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Mandatory Minimum Sentences in S. 15A Drug Cases.

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Introduction

The law with respect to the illegal possession of drugs was significantly affected by new provisions in The Criminal Justice Act, 1999, which came into force on the 26th May, 1999. Section 4 of that Act inserted a new s.15A into the Misuse of Drugs Act, 1977. This new section introduced the specific offence of possession of drugs with a market value of over £10,000, (often referred to as s.15A charges) and applied for the first time the principle of a mandatory minimum sentence with respect to these offences. The sentence to be imposed ranged from a maximum of life imprisonment to a mandatory minimum of 10 years. This revealed the determination of the Oireachtas to address the issue of the growing illegal drugs trade and to impose substantial prison sentences for those involved.

Despite the presence of the mandatory minimum sentence, s.27(3)(C) of the Act of 1977, as amended, does leave an element of discretion to the trial judge to impose a lesser sentence in certain circumstances. It is the application of this discretionary element that has led to some interesting Court of Criminal Appeal decisions in this area. This article proposes to analyse a number of these decisions to determine how the new legislation has been applied by the courts and whether any clear patterns have emerged in this area.

The Legislation

Section.4 of the Act of 1999 inserted the new section 15A into the Misuse of Drugs Act, 1977, as follows:

(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 £10,000 of more."

Section 5 of the 1999 Act amended section 27 of the 1977 Act by inserting after section 27 (3) the following subsections:-

"(3A) Every person guilty of an offence under section 15A shall be liable, on conviction on indictment -

(a) to imprisonment for life or such shorter period as the court may, subject to subsections (3B) and (3C) of this section, determine, and

(b) at the court's discretion, to a fine of such amount as the court considers appropriate.

(3B) Where a person (other than a child or young person) is convicted of an offence under section 15A, the court shall, in imposing sentence, specify as the minimum period of imprisonment to be served by that person a period of not less than 10 years imprisonment.

(3C) Subsection (3B) 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 this purpose the court may have regard to any matters it considers appropriate, including:-

(a) whether that person pleaded guilty to the offence and, if so,
(i) the stage at which he indicated the intention to plead guilty, and
(ii) the circumstances in which the indication was given, and
whether that person materially assisted in the investigation of the offence."

This interpretation of this new section has caused much confusion in this area. This is especially the case where the court has to determine whether or not there are any "exceptional and specific circumstances" within the meaning of s.27 (3C) which would make it unjust to impose the 10 year mandatory minimum sentence.

Caselaw

(i) Renald

The leading case in this area is the Court of Criminal Appeal decision of *The People (The Director of Public Prosecutions) v. James Chipi Renald*[1]. This case concerned a South African national who had applied for refugee status on his arrival in the country. A friend, whom he met in Ireland, asked him to take delivery of a package, for which the applicant would be paid €200. Although suspicious, he agreed and

1. Unreported, Court of Criminal Appeal, Murphy, Lavan and Budd JJ., 23rd November, 2001.

subsequently a suitcase addressed to his friend, arrived at the applicant's apartment. Pursuant to a warrant, the apartment was searched by the Gardaí, and the suitcase was found, in which 9.3 kilograms of cannabis were hidden, with an estimated market value of £18,600. The applicant pleaded guilty in the Circuit Criminal Court to a s.15A charge and received five years' imprisonment.

The severity of this sentence was appealed to the Court of Criminal Appeal. In the Circuit Criminal Court, the trial judge found that this case came within s. 27(3C), as the applicant had made a full statement, assisted the Gardaí in discovering the real suspects, had no previous convictions, was not a principal party in the supply of drugs and had only received a promise of £200. The investigating officer gave evidence to the effect that it was unlikely the applicant would re-offend and the court heard of the sad family history of the applicant. There was also the fact the applicant was a foreigner with a very different cultural and political background. Although the trial judge did not specify which of the above factors in her opinion actually brought the case within s.27(3C), she imposed a lesser sentence than the mandatory minimum prescribed by the statute.

