IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

-V-

JOHN JOSEPH CONLON

CARSWELL LCJ
McCOLLUM LJ

At Downpatrick Crown Court on 20 September 1996 the applicant John Joseph Conlon pleaded guilty to 4 Counts of offences against the Misuse of Drugs Act 1971. On the same indictment Ian Pulford pleaded guilty to 3 counts for which he was sentenced to total of 6 months' imprisonment.

Both sought leave to appeal but Pulford, with the leave of the Court, withdrew his application on the morning of the hearing.

The charges were a consequence of a search of Pulford's flat in Dundonald at about 6.40 pm on Friday, 12 April 1996.

On entering the flat Detective Constable Robinson saw the applicant and noticed a cigarette on the table in front of him which the officer suspected was a cannabis cigarette. This he extinguished and seized. He seized also a small piece of brown resinous material from the table in front of Conlon and a packet of Rizla papers from the same table.

Another officer found a plastic money bag on Conlon's person which contained 26 small blocks of cannabis, a packet of Rizla papers, a piece of paper with names on it and £61.51 in cash.

During interview Conlon admitted smoking approximately a quarter of an ounce of cannabis each week. The cannabis found on the table in front of him, he said, was £10 worth of cannabis he had purchased earlier that day in a bar in Belfast. He stated that the cannabis found in his pocket was worth about £400 and admitted to dealing in cannabis for about 2 months. When asked about the source of the £61.51 in cash he explained that this was his benefit money.

Forensic evidence established that the piece of cannabis taken from the table weighed 261 milligrams and the 26 pieces of cannabis found in the applicant's pocket weighed 92.37 grams.

The applicant is 26 and has no previous drug related offences although in June 1994 he was convicted of burglary and theft for which he received a sentence of 2 months' imprisonment and in July 1994 of criminal damage arising out of the same incident, for which he served a community service order for 130 hours.

He told Miss Mcloughlin, the Probation Officer, that those offences related to the theft of copper pipes from vacant houses in Belfast which he intended to sell to purchase drugs.

In his sentence remarks Judge Hart said:

"He was therefore dealing on a modest scale. On his behalf, Miss Philpott has referred to the fact that he has changed his lifestyle and that he has successfully completed a course of treatment for his drug addiction at the Shaftesbury Square Clinic.

That I must say is encouraging but it cannot in any way deter the court from imposing what would be an appropriate sentence for his past behaviour in a case of this nature".

The applicant appears to have had a troubled family history and to have had difficulties in coping with life and apparently attempted to take an overdose in April of this year after which he was admitted to Knockbracken Health Care Park for a period of one week. It appears that for a considerable period of time the applicant's life style involved abuse of both drugs and alcohol as a result of which he was rarely able to find or keep employment. However, according to the probation officer's report, he recognised the consequences of his activities and managed after being charged to abstain from drugs for a period between his initial arrest and the hearing. He attended Shaftesbury Square Hospital and received treatment on an outpatient's basis for his drug problem and the treatment appears to have been working effectively.

The applicant pleaded guilty to the following offences:

On count 1 – possession of a class B controlled drug, for which he received a sentence of 18 months' imprisonment

Count 2 – possession of a class B controlled drug with intent to supply for which he was sentenced to 2 years' imprisonment; and

Counts 3 and 4 – supplying a class B controlled drug – 2 years' imprisonment on each count. All sentences to be concurrent.

He applies for leave to appeal against the severity of the sentence on the following grounds;

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1. The sentence of the Learned Trial Judge was manifestly excessive in that: -
    a. the Learned Trial Judge did not give sufficient weight to the defendant's mental state nor the observations contained in the Medical and Probation Reports indicating the effect an immediate custodial sentence was likely to have on the defendant's mental health;
    b. the Learned Trial Judge did not give sufficient weight to the fact that the defendant was being sentenced in respect of Class B drugs only – R v Hogg, Osborne, Young, Bradshaw and Guiney, 4 February 1994;
    c. even if the mental state of the defendant could not have amounted to an exceptional circumstance which warranted a non-custodial sentence it was sufficient to affect the length of the custodial sentence which the Court should impose;
    d. the Learned Trial judge did not give sufficient weight to the fact that the defendant had taken successful treatment to deal with his addiction.
2. The sentence was wrong in principle in that there was too great a difference between the length of the sentence given to the defendant and that given to his co-accused."

Sadly this court has had occasion to express its view on drugs offences on a number of occasions.

However, in the present case, as Miss Philpott QC has pointed out to us, there are a number of mitigating factors which are of some significance.

In the first place, the only drug involved is cannabis, a class B drug, and the quantity is modest.

Secondly, the applicant did plead guilty at the first opportunity.

Thirdly, he seems to have made a firm attempt to bring to an end his use of drugs.

Fourthly, there is no evidence to suggest that the applicant was an active "pusher" of drugs but rather that he supplied persons who came to his premises to obtain the drugs.

This Court takes the view that while it is no excuse and cannot of itself be a mitigating factor that drugs are sold in order to finance a drug habit, nonetheless the need for a deterrent sentence is less marked where a person has drifted into modest

or small scale dealing as a consequence of his lifestyle and drug habit, and has subsequently made a serious effort to change his lifestyle and end the habit of taking drugs.

We feel that there is a reasonable chance that this applicant will permanently rehabilitate himself and it is encouraging that he has already taken steps to do so.

The sentence is at the upper end of those appropriate for small to moderate retailers of Class B drugs.

It would be an entirely appropriate sentence for a person in respect of whom there was no firm evidence of a true resolve for rehabilitation and a cessation of drug dealing activities.

There is sufficient indication in this case that the applicant genuinely does want to put an end to his involvement with drugs to enable the Court to take it into account. Rehabilitation should be encouraged.

We have no doubt that the experience of an immediate sentence of imprisonment is a salutary and necessary one for anyone involved in drug dealing but in the circumstances of this case we take the view that the effects sought to be achieved by such a sentence can be attained by a shorter sentence than that imposed by the learned trial judge, and that the rehabilitation of the applicant may be better served by such a sentence in the light of the psychiatric evidence.

We are now without some misgivings about the future for this young man but we feel that there is sufficient material before us to give rise to the hope that he can escape from a lifestyle which involves drug consumption and the retailing of drugs. Accordingly we regard it appropriate to quash the sentences on count 1 of 18 months' imprisonment and on counts 2, 3 and 4 of 2 years' imprisonment and to substitute for each a sentence 12 months' imprisonment all of which are to run concurrently.