

**IRISH SPORT ANTI-DOPING DISCIPLINARY PANEL**

**IN THE MATTER OF**

**MOTOR CYCLING UNION OF IRELAND**

**V**

**Athlete IS-3061**

**REASONED DECISION**

**A. INTRODUCTION AND REASONED DECISION**

1. This is the Reasoned Decision of the Irish Sport Anti-Doping Disciplinary Panel (the “Panel”) in proceedings brought by the Motor Cycling Union of Ireland (the “Union”) under the Irish Anti-Doping Rules (2009 Version 4) (the “Rules”) against IS-3061, a motor cross competitor.
2. The Anti-Doping Rule violation alleged against Mr IS-3061 was that the presence of a Prohibited Substance or its Metabolites or Markers, namely, methylecgonine (Metabolite of cocaine) was found in Sample of urine collected from Mr IS-3061 in In Competition Testing on [...] 2014 contrary to Article 2.1 of the Rules.

**B. PROCEDURAL BACKGROUND**

3. Mr IS-3061 was informed of the alleged Anti-Doping Rule violation by the Irish Sports Council by letter dated 6 November 2014. The Irish Sports Council also informed the Union, the International Federation of the Union, the World Anti-Doping Agency and the Panel of the alleged violation on 6 November 2014. In that correspondence, Mr IS-3061 was informed:
  - (a) of his right to have a hearing before the Panel on the issue of the alleged Anti-Doping Rule violation or the sanction to apply if the violation is admitted.
  - (b) the consequences for him should it be admitted or found that he had committed the alleged Anti-Doping Rule violation, namely, the automatic Disqualification of the individual result obtained by him in that competition with all resulting consequences, including forfeiture of any medals, titles, points and prizes (Article 9.1

and Article 9.2) and the imposition upon of Mr IS-3061 of a period of Ineligibility for a first violation of the Rules of not less than two (2) years' Ineligibility (Article 10.1).

- (c) that the period of Ineligibility would start on the date of the decision of the hearing Panel but if that Mr IS-3061 promptly admitted to the Anti-Doping Rule violation after the date of the letter (6 November 2014) the sanction imposed may provide for the commencement of the period of Ineligibility on the date the Anti-Doping Rule violation occurred, e.g. the date of the Sample collection (Article 10.7.2).
  - (d) the basis upon which Mr IS-3061 could seek to have the period of Ineligibility reduced (Article 10.4) and the circumstances in which the Panel could consider if there were aggravating circumstances to increase the period of Ineligibility (Article 10.5).
  - (e) his right to admit the violation by 27 November 2014 and in the absence of any denial that he would be deemed to have admitted the violation (Article 7.3.2.9)
  - (f) his right to have his B Sample tested and the deadline for so requesting of 20 November 2014. (Mr IS-3061 did not exercise that right).
  - (g) that the Union were provisionally suspending Mr IS-3061 from 6 November 2014.
4. The Panel wrote to Mr IS-3061 on 21 November 2014 referring to the letter of 6 November 2014, informing him again that he was entitled under the Rules to a hearing before the Panel on the question as to whether a violation of the Rules had occurred and, if so, what consequences or sanctions should be imposed in respect of such violation. It was further pointed out that even if Mr IS-3061 admitted the alleged violation he was still entitled to a hearing before the Panel in relation to the consequences or sanctions in respect of such violations.
5. Prior to the hearing of the Panel Mr IS-3061 did have discussions with Siobhan Leonard of the Irish Sports Council and Nicola Carroll, secretary to the Panel. They repeated to him the explanations of his rights and potential sanctions arising on a hearing, suggested to him that he might consider taking legal advice or bringing a third party with him to the hearing and that he had the option of admitting the violation. Mr IS-3061 did not commit as to whether or not he would do so in those discussions. He did not admit the violation by the deadline and so was deemed to have admitted it (Article 7.3.2.9).

**C. HEARING ON 9 DECEMBER 2014**

6. At the Hearing on 9 December 2014 the Union were represented by Jane Ferry BL and Sarah

Byrne solicitor of Raymond Quinn solicitors. The Irish Sports Counsel was represented by Siobhan Leonard. Present on behalf of the Union was Bernard Kelleher. Mr IS-3061 was present at the hearing, unrepresented and attended on his own.

