosecutions) v. W.D.* [2012] IECCA 11, (Unreported, *ex tempore*, Court of Criminal Appeal, 30<sup>th</sup> January, 2012)—**8 years, 4 suspended (4 years)**—Appeal against severity

Drugs found in the applicant’s house following confidential tip. Equipment for preparing drugs for sale or supply also found. The applicant was drug-addicted. The drugs were for himself and for sale to his friends.

**Sentence at Trial:** 8 years, with 3 suspended for a period of 7 years.

**Drugs:** Cocaine valued at €69,599.

**‘Exceptional and specific circumstances’:** Yes.

**Guilty Plea:** Yes.

**Material Assistance:** Yes, cooperated with Gardaí.

**Previous Conviction of Drug Trafficking Offence:** No.

**Mitigating factors:** Plea of guilty; full co-operation; addiction; demonstrated steps towards rehabilitation; no previous convictions; and low risk of re-offending.

**Aggravating Factors:** Type of drug causes serious social problems; volume is 4-5 times threshold for s. 15A; and level of involvement (more than storing or transporting).

**Decision on Appeal:** Appeal allowed. A sentence of 8 years, 4 suspended for 4 years was substituted.

18. *The People (Director of Public Prosecutions) v. J.K.* [2010] IECCA 43, (Unreported, *ex tempore*, Court of Criminal Appeal, 17<sup>th</sup> May, 2011)—**7 years, 3 suspended (4 years)**—Appeal against severity

Drugs were found in the flat of the applicant, 19.

**Sentence at Trial:** 7 years, 1 year suspended

**Drugs:** 726 ecstasy tablets, cannabis valued at €5,000, and cocaine valued at €14,000.

**‘Exceptional and specific circumstances’:** Yes, based on the offender’s cooperation and lack of previous convictions.

**Guilty Plea:** Yes.

**Material Assistance:** Yes, the applicant did not object to search of his flat where the drugs were found, accepted responsibility for their presence and admitted possession therefore negating the need for the prosecution to prove possession.

**Previous Conviction of Drug Trafficking Offence:** No, minor convictions for road traffic and public order offences.

**Mitigating Factors:** Age of applicant, drug and alcohol addiction for which he had already sought rehabilitation, presence of duress, *e.g.* the applicant was seriously physically assaulted, had derived no benefit from possession of the drugs, and the Gardaí gave evidence that the presence of duress was well-founded.

**Decision on Appeal:** Appeal allowed. Insufficient weight had been given to the presence of duress by the sentencing court. Notional sentence was found to be 10 years and mitigated down to 7 years.

19. *The People (Director of Public Prosecutions) v. F.M.* [2010] IECCA 44, (Unreported, *ex tempore*, Court of Criminal Appeal, 18<sup>th</sup> May, 2010)—**10 years, 6 suspended (4 years)**—Appeal against severity

The applicant, 31, was found in possession of a large quantity of drugs. There was a delay between the commission of the offence and the arrest of the applicant during which time the applicant had completely turned his life around.

**Sentence at Trial:** 10 years, 3 year suspended.

**Drugs:** Cocaine valued at €178,000.

**'Exceptional and specific circumstances':** Yes, based on the offender's cooperation and lack of previous convictions.

**Guilty Plea:** Yes, at an early stage.

**Material Assistance:** Yes, admitted responsibility and cooperated with Gardai.

**Previous Conviction of Drug Trafficking Offence:**

**Mitigating Factors:** Applicant was drug addicted at time of offence and sought rehabilitation which was progressing well; volunteered with an organisation as an outreach coordinator where he went "out on the streets to speak to and assist addicts"; became group leader and leads a new centre for the organisation; pursued further study concerning addiction studies; Joined a church and teaches Sunday School; 14 testimonial letters before Circuit Court; almost 3 years drug free (urinalysis) by time of appeal; and there was Garda/Probation evidence that he was at low risk of re-offending.

**Decision on appeal:** Appeal allowed and sentence varied to appropriately reflect applicant's rehabilitation.

20. *The People (Director of Public Prosecutions) v. T.H.* [2010] IECCA 64, (Unreported, *ex tempore*, Court of Criminal Appeal, 23<sup>rd</sup> June, 2010)—**7 years, 3 years suspended (4 years)**—Appeal against leniency

**Sentence at Trial:** 7 years, final 4 suspended

**Drugs:** Cocaine valued at €261,702.

**'Exceptional and specific circumstances':** Yes.

**Guilty Plea:** Yes, but communicated 10 months after the matter was listed. Thus, reduced weight as it was not proffered at the earliest opportunity.

**Material Assistance:** No. When drugs were found in his taxi, he indicated that someone else was responsible. Did not cooperate or assist in the investigation.

**Previous Conviction of Drug Trafficking Offence:** No, two minor previous convictions and not in recent times.

**Mitigating factors:** Plea of guilty and when communicated; cooperation; personal circumstances and history of applicant, *e.g.* had been a national and international boxer but his career ended after a car accident, however he continued to assist young people to pursue boxing (thereby keeping them away from criminal activity); and suffered very severe depression.

**Decision on Appeal:** Appeal allowed. Insufficient attention was paid to presumptive minimum sentence. Sentence mitigated to 7 years appropriate. Applicant has actively treated his addiction in prison and presented additional testimonials, entry into training unit and urinalysis evidence. Sentence imposed was on facts before court in present day and not original Circuit Court. 7 years, 3 years suspended. 7 years, 2 suspended would have been adequate original sentence.



3.6.4. *Imprisonment: 5 years to up to 10 years*

21. *The People (Director of Public Prosecutions) v. B.O.* [2011] IECCA 46, (Unreported, Court of Criminal Appeal, 29<sup>th</sup> July, 2011)—**7 years, final 2 suspended (5 years)**—Appeal against severity

The drugs were found in the home of the offender, 26, on foot of a search warrant. Paraphernalia for mixing the drugs (weighing scales, mixing agent), €830 in cash and two ‘tick lists’ were found. When asked about the items, the offender immediately admitted ownership.

**Sentence at Trial:** 10 years

**Drugs:** Diamorphine (448g) valued at €90,000

**‘Exceptional and specific circumstances’:** Yes, based on the offender’s cooperation and lack of previous convictions.

**Guilty Plea:** Yes

**Material Assistance:** Yes, he made full admissions at scene although caught red-handed. He was immediately cooperative and honest about his role. Gardaí said that it had had not cooperated there would probably not have been a trial as there would have not been sufficient evidence of sale or supply.

**Previous Conviction of Drug Trafficking Offence:** No, 8 minor previous convictions (mostly public order offences), one traffic offence and possession of firearms and offensive weapons.

**Mitigating Factors:** Early admissions; guilty plea and lack of previous convictions; the fact that he had significant debts due to drug problems; had rehabilitated his addiction since entering custody; good reports from governor and chaplain in the prison; and he was undertaking educational programmes in college. His supportive family were also noted.

**Decision on Appeal:** Appeal allowed.

22. *The People (Director of Public Prosecutions) v. M.P.* [2011], (Unreported, *ex tempore*, Court of Criminal Appeal, 27<sup>th</sup> July, 2011)—**7 years, final 2 suspended (5 years)**—Appeal against severity

The drugs were found in the shed of the family home of the offender, 35. The offender’s admission to ownership of the drugs relieved the State from having to establish ownership.

**Sentence at Trial:** 8 years, 1 year suspended for cooperation.

**Drugs:** Cannabis valued at €100,000.

**‘Exceptional and specific circumstances’:** Yes, based on the offender’s cooperation.

**Guilty Plea:** Yes, at an early stage.

**Material Assistance:** Yes, the drugs were found in the shed of the offender’s family home so that it would have been difficult to establish possession, and he assisted the State by admitting that they were his.

**Previous Conviction of Drug Trafficking Offence:** No.

**Mitigating Factors:** Undertaking rehabilitation for drug and alcohol problems and provided clear urine analysis on a weekly basis, which was held to be a significant factor by the Court of Criminal of Appeal. The absence of previous convictions and his cooperation with Gardaí were also considered factors.

**Decision on Appeal:** Appeal allowed. Sentence of 7 years with the final 2 suspended was substituted.

23. *The People (Director of Public Prosecutions) v. G.D.* [2010] IECCA 57, (Unreported, *ex tempore*, Court of Criminal Appeal, 21<sup>st</sup> June, 2010)—**5 years**—Appeal against leniency Garda entered a premises on foot of a search warrant and found the respondent, 24, flushing items down the toilet. Drugs and equipment associated with the sale of drugs, *e.g.* creatine and weighing scales, were found in the premises.

**Sentence at Trial:** 2 years for s. 15A conviction. He had also been convicted of two counts of robbery with a knife (2 years each).

**Drugs:** Cocaine, and small quantities of tablets, diamorphine and cannabis valued at €39,956 (€34,061 for cocaine, €5,895 for cannabis).

**'Exceptional and specific circumstances':** Yes, based on the offender's cooperation.

**Guilty Plea:** Yes, at an early stage but caught red-handed and therefore attracted less weight.

**Material Assistance:** Yes, cooperated with Gardaí, *e.g.* furnished a tick list of customers, and gave explanations in respect of text messages retrieved from his mobile phone.

**Previous Conviction of Drug Trafficking Offence:** Yes. 10 previous convictions. Most for drugs offences (possession under s. 3 possession and s. 15) as well as public order and burglary.

**Mitigating factors:** Guilty plea and cooperation, albeit with diminished value due to the circumstances in which they were offered; Heroin addiction and seeking treatment.

**Aggravating Factors:** Had been released from prison for two convictions concerning s. 3 possession and burglary 7 months earlier; and had previous convictions for drug supply offences.

**Decision on appeal:** Insufficient weight was given to each offence individually, to the reduced value of the assistance provided due to the fact that the respondent was caught red-handed, and the previous convictions. Sentences quashed and sentences of 5 years for each offence imposed and to run concurrently.

24. *The People (Director of Public Prosecutions) v. S.H.* [2010] IECCA 99, (Unreported, *ex tempore*, Court of Criminal Appeal, 15<sup>th</sup> October, 2010)—**5 years**—Appeal against severity

The applicant, 51, was observed throwing a bag out of a car window after Gardaí gave chase to the car in which the applicant was travelling.<sup>168</sup> The bag was later revealed to contain amphetamines. The applicant's co-accused, J.C. (see below, no. 56), was sentenced to 12 years (final 2 suspended).

**Sentence at Trial:** 10 years.

**Drugs:** Amphetamines (3kg) valued at €45,000.

**'Exceptional and specific circumstances':** Yes, based on the offender's cooperation.

**Guilty Plea:** No.

**Material Assistance:** No.

**Previous Conviction of Drug Trafficking Offence:** No.

**Mitigating/Aggravating Factors:** Age; in recent years, he had come to be a "responsible citizen"; and the manslaughter of his son in 2001 had profound effect on the appellant which exacerbated mental and physical health problems (diabetes, had attempted suicide and continued to be at a high risk of attempting suicide) to the degree that a long sentence in prison could shorten his lifespan.

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<sup>168</sup> Additional background information sourced from: <http://www.limerickleader.ie/news/leader-local/sentencing-of-man-with-speed-worth-88-000-deferred-1-2182343>

**Decision on Appeal:** Sentence of 5 years substituted for original sentence.

25. *The People (Director of Public Prosecutions) v. E.McN.* [2010] IECCA 122, (Unreported, *ex tempore*, Court of Criminal Appeal, 29<sup>th</sup> November, 2010)—**7 years, final 2 suspended (5 years)**—Appeal against leniency

The respondent, 27, was intercepted while placing heroin in a truck. The final two years were suspended in order to build in a rehabilitative aspect to his sentence.