On appeal, counsel for the applicant argued that once s.27(3B) i.e. the mandatory minimum sentence of 10 years, was found not to apply, then the mandatory minimum sentence should be ignored by the court in determining the sentence. Counsel further argued that the court should have regard to the nature, value and quantity of the drug found in the applicant's possession, in deciding the appropriate sentence. Counsel's first argument was based on the wording of s.27(3C), which provides as follows "Subsection (3B) of this section *shall not apply where...*" This, it was argued, erased the mandatory minimum sentence and therefore, the trial judge was incorrect when she proceeded to use it as a benchmark by reference to which the appropriate sentence was to be fixed, having regard to all the relevant mitigating factors. The Court of Criminal Appeal, (the Court), rejected this argument. Murphy J. stated:-

> "Even where exceptional circumstances exist which would render the statutory minimum term of imprisonment unjust, there was no question of the minimum sentence being ignored. 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 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 staring point for determining the appropriate sentence. To do so would be to ignore the other material provision *i.e.*, 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."

The court went on to state that where the trial judge was satisfied that "exceptional and specific circumstances" existed which would render it unjust to impose the mandatory minimum 10 year sentence, then he could examine those circumstances to see whether a lesser sentence ought to be imposed. However, the existence of such circumstances did "not reduce the inherent seriousness of the offence."

Counsel's second argument was that the trial judge should have had regard to the nature, value and quantity of the drug concerned. The Court accepted that although s. 27(3C) specified certain matters which were material in assessing whether or not the mandatory minimum sentence would be unjust, i.e. whether there had been a plea of guilty, at what stage had it been made and whether the individual had assisted the Gardaí in their investigations, the legislation permitted the court to "have regard to any matters it considers appropriate." Counsel on behalf of the applicant argued that regard should have been had to the fact the drugs here were cannabis and as such it was less harmful than other controlled drugs. The trial judge had rejected this argument on the basis that the application of the section was determined by the value rather than the category of the drugs involved.

The court accepted that a distinction has been made in the legislation for some purposes between cannabis and other controlled drugs, for example in the sentencing of summary offences, but held that this was an argument of "very limited value." On the one hand the court stated that in cases where the value of the drugs, as opposed to their nature, determined the outcome, that made this argument irrelevant. On the other hand, it accepted that it was a factor "to which a sentencing judge in his or her discretion might attach some limited significance."

The court was satisfied that the trial judge had not erred in law in imposing the sentence of five years but felt that in all the circumstances, it was appropriate to suspend the final two years of it. The mitigating factors highlighted by the court were: the cooperation with the Gardaí, the absence of previous convictions, and the difficulties the applicant would face serving a term of imprisonment in this jurisdiction. Only the first of these reasons is specifically referred to in the legislation, the latter two coming within the remit of matters the court "consider[ed] appropriate." The court could not determine whether or not the trial judge was too rigid in her approach or whether she did not give adequate weight to the mitigating factors, which were present.

It was not made clear by this decision how exactly trial judges are to approach the mandatory minimum sentence in cases where they felt that to impose the 10 years would have been unjust. The benchmark approach, adopted by the trial judge in this case, was neither expressly approved of or ruled out, however as no error in law was found, it could be assumed that the approach was acceptable, although not the only option open to trial judges. With respect to matters which might amount to "exceptional and specific" factors, the court included the consideration of the absence of any previous convictions and the difficulties that the applicant would face in serving his sentence in this jurisdiction as a foreign national, as well as the specific factors set out in the legislation. Throughout its judgment, the court emphasised the seriousness of these cases as evidenced by the very existence of the new mandatory minimum sentence in the legislation. However, it is to be noted that the Court of Appeal did suspend the final two years of the five year sentence, even though it was held that there had been no error in principle made by the trial judge.