7. On behalf of the Union Ms Ferry presented the case and took the Panel through the relevant provisions of the Rules and all the documentary evidence available in relation to the taking of an In Competition Sample from Mr IS-3061, the results which evidence the trace of a Metabolites or Markers of Prohibited Substance in his Sample, relevant certificates in relation to those results and all subsequent correspondence involving the Irish Sports Council, the Union, the Panel and Mr IS-3061.
8. Mr Kelleher on behalf of the Union explained that the Union does run Anti-Doping training and before Athletes renew their licence for annual competition they must sign a certificate confirming that they have participated in training. Mr IS-3061 had completed this documentation before renewing his licence in advance of the competition at which the In Competition Anti-Doping violation occurred.
9. The first issue which the Panel had to determine was what period of Ineligibility should be imposed upon Mr IS-3061 in respect of a first violation of Article 2.1, namely the presence of Prohibited Substance or its Metabolite or Marker in Mr IS-3061' sample. Article 10.1 provides that the period of Ineligibility for a first violation of Article 2.1 shall be two (2) years' Ineligibility unless the conditions for eliminating or reducing the period of Ineligibility as provided in Articles 10.3 and Article 10.4, or conditions for increasing the period of Ineligibility, as provided in Article 10.5, are met.
10. Article 10.3 is relevant where the Prohibited Substance is also a Specified Substance and where its use can be explained as not being intended to enhance an athlete's performance. The Metabolite or Marker of cocaine found in Mr IS-3061 system is not a Specified Substance so Article 10.3 is not applicable. Article 10.4 provides for the elimination or reduction of a period of Ineligibility in the exceptional circumstances where the Athlete may be guilty of No Fault or Negligence or No Significant Fault Or Negligence in terms of the ingestion of the Prohibited Substance. Mr IS-3061 gave evidence that he knowingly and willingly took cocaine on the night before the competition and in those circumstances Article 10.4 is not applicable. There was no evidence adduced of any aggravating circumstances of the kind justifying an increase of the penalty as provided for in Article 10.5.
11. Ms Ferry concluded her submission by submitting on behalf of the Union that the appropriate period of Ineligibility in Mr IS-3061 case was one she would comment on once she

had heard from Mr IS-3061. Mr IS-3061 confirmed he was admitting the violation, having taken the substance willingly and knowingly. In the circumstances Ms Ferry submitted that the relevant period of Ineligibility should be as set out in Article 10.1, namely two (2) years and that there was no basis for reducing that period.

12. Mr IS-3061 [...] confirmed that he was well aware of the Anti-Doping regime and had attended training. He said that on the morning of the competition when he saw the Anti-Doping tester's van he was keeping his fingers crossed. Mr IS-3061 did not explain why he did not withdraw from the competition at this stage given that he knew he was vulnerable to failing an Anti-Doping test.
13. The second issue which the Panel had to determine was when the period of Ineligibility should commence. Under Article 10.7, the general rule is set that the period of Ineligibility starts on the date of the decision providing for the Ineligibility. There are two exceptions to the Rule:
  - (a) If an athlete promptly admits the violation (which in all events means before the Athlete competes again) after being notified of the alleged violation the sanction may provide for commencement of the period of Ineligibility as early as the date the same was taken provided the Athlete serves at least half of the period of ineligibility imposed (Article 10.7.2).
  - (b) Where a Provisional Suspension is imposed and respected by the Athlete. In those circumstances the Athlete shall receive a credit for such period of Provisional Suspension against any period of Ineligibility which may ultimately be imposed (Article 10.7.3.1)

**D. PANEL'S DECISIONS**

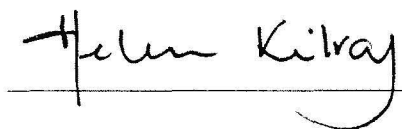
14. Having considered the submissions and the evidence before it the Panel was in position to give its Ruling immediately following the hearing on 9 December 2014. The Panel was comfortably satisfied that the appropriate period of Ineligibility under Article 10.1 of the Rules in respect of Mr IS-3061 violation was the minimum period of two (2) years. The Panel was satisfied that there were no circumstances in which that period should could either be reduced or increased under Articles 10.3, 10.4 and 10.5 respectively.
15. Mr IS-3061 finished second in the competition on the day of the Anti-Doping violation, received a trophy but did not receive any prize money. That result is automatically disqualified under Article 9.1.

16. Having regard to Article 10.7.3.1 of the Rules of the Panel was satisfied that Mr IS-3061 was entitled to credit for the period of his Provisional Suspension, which commenced on 6 November 2014 and the Period of Ineligibility shall run from that date.
17. Under Article 13.2.1 of the Rules this decision can be appealed within fourteen days of today's date in accordance with the procedures set out under the Rules.

E. CONCLUDNG REMARKS

18. The Panel wishes to highlight to the Irish Sports Council, as has been done before, the potential imbalance that arises where an Athlete is not legally represented at a hearing and the possibility that Mr IS-3061 might have admitted the violation earlier had he the benefit of independent legal advice. Had he done so his period of Ineligibility might have been back dated by a further three weeks to the date of the violation on [...] 2014. In this case the point is not material in the context of the period of Ineligibility being two years but in other cases it might be. The Irish Sports Council or National Governing Bodies may be able to assist Athletes in the future in accessing free legal advice to help address the potential imbalance, which in turn should deliver more efficient disposal of cases such as this where the violation was clear cut.
19. Finally, the Panel wishes to thank its Secretary, Ms Nicola Carroll BL, for her hard work and assistance in relation to these proceedings. The Panel would also like to thank the parties and participants in the proceedings for their assistance.

Dated 19 December 2014

A handwritten signature in black ink that reads "Helen Kilroy". The signature is written in a cursive style and is positioned above a horizontal line.

Signed on behalf of the Panel by

Helen Kilroy