**Sentence at Trial:** 7 years, final 2 suspended.

**Drugs:** Diamorphine (½kg) valued at €100,000.

**'Exceptional and specific circumstances':** Yes.

**Guilty Plea:** No.

**Material Assistance:** No.

**Previous Conviction of Drug Trafficking Offence:** No.

**Mitigating factors:** No previous convictions/previous good character; death of young child; and was addicted to alcohol but was taking steps to rehabilitate.

**Decision on appeal:** Appeal refused.

26. *The People (Director of Public Prosecutions) v. D.M.* [2010] IECCA 125, (Unreported, *ex tempore*, Court of Criminal Appeal, 29<sup>th</sup> January, 2010)—**7 years, final 2 suspended (5 years)**—Appeal against severity

This appeal was heard with that of the applicant's co-accused, J.M. (See above, no. 9). A large quantity of cannabis was found in a van in which the applicant was the driver. The applicant and J.M., a passenger in the van, were convicted for possession for sale or supply.

**Sentence at Trial:** 8 years, final 2 suspended.

**Drugs:** Cannabis (24kg) valued at €287,050.

**'Exceptional and specific circumstances':** Yes. Made admissions that he was in possession of the drugs in the van.

**Guilty Plea:** Yes.

**Material Assistance:** Yes. Admitted to possession of the drugs in the van although the van was not his own.

**Previous Conviction of Drug Trafficking Offence:** No.

**Mitigating Factors:** Made efforts to distance himself from the people involved in organisation of the offence; and no previous convictions.

**Aggravating Factors:** The "very significant quantity" of the drugs; his involvement was more significant than his co-accused; and sought out opportunity for 'easy money'.

**Decision on Appeal:** Appeal allowed. Sentence varied.

27. *The People (Director of Public Prosecutions) v. I.A.* [2010] IECCA 46, (Unreported, *ex tempore*, Court of Criminal Appeal, 18<sup>th</sup> May, 2010)—**11 years, final 5 suspended (6 years)**—Appeal against severity

The applicant had been found in possession of a large quantity of cocaine. The appropriate notional sentence was considered by the Court of Criminal Appeal to be between 12-14 years.

**Sentence at Trial:** Unknown but close to the minimum.

**Drugs:** Cocaine valued at €457,000.

**'Exceptional and specific circumstances':** Yes, based on the offender's cooperation.

**Guilty Plea:** Yes, at an early stage.

**Material Assistance:** Yes, applicant directed the Gardaí to where the drugs were during search.

**Previous Conviction of Drug Trafficking Offence:** No.

**Mitigating Factors:** Guilty plea (held to be of value) and cooperation; family background; addiction; drug debt of €18,500 “was an ingredient in becoming involved in the criminal behaviour”; and impact of prison on applicant and his family (partner, 2 children).

**Decision on Appeal:** Appeal allowed. Sentence varied to encourage rehabilitative efforts.

28. *The People (Director of Public Prosecutions) v. N.P.*<sup>169</sup> [2010] IECCA 55, (Unreported, *ex tempore*, Court of Criminal Appeal, 21<sup>st</sup> June, 2010)—**6 years**—Appeal against leniency Drugs worth €50,000 and several firearms and ammunition were found in a house adjoining the home of the respondent, 36. He was involved in drug and gun dealing and it was argued that his involvement in dealing was in order to pay off drug debts. He was sentenced to six years for the count under s. 15A. He was also sentenced to three five-year terms for the firearms and live ammunition, and a three-year term for other ammunition (blanks). The sentences were to run concurrently.

**Sentence at Trial:** 6 years.

**Drugs:** Cocaine (645.3g), cannabis herb (464.5g) and cannabis resin (43g) valued at €54,600.

**‘Exceptional and specific circumstances’:** Yes, his guilty plea and cooperation.

**Guilty Plea:** Yes, at an early stage.

**Material Assistance:** Yes, cooperated with the Gardaí “as much as he could within the possibilities of his position” and made admissions helpful to prosecution such as admitting possession of the articles which were not found in his premises and without such admissions “there would not have been any case against him in respect of such articles”.

**Previous Conviction of Drug Trafficking Offence:** No. Some previous convictions but none recently or as serious as present ones.

**Mitigating Factors:** Guilty plea; cooperation with Gardaí; admitted he was acting as a “quartermaster” in relation to the drugs – it was accepted that he was pressurised into minding the drugs and guns in order to pay off drug debts but was engaged in dealing them himself; had a teenage daughter who had a positive influence on his life.

**Aggravating Factors:** Dealing in both guns and drugs.

**Decision on Appeal:** Appeal refused.

29. *The People (Director of Public Prosecutions) v. E.B.* [2010] IECCA 67, (Unreported, *ex tempore*, Court of Criminal Appeal, 24<sup>th</sup> June, 2010)—**6 years**—Appeal against severity The applicant, 45, was intercepted bringing cocaine into Dublin. He was a national of another European state with an address in a third European state. He claimed that he had agreed to smuggle for a friend but believed he was smuggling sheet gold. He had been paid €5,000 to courier the drugs.

**Sentence at Trial:** 7 years.

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<sup>169</sup> Additional background information sourced from:

<http://www.irishexaminer.com/archives/2009/0204/ireland/limerick-drug-pusher-dubbed-aposdeals-on-wheelapos-gets-six-year-jail-term-83596.html>.

**Drugs:** Cocaine valued at €159,000.

**'Exceptional and specific circumstances':** Yes, his guilty plea and cooperation.

**Guilty Plea:** Yes, at an early stage.

**Material Assistance:** Yes, cooperated with the Gardai "as much as he could within the possibilities of his position" and made admissions helpful to prosecution such as admitting possession of the articles which were not found in his premises and without such admissions "there would not have been any case against him in respect of such articles".

**Previous Conviction of Drug Trafficking Offence:** No. Some previous convictions in Spain.

**Mitigating factors:** His role as a courier was acknowledged but the Court of Criminal Appeal held that couriers have a significant role to play; Foreign nationality, *e.g.* it was noted that he had no visitors while in custody.

**Aggravating Factors:** The value of the drugs; and the commercial aspect to the transaction, *i.e.* applicant was paid.

**Decision on Appeal:** Appeal allowed. All mitigating factors were mentioned but not adequately taken into account during sentencing, particularly his foreign nationality and steps taken in prison to rehabilitate himself *e.g.* he had undertaken Leaving Certificate examination. Sentence varied to 6 years.

30. *The People (Director of Public Prosecutions) v. E.B.* [2009] IECCA 141, (Unreported, *ex tempore*, Court of Criminal Appeal, 14<sup>th</sup> December, 2009)—**6 years**—Appeal against severity

The applicant was a 42-year old taxi driver at the time he was arrested. A large quantity of drugs was found in the boot of his car. The appeal was made on the basis that two mitigating factors were not given sufficient weight: first, that insufficient weight was given by the trial judge to his guilty plea; and secondly, that the applicant's two prior convictions were not relevant prior convictions. "There were certain admissions made at the scene but those admissions were withdrawn by the applicant and from the Court's point of view it does not consider that in the absence of open admissions, those admissions having been resiled from, they are of any significant value to the applicant."

**Sentence at Trial:** 9 years

**Drugs:** Unknown valued at €278,000

**'Exceptional and specific circumstances':** Yes

**Guilty Plea:** Yes, at an early stage.

**Material Assistance:** Unknown

**Previous Conviction of Drug Trafficking Offence:** No.

**Mitigating Factors:** Early plea; no previous convictions.

**Decision on Appeal:** Appeal allowed. "[T]he Court is satisfied that the starting point in this particular case, on these particular facts, must be taken to be the ten year mandatory minimum sentence, rather than the life sentence, or something less than that. If that be so, the Court is equally satisfied that an adequate discount or reduction in a possible sentence was not made by the learned sentencing judge, either for the early plea of guilty, or for the fact that the applicant came to court in effect as an innocent applicant with no prior convictions, because the only prior convictions were not of relevance in relation to the drugs charge."

31. *The People (Director of Public Prosecutions) v. K.B.* [2012] IECCA 32, (Unreported, *ex tempore*, Court of Criminal Appeal, 6<sup>th</sup> February, 2012)—**10 years, final 4 suspended for period of 2 years (6 years)**—Appeal against severity  
The applicant, 36, played a minor role in a large heroin operation, in which he delivered drugs for no financial reward. Both he and his co-accused, A.C. (See below, no. 32), were drug addicted. Unusually, the Gardaí placed a letter before the court attesting to the significant degree of material assistance provided by the applicant.  
**Sentence at Trial:** 10 years.  
**Drugs:** Diamorphine.  
**'Exceptional and specific circumstances':** Yes  
**Guilty Plea:** Yes.  
**Material Assistance:** Yes.  
**Previous Conviction of Drug Trafficking Offence:** No  
**Mitigating Factors:** Material assistance; expressed remorse; had been drug addicted but had completed several courses in rehabilitation; married with one child; good employment history; and his probate report stated that he was at low risk of re-offending.  
**Decision on Appeal:** Appeal allowed. 10 years considered an appropriate sentence but not enough weight given to material assistance. 4 years suspended for 2 years from completion of the sentence.
32. *The People (Director of Public Prosecutions) v. A.C.* [2012] IECCA 32, (Unreported, *ex tempore*, Court of Criminal Appeal, 6<sup>th</sup> February, 2012)—**10 years, final 4 suspended for period of 2 years (6 years)**—Appeal against severity  
The applicant, 36, played a minor role in a large heroin operation, in which he delivered drugs for no financial reward. Both he and his co-accused, K.B. (See above, no. 31), were drug addicted. Unusually, the Gardaí placed a letter before the court attesting to the significant degree of material assistance provided by the applicant.  
**Sentence at Trial:** 10 years.  
**Drugs:** Diamorphine.  
**'Exceptional and specific circumstances':** Yes  
**Guilty Plea:** Yes.  
**Material Assistance:** Yes.  
**Previous Conviction of Drug Trafficking Offence:** No  
**Mitigating Factors:** Material assistance; expressed remorse; drug addicted and had made some progress in his rehabilitation; and his probate report stated that he was at moderate risk of re-offending.  
**Decision on Appeal:** Appeal allowed. 10 years considered an appropriate sentence but not enough weight given to material assistance. 4 years suspended for 2 years from completion of the sentence.
33. *The People (Director of Public Prosecutions) v. K.O'C.* [2009], (Unreported, *ex tempore*, Court of Criminal Appeal, 27<sup>th</sup> July, 2009)—**8 years, 2 years suspended (6 years)**—Appeal against severity  
The applicant stored a quantity of drugs in her house by arrangement with other people who were higher up the chain in the drugs industry. She was paid €400 per week. She was 28 years old at the time of the appeal. Her personal circumstances included the fact that she was expelled from school at 15 and in foster care twice aged 14 and 16. She has 2 children aged 8 and 7. She is a drug addict and had a history of attending clinics for treatment without success. Following 5 out of 18 tests testing

positive for benzodiazepine and opiates, a GP for the HSE addiction services reported that she was making some progress towards rehabilitation.

**Sentence at Trial:** 8 years.

**Drugs:** Cocaine, first valued at €210,000 but later altered to €191,534.

**'Exceptional and specific circumstances':** Yes

**Guilty Plea:** Yes

**Material Assistance:** Cooperation at time of search.

**Previous Conviction of Drug Trafficking Offence:** Unknown.

**Mitigating/Aggravating Factors:** Sentencing judge had found that the circumstances of the case warranted 10 year sentence but such sentence was not imposed due to cooperation at scene of search; although the value of the drugs was high, the applicant was only involved because she needed cash to pay bills; and some consideration was given for her early plea. She was in a vulnerable position with financial pressures. Her young age was also noted.

