R v Haveron, Millar, Harris and McCrystal
COURT OF APPEAL (CRIMINAL DIVISION)

CARSWELL LJ7 JULY 1995

7 July 1995CARSWELL LJ
(giving the judgment of the court: These four cases, which we heard together because of their common features, consisted of applications for leave to appeal against sentences imposed on the applicants in respect of offences against the Misuse of Drugs Act 1971. They involve a number of different levels of possession and possession with intent to supply of class A and class B drugs. Each applicant pleaded guilty to some or all of the counts against him and all were sentenced by the same judge, His Honour Judge Hart QC, at Ballymena Crown Court on different dates earlier this year. Leave to appeal was refused in each case by Mr Justice Higgins.
Before I look at the individual cases I would make a few observations of general application. First, in February 1994 this Court gave a detailed judgment in a number of drug cases, R v Hogg and Others, unreported 1994 designed to give guidance to the lower courts in their approach to sentence in the variety of situations which they encounter. In doing so we set out a number of principles and enumerated a number of factors to which a Court should have regard, and these remain valid. It is not necessary to repeat them in extenso in this judgment, but it is plain that the learned Judge was alive to them in sentencing each of the applicants. There has been no suggestion in any of the pleas addressed to us that he overlooked matters or failed to make himself familiar with the relevant factors. On the contrary he took conspicuous care to look at the details of each case and the principles which he should observe. He cannot in our judgment be faulted in his general approach to cases involving drugs, of which, as we in this Court are very well aware, he has accumulated considerable experience in the Crown Court.

Secondly, one of the principles which we enunciated at page 4 of the Hogg judgment is every bit as valid as it was in February 1994, that is to say, severe sentences, including custodial sentences of any kind, are of assistance in signifying the community's rejection of drug taking and its hostility to traffickers in drugs and even to those who supply them free of charge. Another remark made by the judge in one of these cases is also material, that the prevalence of a particular type of offence in a particular area may require and justify deterrent sentences. We would refer in this context to the fact that all the information available to the Court tends to show that the drugs problem in Northern Ireland is on the increase rather than decreasing. This underlines the necessity for the Courts to show continuing firmness in dealing with those apprehended, which may outweigh mitigating factors relating to the personal circumstances of any given defender.

Thirdly, in the Hogg judgment we adverted to the fact that not uncommonly the major suppliers use the services of others, frequently young people of good backgrounds and presentable appearance as couriers and retailers. In two of the

present applications the applicants claim that they were carrying the drugs on behalf of others in return for quite moderate sums of money, plainly so that those others might reduce their own risk of apprehension. This expedience is not confined to this jurisdiction, but is a regular notice of opperandi of drug dealers in England as well, as reference to recent reported cases will show. I need mention only one, the R v Asquith (1995), 16 Cr App R(S) 453, in which Holland J said at page 455:

"in considering this appeal, this Court is acutely conscious that one pernicious recurring feature of the world of drug dealing is the cynical use of comparative innocence to undertake the fetching, the carrying and the storing. That use serves, if successful, to divert attention away from the dealers at the centre of the dealing. There is, secondly, the feature that if caught it is hoped the courts will be sympathetic to such comparative innocence.

In this regard this Court is only too familiar with the pathetic couriers, exploited persons of hitherto good character emanating from West Africa or the West Indies, each bringing very substantial quantities of drugs into this country. It is again becoming familiar to this Court that young men like this appellant who are on the periphery of drug dealing, come into the court because they have contributed vital but menial assistance for modest reward, typically free drugs. With respect to all these persons this Court is profoundly reluctant to give credence to any belief that relevant innocents can play a role in drug dealing with impunity. All who enter into drug dealing in any capacity must, as the learned recorder pointed out, expect a custodial sentence and a substantial one at that. That much has been realistically conceded by Mr Kennedy and his helpful submission to this Court".

