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Judgment: approved by the Court for handing down | *Delivered:* **21/9/2007**
*(subject to editorial corrections)**

IN THE CROWN COURT IN NORTHERN IRELAND

BELFAST CROWN COURT

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THE QUEEN

v

STEPHEN ANTHONY COURTNEY and JEAN BERRY

Icos No 05/059830

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HART J

[1] The defendants are before the court to be sentenced in relation to a number of charges in which they appear on the same indictment. Courtney pleaded guilty to three counts of possession with intent to supply of Class A, B and C drugs, whilst Berry was convicted after a trial by the jury on two counts of money laundering. Count 7 was a charge of possession of criminal property knowing or suspecting that £58,780 represented in whole or in part the proceeds of criminal conduct committed by Stephen Courtney, contrary to s. 329(1) of the Proceeds of Crime Act, 2002 (the 2002 Act). Count 8 was a charge of entering into an arrangement with Courtney to transport the money to England for him, contrary to s. 328(1) of the 2002 Act.

[2] The background to the charges is that at just after 9.00 am on 11 August 2005 the police raided a house at 41 Kingsdale Park, Dundonald. Three people were found on the premises. One was Courtney, the other was a 20 year old lady from the New Lodge area with whom he was having a relationship of some sort, and the third was Berry. Berry's Renault Clio car was parked in the driveway, and as the police arrived she was leaning into the car, clearly preparing to leave as she had with her a bag containing her overnight clothes and toiletries.

[3] A search of the premises led to the discovery of a bag containing 5.1 kilograms of cocaine concealed in the hedge between No 41 and No 43. A number of keys found in the premises led the police to other premises at

Sealstown Road, Mallusk; on the Seven Mile Straight, and at Ballyclare. Drugs found amounting to a total of 49 kilograms of amphetamine and 150 kilograms of cannabis resin were found at these premises. Altogether the drugs were Class A, Class B and Class C drugs, and the evidence of Detective Constable Bingham given during Berry's trial was that the total street value of all of these drugs was in the region of £1.6 million. He described this as a "significant seizure", and said that whilst larger quantities of the individual drugs concerned had been found on other occasions, this was the largest seizure of all three drugs at the same time.

[4] Valuations of the street or intermediate value of illegal drugs can be somewhat difficult to establish precisely, and at the hearing of the plea on behalf of Courtney in this case this figure was amended, the prosecution and defence agreeing that the street value was between £1.3 and £1.5 million. I will therefore sentence the accused on the basis of these amended figures, but it remains the case that this was still a "significant seizure" for the reasons given by Detective Constable Bingham.

[5] A search of Berry's Clio revealed a total of £58,780 in cash hidden behind the rear passenger side panel, the vast majority of which consisted of bank notes issued by Northern Ireland banks.

[6] Although Courtney eventually admitted his involvement in moving these drugs by his pleas of guilty, Berry denied any knowledge of the presence of the money in her car, or of the drugs. However, by its verdict the jury has rejected that account, and has found that she knew the money was in the car, and that she knew or suspected that it represented the proceeds of Courtney's drug dealing, and therefore was criminal property. The charges against Berry were essentially alternatives, the case against her being that she was helping Courtney to move cash to England which was the proceeds of drug crime.

[7] Courtney was 27 when he was arrested and is now 29. He has a formidable criminal record. His first criminal offence was committed on 3 December 1992 when he was a few days short of his 15th birthday. Many of his convictions are for motoring offences and these are significant in themselves. He has five previous convictions for dangerous driving and one for reckless driving, and he has been convicted no fewer than sixteen times for driving whilst disqualified. He also has many convictions for offences of dishonesty, with six convictions for theft, six for burglary, nine for offences of deception, and three of going equipped for theft. He also has two convictions for assault occasioning actual bodily harm, one for attempted escape from lawful custody, and three for failing to surrender to bail.

