R v Gallagher And Mullan
COURT OF APPEAL (CRIMINAL DIVISION)

MACDERMOTT LJ15 DECEMBER 1995

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We are indebted to Judge Burgess for the careful and thorough manner in which he approached the task of sentencing in these cases. His analysis of the earlier cases of McCay, Hogg & others and Haveron and others (unreported 7 July 1995) is so thorough that it would be an idle exercise to go over again the principles so clearly established by this court:

We would however venture three additional comments –

1 When dealing with Ecstasy cases, Asquith 16 CAR(S) 453 (referred to by Carswell LJ in relation to the general approach of the courts to so called "couriers") is of help to sentencers. In that case the appellant (aged 19) pleaded guilty to possession of 44 Ecstasy tablets with intent. Responding to the argument that the quantity of drugs was small and the appellant's role was minor Holland J said:

"This Court has given anxious consideration to that argument, well advanced as it has been. But this Court has already reminded itself of the other decisions that are reported dealing with this matter of possession of Ecstasy with intent to supply. Those decisions make the following apparent. First, they underline the fact that we are dealing with a class A drug, that is a drug in the same category as, for example, heroin and cocaine. The second feature arising from a perusal of these other decisions is that the starting point for the consideration of a court when having to sentence a person involved in possession with intent to supply is, in truth, five years. It is from that particular level that the court may, if the facts allow, discount to a lower level; typically discounting if, as here, there has been a plea of guilty.

But what further and very clearly emerges from the decisions, collected as they are in the Current Sentencing Practice Volume 1 at section B11-2.3, is that three years, with all respect to the division of this Court in Broom, so far from being at the top end of the scale, is essentially right at the centre of it. Indeed, as Mr Kennedy had to concede, there is only one decision that is reported in which this Court upheld a sentence of less than three years, and that was in the wholly exceptional circumstances that arose in the case of Catterall (1993)14 Cr App R(S) 724, in which a sentence of three years was set aside and a sentence of two years was substituted."

The Court in Asquith ruled that the sentence of 3 years detention was "precisely the right length" and dismissed the appeal.

2 The use of Ecstasy tablets appears to be becoming commonplace. This must not be allowed to conceal the fact that it is a dangerous and potentially life threatening substance. Recent well publicised cases show that it can kill. In Slater & Scott 16

CAR(S) 870 the Court of Appeal saw fit to repeat and entirely agree with the trial judge's description of Ecstasy. He had said:

"I begin with the fact that Ecstasy is a Class A drug. In a case in the Court of Appeal in 1993 called Allery 14 Cr App R(s) 699 the Court described it as a 'synthetic amphetamine derivative'. The judgment of the Court said that they had material which indicated that it was capable of causing convulsions, collapse, hyperpyrexia, discriminated intravascular coagulation and other very unpleasant consequences and was also capable of causing acute renal failure [That acute renal failure, frequently, if not invariably, leads to death.] They commented that Parliament had been well advised to include this as a dangerous drug in the Class A. Even without that material it is plain from its mere characterisation of Class A that it is to be seen in the same category as, for instance, heroin and cocaine."

3 Those who play any part in the supply of this dangerous substance, Ecstasy, are participating in an evil trade. In this jurisdiction statistics show a truly enormous and frightening increase in the amount of Ecstasy seized. In this year to end of November 1995 the figure is 135,618 tablets. This is to be compared with 23,853 tablets and 168 grams of powder in 1994, and 2923 tablets in 1993. The readiness to use and supply this drug shows that current sentencing levels are not acting as a deterrent and that therefore the imposition of longer sentences will be entirely appropriate. Judges in this jurisdiction are faced with the evil effects of this drug in Northern Ireland and should not feel constrained to follow English sentencing guidelines if they consider they are at too low a level.

We turn now to consider the circumstances of the present appeals.

We will deal first with Mullan as it was an Ecstasy case and so one which can be considered in the light of these additional observations which we have just made.