(ii) Duffy

The next decision of the Court of Criminal Appeal was the case of *The People (The Director of Public Prosecutions) v. John Duffy*[2] handed down a month after the *Renald* decision by the Chief Justice. This case concerned the proprietor of a car valeting business on whose premises £130,000 worth of cannabis resin, £10,000 worth of cannabis and 135 ecstasy tablets was found. On pleading guilty, the applicant received one sentence of six years along with lesser sentences for other charges, all to run concurrently.

The court examined the procedure adopted by the trial judge in determining the sentence, which was as follows: First, he would decide on the appropriate sentence ignoring any mitigating factors, then he would take these factors into consideration and make the necessary deduction. If this resulted in a sentence of over 10 years then that would be the sentence he would impose. If, however it resulted in a sentence of less than 10 years, then he would consider whether this ought to be raised to the statutory minimum, having regard to the relevant legislation. The trial judge at first considered that the appropriate sentence was one of 20 years' imprisonment given the seriousness of the case, however he revised this downwards to 15 years, having heard from the applicant's counsel. The plea of guilty and lack of previous convictions were then taken into consideration and the sentence was reduced to six years. He finally concluded that it would be inappropriate to increase this sentence to the statutory minimum as there was no indication of a pattern of similar behaviour, the applicant had pleaded guilty and had assisted the court in pleading guilty to an additional charge for which he had not yet been returned.

The court was satisfied that this approach was essentially in harmony with the law in this area as laid down by Murphy J., in the *Renald* case (as quoted above). It stated that although other approaches may also be correct, what was important was that in assessing the appropriate sentence the trial judge took into account the statutory minimum, "as he was not only entitled but bound to do" , reiterating the point that even where "exceptional and specific circumstances" are found to exist, the mandatory minimum sentence was never to be ignored.

The court did comment that had the trial judge stuck with his original sentence of 20 years' imprisonment minus the mitigating factors, that this would have been too high. However, the reduction to 15 years and the following deductions made for the plea of guilty and the lack of any previous convictions found favour with the Court of Appeal. The court concluded with a remark emphasising the seriousness of this type of offence, stating that "[t]hose who undertake this trade must be left under no illusions as to the consequences for them when they are brought to justice."

(iii) Hogarty

The decision of *The People (The Director of Public Prosecutions) v. David Hogarty*[3], was delivered on the same day by the same court as the *Duffy* case. The law, as set out in *Renald* by Murphy J., was again endorsed by the court. Here the applicant had been involved in making deliveries of drugs for around three months prior to his arrest. The drugs here consisted of two consignments of cannabis resin with a market value of £100,000 each. The applicant was to receive £150 for his role in the deliveries. The applicant pleaded guilty in the Circuit Criminal Court and received two sentences of six years and six months, to run concurrently. The trial judge had set out exactly how he approached the case:-

> "I have taken the view, since this particular piece of legislation was introduced, that the court in dealing with these matters is effectively looking at a sentence of 10 years' imprisonment in relation to the person pleading guilty to such offence. But that in cases where a plea of guilty has been entered and where there has been cooperation, that that is a factor that the court can use to reduce that 10 year tariff."

In so far as this passage could be taken to mean that a person convicted of this type of offence should be sentenced to 10 years' imprisonment unless a plea of guilty was entered and there was cooperation with the investigation (which would then render a lower sentence appropriate), the Court of Appeal was satisfied that such would be "an erroneous construction of the provisions." The court's view was that "It is clear that the legislature envisaged that a sentence in excess of 10 years, including a sentence of imprisonment for life, may be imposed in respect of such offences." However as such an approach, although erroneous in point of law, was to the benefit and not the detriment of the applicant, it did not constitute a ground on which the court felt it could interfere with the sentences actually imposed and therefore, the court found no error in principle. It also found that every allowance had been made for the applicant's plea of guilty, his cooperation with the investigation, his lack of previous convictions and his particular family circumstances (he had a long standing relationship with his girlfriend and two children). The importance of the role of couriers in the facilitation of the illegal drugs trade was again emphasised by the court as was its own role to uphold the policy behind the legislation. Again, although the seriousness of this type of offence was emphasised by the court, it was still reluctant to impose the statutory minimum sentence of 10 years.

