R v Stalford and O'Neill
COURT OF APPEAL (CRIMINAL DIVISION)

MACDERMOTT LJ, CARSWELL LJ3 MAY 1996

3 May 1996MacDERMOTT LJ (SITTING WITH CARSWELL LJ)
On Friday 19 April 1996 we heard two appeals against sentence by two young men charged with various offences in relation to the possession of controlled drugs. As each appeal raised the same primary issue – namely the appropriate sentence for possession with intent of the drug Ecstasy – we reserved judgment and decided to deal with both cases in one judgment.

The Case of Stalford

Stalford was born on 25 July 1974. In April 1995 he was the tenant of a flat – 40c Braeside Grove, Braniel on the eastern outskirts of Belfast. About 6.25 pm on 29 April the police conducted a planned search of the premises. On a table in the living room were scales and a knife and cannabis was clearly being cut up for packaging and distribution. A thorough search of the premises revealed:

131 grammes of cannabis resin

35 Ecstasy tablets

28 grammes of amphetamine

The street value of the drugs seized was put at £2,125 and His Honour Judge Hart QC who dealt with the case on 2 February 1996 was clearly entitled to describe Stalford as a drug dealer on a significant scale.

The indictment in this case contained five counts:-

1 Possession of the Ecstasy tablets (a class A drug)

2 Possession of the cannabis (a class B drug)

3 Possession of the Ecstasy with intent to supply

4 Possession of the cannabis with intent to supply

5 Possession of the amphetamine (also a class A drug)

Stalford pleaded guilty on arraignment to all counts and was sentenced on counts 1, 4 and 5 to three years' imprisonment, on count 2 to two years and on count 3 to four years. The sentences were ordered to be served concurrently and so Stalford faces an effective sentence of 4 years' imprisonment. In sentencing as he did the Judge very properly drew a distinction between charges of simple possession and charges of

possession with intent to supply and he also rightly imposed longer sentences in respect of class A drugs as compared to those in class B.

Mark Simpson was also present in this flat at the time of Stalford's arrest. His pleas of guilty to counts 1 and 2 were accepted and counts 3 and 4 were ordered to remain 'on the books' of the Court. On Count 1 Simpson received a sentence of 9 months' imprisonment and on count 2 a concurrent sentence of 6 months. Simpson appealed against those sentences but sensibly withdrew his appeal on the sitting of the Court.

The Case of O'Neill

The appellant pleaded guilty to all six counts on the indictment when arraigned on 29 January 1996, and on 14 February he was sentenced at Londonderry Crown Court by Judge Burgess to the following periods of detention in the Young Offenders Centre.

Count 1 – Possession of class A drugs with intent to supply – 3 years

Count 2 – Possession of class B drugs – 9 months

Count 3 – Possession of class A drugs – 18 months

Count 4 – Possession of class A drugs – 18 months

Count 5 – Possession of class B drugs – 12 months

Count 6 – Possession of class B drugs – 12 months.

All sentences were concurrent, and accordingly the effective sentence was that of 3 years.

On 17 June 1995 at approximately 10.00 pm the appellant was seen by a police patrol outside Doherty's Bar in Londonderry with a group of young men gathered around him. When he became aware of the presence of police he went into the bar. The police patrol then left the area but returned a short time later, and again saw the appellant accompanied this time by a different group of youths. When the appellant saw the police patrol he threw a plastic bag to the ground, which was immediately seized by one of the officers.

The bag contained seven Ecstasy tablets and two blocks of cannabis resin, the total weight of which was 2.127 grammes. The appellant told the police that he had bought the tablets for £70 and the cannabis for £20 from a man outside Doherty's Bar. At first he indicated that his intention was to sell the tablets for £15 each, a profit of £5 per tablet, but in a subsequent interview he averred that they were for his own use. He was found to have the sum of £147.64 on him, which he asserted that he had won on betting on horses and dogs and did not come from drug dealing. In the course of interview the appellant also admitted that on a couple of occasions in May

1995 he had bought 2 or 3 Ecstasy tablets at raves at Kelly's Hotel, Portrush and that on the same nights he had bought and smoked cannabis joints.