On 13 September 1995 at Coleraine Judge Burgess sentenced the applicant Paul Martin Mullan, born on 30 June 1976, to two years on Count 1 for possession of a Class A drug and on Count 2 to three years for possession of a Class A drug with intent The background facts were these. On Thursday 16 February 1995 about 7.40 pm the police in an unmarked vehicle were in Waterside in Londonderry. The applicant was driving a white Vauxhall Nova when it was stopped. A white object was thrown out by the front seat passenger. The applicant and the passenger were taken to Strand Road RUC Station. The package was found to contain 147 Ecstasy tablets. The applicant said that he had seen some known drug dealer go to a hide and that he then went there and stole this packet containing 147 tablets. Before Judge Burgess and this Court the defence explanation was that the applicant was acting as a courier in transporting these drugs to some place where they could be sold and that his reward was to be a few tablets. As was indicated in the course of argument this self-serving explanation lacked credibility, especially as to the recompense that the applicant claims he was expecting. The street value of these drugs was £2,500. Mr Talbot had said all he possibly could have said on behalf of Mullan and he

emphasised that he had pleaded guilty at the first opportunity and that is always a factor in an appellant's favour.

As we have said before, when a person is found in possession of this amount of drugs the facts largely speak for themselves. Mr Talbot accepts that the applicant was economic with the truth in the original description of how he came to possess the tablets and asked us not to hold that against him because of the pressures, which he says, may influence a correct exercise of freedom of choice in some places.

He also, from his experience of practice in Londonderry, informed us that there are areas in Londonderry which are, to use his phrase, "rife with drug dealing". That is a sorry state of affairs and is a factor which any court is bound to have regard to because if there is an epidemic of that nature, then it is very much the court's duty when sentencing to seek to discourage others from so offending as well as properly punishing the offender. We were also told that the applicant had full employment, a good family background and that his family were gravely upset by what had happened. Sadly, it is very often the case that families suffer, perhaps almost more than the actual offender, and it is they who have to bear the disgrace and have to attend and visit their errant child.

Even without the assistance of the good sense enshrined in Asquith's case we are satisfied that this sentence cannot in any way be described as excessive. Indeed, a somewhat longer sentence falls within the parameters indicated in Asquith and would be hard to challenge successfully. Accordingly this application is refused.

Turning then to the case of Gallagher. He was born on 13 February 1969 and on the same date, 13 February 1995, Judge Burgess who had other drug offences before him, sentenced Gallagher to 18 months on Count 1 for possession of Class B drugs and two years on Count 2 for possession of Class B drugs with intent. The appeal is against an effective sentence of two years.

The background facts can be stated shortly. On Thursday 13 October 1994 at about 6.50 police arrived to search a house at 17 Tyrconnell Street in Londonderry, the home of a Mrs Flood, with whom the applicant was living or was friendly with. They noticed the applicant go out of the house, located him shortly afterwards in a nearby public house and brought him back to Mrs Flood's house. A search of the premises revealed quantities of cannabis. They were in three packages, the largest contained 267.18 grams of cannabis resin, another 7.1 grams and a third 1.35 grams. The evidence was that 7 cigarettes can be manufactured from 1 gram of cannabis resin, therefore this find was enough for 1,890 cigarettes, the street value of which was given as some £2,500. The applicant's explanation was that he had bought them off a person he had recently met at Kellys in Portrush. He had arranged to meet that man and had gathered up £750 which he handed over for the packages containing cannabis resin. Again we suspect that we are not getting a full account of what happened, but the basic facts speak for themselves. Gallagher obtained this considerable quantity of cannabis resin and as it is clearly much in excess of personal

requirements the irresistible inference is that he possessed it with the intent to supply others.

On his behalf Mr Magee made a number of points. He emphasised that he pleaded guilty at the first opportunity. Secondly, to all intents and purposes this man had a clear record and that this was not a Class A drug and as we all know the courts have seen fit to draw a distinction between Class A and Class B drugs. He also pointed out that the applicant did not organise "raves", parties and so on, nor did we hear any evidence that he introduced people to drugs, but if you are going to sell drugs you do not know who will be the purchaser or user. The next point was that Gallagher had been on police bail from October 1994. He had not come under any adverse notice and had properly complied with the terms of his bail. He explained how Gallagher and Mrs Flood had now moved to Shantallow and were setting up home with her children. Further it is clear that he co-operated fully with the police to the extent of helping to identify his supplier. Mr Magee emphasised that Gallagher was involved with cannabis resin and would smoke a bit himself and that the investigating police officers have spoken for him and say that he was not a big dealer. For our part Gallagher comes over to us as a small-time operator in drug dealing, but, as in all these cases, that involves subjecting other people to all the harm and disadvantage which flows from participation in drug taking.

We said at the outset that Judge Burgess approached these cases in a particularly careful manner and we share his view that an effective sentence of two years is proper and in no way excessive. Therefore this application also is dismissed.

Applications Dismissed