**Decision on Appeal:** Appeal dismissed.

34. *The People (Director of Public Prosecutions) v. G.G.* [2009], (Unreported, *ex tempore*, Court of Criminal Appeal, 13<sup>th</sup> July, 2009)—**7.5 years, final year suspended (6.5 years)**—Appeal against severity

The applicant, 53, North American national was caught red-handed. During evidence, he admitted that he was dealing in drugs during the period from late 2006 to late 2007.

**Sentence at Trial:** 7.5 years

**Drugs:** Multiple types: MDMA (401g), ecstasy (2,983), cannabis resin and cocaine. Valued between €66,213-€88,306.<sup>170</sup>

**'Exceptional and specific circumstances':** Yes.

**Guilty Plea:** Yes. Caught red-handed.

**Material Assistance:** Yes.

**Previous Conviction of Drug Trafficking Offence:** No.

**Mitigating Factors:** Alcohol and drug addiction; mother and brother, to whom he was close, had died which caused him to relapse at time of dealing and his first wife had also died.

**Decision on Appeal:** The Court of Criminal Appeal noted that applicant was capable of remaining free of drugs for "a relatively long period of time" and therefore rehabilitation should have been given greater emphasis. Appeal allowed, a sentence of 7.5 years was imposed with the final 12 months suspended on the condition that he agreed to comply with any conditions imposed by probation service, *e.g.* drug rehabilitation.

35. *The People (Director of Public Prosecutions) v. P.G.* [2011] IECCA 18, (Unreported, *ex tempore*, Court of Criminal Appeal, 15<sup>th</sup> April, 2011)—**7 years**—Appeal against severity

The offender, 40, was convicted for possession for sale of supply of heroin valued at over €1m. His co-accused, E.McN., (see above, no. 25) was sentenced to 7 years with 2 suspended. He was married with two children aged 10 and 13 years respectively.

**Sentence at Trial:** 10 years.

**Drugs:** Diamorphine valued at €1.6m.

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<sup>170</sup> Additional background information sourced from:

[http://www.mayonews.ie/index.php?option=com\\_content&view=article&id=5252:jail-for-man-who-had-arsquoaladdinarsquo-cavearsquo-of-drugs&Itemid=51](http://www.mayonews.ie/index.php?option=com_content&view=article&id=5252:jail-for-man-who-had-arsquoaladdinarsquo-cavearsquo-of-drugs&Itemid=51)

**'Exceptional and specific circumstances':** Yes, based on the offender's cooperation.

**Guilty Plea:** Yes

**Material Assistance:** Yes, he made full admissions and disclosed all the information that he had to Gardaí. His assistance was noted to be "very material".

**Previous Conviction of Drug Trafficking Offence:** No but nine previous convictions, some related to drugs but not trade in drugs.

**Mitigating Factors:** Cooperation with Gardaí.

**Decision on Appeal:** Appeal allowed. A notional sentence of 12 years was considered appropriate, mitigated to 7 years for his cooperation.

36. *The People (Director of Public Prosecutions) v. P.F.* [2010] IECCA 60, (Unreported, Court of Criminal Appeal, *ex tempore*, 24<sup>th</sup> June, 2010)—7 years—Appeal against severity  
The applicant, 42, was in possession of cannabis when he was intercepted by Customs officers in Dublin Airport upon arrival from a flight from Brussels.

**Sentence at Trial:** 7 years.

**Drugs:** Cannabis valued at €33,000.

**'Exceptional and specific circumstances':** Yes, based on the offender's cooperation.

**Guilty Plea:** Yes.

**Material Assistance:** Yes, he made full admissions and disclosed all the information that he had to Gardaí. His assistance was noted to be "very material".

**Previous Conviction of Drug Trafficking Offence:** No but 9 previous convictions, some related to drugs but not trade in drugs.

**Mitigating/Aggravating Factors:** The value of the drugs was held not to be an aggravating factor because it was not "excessively higher" than the statutory minimum.

**Decision on Appeal:** Application rejected.

37. *Director of Public Prosecutions v. R.S.* [2010] IECCA 83, (Unreported, Court of Criminal Appeal, 28<sup>th</sup> July, 2010)—7 years—Appeal against severity  
Customs and Excise Officers were alerted to the fact that a concealed package of cocaine would be arriving via an airport in Ireland. The package was found in the applicant's suitcase. The cocaine was hidden in cardboard inserts inside shirts. The suitcase arrived by way of international courier and was addressed to the applicant. The applicant appealed against the severity of sentence in light of mitigating factors and also on the basis that suspension of any part of the sentence had not been considered by the sentencing judge.

**Sentence at Trial:** 7 years.

**Drugs:** 603.5 grams of cocaine, value: €43,000.

**'Exceptional and specific circumstances':** Yes

**Guilty Plea:** Yes, at an early stage.

**Material Assistance:** Yes. He was said to be of some assistance and cooperative. He identified the shirts in which the drugs were hidden.

**Previous Conviction of Drug Trafficking Offence:** No.

**Mitigating Factors:** Foreign nationality; and good behaviour during time in prison.

**Aggravating Factors:** Knowing involvement in the supply chain of the drug trade contributed to the gravity of the offence although it was acknowledged that the applicant was not the main instigator and showed no signs of wealth.

**Decision on Appeal:** Application refused. Suspension of any part of the sentence would not be appropriate in this case and the sentencing judge had considered all mitigating factors.



38. *The People (Director of Public Prosecutions) v. M.R.* (Unreported, *ex tempore*, Court of Criminal Appeal, 27<sup>th</sup> May, 2009)—**7 years**—Appeal against severity  
The applicant, 26 at the time of the offence, was found to have cocaine in his bedroom.<sup>171</sup> He pleaded guilty as soon as Gardaí confronted him about possession of drugs.  
**Sentence at Trial:** 10 years.  
**Drugs:** 570 grams of cocaine, value: €39,950.  
**'Exceptional and specific circumstances':** Yes.  
**Guilty Plea:** Yes "at first available opportunity".  
**Material Assistance:** Yes. His admission to ownership of drugs meant that it was not necessary for Gardaí to seek evidence establishing ownership and the investigation could come to a close.  
**Previous Conviction of Drug Trafficking Offence:** No.  
**Mitigating Factors:** Early guilty plea; cooperation with Gardaí; and while in prison, he had also received a Gaisce award, completed computer courses and was making good progress in relation to his drug problem.  
**Decision on Appeal:** Appeal allowed as sentencing judge had erred in principle where he had not given reduction for guilty plea and assistance.
39. *The People (Director of Public Prosecutions) v. W.S.* [2011] IECCA 18, (Unreported, *ex tempore*, Court of Criminal Appeal, 7<sup>th</sup> February, 2011)—**10 years, 2.5 years suspended (7.5 years)**—Appeal against severity  
**Sentence at Trial:** 10 years.  
**Drugs:** Unknown type valued at €28,540.  
**'Exceptional and specific circumstances':** Yes.  
**Guilty Plea:** Yes.  
**Material Assistance:** Cooperated with Gardaí.  
**Previous Conviction of Drug Trafficking Offence:** No but 9 previous convictions, some related to drugs but not trade in drugs.  
**Mitigating Factors:** Guilty plea; cooperation with Gardaí; and personal circumstances (21, living with father).  
**Decision on Appeal:** Appeal allowed.
40. *The People (Director of Public Prosecutions) v. J.McG.* [2010] IECCA 8, (Unreported, *ex tempore*, Court of Criminal Appeal, 8<sup>th</sup> February, 2010)—**8 years**—Appeal against leniency  
On foot of a surveillance operation, the offender, 29, was found in possession of drugs worth €1.6m. The drugs were found in his van and he had been paid €400 to move them.  
**Sentence at Trial:** 8 years.  
**Drugs:** Diamorphine (7.58kg) valued at €1.6m  
**'Exceptional and specific circumstances':** Yes. Guilty plea and cooperation.  
**Guilty Plea:** Yes.  
**Material Assistance:** Cooperated with Gardaí and information regarding others involved.  
**Previous Conviction of Drug Trafficking Offence:** No but previous convictions in relation to criminal damage, public order and larceny but only 1 custodial sentence

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<sup>171</sup> Additional background information sourced from: <http://www.herald.ie/news/courts/dealer-who-hid-cocaine-in-parents-home-jailed-27879951.html>

for road traffic offence of having no insurance. Can be treated as “young in terms of serious offending.”

**Mitigating Factors:** Cooperated early with Gardaí; addiction to heroin since age 13 but clean for 3.5 years at time of sentence; several reports attesting to his good character were submitted; and has a partner and two young children (aged 5 and 8 years). Little weight, if any, was given to his role as a courier.

**Aggravating Factors:** The value of the drugs.

**Decision on Appeal:** Objectively and prior to considering any mitigating circumstances, the Court of Criminal Appeal held that the value of the drugs placed it beyond the presumptive threshold and considered it to attract a sentence of 12 years. The Court considered that sentence at the lower end of the scale and a higher one could equally be justified. The court considered that the ordinary discounts for a guilty plea and cooperation would bring the sentence down to nine years. The difference between the sentence actually imposed and what the Court of Criminal Appeal considered appropriate being one year, the sentence actually imposed was not considered to be unduly lenient because it may encourage rehabilitation to persons of previously good character or young in crime. Appeal dismissed.

41. *The People (Director of Public Prosecutions) v. J.W.* [2010] IECCA 12, (Unreported, *ex tempore*, Court of Criminal Appeal, 18<sup>th</sup> February, 2010)—**10 years, final 2 suspended (8 years)**—Appeal against severity

The offender, 43, was found in possession of drugs worth €70,000 when a van he was travelling in was pulled over by Gardaí. A later search on foot of a search warrant revealed more drugs valued at €140,000.

**Sentence at Trial:** Two 10 year sentences to run concurrently.

**Drugs:** Cocaine (1kg) valued at €70,000 and €140,000 (2kg) on each count.

**‘Exceptional and specific circumstances’:** Yes.

**Guilty Plea:** Yes. On the first charge, his plea was found to have reduced value as he was caught red-handed but the value for the plea on the second charge was considerably higher.

**Material Assistance:** He gave some information in relation to both charges and his plea to the second charge did assist materially. He did not provide information in relation to sources of the drugs.

**Previous Conviction of Drug Trafficking Offence:** No.

**Mitigating Factors:** Guilty plea.

**Aggravating Factors:** The drugs concerned in the first count were concealed under the offender’s three-month old baby.

**Decision on Appeal:** Appeal allowed. A sentence of 10 years with the final two years suspended on the conditions that he make every effort to rehabilitate his cocaine and alcohol addiction, and take advice to acquire a skill or trade in order to support his partner and family.

42. *The People (Director of Public Prosecutions) v. A.B.* [2010] IECCA 26, (Unreported, *ex tempore*, Court of Criminal Appeal, 12<sup>th</sup> March, 2010)—**8 years**—Appeal against severity

The applicant was found in possession of drugs with a value exceeding €13,000. His co-accused had received a sentence of 10 years. He appealed his sentence on the basis that it was calculated based on involvement by the applicant in the preparation of drugs which had not been proven.

**Sentence at Trial:** 8 years.

**Drugs:** Cocaine (1kg) valued at €70,000 and €140,000 (2kg) on each count.

**'Exceptional and specific circumstances':** Yes. 1985 report on the applicant's mental health; has a wife and 3 children; good employment references; poor level of education; and no previous convictions.