[8] In addition he has nine previous convictions for drug offences. On 18 January 1995 he was put on probation for 18 months for possession of a Class

B drug. On 15 October 1996 at Belfast Crown Court he was sentenced for possession of Class A drugs and Class B drugs with intent to supply, and was sentenced to 16 months detention. On 11 July 2001 at Craigavon Crown Court he received a total of 5 years imprisonment and 1 year's probation for offences of possession of Class A and Class B drugs with intent to supply. In addition, the court ordered the forfeiture or confiscation of £55,020, an indication of the scale on which Courtney was operating.

[9] He was released from the custodial element of this sentence on 10 February 2005 and was on licence until 14 May 2007. Therefore, at the time he committed the present offences he was on licence and subject to the probation element of the custody probation order.

[10] I consider that Courtney's record, and in particular his record for drugs offences, and his re-offending whilst on probation and on licence, are substantial aggravating factors in the present case.

[11] The only mitigating factor in his case is that he pleaded guilty. When interviewed he refused to answer any substantive questions, confining his answers to personal details and other irrelevant matters. When arraigned he pleaded not guilty, and although there were a number of suggestions at the review hearings that a Rooney hearing would be sought, in the event no application was made by him for such a hearing. On 4 May, by which time his trial was fixed for a standby date of 18 June, he asked to be rearraigned and pleaded guilty to the charges of possession with intent to supply. These pleas were acceptable to the prosecution, and the remaining charges of simple possession were ordered to lie on the file, not to be proceeded with without leave of the Crown Court or the Court of Appeal.

[12] This was a very substantial seizure of drugs indeed. The following principles are relevant when deciding the appropriate sentence in Courtney's case:

(1) The appropriate sentence cannot be calculated simply by an arithmetical calculation based on either the weight or value of the drugs, although these are relevant considerations. See MacDermott LJ in R v. McIlwaine [1998] NI 136, and Carswell LCJ in R v. Murdock [2003] NICA 21.

(2) Possession of a Class A drug should generally be visited with a heavier sentence than one for possession of a Class B drug. R v. Murdock.

(3) Previous convictions for drug offences weigh heavily against the defendant. See R v. Hogg and Others. [1994] NI 258.

(4) To gain full allowance for a plea of guilty this must be made at the earliest opportunity, with the maximum allowance reserved for those who admit their guilt at interview. A-G's Reference (No 1 of 2006), [2006] NIJB 424.

[13] Severe sentences have been imposed in cases involving possession of substantial quantities of drugs with intent to supply. In McIlwaine it was stated that sentences of up to 10 years imprisonment for a 200 kilogram seizure of cannabis resin would be appropriate. McAuley, who was treated as having a clear record, was sentenced to 9 years imprisonment on conviction for possession with intent to supply of 310 kilos of cannabis resin with an estimated street value of £1.5 million. In Darragh, where the defendant was found in possession of 4,693 ecstasy tablets and 14.97 kilograms of cannabis resin, a sentence of 9 years custody and 1 year's probation was imposed on a plea of guilty, and the trial judge indicated that a sentence of 12 years imprisonment after a contest would have been appropriate.

[14] I have an extensive pre sentence report upon Courtney. It appears that on two occasions he has been subject to breach proceedings for failure to comply with probation orders, on one occasion he failed to return to Maghaberry after a period of home leave, and his conviction for attempted escape from lawful custody relates to an attempt to escape from the custody of a prison officer when he was taken to Belfast City Hospital on 20 November 2001. The report states that Courtney denies any major role in drug dealing "or indeed, profiting to any large extent from his involvement." He alleges that he carried out tasks of transporting people, money or drugs in order to ensure his own supply of cocaine, which he estimated is costing about £200 a day, as well as having a significant gambling problem.

[15] In his plea in mitigation on behalf of Courtney Mr Gallagher QC pointed to Courtney's cocaine and gambling addiction, and said that these made his client vulnerable to approaches from others. In a letter to the court Courtney said that he was anxious to make a fresh start in life. Mr Gallagher also referred to the influence of Courtney's father on the defendant, pointing out that his father was closely involved with drugs.