Miss Philpott QC (who appeared with Mr Hill for Stalford) and Mr McNeill (appearing on behalf of the appellant O'Neill) advanced similar arguments which can be summarised thus: the effective sentences of 4 years imprisonment (Stalford) and 3 years detention (O'Neill) were manifestly excessive because:

(a) the amount and value of the drugs seized were comparatively small;

(b) the sentences were out of line with sentences imposed in the guideline cases of R v Hogg and Others 7 July 1995 and R v Haveron and Others 7 July 1995;

(c) each had pleaded guilty at the first available opportunity, namely on arraignment;

(d) each was comparatively young at the time of offending (Stalford 21 and O'Neill 20);

(e) O'Neill has no previous record and Stalford's record is one of petty crime. He seems to have been before the court on 24 November 1994 for possession of cannabis but that charge seems to have been adjourned for some time and is of little materiality in the context of the present case;

(f) each appears to have been addicted to drugs at the time of his offence.

We have already mentioned the cases of Hogg and Haveron and do not repeat the good sense enshrined in those cases, which remain a useful guide to sentencing. We would also mention the recent case of Gallagher and Mullan (15 December 1995) in which this court drew attention to the fact that the use of Ecstasy was escalating in this province, that it was a dangerous and potentially lethal drug, that those possessing it faced lengthy custodial sentences and that sentences on those participating in this evil trade would continue to rise as the courts in a discharge of their public duty sought to deter people, and especially young people, from having anything to do with Ecstasy and other class A drugs. That does not mean that the courts adopt a tolerant view towards class B drugs. That is not the position in this jurisdiction no matter what may be fashionable elsewhere. We also note Warren and Beeley [1996] 1 CAR(S) 233 and [1995] Crim LR 838 where the revealed statistics make it all too clear that the use of Ecstasy in England and Wales is also escalating in an alarming fashion.

We turn back from those general observations to counsel's arguments in the present cases and in doing so we record our appreciation of the careful and detailed nature of their submissions, which must, however, be viewed in the context of their clients' being in possession of dangerous drugs and being engaged in an evil trade. As was said in R v McLaughlin 16 CAR(S) 357, 358 "Even those who play minor roles in the distribution of drugs must expect substantial sentences".

(a) The value and quantity of the drugs seized

As was pointed out in Warren and Beeley (Page 236) the value of drugs seized is no longer a helpful criterion when passing sentence, because the more drugs there are on the market (which is the danger) the more prices are driven down. As we pointed out in Gallagher and Mullan, Holland J dealt with the 'small quantity' argument in Asquith 16 CAR(S) 453 (a seizure of 44 Ecstasy tablets) and said "the starting point for the considerations of a court when having to sentence a person involved with intent to supply is, in truth, five years". We adhere to that view. A sentencer will wish to know as much as he can about the accused with whom he is dealing: possession of any amount of Ecstasy with intent to supply reveals him to be a person who is prepared to involve himself in the drug trade for his own financial benefit or to feed his addiction. It also must not be forgotten that in facilitating himself he may be introducing the buyer to drugs or fuelling the addiction of others. In this case Stalford was dealing in drugs: O'Neill, whose package contained seven tablets, might have passed himself off as a 'one time' possessor of a small quantity of drugs, but his frank statement to the police showed that twice during the previous May he had bought 2 or 3 tablets. Thus the amount of drugs seized may indicate a false picture; it may be the tip of a more significant "iceberg" and the sentencer should seek to discover the reality of the situation.

(b) Other allegedly comparable cases

Rarely is reference to the sentences in an earlier case of particular value. There are three flaws in such an approach: (1) Similarities may be more apparent than real – for instance a judge may impose a lenient sentence because of some personal weakness in an accused's character or because he has been co-operative with the police but consider it unfair to emphasise such matters when passing sentence. (2) A sentence which comes before a court on appeal and is confirmed is not necessarily the maximum proper sentence for that offence. (3) The court's level of sentencing may increase if circumstances so require. This has occurred in relation to firearms offences (R v Carroll) 22 December 1992 and certainly represents the approach of the courts in the jurisdiction in the face of persistent drug offending. In R v Large (1981) 3 CAR(S) 80, 82 Griffiths LJ (as he then was) said:-

"By reason of the appeals which constantly come before it the court is aware of the general level of sentencing throughout the country. If, when individual sentences are being considered, it was permissible for counsel to analyse sentences passed by other judges on other occasions for other offences the work of this court would come to a standstill. It would occupy the time of the court to an inordinate extent and would do no more than draw its attention to the sentencing practice of a particular judge on a particular occasion in circumstances quite different from those with which the court is immediately concerned."