In imposing the sentence in respect of Millar, the Learned Judge took the same approach when he said:-

"I therefore, in this case, as in earlier cases take the view as a matter of principle that those who with their eyes wide open carry drugs for drug dealers, even if it is only on one occasion, must be dealt with in the appropriate way and where the quantity of drugs is small they fall within the bracket appropriate to small scale retailers".

He repeated that conclusion again in Harrison's case. He referred to the decisions in England of the R v Aramah 4 Cr App R(S) 407 and the R v Hamouda 4 Cr App R(S) 137. It is constructive to see what Lawton LJ said in the latter case about successive expedients adopted by the drug godfathers to smuggle drugs past the authorities by the agency of different persons and different types of persons selected to be able to tell a sob story. The courts have had to harden their hearts against these stories and to set aside sympathy as misplaced. We regard the approach taken by the learned Judge in these cases as fully justified on the authorities.

I turn then to the circumstances of the individual cases. I shall deal first of that of Haveron and Millar.

Haveron is 29 years of age and Millar 30 years. They were sentenced at Ballymena Crown Court on 28 March 1995. Millar pleaded guilty to possession of a class A drug with intent to supply, being 35 Ecstacy tablets, for which he was sentenced to two years imprisonment, and also to the charge of attempted possession of class B drugs, for which he received 18 months imprisonment concurrent with the other sentence. Haveron pleaded guilty to two charges of possession of a class A drug, 47 LSD tablets and 12 Ecstacy tablets and was sentenced to 15 months imprisonment.

The charges arose out of an incident on 2 July 1994 when the police stopped and searched the car at Bushmills Road, Portrush. Haveron was the driver and Millar was a rear seat passenger in the car. A bag containing 49 Ecstacy tablets was found in the car, but it was not made the subject of charges against the applicants, because there was an insufficient link with any particular one. Millar ran off, tried to throw away two plastic bags containing 112 wraps, but it transcribed that these were not in fact controlled drugs, although by his plea he clearly thought that they were. Subsequently while he was in the station while he was being searched a packet containing 35 Ecstacy tablets fell to the floor. He said that he was transporting the drugs to Kellys for another person whom he did not name and that he was to receive some £50 in return. When Haveron was searched he had 12 Ecstacy tablets and 47 LSD squares concealed in his underwear, though at first he denied that they were his and Millar tried to take responsibility for them. Millar later retracted that acceptance and responsibility and Haveron admitted ownership and said that the drugs were for the use of himself and two other persons.

Millar is aged 30, as I have said and has a number of convictions, but none of them is drug related. The probation report indicates that he carried the drugs for money, but he is not himself a drug user, and he claimed not to have thought of the consequences of his carrying of these drugs. The learned Judge took the view that couriers must be dealt with on the same lines as retailers and that Millar must receive an immediate custodial sentence. He made allowance for his personal circumstances in making the sentences 2 years and 18 months concurrent. None of the matters raised in his notice of appeal or the argument presented on his behalf is sufficient to indicate any error in principle on the part of the learned Judge, and the sentences are in our judgment fully justified and can in no way be said to be excessive. We accordingly dismiss Millar's application.

Haveron is aged 29 years and said to the probation officer that he was using drugs very heavily, and that he and others bought the Ecstacy tablets and LSD squares for their own use in the following week in a caravan at Milisle. He said, less than convincingly, that he was carrying them near Kelly's Hotel in Portrush because he had nowhere else to leave them. Haveron has a poor record, but it is not drug related. The learned Judge approached his case as distinct from Millar's case because there was no intention to supply these drugs, and he referred to a passage in Hogg's case concerning the impossibility of adopting a greater degree of flexibility in such cases. But he also referred to a well known passage in R v McCay [1991] 1 All ER 232, and he underlined that the consumption of illegal drugs is a serious criminal