**Guilty Plea:** No.

**Material Assistance:** No.

**Previous Conviction of Drug Trafficking Offence:** No.

**Mitigating Factors:** Good employment record; poor level of education and reference was made to a report from 1985 on the applicant's mental health; had wife and 3 young children.

**Decision on Appeal:** The applicant's role had been sufficiently distinguished from that of his co-accused. Appeal dismissed.

43. *The People (Director of Public Prosecutions) v. M.T.* (Unreported, *ex tempore*, Court of Criminal Appeal, 23<sup>rd</sup> November, 2009)—**8 years**—Appeal against severity

The applicant appealed sentences imposed for 2 offences. He was found in a premises following police surveillance which was described as a factory where mixing cocaine took place. 1 kilogramme of cocaine found with 29 bags of mixing agent which would increase its value to €200,000. The applicant claimed that he was involved in this offence due to his own cocaine addiction. He owed €1,300 for drugs and was working on the premises to pay it off. Later, while on bail, he committed an offence of armed robbery. His personal circumstances included the fact that he had a partner and 2 daughters (aged 3 and 7 years), and was an early school leaver with limited skills and intelligence. He attended drug treatment while in custody.

**Sentence at Trial:** 8 years.

**Drugs:** Cocaine, €70,000.

**'Exceptional and specific circumstances':** Yes.

**Guilty Plea:** Yes, one week before the trial.

**Material Assistance:** Nothing of evidential value at interview and no material assistance to Gardaí. Admitted his own involvement.

**Previous Conviction of Drug Trafficking Offence:** Unknown

**Mitigating Factors:** Consideration given for his guilty plea and the fact that court time was not taken up and witnesses could be notified.

**Decision on Appeal:** Appeal refused.

44. *The People (Director of Public Prosecutions) v. J.P.D.* [2011] IECCA 44, (Unreported, *ex tempore*, Court of Criminal Appeal, 5<sup>th</sup> April, 2011)—**10 years (8.33 years)**—Appeal against leniency

**Sentence at Trial:** 8.33 years. A notional sentence of 10 years with 20 months deducted in mitigation.

**Drugs:** Unknown valued at €2.8m

**'Exceptional and specific circumstances':** Yes

**Guilty Plea:** Yes.

**Material Assistance:** /

**Previous Conviction of Drug Trafficking Offence:** /

**Mitigating Factors:** Guilty plea.

**Decision on Appeal:** Appeal dismissed.

45. *The People (Director of Public Prosecutions) v. A.F.* [2011] IECCA 42, (Unreported, *ex tempore*, Court of Criminal Appeal, 7<sup>th</sup> July, 2011)—**12 years, final 3 years suspended (9 years)**—Appeal against severity

The offender had at first accepted responsibility for his role but during further questioning by the Gardaí he provided a “completely false and indeed lying story”.

**Sentence at Trial:** 12 years, 3 suspended for a period of 6 years.

**Drugs:** Cannabis (117kg) valued at €818,898

**‘Exceptional and specific circumstances’:** Yes

**Guilty Plea:** Yes, at an early stage.

**Material Assistance:** Admitted his role.

**Previous Conviction of Drug Trafficking Offence:** No

**Mitigating Factors:** Did not own the drugs although he did facilitate their movement.

**Aggravating Factors:** Large value of the drugs; and expert reports suggested high risk of reoffending.

**Decision on appeal:** Appeal dismissed but sentence varied. Period of suspension was limited to the period of the sentence.

46. *The People (Director of Public Prosecutions) v. T.U.* [2010] IECCA 13, (Unreported, *ex tempore*, Court of Criminal Appeal, 18<sup>th</sup> February, 2010)—**12 years, final 3 suspended**—Appeal against severity

The applicant, 65, was convicted under s. 15B and appealed the severity of his sentence on three grounds: the value of the drugs; a prior previous conviction from another jurisdiction being taken into account, and the age of applicant. The applicant had been detained at an airport in Ireland and found with “a substantial quantity of drugs”.<sup>172</sup>

**Sentence at Trial:** 12 years, final 3 suspended.

**Drugs:** Unknown type valued at €240,000.

**‘Exceptional and specific circumstances’:** /

**Guilty Plea:** Yes

**Material Assistance:** /

**Previous Conviction of Drug Trafficking Offence:** Yes, but not in this jurisdiction. Not considered an aggravating factor.

**Mitigating/Aggravating Factors:** /

**Decision on Appeal:** There was no error in principle. The drugs were a substantial quantity. The age and previous conviction of the applicant were not necessarily treated as aggravating factors according to the transcript. In particular, it was appropriate for the trial judge to take into account the applicant’s prior conviction in another jurisdiction. Appeal refused.

47. *The People (Director of Public Prosecutions) v. A.McE.* [2009] IECCA 70, (Unreported, *ex tempore*, Court of Criminal Appeal, 29<sup>th</sup> June, 2009)—**11 years, final 2 suspended (9 years)**—Appeal against severity

Garda surveillance of a warehouse detected the applicant operating a forklift to take a delivery of drugs from a delivery van into the warehouse, over which he was held to have “charge and control”. The applicant was 20 years old at time of the offence and was also unemployed. The driver of van (20 years older than applicant) involved in the same event was sentenced to 10 years, 3 suspended after applicant was sentenced but no evidence adduced by applicant demonstrating parity of cases.

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<sup>172</sup> Facts found in later judgment arising from same offence and offender concerning an application for leave to appeal to the Supreme Court: *The People (Director of Public Prosecutions) v. T.U.* [2011] IECCA 30, (Unreported, *ex tempore*, Court of Criminal Appeal, 11<sup>th</sup> May, 2011)

**Sentence at Trial:** 11, final 2 suspended<sup>173</sup>

**Drugs:** 308 bags of cannabis (€3.08m); 10 bags of cocaine (€700,000): €3.78m.

**'Exceptional and specific circumstances':** /

**Guilty Plea:** Yes, at a late and had been caught red-handed.

**Material Assistance:** Yes.

**Previous Conviction of Drug Trafficking Offence:** No.

**Mitigating Factors:** Youth; and low intellectual ability.

**Decision on Appeal:** Severity justified due to the quantity of drugs involved in seizure in case. Appeal dismissed.

### 3.6.5. *Imprisonment: over 10 years*

48. *The People (Director of Public Prosecutions) v. M.F.* (Unreported, Court of Criminal Appeal, *ex tempore*, 17<sup>th</sup> February, 2012)—**13 years, final 3 years suspended (10 years, review after 8 years)**—Appeal against leniency

The offender was convicted of six counts under two bills under s. 15A.

**Sentence at Trial:** 3 years for Bill 'A' and for Bill B, 10 years for three counts which were to run concurrently, with a review after 5 years (to run consecutive to the first offence). Total imposed: 13 years with possibility of review after 8 years.

**Drugs:** Diamorphine valued at €746,800 (Bill A) and €207,000 (Bill B)

**'Exceptional and specific circumstances':** Yes for the first offence but mandatory sentence had to be imposed for sentencing the second offence.

**Guilty Plea:** Yes, but not immediately.

**Material Assistance:** In relation to the first bill, he was uncooperative except on one occasion, when he was shown CCTV. Sufficient cooperation which coupled with the plea of guilty would justify a sentence of less than the statutory minimum.

**Previous Conviction of Drug Trafficking Offence:** No

**Mitigating Factors:** Drug-addicted; sought rehabilitation; and had partner and child, as well as children from previous relationship.

**Aggravating Factors:** Noted that was involved in a large scale operation.

**Decision on Appeal:** Had Bill A been the sole offence something in the order of 12 years would have been appropriate. The second bill referred to offences committed while on bail and by statute that sentence must be consecutive to the sentence imposed on Bill A. Therefore, circumstances of that mean a sentence in excess of presumptive statutory minimum was required. However, with respect to the circumstances and the totality principle, imposing two sentences of at least 10 years duration was deemed excessive. Thus, for Bill A, a sentence of 5 years, with final 3 years suspended was imposed and a sentence of 10 years was imposed for Bill B.

49. *The People (Director of Public Prosecutions) v. A.O'L.* [2011] IECCA 27, (Unreported, Court of Criminal Appeal, 7<sup>th</sup> March, 2011)—**10 years, review after 5**—Appeal against severity

The offender, 36, was convicted on two counts for possession for sale or supply of drugs with a total value exceeding €1 million. The trial judge had stated when passing sentence that the sentence would have been 12 years were it not for the applicant's plea of guilt, and his co-operation by way of early admissions and at interview.

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<sup>173</sup> Source for sentence imposed at trial: <http://www.herald.ie/news/courts/boxer-caught-with-a-forklift-load-of-cocaine-27894682.html>

**Sentence at Trial:** 10 years, review upon expiration of 5 years.

**Drugs:** Diamorphine valued at €991,076 (5kg, count 1) and €270,000 (1kg, count 2).

**'Exceptional and specific circumstances':** No.

**Guilty Plea:** Yes, early plea.

**Material Assistance:** Yes, early admission and cooperation with Gardaí during interview.

**Previous Conviction of Drug Trafficking Offence:** Yes, two previous convictions regarding drugs, one of which was under s. 15 of the Misuse of Drugs Act 1977, as amended.

**Mitigating Factors:** Had partner and two children.

**Aggravating Factors:** Previous convictions for drugs offences and serious road traffic, and theft and fraud offences.

**Decision on Appeal:** Appeal dismissed.

50. *The People (Director of Public Prosecutions) v. P.K.* [2011] IECCA 48, (Unreported, Court of Criminal Appeal, 27<sup>th</sup> July, 2011)—**At least 10 years**—Appeal against severity

Evidence was tendered showing that he was a drug user but also that he was an active drug dealer, e.g. he had a mobile phone with text messages containing details of drug weights and prices. He asserted that he was engaged in small-scale dealing in a small town and not engaged in the level of harm found in large cities. He also asserted that the trial judge had treated the fact that he was dealing in drugs within two weeks of being remanded in custody for another charge, but for which he was acquitted, as an aggravating factor.

**Sentence at Trial:** At least 10 years.

**Drugs:** Diamorphine valued at €38,979.

**'Exceptional and specific circumstances':** No.

**Guilty Plea:** Yes, but 18 months after the commission of the offence and had been caught red-handed.

**Material Assistance:** No.

**Previous Conviction of Drug Trafficking Offence:** No, but had two convictions under s. 3 of the Misuse of Drugs Act 1977, as amended, for possession *simpliciter* and one conviction under s. 21 for obstruction.

**Mitigating Factors:** Only mitigating factor was the plea of guilty but its weight was diminished by the delay in communicating it and the fact that the accused was caught red-handed.

**Aggravating Factors:** Role as a drug-dealer.

**Decision on Appeal:** Role as a drug-dealer was something that a judge could consider in sentencing despite the fact that it was happening in a provincial town. The judge's comments regarding his post-custody conduct were references to the surrounding circumstances of the applicant's behaviour and not sentencing for offences for which there has been no conviction. Appeal dismissed.

51. *The People (Director of Public Prosecutions) v. K.R.* [2011] IECCA 34, (Unreported, Court of Criminal Appeal, 11<sup>th</sup> February, 2011)—**10 years**—Appeal against severity

The drugs were found on the applicant's person following a Garda search of his home. He was observed throwing drugs out the window.

**Sentence at Trial:** 10 years.

**Drugs:** Unknown valued at €23,440.

**'Exceptional and specific circumstances':** No

**Guilty Plea:** No.

**Material Assistance:** No.

**Previous Conviction of Drug Trafficking Offence:** Yes, one conviction for drug dealing which received a suspended sentence.