In this court we are regularly referred to cases in Dr Thomas' Encyclopedia, but as Alliott J observed in R v Serzin 16 CAR(S) 4 at 6 "The value of Dr Thomas' work

cannot be overstated, but direct comparisons between specific sets of facts are extraordinarily difficult".

Another factor which must always be borne in mind is that experienced County Court Judges are well aware of the problems in their own areas of jurisdiction – if they believe that a particular form of offending (for instance drug offences) requires particularly deterrent sentencing then an appeal court which is not familiar with the problems on the ground should be slow to set aside a sentence as manifestly excessive unless justice so requires.

We have looked carefully at the cases upon which Miss Philpott and Mr McNeill relied heavily – Millar, Harris and Guiney. They do not purport to set the ceiling for sentences in respect of possession of class A drugs with intent. The most that can be said is that the sentences imposed were not considered excessive at that time. In this particular sphere as time moves on judicial knowledge and concern grows and we are satisfied that on what we know of those cases the sentences would be considered lenient today.

As to (c): The pleas of guilty

It has long been accepted that a material factor in sentencing is the fact that an accused has pleaded guilty and this mitigating factor is of particular weight when made at the first available opportunity – namely arraignment. That is what both appellants did in this case. Popplewell J put the point this way in R v Landy 16 CAR(S) 908 at 909:-

"As a matter of general policy courts will give credit to a defendant who pleads guilty because the court recognises thereby some remorse, the saving of time and the avoidance of witnesses having to attend court".

But that case and R v Hastings [1996] 1 CAR(S) 168 are also a salutary reminder that in some cases a maximum sentence may be the proper sentence even though the accused has pleaded guilty. That issue does not arise in these cases, but Parliament's attitude towards possession of class A drugs with intent to supply can be seen in the fact that the maximum sentence is life imprisonment.

We are satisfied that each judge did give full weight to the pleas of guilty in the case before him. Indeed we would record that the remarks on sentencing by each judge pay tribute to the great care with which each approached the difficult task of determining the appropriate sentence.

(d&e) The Age and Background of the Appellants

Both appellants are comparatively young men. Sadly however experience shows that it is at just that age that people stupidly become active in the use and supply of dangerous drugs and it is in their interest as well as that of the public generally that the courts must enforce deterrent sentences. Background circumstances are relevant

in any case but as was said in R v Slater and Scott 16 CAR(S) 870 at 877 "good character in offences of this gravity are of little importance". As we observed in the course of the argument, no judge likes to send a young person to prison or detention for a period of years, but when such persons get involved in drugs offences it is the judicial duty to impose stiff but appropriate sentences. We would note that Miss Philpott informed us that Stalford is now very much aware of the error of his ways and participated in a television programme emphasising the folly of involvement in the drug scene. We bear this in mind, but while a late conversion to good sense and behaviour is an encouraging feature it must be looked at in the overall seriousness of Stalford's offending. Counsel reminded us of the truism that the parents of the appellants are greatly distressed by their sons' plight. This is understandable and we have sympathy for them. Such suffering is an additional aspect of the suffering caused by the use and supply of dangerous drugs.

(f) The Appellant's Addiction

This is not a mitigating factor. We would repeat the forceful observation of Simon Brown J (as he then was) in R v Lawrence 10 CAR(S) 463 at 464:-

"We cannot make too plain the principle to be followed. It is no mitigation whatever that a crime is committed to feed an addiction, whether that addiction be drugs, drink, gambling, sex, fast cars or anything else. If anyone hitherto has been labouring under the misapprehension that it was mitigation, then the sooner and more firmly they are disabused of it the better."

We have taken the opportunity to look afresh at all aspects of these cases. We bear in mind all the points advanced by counsel and which arise out of the careful probation and medical reports. We are satisfied that while the sentences in these cases were stiff such sentences were appropriate and not excessive – let alone manifestly excessive. The appeals are dismissed.

Appeal Dismissed