(iv) Benjamin and Peyton

Two more decisions in this area were handed down by the Court of Criminal Appeal *ex tempore* in January, 2002: *The People (The Director Of Public Prosecutions) v. Karen Benjamin*[4] *and The People (The Director Of Public Prosecutions) v. Mark Peyton*[5].

In the *Benjamin* case, the applicant had been sentenced to 10 years' imprisonment by the trial judge, who himself certified the case fit for an appeal on the basis that due to the cooperation given by the applicant to the Gardaí, a major drug dealer was apprehended. The actual facts of this case were not given in much detail in the judgment of the Court of Criminal Appeal, however a passage from the trial judge

2. Unreported, Court of Criminal Appeal, Keane C.J., O'Higgins and Butler JJ., 21st December, 2001.
3. Unreported, Court of Criminal Appeal, Keane C.J., O'Higgins and Butler JJ., 21st December, 2001.
4. Ex tempore, Court of Criminal Appeal, Denham, Johnson and O'Sullivan JJ., 14th January, 2002.
5. Ex tempore, Court of Criminal Appeal, Denham, Johnson and O'Sullivan JJ., 14th January, 2002.

was quoted outlining some of the circumstances of the case. It involved a South African national, found to be a very vulnerable person with little to gain from the crime. We were told the amount was "considerable", but not the actual amount involved. The trial judge went on to say that had he the power to do so, he would, after imposing a 10 year sentence, review it within one year with a view to suspending the balance, having taken into consideration any time already served. He was also of the opinion that it would not be in the best interests of this woman to deport her to South Africa as that could lead to "grievous consequences" for her. The applicant appealed the severity of this sentence on a number of grounds including the failure of the trial judge to take into account the relevant factors. These factors were in particular, that the applicant had made a full admission on arrest, that she had behaved in a manner as set out in the transcript, her plea of guilty at the earliest opportunity, that she played only a small role in the operation as a courier with little prospect of earning much money, she had a history of depression and the fact that she had no previous convictions. In her judgment, Denham J. outlined the law in this area and referred to the earlier decisions of the Court of Criminal Appeal in *Renald, Duffy* and *Hogarty*. Firstly, she determined what the appropriate sentence should be, given the seriousness of the offence. As it was not at the top end of the scale, she decided that the sentence of 10 years would be appropriate. The next step was to examine the particular circumstances of the case in light of the law in general and in light of the relevant legislation. With respect to the law in general, the plea of guilty attracted a deduction of one third, which brought it below the statutory minimum. This meant a further analysis must be made with respect to the legislation. As far as the statutory minimum sentence was concerned, the Court was satisfied that it would be unjust in all the circumstances to impose a sentence of 10 years in this case and so it came within s.27(3C) of the legislation. The early and consistent plea of guilty having already been considered, the Court referred to "all the exceptional factors which appear in the transcript" being taken into consideration. Although these factors were not listed, presumably this referred to the cooperation the applicant had given the Gardai with respect to their further investigations. The Court also found relevant the fact that the applicant only had a small role to play and received a limited amount of money, that she had a psychiatric history and had no previous convictions. The fact that the drug in question was cannabis was found only to be of limited relevance, in accordance with the judgment of Murphy J., in the *Renald* case. The Court considered that in light of the foregoing, the sentence ought to be reduced to a sentence of five years with the final four years being suspended. It highlighted again the importance of the applicant's plea of guilty along with her cooperation with the Gardai investigation as the reasons for their decision.