offence. In our opinion one cannot fault his approach for the length of his sentence and we also dismiss Haveron's application.
Harris is aged 20 years and he was sentenced on 6 March 1995 at Ballymena Crown Court. He pleaded guilty to 2 charges of possession of class A drugs with intent and 2 charges of possession. He was sentenced to 3 years on each of these charges, to run concurrently. The drugs in question were found on his person on 17 September 1994, when he was stopped on foot at the police checkpoint walking along Bushmills Road, Portrush. He was intoxicated on a cocktail of alcohol, drugs and glue and gave a false story about where he was going and what he was doing. When he was searched he was found to have 2 plastic bags tucked inside the waistband of his jeans. One contained 151 tablets and 100 squares of LSD and the other 149 Ecstacy tablets. The estimated street value of these drugs was in excess of £4,000. Harris said that he was asked by a person named 'Scoot' to transport the tablets and squares to Kelly's in return for the payment of £50, with which he intended to buy more Ecstacy for his own use. He admitted in interviews that he was a regular drug user and he used his own words "was into drugs in a big way". He was described by the probation report as of being "of no intelligence and inadequate personality".

The Court has been told that his uncle has offered to employ him when he is free to take it up. It was also told that he did the rehabilitation programme in 1994 but had not succeeded in casting off his drugs habit. The notice of his appeal focuses on Harris' lack of sophistication, and the fact that he was not involved in supply. It contrasts another case, but counsel at the hearing of the application did not rely upon the latter ground. Harris has a record of dishonesty, but none of the convictions are drugs related. The learned Judge referred to the English cases in which the Courts have said repeatedly that couriers were not to be let off lightly and that sympathy would be misplaced. He said that he must treat Harris as a small-scale wholesaler, but we cannot say that he was wrong in principle or that the sentence was manifestly excessive. What he said in that case and repeated in one of the other cases is worth mentioning in more detail, because he said that the applicant in one of the other cases should be regarded as either a small wholesaler or a retailer and that there is not much significant difference between them. It is sometimes difficult to tell the borderline, therefore we do not place much weight upon arguments which seek to distinguish between one and the other. At all events we are quite satisfied that the learned Judge approached the case in the right manner and that his sentence was a proper one, and we dismiss the application.

McCrystal is aged 34 years. He was sentenced at Ballymena Crown Court on a plea of guilty on 15 February 1995 on two charges of possession of class B drugs with intent, consisting of 182.2 grams of amphetamine and 36.9 grams of cannabis resin, and also 2 charges of possession of the same drugs. He was sentenced to 3 years on each count to run concurrently. On 18 August 1994, McCrystal's house in Ballymena was searched and there police found that bags of white powder had been thrown on the fire. When retrieved these were found to contain amphetamine of an amount which has been the subject of dispute, but which the learned Judge accepted as a median figure was sufficient to make a number of wraps of the order of 900. In the

house there was also found the quantity of cannabis resin to which I have referred and a number of drug-related items. The applicant had £360 of cash in his pocket and this sum was forfeited. McCrystal is a self-confessed drug trader and is himself addicted to amphetamines. He admitted that he intended to sell the drugs to pay off his supplier and service his own drug use from the proceeds. He has a drug-related record, in 1988 for possession, in 1989 2 charges of possession, and in 1991 a further charge of possession. The only thing that can be said in his favour is that the drugs in question were of class B, not of class A, and that although he has a drug-related record it does not include supply or possession with intent to supply. That said, his case remains one of a confirmed drugs taker and peddler, who has been steadily involved in trading. It is not, as the Judge recognised, a matter of great consequence whether you class his participation as that of wholesaler or retailer because of the lack of definition between the boundaries. Indeed the applicant seems from the probation report to have been dependent upon this trading for his means of livelihood.

We have come to the conclusion that we cannot fault the Judge's approach nor can we consider the sentences, taking into account the circumstances of the case and his personal circumstances and background, to be in any way excessive, and accordingly we dismiss this application also.

Judgment accordingly