[16] Courtney's criminal record shows that within months from release from prison he became re-involved in drug dealing on a major scale. He has had ample opportunity to mend his ways in the past and his professions of a desire to change count for little in the light of his record. The Pre-Sentence Report states that he has been assessed as being at a high risk of re-offending and as presenting some potential risk to the public in terms of motoring and drugs related offences. I am obliged to consider whether a custody probation order is appropriate. I am satisfied that it is not. His record, and the fact that the present offences were committed not long after his release from prison

and whilst he was on licence and subject to a custody probation order leave me in no doubt that such an order would not be appropriate.

[17] I consider that had Courtney been convicted after a contest the appropriate sentence on each of the three counts would have been one of 14 years imprisonment, in order to properly reflect the volume of drugs involved in this instance, his criminal record, and his reoffending whilst on probation and under licence. The only mitigating factor is his plea of guilty. He denied the offences whilst interviewed, and only changed his plea shortly before the date of trial, despite the overwhelming nature of the evidence against him. He is entitled to a degree of credit for his change of plea, but because he did not admit his guilt when questioned, or plead guilty at the first opportunity, the credit to be allowed to him has to be substantially reduced. I sentence him to 12 years imprisonment on each count. The sentences will be concurrent.

[18] Jean Berry is now 41 years of age. She lives in Salford and travelled to Northern Ireland the day before the police raid on 41 Kingsdale Park. In her possession was a return ticket for a sailing from Dublin later on the day of her arrest. By its verdict the jury has rejected her denial of knowledge of the cash hidden in her car, and I must therefore sentence her upon the basis that she was knowingly and willingly taking part in Courtney's drug enterprises by driving this money to England for him whilst it was hidden in her car.

[19] During her trial she gave evidence that she had known Courtney for some time and that he was the father of a child of her niece. She has two shop lifting convictions when she was aged 15. However, these were many years ago and are of no relevance today. She also admitted having no insurance for her car at the time, but I do not regard this as a significant matter when placed against her otherwise good character, and I propose to treat her as a person of good character.

[20] I have been referred by counsel to a number of decisions in money laundering or analogous cases, namely R v B, [2006] EWCA Crim 3130, R v Everson, [2002] 1 Cr. App. R (S) 132, R v Gonzalez and Sarmiento, [2003] 2 Cr. App. R (S) 9, R v Griffiths and Pattison [2007] 1 Cr. App. R. (S) 95, and R v McCartan [2004] NICA 43. Whilst there are considerable variations in the facts of each case, a number of principles can be extracted from these decisions and the other cases referred to in them.

(1) Organising the cover up or laundering of the proceeds of crime is always particularly serious and custodial sentences are almost inevitable.

(2) Couriers or launderers may expect to receive a somewhat lesser sentence than those involved as principals.

(3) The sentence ought to reflect the amount of money involved. Cases where the defendant has been convicted after pleading not guilty involving about £2 million have resulted in sentences in the region of 5 to 6 years imprisonment (R v B), (R v Gonzalez),

(4) Where the amount involved is less than £100,000 and the defendant is a professional person such as a solicitor and has pleaded guilty and will face other severe consequences as a result of being convicted, such as being struck off the roll of solicitors and thus facing difficulties in earning a living upon release from prison, sentences ranging from 6 to 30 months imprisonment have been considered appropriate.

(5) As in any case where there are compelling personal mitigating circumstances a lower sentence than otherwise might be required may be appropriate. (R v McCartan)

[21] The successful operation of drug rings, particularly those on the scale in which Courtney was plainly engaged, require the willing assistance of other people, whether to transport drugs, store drugs, or, as in Berry's case, transport money. Without the assistance of such people the activities of people such as Courtney could not be sustained. Despite Berry's clear record, in view of the amount of money involved a custodial sentence is inevitable in Berry's case. Whilst the amount is substantial, it is in the category of cases such as McCartan (£70,250) and Duff (£70,000) where the amount was less than £100,000. I sentence Berry to 9 months imprisonment. The question of a custody probation order does not therefore arise.