The *Peyton* case concerned a very different type of applicant who had been sentenced to 12 years imprisonment for the possession of €30,000 worth of ecstasy tablets. In this case, the applicant was found to be involved in the drugs business, had been known to the Gardai for the last 10 years and could not be described as a mere courier (as in the previous cases). The trial judge accepted that at the time the applicant had committed the offence, he had been suffering severely from withdrawal symptoms and this had been a substantial factor leading to the offence. Referring to the rehabilitation course the applicant was undergoing at the time of sentencing, the trial judge stated that he did not have the power to sentence the applicant to carry out this course, but rather his only option was to send the applicant to prison. According to the Court of Criminal Appeal, this offence would have attracted 16 years with the plea having the effect of reducing it to 12 years. On examining the circumstances of this case, the Court felt that the trial judge had made no error in principle in the imposition of a 12 year sentence. The Court noted that whereas it did possess a degree of discretion in light of the legislation, this did not include "restorative justice in conflict with the legislation", thus rejecting the idea of a sentence of drug rehabilitation.

These two decisions highlight some of the factors (not specified in the legislation) that the court will consider relevant in deciding whether it is unjust in all the circumstances to impose the mandatory minimum sentence. These factors are; the actual role that was played in the operation, the vulnerability of the accused and whether they are a foreign national. Even though the role of couriers was considered to be very serious as stated in the *Duffy* and *Hogarty* cases, in practice the court does not seem keen to impose the mandatory minimum in such cases and appears amenable to bringing them within the scope of s.27(3C). This was particularly apparent in the *Benjamin* case where the applicant received what can be considered a lenient sentence despite the fact that the courts regularly emphasise that "those who willingly enter into the trade for financial reward ... cannot expect to receive anything but severe treatment from the courts"(*per* Keane C.J., in *Hogarty*). However, when it comes to the so-called bigger players in the drugs world, the court adopts a more rigid approach, seeking (it would seem) to more heavily penalise those who organise and profit most from the drugs trade.

(v) Heffernan

In *The People (The Director of Public Prosecutions) v. Edward Heffernan*[6], the Director of Public Prosecutions brought an appeal against the leniency of the sentence, pursuant to s. 2 of the Criminal Justice Act, 1993. The applicant had pleaded guilty to a s.15A charge of possession of drugs which had a market value of €18,000. He was sentenced to two and half years' imprisonment. In the court's judgment, Hardiman J. accepted that the trial judge had made an error in principle. The court found that the weight the trial judge gave to the mitigating factors in the case was not excessive. In reducing the sentence from the minimum of 10 down to four years, it was noted that this adequately reflected all of the mitigating factors present in the case. The problem arose when the trial judge then proceeded to further reduce the sentence to two and half years by "[h]aving regard to the matters that I have determined in mitigation." The court found that the trial judge could only have been referring to the matters which had allowed him to bring the case within the remit of s. 27(3C). The sentence of four years was considered to be appropriate in the circumstances of the case and the court substituted that for the

6. *Ex tempore*, Court of Criminal Appeal, Hardiman, Carroll and Peart JJ., 10th October, 2002.

original two and half years sentence. The Court of Appeal did not go into the facts of this case so we do not discover what were the mitigating factors. However, a sentence of four years was still considerably less than the mandatory 10 year minimum. Hardiman J. stated in the judgment that the effect of the legislation was "to trammel judicial discretion" in cases like this one. He also seemed to question the wisdom of the Oireachtas in imposing mandatory minimum sentences, and stated that the Oireachtas had

> "for reasons that seem to them sufficient, indicated a minimum sentence of a substantial nature in respect of these offences. They have presumably, in doing so considered the fact that such sentences might be regarded as harsh in certain circumstances and on certain individuals. In this Court we have to attend to the determination of the Oireachtas as expressed in the statutory language and not permit it to be gainsaid except in circumstances which the statute itself envisaged."