**Aggravating Factors:** Drug dealing.

**Decision on Appeal:** Appeal dismissed.

52. *The People (Director of Public Prosecutions) v. D.H.* [2010] IECCA 45, (Unreported, Court of Criminal Appeal, *ex tempore*, 18<sup>th</sup> May, 2011)—**10 years, review after 5**—Appeal against severity

The applicant, 54, was found to be in possession of cocaine after being observed handing a box to a man. Both men then boarded a train from that city to another. He was charged with three drug trafficking counts: two counts were under s. 15 and one was under s. 15A.

**Sentence at Trial:** 10 years.

**Drugs:** Cocaine valued at €51,600.

**'Exceptional and specific circumstances':** No.

**Guilty Plea:** No.

**Material Assistance:** No.

**Previous Conviction of Drug Trafficking Offence:** Yes, one conviction for an offence under s. 15.

**Decision on Appeal:** In light of the applicant's age and his poor health as a result of a lifelong dependency on drugs and alcohol, the CCA upheld the original sentence but incorporated a review upon expiration of one-half of the term, *per s. 27(3J)* with a view to encouraging his rehabilitation.

53. *The People (Director of Public Prosecutions) v. V.C.*<sup>174</sup>, (Unreported, Court of Criminal Appeal, *ex tempore*, 17<sup>th</sup> February, 2010)—**10 years**—Appeal against severity

The applicant, 38, was found with 5 kilogrammes of cocaine and €350,000 in cash in a backpack. A further 11 kilogrammes and paraphernalia associated were found in his house. He appealed against severity on the grounds that insufficient weight had been attached to his role (not in charge of operation nor making significant profits from his involvement) and the absence of previous convictions.

**Sentence at Trial:** 10 years.

**Drugs:** Cocaine (16 kilogrammes) valued at €2m.

**'Exceptional and specific circumstances':** No.

**Guilty Plea:** Yes.

**Material Assistance:** No.

**Previous Conviction of Drug Trafficking Offence:** No.

**Mitigating Factors:** Cocaine and cannabis addiction; and guilty plea.

**Decision on Appeal:** It was regrettable that the sentencing judge had not specifically mentioned the two mitigating factors contested but it was apparent that they were taken into consideration. Nevertheless the offence was a serious one meriting at least 10 years imprisonment and perhaps more. Appeal dismissed.

54. *The People (Director of Public Prosecutions) v. M.N.* [2009] IECCA 82, (Unreported, *ex tempore*, Court of Criminal Appeal, 20<sup>th</sup> July, 2009)—**10 years**—Appeal against severity

The applicant, 42, was convicted of five offences contrary to Misuse of Drugs Act 1977, as amended. Count 5 was the most serious and an offence under s. 15A. A

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<sup>174</sup> Additional background information sourced from: <http://www.breakingnews.ie/ireland/man-jailed-for-having-2m-worth-of-cocaine-at-lucan-home-366214.html>

substantial quantity of drugs was found in two wardrobes in a house, which she owned and occupied. She appealed against the severity of sentence (presumptive mandatory minimum imposed) and asserted that her decision to contest the case was treated as an aggravating factor.

**Sentence at Trial:** 10 years.

**Drugs:** Cannabis resin valued at €230,500 and cocaine valued at €70,000 (€300,500 total).

**'Exceptional and specific circumstances':** No.

**Guilty Plea:** No.

**Material Assistance:** No.

**Previous Conviction of Drug Trafficking Offence:** No.

**Mitigating Factors:** No previous convictions of import; age; stressed and vulnerable disposition due to death of her son the preceding year; and no evidence of substantial profit from enterprise.

**Decision on Appeal:** The sentencing judge had meticulously considered the statutory provisions and the circumstances of the applicant. The offence was "at the upper end of seriousness". There was no evidence in the transcript of penalisation for contesting the charges. Appeal dismissed.

55. *The People (Director of Public Prosecutions) v. K.B.* [2009] IECCA 69, (Unreported, *ex tempore*, Court of Criminal Appeal, 26<sup>th</sup> June, 2009)—**10 years, review at 5 years**—Appeal against severity

Drugs found in a bunker in applicant's house.

**Sentence at Trial:** 10 years, review upon the expiration of 5 years.

**Drugs:** 315g cocaine (€22,000).

**'Exceptional and specific circumstances':** No.

**Guilty Plea:** Yes.

**Material Assistance:** Yes.

**Previous Conviction of Drug Trafficking Offence:** Yes, two convictions under s. 15. 49 previous convictions generally (mostly road traffic and public order offences).

**Mitigating Factors:** Age (22 years old); was employed until entered into custody; cocaine and gambling addiction; had provided 4 urine analyses in 2008 showed presence of cannabis but not cocaine; and was engaged with community Start Programme which was believed by the Court of Criminal Appeal to be an "encouraging sign".

**Decision on Appeal:** Sentence affirmed.

56. *The People (Director of Public Prosecutions) v. J.C.* [2009] IECCA 28, (Unreported, Court of Criminal Appeal, 2<sup>nd</sup> April, 2009)—**12 years, 2 years suspended (10 years)**—Appeal against severity

The applicant, 27 at time of appeal, had pleaded guilty on the second day of his trial and was convicted under s. 15A. His co-accused, S.H. (see above, no. 24), was sentenced to 10 years. The applicant sought leave to appeal on the basis that the sentencing process had been truncated and there was insufficient enquiry as to whether exceptional and specific circumstances existed.

**Sentence at Trial:** 12 years, 2 suspended.

**Drugs:** Amphetamines valued at €45,000.

**'Exceptional and specific circumstances':** No.

**Guilty Plea:** Yes, on second day of trial.

**Material Assistance:** No.



**Previous Conviction of Drug Trafficking Offence:** No. 9 previous convictions for road traffic, public order and assault offences.

**Mitigating Factors:** Plea of guilt; role as courier (“mule”); and his involvement in the operation was claimed to be to pay off a drug debt.

**Decision on Appeal:** Sentence affirmed. The personal circumstances of his co-accused could be distinguished from those of the applicant.

57. *The People (Director of Public Prosecutions) v. D.C.* [2009] IECCA 144, (Unreported, *ex tempore*, Court of Criminal Appeal, 7<sup>th</sup> December, 2009)—**11 years**—Appeal against severity

The offender had 63 prior convictions. But this was his first serious offence. He was a 38-year old father of five (7-14 years). A notional sentence of 15 years was set and discounted by 4 years having regard to mitigating factors.

**Sentence at Trial:** A notional sentence of 15 years which was discounted to 11.

**Drugs:** LSD, valued at €619,000

**‘Exceptional and specific circumstances’:** No. As the sentence with mitigating circumstances exceeded 10 years, the Court deemed it unnecessary to consider whether any applied.

**Guilty Plea:** Yes, but late (date of trial when court time taken up and witnesses arranged) although some admissions made earlier.

**Material Assistance:** Yes.

**Previous Conviction of Drug Trafficking Offence:** No, but 63 convictions of a different character between 1993 and 2000. None particularly serious (the longest sentence was 6 months, and two for 2 months)

**Mitigating Factors:** Family circumstances (partner, 5 sons. Daughter died tragically in 1998); employment history and there were testimonials from employers; reports from social workers on problems with his family. At trial, these personal circumstances merited a 4 year reduction but no more was considered to be warranted due to limited nature of co-operation and lateness of plea.

**Decision on Appeal:** Application rejected. The Court of Criminal Appeal was satisfied that having regard to the value of the drugs that starting point of 15 or 16 years was not an error of principle due to the fact that had the value of drugs been €15,000 as opposed to €619,000 then the presumptive mandatory sentence provision would apply. If a value of €13,000 can therefore “merit a ten year sentence in every case unless special features exist then it would be difficult to see how when over €619,000 is involved that fourteen, fifteen or sixteen years could be an inappropriate sentence.”

58. *The People (Director of Public Prosecutions) v. A.F.* [2012] IECCA 8, (Unreported, Court of Criminal Appeal, *ex tempore*, 27<sup>th</sup> January, 2012); and [2012] IECCA 77, (Unreported, Court of Criminal Appeal, 30<sup>th</sup> July, 2012)—**12 years**—Appeal against severity

The applicant and a co-accused, A.M. (see below, no. 59), were observed exchanging a bag containing heroin while under surveillance. A third co-accused, C., received a lesser sentence of 10 years with 5 suspended. The applicant and one co-accused sought leave to appeal the severity of sentence on the basis that the trial judge had not indicated the reasons for the disparity in sentencing for the same offence.

**Sentence at Trial:** 12 years

**Drugs:** Diamorphine (215.6g) valued at €42,120

**‘Exceptional and specific circumstances’:** No.

**Guilty Plea:** No.

**Material Assistance:** No.

**Previous Conviction of Drug Trafficking Offence:** /

**Decision on Appeal:** No evidence adduced of the personal circumstances of the third co-accused and he had pleaded guilty and cooperated with Gardaí. Appeal dismissed.

59. *The People (Director of Public Prosecutions) v. A.M.* [2012] IECCA 8, (Unreported, *ex tempore*, Court of Criminal Appeal, 27<sup>th</sup> January, 2012); and [2012] IECCA 77, (Unreported, Court of Criminal Appeal, 30<sup>th</sup> July, 2012)—**12 years**—Appeal against severity

The applicant and a co-accused, A.F. (see above, no. 58), were observed exchanging a bag containing heroin while under surveillance. A third co-accused, C., received a lesser sentence of 10 years with 5 suspended. The applicant and one co-accused sought leave to appeal the severity of sentence on the basis that the trial judge had not indicated the reasons for the disparity in sentencing for the same offence.

**Sentence at Trial:** 12 years

**Drugs:** Diamorphine (215.6g) valued at €42,120

**'Exceptional and specific circumstances':** No

**Guilty Plea:** No.

**Material Assistance:** No.

**Previous Conviction of Drug Trafficking Offence:** /

**Decision on Appeal:** No evidence adduced of the personal circumstances of the third co-accused and he had pleaded guilty and cooperated with Gardaí. Appeal dismissed.

60. *The People (Director of Public Prosecutions) v. M.B.* [2012] IECCA 72, (Unreported, Court of Criminal Appeal, 6<sup>th</sup> July, 2012)—**18 years**—Appeal against severity

The offender was observed carrying two carrier bags from a van while under surveillance. Members of the Gardaí asked the applicant to stop and he fled but was eventually apprehended. Two other counts of possession for sale or supply were taken into account.

**Sentence at Trial:** 18 years

**Drugs:** Diamorphine (32kg) valued at €6,200,000

**'Exceptional and specific circumstances':** No

**Guilty Plea:** No

**Material Assistance:** No

**Previous Conviction of Drug Trafficking Offence:** No. 19 previous convictions related to petty crime: assault, public order, larceny, unauthorised taking of a vehicle and other road traffic offences but none possession of drugs.

**Mitigating Factors:** None.

**Aggravating Factors:** Three aggravating factors were identified: (i) the applicant's past criminal record albeit of relatively minor relevance; (ii) the type of drug (socially destructive) in question was highly addictive; and (iii) the quantity and value (enormous amount) of the drug was very high.

**Decision on Appeal:** Application rejected.

61. *The People (Director of Public Prosecutions) v. J.D.* [2011] IECCA 104, [2011] 1 I.R. 476—**25 years**—Appeal against severity

The offender and 3 co-offenders were convicted under s. 15A following the largest seizure in the State's history. They had been transporting the drugs from a catamaran

off the Irish coast and bringing bales of cocaine to the mainland. The smuggling operation was devised by an organised criminal group based in Europe but operating internationally and was executed over a period of several months, spanned several countries, and at an expense of a third of a million euro (excluding cost of cocaine). The offender and his family (married, 3 children) are resident in a nearby European nation.

