

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

-v-

MING CHEN

Before: Morgan LCJ, Higgins LJ and Coghlin LJ

MORGAN LCJ (giving the judgment of the court ex tempore)

[1] These are applications for leave to appeal against a determinate custodial sentence of six years comprising three years imprisonment and three years on licence imposed by His Honour Judge Miller QC for the offences of possession of Class B drugs, possession of Class B drugs with intent to supply and possession of criminal property. The drug in question was cannabis and the property was €25,450 in cash. The grounds of appeal are that the sentence was manifestly excessive, insufficient weight was attached to the applicant's clear record, the judge wrongly took into account the cultivating paraphernalia found upon a search of the house and the judge failed to distinguish the fact that the applicant was subservient to his co-accused.

[2] The applicant was further sentenced by His Honour Judge Miller QC to a concurrent determinate custodial sentence of twelve months comprising six months custody and six months on licence for the offence of possession of a false identity document namely an Italian driving licence.

[3] The circumstances of the detection can be derived from the contents of CCTV footage taken at the car park of the Quays Shopping Centre in Newry on 28 April 2010. It was described by the learned trial judge as follows:

"The two defendants arrived in a grey Volkswagen Polo driven by Bin Shi with Ming Chen in the front passenger seat. Ming Chen got out of the Polo into the front passenger seat of the adjoining Volkswagen

Golf driven by Jonathan Coyle. Bin Shi a little later got out of the Polo, got round to the open front passenger door of the Golf where he leaned in and remained for a matter of minutes before climbing into the back seat behind Ming Chen. Coyle then removed a plastic bag from the Golf's boot and this was then handed to Ming Chen who removed from it a large wad of Euro notes which he could be seen to rifle through and we now know that there was €25,450 in that package. The package when the police arrived was found underneath the front passenger seat. That was seat where Ming Chen was sitting. Coyle can also be seen passing a book which was a guide to cultivating cannabis to Ming Chen and he also can be seen passing a small bag of herbal cannabis weighing just over 18 grams to this applicant who inspected it on several occasions and this also was found in the front passenger's seat in the foot well. When arrested Ming Chen was found to be in possession of an insurance document in the name of Ling Zang of 9 Greave Crescent, Newry which was a document in respect of a Mazda car. A search of the Polo revealed a number of documents in the name of Ling Zang giving the same address and £280 in cash was also found in Ming Chen's possession. At the time of the discovery of the items in the Volkswagen Golf the defendant Coyle was heard to call out 'that everything there was mine, nothing to do with them'."

[4] In approaching the question of sentence in this case there are a number of factors which in our view are aggravating matters. First of all it is clear that the appellant was linked to the property at 9 Corre Crescent. Within that property there were found substantial materials which had clearly been gathered for the purpose of cultivation and it is of some significance that in addition to those materials which had been gathered that the appellant applicant also received from Mr Coyle, his co-accused, a book in relation to cultivation so there can be no doubt that the applicant was involved in the preliminary stages of a consideration of cultivation at the very least. Secondly, the evidence indicates that the cannabis in question was what was described as high quality skunk and clearly therefore in terms of culpability this must rest at the very highest end of the Class B spectrum. Thirdly, although Mr Sherrard points out to us that the quantities involved do not match the enormous quantities that have been found in a number of such cases, 8.5 kgs still in this jurisdiction constitutes a significant quantity. Fourthly, the meeting of this applicant with Mr Coyle was no accident. It appears that there were phone calls between the applicant and Mr Coyle in the days preceding the meeting which strongly suggest

that there had been a clear arrangement for such a meeting to take place. Fifthly, this was not the first occasion on which this applicant had met Mr Coyle. He accepted that he had done so in the past. And sixth it is clear that the money that was counted by this applicant was being received by him in the course of what was a commercial transaction in relation to significant drug dealing so that when one stands back and looks at the case one finds that here was a man who was engaged in conducting a significant drugs transaction which had been arranged by him through his phone in circumstances where he had access, not just to very substantial quantities of highly quality cannabis but also facilities in relation to cultivation.

[5] We accept that the learned trial judge was obliged to sentence in relation to the charges which were laid against this accused and that those did not include charges of cultivation, but he is entitled to have regard to the surrounding circumstances and indeed were he not take into account the material in relation to cultivation it would have been closing his eyes to the blindingly obvious. This was clearly a case where a deterrent sentence was appropriate and that inevitably therefore diminishes the extent to which the applicant's clear record can play a significant part in the determination of the sentence. We accept that the sentence of six years was a stiff sentence but in our view it cannot be said that the sentence is in any respect manifestly excessive. In those circumstances we refuse the application for leave. We did call upon the Crown and therefore we will grant legal aid to the applicant.