This is the clearest criticism of the legislation in this area, suggesting that mandatory sentences can result in undue hardship on certain individuals. However Hardiman J. noted that no doubt the Oireachtas had considered this point and, he accepted (albeit, it would appear, with some reluctance) that thereafter, it was the role of the courts to apply the terms of the legislation as set out in the statute.

In this case, the four year sentence was still considerably less than the mandatory minimum and yet there was a sense that this may have been unduly harsh on the applicant. However we do not have the facts of the case to determine exactly how. It would be interesting to see if the actual circumstances were such as to warrant a less lenient approach than that adopted in the *Benjamin* case or whether it was a case where the Court actually applied the legislation more stringently.

(vi) Dunne

In *The People (Director of Public Prosecutions) v. Rachel Dunne*[7], the applicant had received a sentence of seven years' imprisonment having pleaded guilty to possession of £570,000 of heroin. The appeal was on the basis that the trial judge erred in principle in two respects. Firstly, it was argued that she had undue regard to the statutory minimum sentence of 10 years by using it as her benchmark and secondly, that she erred by refusing to allow the sentence to be listed for review.

On the first point, the Court of Criminal Appeal noted that this case was determined prior to the *Hogarty* judgment. Finlay Geoghegan J. referred to the passage of Chief Justice Keane where he stated that using the 10 year minimum sentence as a sentencing benchmark was not the correct construction of the statutory provisions insofar as the legislature envisaged a possible maximum sentence of life. However as the approach adopted by the trial judge was again in the applicant's favour, it did not provide a ground upon which the Court could interfere with the sentence actually imposed.

The second ground of appeal was an important point and had not been raised in the Court of Criminal Appeal before. Section 27(3G) of the Misuse of Drugs Act, 1977 (as inserted by s.5 of the Criminal Justice Act, 1999) states that:-

> "In imposing a sentence on a person convicted of an offence under section 15A of this Act, a court-
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> (a) may inquire whether at the time of commission of the offence the person was addicted to one or more controlled drugs, and
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> (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 period specified by the Court under subsection (3B) of this section."

The Court of Appeal was of the view that the trial judge took the correct approach in her interpretation of this issue. Finlay Geoghegan J. noted that the wording of the section confined the listing for review to the cases in which the trial court had imposed the mandatory minimum sentence as set out in s.27(3B). The judge went on to highlight the fact that prior to the Supreme Court decision in the case of *The People (The Director of Public Prosecutions) v. Finn*[8], it had been the general practice of many judges to impose reviews as part of the sentence and therefore, it may well have been that the legislature was merely trying to clarify that where the crime had been committed by an addict, cases which had received the statutory minimum were still entitled to be listed for review after one half of the sentence had been served. The *Finn* decision however, which was delivered post the Act of 1999, held that the practice of imposing reviews as part of the sentence should be discontinued. So although it may have been assumed that such a general power existed at the time of the legislation, in the absence of any express provision following the *Finn* case, the trial court could not impose a provision for review as part of the sentence. Finlay Geoghegan J. stated that:-

> "Subsection 3G in its terms only gives a court power to do so where a minimum sentence provided for in subs. 3B is imposed by the court as was not done in this case."

The court found that the trial judge was correct in determining that s. 27(3B) should not apply as the applicant had readily admitted possession, pleaded guilty and co-operated with the Gardaí. The applicant's personal and family history were also taken into consideration. As s.27(3B) did not apply, the trial judge had no power to impose a review as part of the sentence.

This judgment highlights the anomaly in this area brought about by the *Finn* decision. In practice, if an addict receives the minimum 10 year

7. Unreported, Court of Criminal Appeal, Hardiman, O'Sullivan and Finlay Geoghegan JJ., 17th October, 2002.
8. [2001] 2 I.R. 25.

sentence, he can have his sentence listed for review after five and this could result in his release at that stage. This means that a person upon whom the statutory minimum sentence is imposed because it is not "unjust" in the circumstances, may serve less time than someone who had, at the time of sentence, received the benefit of s.27(3C) because of the mitigating factors in his case.