**Sentence at Trial:** 25 years, upheld on appeal. 2 other counts under s. 15 and s. 3 were taken into account.

**Drugs:** Cocaine (1, 553kg) valued at €108-440m due to its 75% level of purity.

**'Exceptional and specific circumstances':** No

**Guilty Plea:** No

**Material Assistance:** No

**Previous Conviction of Drug Trafficking Offence:** 4 previous convictions of a relatively minor between 1989 and 1998 nature involving assault on a police officer and possession of a blade.

**Mitigating Factors:** The applicant's foreign nationality was of limited significance as the applicant would not be as isolated as many other foreign nationals who come before the court for similar offences, *e.g.* his family were a short travel distance away.

**Aggravating Factors:** Held to be one of the core members of a large-scale operation. The fact that he was not the ringleader but was intimately involved with core pillars of the operation was held to be an aggravating rather than mitigating factor.

**Decision on Appeal:** Application rejected

## Part IV. Tables of Sentences from the Court of Criminal Appeal: 2009-2012

### 4.1. By Drug Type

#### 4.1.1. Sentences for Convictions under s. 15

	Name	Sentence Imposed	Years Suspended	Total Custodial	Year	Drug	Value (€)
1	F.H	3	2	1	2010	Cannabis	30,000
2	L.C.	2	0	2	2010	Cannabis herb/ Cocaine	8,000
3	D.R.	5	2	3	2011	Cannabis resin	875
4	P.O'C.	4	1	3	2009	Cannabis resin	4,275
5	C.B.	2	0	2	2009	Cannabis resin	5,295
6	S.F.	5	2	3	2010	Cannabis resin	6,800
7	P. McD.	3	1	2	2009	Cocaine	8,080
8	D.O'N.	5	1	4	2012	Cocaine	10,000
9	G.M.	3	3	0	2009	Cocaine	15,000
10	P.B.	3.5	3.12	0.38	2011	Cocaine	16,575
11	B.F.	6	2	4	2011	Cocaine	18,000
12	J.F.	5		5	2011	Cocaine	18,940
13	K.W.	5	2	3	2011	Cocaine/ Diamorphine	2,300
14	P.O'M.	5	1	4	2011	Diamorphine	2,000
15	B.O'S.	5	1	4	2010	Diamorphine	2,800
16	P.M.	Unknown	Unknown	Unknown	2009	Diamorphine	4,426
17	D.B.	5	0	5	2011	Diamorphine	5,185
18	Z.M.	2	0	2	2009	Ecstasy	1,000
19	J.M.	5	4.25	0.75	2009	Ecstasy	16,000
20	M.O'C.	3	0	3	2010	Unknown	Unknown

#### 4.1.2. Sentences for Convictions under s. 15A or s. 15B

	Name	Sentence Imposed	Years Suspended	Total Custodial	Year	Drug	Value (€)
1	S.H.	5	0	5	2010	Amphetamines	45,000
2	J.C.	12	2	10	2009	Amphetamines	45,000
3	P.F.	7	0	7	2010	Cannabis	33,000
4	D.M.	4	2	2	2010	Cannabis	287,050
5	W.H.	5	2	3	2011	Cannabis	88,380
6	M.P.	7	2	5	2011	Cannabis	100,000
7	J.M.	7	2	5	2010	Cannabis	287,050
8	A.F.	12	3	9	2011	Cannabis	818,898
9	A.McE.	11	2	9	2009	Cannabis/ Cocaine	3,780,000
10	M.N. aria Norris	10	0	10	2009	Cannabis/ Cocaine	300,500

*Analysis of Sentencing for Possession or Importation of Controlled Drugs for Sale or Supply*

11	E.B.	6	0	6	2010	Cocaine	159,000
12	M.R.	7	0	7	2009	Cocaine	39,950
13	R.S.	7	0	7	2010	Cocaine	43,000
14	A.B.	8	0	8	2010	Cocaine	13,000
15	M.T.	8	0	8	2009	Cocaine	70,000
16	K.B.	10	0	10	2009	Cocaine	22,000
17	D.H.	10	0	10	2010	Cocaine	51,600
18	V.C.	10	0	10	2010	Cocaine	2,000,000
19	J.D.	25	0	25	2011	Cocaine	440,000,000
20	D.O'D.	3	1.5	1.5	2009	Cocaine	43,000
21	K.O'C.	8	2	6	2009	Cocaine	191,534
22	J.W.	10	2	8	2010	Cocaine	210,000
23	P.G.	3	3	0	2009	Cocaine	16,000
24	T.H.	7	3	4	2010	Cocaine	261,702
25	J.P.L.	5	3.5	1.5	2010	Cocaine	45,000
26	S.M.	7	4	3	2011	Cocaine	210,119
27	W.D.	8	4	4	2012	Cocaine	69,599
28	J.R.	5	5	0	2009	Cocaine	329,301
29	I.A.	11	5	6	2010	Cocaine	457,000
30	A.W.	6	6	0	2010	Cocaine	34,370
31	F.M.	10	6	4	2010	Cocaine	178,000
32	N.P.	6	0	6	2010	Cocaine/ Cannabis Herb/ Cannabis Resin	54,600
33	G.D.	5	0	5	2010	Cocaine/ Cannabis/ Others	39,956
34	J.McG.	8	0	8	2010	Diamorphine	1,600,000
35	P.K.	10	0	10	2011	Diamorphine	38,979
36	A.O'L.	10	0	10	2011	Diamorphine	1,261,076
37	A.F.	12	0	12	2012	Diamorphine	43,120
38	A.M.	12	0	12	2012	Diamorphine	43,120
39	M.B.	18	0	18	2012	Diamorphine	6,200,000
40	B.O.	7	2	5	2011	Diamorphine	90,000
41	E.McN.	7	2	5	2010	Diamorphine	100,000
42	M.F.	13	3	10	2012	Diamorphine	953,800
43	R.E.	7	4	3	2010	Diamorphine	150,000
44	A.C.	10	4	6	2012	Diamorphine	Unknown
45	K.B.	10	4	6	2012	Diamorphine	Unknown
46	P.G.	12	5	7	2011	Diamorphine	1,600,000
47	B.W.	6	6	0	2011	Diamorphine	145,600
48	E.A.F.	8	6	2	2010	Diamorphine	1,600,000
49	P.K.	5	2	3	2009	Ecstasy	86,000

50	J.K.	7	3	4	2010	Ecstasy/ Cocaine/ Cannabis	19,000
51	D.C.	11	0	11	2009	LSD	619,000
52	N.L.	4	4	0	2012	MDMA/ Cocaine	17,664
53	G.G.	7.5	1	6.5	2009	MDMA/ Ecstasy/ Cannabis Resin/ Cocaine	66,213
54	E.B.	6	0	6	2009	Unknown	278,000
55	W.S.	7.5	0	7.5	2011	Unknown	28,540
56	K.R.	10	0	10	2011	Unknown	23,440
57	J.P.D.	10	1.67	8.33	2011	Unknown	2,800,000
58	A.A.	5	2	3	2009	Unknown	Unknown
59	A.B.	7	2	5	2010	Unknown	16,000
60	D.H.	3	3	0	2010	Unknown	30,000
61	T.U.	12	3	9	2011	Unknown	240,000

## 4.2. By Drug Value

### 4.2.1. Sentences for Convictions under s. 15

	Name	Sentence Imposed	Years Suspended	Total Custodial	Year	Drug	Value (€)
1	D.R.	5	2	3	2011	Cannabis resin	875
2	Z.M.	2	0	2	2009	Ecstasy	1,000
3	P.O'M.	5	1	4	2011	Diamorphine	2,000
4	K.W.	5	2	3	2011	Cocaine/ Diamorphine (€20)	2,300
5	B.O'S.	5	1	4	2010	Diamorphine	2,800
6	P.O'C.	4	1	3	2009	Cannabis resin	4,275
7	P.M.	Unknown	Unknown	Unknown	2009	Diamorphine	4,426
8	D.B.	5	0	5	2011	Diamorphine	5,185
9	C.B.	2	0	2	2009	Cannabis resin	5,295
10	S.F.	5	2	3	2010	Cannabis resin	6,800
11	L.C.	2	0	2	2010	Cannabis herb/ Cocaine	8,000
12	P.McD.	3	1	2	2009	Cocaine	8,080
13	D.O'N.	5	1	4	2012	Cocaine	10,000
14	G.M.	3	3	0	2009	Cocaine	15,000
15	J.M.	5	4.25	0.75	2009	Ecstasy	16,000
16	P.B.	3.5	3.12	0.38	2011	Cocaine	16,575
17	B.F.	6	2	4	2011	Cocaine	18,000
18	J.F.	5		5	2011	Cocaine	18,940
19	F.H.	3	2	1	2010	Cannabis	30,000
20	M.O'C.	3	0	3	2010	Unknown	Unknown

4.2.2. *Sentences for Convictions under s. 15A or s. 15B*

	Name	Sentence Imposed	Years Suspended	Total Custodial	Year	Drug	Value (€)
1	A.B.	8	0	8	2010	Cocaine	13,000
2	P.G.	3	3	0	2009	Cocaine	16,000
3	A.B.	7	2	5	2010	Unknown	16,000
4	N.L.	4	4	0	2012	MDMA/ Cocaine	17,664
5	J.K.	7	3	4	2010	Ecstasy/ Cocaine/ Cannabis	19,000
6	K.B.	10	0	10	2009	Cocaine	22,000
7	K.R.	10	0	10	2011	Unknown	23,440
8	W.S.	7.5	0	7.5	2011	Unknown	28,540
9	D.H.	3	3	0	2010	Unknown	30,000
10	P.F.	7	0	7	2010	Cannabis	33,000
11	A.W.	6	6	0	2010	Cocaine	34,370
12	P.K.	10	0	10	2011	Diamorphine	38,979
13	M.R.	7	0	7	2009	Cocaine	39,950
14	G.D.	5	0	5	2010	Cocaine/ Cannabis/ Others	39,956
15	D.O'D.	3	1.5	1.5	2009	Cocaine	43,000
16	R.S.	7	0	7	2010	Cocaine	43,000
17	A.F.	12	0	12	2012	Diamorphine	43,120
18	A.M.	12	0	12	2012	Diamorphine	43,120
19	S.H.	5	0	5	2010	Amphetamines	45,000
20	J.C.	12	2	10	2009	Amphetamines	45,000
21	J.P.L.	5	3.5	1.5	2010	Cocaine	45,000
22	D.H.	10	0	10	2010	Cocaine	51,600
23	N.P.	6	0	6	2010	Cocaine/ Cannabis Herb/ Cannabis Resin	54,600
24	G.G.	7.5	1	6.5	2009	MDMA/ Ecstasy/ Cannabis Resin/ Cocaine	66,213
25	W.D.	8	4	4	2012	Cocaine	69,599
26	M.T.	8	0	8	2009	Cocaine	70,000
27	P.K.	5	2	3	2009	Ecstasy	86,000
28	W.H.	5	2	3	2011	Cannabis	88,380
29	B.O.	7	2	5	2011	Diamorphine	90,000
30	M.P.	7	2	5	2011	Cannabis	100,000
31	E.McN.	7	2	5	2010	Diamorphine	100,000
32	B.W.	6	6	0	2011	Diamorphine	145,600
33	R.E.	7	4	3	2010	Diamorphine	150,000
34	E.B.	6	0	6	2010	Cocaine	159,000
35	F.M.	10	6	4	2010	Cocaine	178,000
36	K.O'C.	8	2	6	2009	Cocaine	191,534
37	J.W.	10	2	8	2010	Cocaine	210,000

38	S.M.	7	4	3	2011	Cocaine	210,119
39	T.U.	12	3	9	2011	Unknown	240,000
40	T.H.	7	3	4	2010	Cocaine	261,702
41	E.B.	6	0	6	2009	Unknown	278,000
42	D.M.	4	2	2	2010	Cannabis	287,050
43	J.M.	7	2	5	2010	Cannabis	287,050
44	M.N.	10	0	10	2009	Cannabis/Cocaine	300,500
45	J.R.	5	5	0	2009	Cocaine	329,301
46	I.A.	11	5	6	2010	Cocaine	457,000
47	D.C.	11	0	11	2009	LSD	619,000
48	A.F.	12	3	9	2011	Cannabis	818,898
49	M.F.	13	3	10	2012	Diamorphine	953,800
50	A.O'L.	10	0	10	2011	Diamorphine	1,261,076
51	E.A.F.	8	6	2	2010	Diamorphine	1,600,000
52	P.G.	12	5	7	2011	Diamorphine	1,600,000
53	J.McG.	8	0	8	2010	Diamorphine	1,600,000
54	V.C.	10	0	10	2010	Cocaine	2,000,000
55	J.P.D.	10	1.67	8.33	2011	Unknown	2,800,000
56	A.McE.	11	2	9	2009	Cannabis/ Cocaine	3,780,000
57	M.B.	18	0	18	2012	Diamorphine	6,200,000
58	J.D.	25	0	25	2011	Cocaine	440,000,000
59	A.C.	10	4	6	2012	Diamorphine	Unknown
60	K.B.	10	4	6	2012	Diamorphine	Unknown
61	A.A.	5	2	3	2009	Unknown	Unknown

### 4.3. By Length of Total Custodial Sentence

#### 4.3.1. Sentences for Convictions under s. 15

	Name	Sentence Imposed	Years Suspended	Total Custodial	Year	Drug	Value (€)
1	G.M.	3	3	0	2009	Cocaine	15,000
2	P.B.	3.5	3.12	0.38	2011	Cocaine	16,575
3	J.M.	5	4.25	0.75	2009	Ecstasy	16,000
4	F.H.	3	2	1	2010	Cannabis	30,000
5	Z.M.	2	0	2	2009	Ecstasy	1,000
6	C.B.	2	0	2	2009	Cannabis resin	5,295
7	L.C.	2	0	2	2010	Cannabis herb/ Cocaine	8,000
8	P.McD.	3	1	2	2009	Cocaine	8,080
9	D.R.	5	2	3	2011	Cannabis resin	875
10	K.W.	5	2	3	2011	Cocaine/ Diamorphine (€20)	2,300
11	P.O'C.	4	1	3	2009	Cannabis resin	4,275
12	S.F.	5	2	3	2010	Cannabis resin	6,800
13	M.O'C.	3	0	3	2010	Unknown	Unknown



14	P.O'M.	5	1	4	2011	Diamorphine	2,000
15	B.O'S.	5	1	4	2010	Diamorphine	2,800
16	D.O'N.	5	1	4	2012	Cocaine	10,000
17	B.F.	6	2	4	2011	Cocaine	18,000
18	D.B.	5	0	5	2011	Diamorphine	5,185
19	J.F.	5	0	5	2011	Cocaine	18,940
20	P.M.	Unknown	Unknown	Unknown	2009	Diamorphine	4,426

*4.3.2. Sentences for Convictions under s. 15A or s. 15B*

	Name	Sentence Imposed	Years Suspended	Total Custodial	Year	Drug	Value (€)
1	P.G.	3	3	0	2009	Cocaine	16,000
2	J.R.	5	5	0	2009	Cocaine	329,301
3	A.W.	6	6	0	2010	Cocaine	34,370
4	B.W.	6	6	0	2011	Diamorphine	145,600
5	N.L.	4	4	0	2012	MDMA/ Cocaine	17,664
6	D.H.	3	3	0	2010	Unknown	30,000
7	D.O'D.	3	1.5	1.5	2009	Cocaine	43,000
8	J.P.L.	5	3.5	1.5	2010	Cocaine	45,000
9	D.M.	4	2	2	2010	Cannabis	287,050
10	E.A.F.	8	6	2	2010	Diamorphine	1,600,000
11	W.H.	5	2	3	2011	Cannabis	88,380
12	S.M.	7	4	3	2011	Cocaine	210,119
13	R.E.	7	4	3	2010	Diamorphine	150,000
14	P.K.	5	2	3	2009	Ecstasy	86,000
15	A.A.	5	2	3	2009	Unknown	Unknown
16	T.H.	7	3	4	2010	Cocaine	261,702
17	W.D.	8	4	4	2012	Cocaine	69,599
18	F.M.	10	6	4	2010	Cocaine	178,000
19	J.K.	7	3	4	2010	Ecstasy/ Cocaine/ Cannabis	19,000
20	S.H.	5	0	5	2010	Amphetamines	45,000
21	M.P.	7	2	5	2011	Cannabis	100,000
22	J.M.	7	2	5	2010	Cannabis	287,050
23	G.D.	5	0	5	2010	Cocaine/ Cannabis/ Others	39,956
24	B.O.	7	2	5	2011	Diamorphine	90,000
25	E.McN.	7	2	5	2010	Diamorphine	100,000
26	A.B.	7	2	5	2010	Unknown	16,000
27	E.B.	6	0	6	2010	Cocaine	159,000
28	K.O'C.	8	2	6	2009	Cocaine	191,534
29	I.A.	11	5	6	2010	Cocaine	457,000
30	N.P.	6	0	6	2010	Cocaine/ Cannabis Herb/ Cannabis Resin	54,600

31	A.C.	10	4	6	2012	Diamorphine	Unknown
32	K.B.	10	4	6	2012	Diamorphine	Unknown
33	E.B.	6	0	6	2009	Unknown	278,000
34	G.G.	7.5	1	6.5	2009	MDMA/ Ecstasy/ Cannabis Resin/ Cocaine	66,213
35	P.F.	7	0	7	2010	Cannabis	33,000
36	M.R.	7	0	7	2009	Cocaine	39,950
37	R.S.	7	0	7	2010	Cocaine	43,000
38	P.G.	12	5	7	2011	Diamorphine	1,600,000
39	W.S.	7.5	0	7.5	2011	Unknown	28,540
40	A.B.	8	0	8	2010	Cocaine	13,000
41	M.T.	8	0	8	2009	Cocaine	70,000
42	J.W.	10	2	8	2010	Cocaine	210,000
43	J.McG.	8	0	8	2010	Diamorphine	1,600,000
44	J.P.D.	10	1.67	8.33	2011	Unknown	2,800,000
45	A.F.	12	3	9	2011	Cannabis	818,898
46	A.McE.	11	2	9	2009	Cannabis/ Cocaine	3,780,000
47	T.U.	12	3	9	2011	Unknown	240,000
48	J.C.	12	2	10	2009	Amphetamines	45,000
49	M.N.	10	0	10	2009	Cannabis/ Cocaine	300,500
50	K.B.	10	0	10	2009	Cocaine	22,000
51	D.H.	10	0	10	2010	Cocaine	51,600
52	V.C.	10	0	10	2010	Cocaine	2,000,000
53	P.K.	10	0	10	2011	Diamorphine	38,979
54	A.O'L.	10	0	10	2011	Diamorphine	1,261,076
55	M.F.	13	3	10	2012	Diamorphine	953,800
56	K.R.	10	0	10	2011	Unknown	23,440
57	D.C.	11	0	11	2009	LSD	619,000
58	A.F.	12	0	12	2012	Diamorphine	43,120
59	A.M.	12	0	12	2012	Diamorphine	43,120
60	M.B.	18	0	18	2012	Diamorphine	6,200,000
61	J.D.	25	0	25	2011	Cocaine	440,000,000

#### 4.4. By Length of Suspension of Sentence

##### 4.4.1. Sentences for Convictions under s. 15

	Name	Sentence Imposed	Years Suspended	Total Custodial	Year	Drug	Value (€)
1	L.C.	2	0	2	2010	Cannabis herb/ Cocaine	8,000
2	C.B.	2	0	2	2009	Cannabis resin	5,295
3	D.B.	5	0	5	2011	Diamorphine	5,185
4	Z.M.	2	0	2	2009	Ecstasy	1,000
5	M.O'C.	3	0	3	2010	Unknown	Unknown

6	P.O.C.	4	1	3	2009	Cannabis resin	4,275
7	P.McD.	3	1	2	2009	Cocaine	8,080
8	D.O'N.	5	1	4	2012	Cocaine	10,000
9	P.O'M.	5	1	4	2011	Diamorphine	2,000
10	B.O'S.	5	1	4	2010	Diamorphine	2,800
11	F.H.	3	2	1	2010	Cannabis	30,000
12	D.R.	5	2	3	2011	Cannabis resin	875
13	S.F.	5	2	3	2010	Cannabis resin	6,800
14	B.F	6	2	4	2011	Cocaine	18,000
15	K.W.	5	2	3	2011	Cocaine/ Diamorphine (€20)	2,300
16	G.M.	3	3	0	2009	Cocaine	15,000
17	P.B.	3.5	3.12	0.38	2011	Cocaine	16,575
18	J.M.	5	4.25	0.75	2009	Ecstasy	16,000
19	P.M.	Unknown	Unknown	Unknown	2009	Diamorphine	4,426
20	J.F.	5		5	2011	Cocaine	18,940

*4.4.2. Sentences for Convictions under s. 15A or s. 15B*

	Name	Sentence Imposed	Years Suspended	Total Custodial	Year	Drug	Value (€)
1	S.H.	5	0	5	2010	Amphetamines	45,000
2	G.D.	5	0	5	2010	Cocaine/ Cannabis/ Others	39,956
3	E.B.	6	0	6	2010	Cocaine	159,000
4	N.P.	6	0	6	2010	Cocaine/ Cannabis Herb/ Cannabis Resin	54,600
5	E.B.	6	0	6	2009	Unknown	278,000
6	P.F.	7	0	7	2010	Cannabis	33,000
7	M.R.	7	0	7	2009	Cocaine	39,950
8	R.S.	7	0	7	2010	Cocaine	43,000
9	W.S.	7.5	0	7.5	2011	Unknown	28,540
10	A.B.	8	0	8	2010	Cocaine	13,000
11	M.T.	8	0	8	2009	Cocaine	70,000
12	J.McG.	8	0	8	2010	Diamorphine	1,600,000
13	M.N.	10	0	10	2009	Cannabis/ Cocaine	300,500
14	K.B.	10	0	10	2009	Cocaine	22,000
15	D.H.	10	0	10	2010	Cocaine	51,600
16	V.C.	10	0	10	2010	Cocaine	2,000,000
17	P.K.	10	0	10	2011	Diamorphine	38,979
18	A.O'L.	10	0	10	2011	Diamorphine	1,261,076
19	K.R.	10	0	10	2011	Unknown	23,440
20	D.C.	11	0	11	2009	LSD	619,000
21	A.F.	12	0	12	2012	Diamorphine	43,120
22	A.M.	12	0	12	2012	Diamorphine	43,120
23	M.B.	18	0	18	2012	Diamorphine	6,200,000
24	J.D.	25	0	25	2011	Cocaine	440,000,000
25	G.G.	7.5	1	6.5	2009	MDMA/ Ecstasy/ Cannabis Resin/ Cocaine	66,213
26	D.O'D.	3	1.5	1.5	2009	Cocaine	43,000
27	J.P.D.	10	1.67	8.33	2011	Unknown	2,800,000