Conclusion

In determining the appropriate sentence, the Court of Appeal has not laid out a specific approach and has left this to the discretion of the trial judge. However, some guidelines have been established. It has been determined that it is inappropriate to use as a benchmark the mandatory minimum sentence where to do so would be to ignore the presence of the maximum sentence of life imprisonment. Thus, a trial judge should not work from the premise that unless there has been a plea of guilty, a 10 year sentence should be imposed. Also, once the trial judge takes the view that s.27(3C) applies, he cannot then ignore the mandatory minimum sentence -- it can be appropriate in these circumstances to use the 10 year figure as a benchmark, although this is not the only approach - the key factor is that the seriousness of the offence is reflected in the sentence.

A review of the decisions of the Court of Criminal Appeal, shows that the majority of the cases are brought within the terms of s27(3C). In *Renald*, the sentence was left at five years but the final two were suspended on the basis that the sentence seemed excessive in all the circumstances. In *Duffy* and *Hogarty*, the sentences were left unchanged at six and six and half years, respectively. The *Benjamin* case led to the most extreme reduction by the Court, down from the statutory minimum to five years with the final four suspended in light of the exceptional circumstances. In *Peyton* the applicant's sentence of 12 years was left unchanged, as the applicant was involved in the drugs business. The Director of Public Prosecution's appeal against leniency in *Heffernan* led to an increase in the sentence from two and a half years to four years, in circumstances where it would seem the trial judge gave the mitigating factors a double effect in reducing the sentence. In Dunne, the Court was unwilling to interfere with the discretion of the trial judge and left the sentence at seven years.

Six out of seven of the above cases received sentences under the statutory minimum. So even though it was at pains to assert that no leniency would be tolerated in this area, the Court of Criminal Appeal has showed a general reluctance to impose the mandatory minimum sentence in practice. On the one hand, the discretionary element of s.27(3C) leads to uncertainty in the area. On the other hand, not to allow such discretion could lead to great injustices. As far as the "exceptional and specific circumstances" are concerned, it is clear that the Court has placed a clear emphasis on the importance of the plea of guilty and any cooperation given to the Gardai, two factors specified in the legislation. However other factors which may be taken into consideration as the trial judge deems appropriate, seem to include, the timing and nature of the plea, whether the cooperation yielded any results, the actual role played by the person, the amount, and to a limited extent, the type of drugs involved, the individual's family and personal circumstances, nationality, any pattern of behaviour and whether there are previous convictions. The trial judge can therefore attach certain weight to the circumstances of the case as he considers appropriate and this can lead to sizeable differences in approach by each trial judge. However a "one size fits all approach" is clearly undesirable in an area where there is such a discrepancy between the different roles an individual may play.

In general, there can often be a wide variation in the sentences actually imposed with respect to the same crimes, depending on the circumstances of each case. It would seem that this remains the case even where the Oireachtas has specifically endeavoured to legislate against it. The fact that the court has a residual discretionary power and is entitled to take into consideration "any matters it considers appropriate" as per s. 27(3C), is probably what saved the provisions from any constitutional challenge, according to Professor Thomas O'Malley[9]. He has also stated that what was really introduced by the legislation was, "presumptive sentencing" rather than mandatory sentencing. This accords with the view that the concept of mandatory sentencing has only a limited part to play because of its inflexibility. Perhaps, then, the Oireachtas should only go so far as to provide sentencing guidelines, leaving a large measure of discretion to the trial court, which has the benefit of hearing all the evidence in each individual case.

A final point should be made with respect to the question of reviewing sentences. It would seem appropriate that this should be addressed by the legislature in order to ensure that those sentenced to the statutory minimum are not more favourably treated than those who fall within the remit of s. 27(3C), due to the mitigating circumstances of their case. ●

9. Sentencing Law and Practice, at p. 102.