28	D.M.	4	2	2	2010	Cannabis	287,050
29	W.H.	5	2	3	2011	Cannabis	88,380
30	P.K.	5	2	3	2009	Ecstasy	86,000
31	A.A.	5	2	3	2009	Unknown	Unknown
32	M.P.	7	2	5	2011	Cannabis	100,000
33	J.M.	7	2	5	2010	Cannabis	287,050
34	B.O.	7	2	5	2011	Diamorphine	90,000
35	E.McN.	7	2	5	2010	Diamorphine	100,000
36	A.B.	7	2	5	2010	Unknown	16,000
37	K.O'C.	8	2	6	2009	Cocaine	191,534
38	J.W.	10	2	8	2010	Cocaine	210,000
39	A.McE.	11	2	9	2009	Cannabis/ Cocaine	3,780,000
40	J.C.	12	2	10	2009	Amphetamines	45,000
41	P.G.	3	3	0	2009	Cocaine	16,000
42	D.H.	3	3	0	2010	Unknown	30,000
43	T.H.	7	3	4	2010	Cocaine	261,702
44	J.K.	7	3	4	2010	Ecstasy/ Cocaine/ Cannabis	19,000
45	A.F.	12	3	9	2011	Cannabis	818,898
46	T.U.	12	3	9	2011	Unknown	240,000
47	M.F.	13	3	10	2012	Diamorphine	953,800
48	J.P.L.	5	3.5	1.5	2010	Cocaine	45,000
49	N.L.	4	4	0	2012	MDMA/ Cocaine	17,664
50	S.M.	7	4	3	2011	Cocaine	210,119
51	R.E.	7	4	3	2010	Diamorphine	150,000
52	W.D.	8	4	4	2012	Cocaine	69,599
53	A.C.	10	4	6	2012	Diamorphine	Unknown
54	K.B.	10	4	6	2012	Diamorphine	Unknown
55	J.R.	5	5	0	2009	Cocaine	329,301
56	I.A.	11	5	6	2010	Cocaine	457,000
57	P.G.	12	5	7	2011	Diamorphine	1,600,000
58	A.W.	6	6	0	2010	Cocaine	34,370
59	B.W.	6	6	0	2011	Diamorphine	145,600
60	E.A.F.	8	6	2	2010	Diamorphine	1,600,000
61	F.M.	10	6	4	2010	Cocaine	178,000

#### 4.5. By Year

##### 4.5.1. Sentences for Convictions under s. 15

	Name	Sentence Imposed	Years Suspended	Total Custodial	Year	Drug	Value (€)
1	G.M.	3	3	0	2009	Cocaine	15,000
2	C.B.	2	0	2	2009	Cannabis resin	5,295
3	P.O'C.	4	1	3	2009	Cannabis resin	4,275
4	P.McD.	3	1	2	2009	Cocaine	8,080
5	P.M.	Unknown	Unknown	Unknown	2009	Diamorphine	4,426
6	Z.M.	2	0	2	2009	Ecstasy	1,000
7	J.M.	5	4.25	0.75	2009	Ecstasy	16,000
8	F.H.	3	2	1	2010	Cannabis	30,000
9	L.C.	2	0	2	2010	Cannabis herb/ Cocaine	8,000

10	S.F.	5	2	3	2010	Cannabis resin	6,800
11	B.O'S.	5	1	4	2010	Diamorphine	2,800
12	M.O'C.	3	0	3	2010	Unknown	Unknown
13	D.R.	5	2	3	2011	Cannabis resin	875
14	B.F.	6	2	4	2011	Cocaine	18,000
15	P.B.	3.5	3.12	0.38	2011	Cocaine	16,575
16	J.F.	5		5	2011	Cocaine	18,940
17	K.W.	5	2	3	2011	Cocaine/ Diamorphine (€20)	2,300
18	D.B.	5	0	5	2011	Diamorphine	5,185
19	P.O'M.	5	1	4	2011	Diamorphine	2,000
20	D.O'N.	5	1	4	2012	Cocaine	10,000

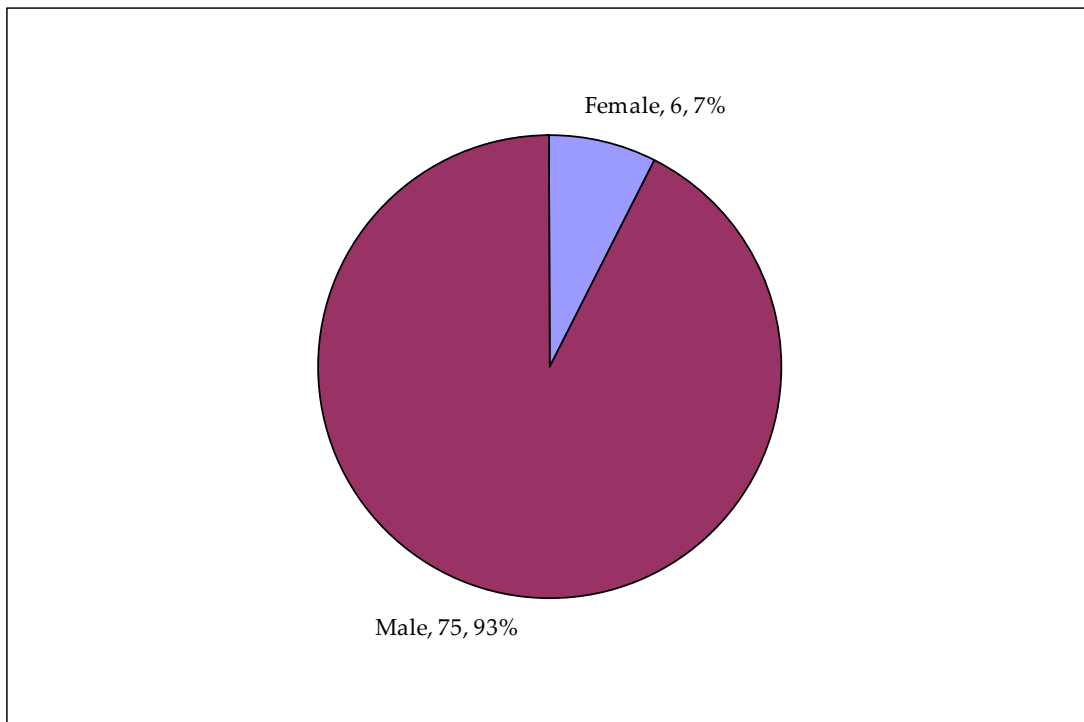
*4.5.2. Sentences for Convictions under s. 15A or s. 15B*

	Name	Sentence Imposed	Years Suspended	Total Custodial	Year	Drug	Value (€)
1	J.C.	12	2	10	2009	Amphetamines	45,000
2	A.McE.	11	2	9	2009	Cannabis/ Cocaine	3,780,000
3	M.N.	10	0	10	2009	Cannabis/ Cocaine	300,500
4	M.R.	7	0	7	2009	Cocaine	39,950
5	M.T.	8	0	8	2009	Cocaine	70,000
6	K.B.	10	0	10	2009	Cocaine	22,000
7	D.O'D.	3	1.5	1.5	2009	Cocaine	43,000
8	K.O'C.	8	2	6	2009	Cocaine	191,534
9	P.G.	3	3	0	2009	Cocaine	16,000
10	J.R.	5	5	0	2009	Cocaine	329,301
11	P.K.	5	2	3	2009	Ecstasy	86,000
12	D.C.	11	0	11	2009	LSD	619,000
13	G.G.	7.5	1	6.5	2009	MDMA/ Ecstasy/ Cannabis Resin/ Cocaine	66,213
14	E.B.	6	0	6	2009	Unknown	278,000
15	A.A.	5	2	3	2009	Unknown	Unknown
16	S.H.	5	0	5	2010	Amphetamines	45,000
17	P.F.	7	0	7	2010	Cannabis	33,000
18	D.M.	4	2	2	2010	Cannabis	287,050
19	J.M.	7	2	5	2010	Cannabis	287,050
20	E.B.	6	0	6	2010	Cocaine	159,000
21	R.S.	7	0	7	2010	Cocaine	43,000
22	A.B.	8	0	8	2010	Cocaine	13,000
23	D.H.	10	0	10	2010	Cocaine	51,600
24	V.C.	10	0	10	2010	Cocaine	2,000,000
25	J.W.	10	2	8	2010	Cocaine	210,000
26	T.H.	7	3	4	2010	Cocaine	261,702

*Analysis of Sentencing for Possession or Importation of Controlled Drugs for Sale or Supply*

27	J.P.L.	5	3.5	1.5	2010	Cocaine	45,000
28	I.A.	11	5	6	2010	Cocaine	457,000
29	A.W.	6	6	0	2010	Cocaine	34,370
30	F.M.	10	6	4	2010	Cocaine	178,000
31	N.P.	6	0	6	2010	Cocaine/ Cannabis Herb/ Cannabis Resin	54,600
32	G.D.	5	0	5	2010	Cocaine/ Cannabis/ Others	39,956
33	J.McG.	8	0	8	2010	Diamorphine	1,600,000
34	E.McN.	7	2	5	2010	Diamorphine	100,000
35	R.E.	7	4	3	2010	Diamorphine	150,000
36	E.A.F.	8	6	2	2010	Diamorphine	1,600,000
37	J.K.	7	3	4	2010	Ecstasy/ Cocaine/ Cannabis	19,000
38	A.B.	7	2	5	2010	Unknown	16,000
39	D.H.	3	3	0	2010	Unknown	30,000
40	W.H.	5	2	3	2011	Cannabis	88,380
41	M.P.	7	2	5	2011	Cannabis	100,000
42	A.F.	12	3	9	2011	Cannabis	818,898
43	J.D.	25	0	25	2011	Cocaine	440,000,000
44	S.M.	7	4	3	2011	Cocaine	210,119
45	P.K.	10	0	10	2011	Diamorphine	38,979
46	A.O'L.	10	0	10	2011	Diamorphine	1,261,076
47	B.O.	7	2	5	2011	Diamorphine	90,000
48	P.G.	12	5	7	2011	Diamorphine	1,600,000
49	B.W.	6	6	0	2011	Diamorphine	145,600
50	W.S.	7.5	0	7.5	2011	Unknown	28,540
51	K.R.	10	0	10	2011	Unknown	23,440
52	J.P.D.	10	1.67	8.33	2011	Unknown	2,800,000
53	T.U.	12	3	9	2011	Unknown	240,000
54	W.D.	8	4	4	2012	Cocaine	69,599
55	A.F.	12	0	12	2012	Diamorphine	43,120
56	A.M.	12	0	12	2012	Diamorphine	43,120
57	M.B.	18	0	18	2012	Diamorphine	6,200,000
58	M.F.	13	3	10	2012	Diamorphine	953,800
59	A.C.	10	4	6	2012	Diamorphine	Unknown
60	K.B.	10	4	6	2012	Diamorphine	Unknown
61	N.L.	4	4	0	2012	MDMA/ Cocaine	17,664

#### **4.6. Breakdown of Offenders by Gender**



*Of the 61 sentences for ss. 15A or 15B offences analysed herein, five of those sentenced were female and 56 were male. Of those 20 convicted and sentenced under s. 15, 19 were male and one was female.*