R v Hogg and related applications

COURT OF APPEAL

HUTTON LCJ, CARSWELL LJ AND MCCOLLUM J20 DECEMBER 1993, 4 FEBRUARY 1994

Sentencing – Drugs offences – Possession and supply of drugs – Principles and guidelines governing sentencing.

In addition to the existing guidelines on sentencing in cases of drug offences, the following considerations should be taken into account. First, importation of drugs on a large scale is the most serious offence in the area of drugs offences and should invariably be visited by a substantial custodial sentence. Secondly, supplying drugs is to be considered the next offence in descending order of gravity, closely followed by possession with intent to supply; in all but exceptional cases these offences should attract an immediate custodial sentence which will vary according to the classification and quantities of drugs involved and the circumstances of the offence. Finally, more flexibility should be adopted in sentencing in the case of possession where there has been no supply of drugs or intent to supply them to other persons. Dictum of Lowry LCJ in R v McCay [1975] NI 5 at 5–6 followed; R v Aramah (1982) 4 Cr App R (S) 407 applied.

Cases referred to in judgment

R v Aramah (1982) 4 Cr App R (S) 407, CA.

R v Magee [1975] 6 NIJB (6).

R v Martinez (1984) 6 Cr App R (S) 364, CA.

R v McCay [1975] NI 5, CCA.
R v O'Neill [1984] NI 264, CA.
R v Virgin (1983) 5 Cr App R (S) 148, CA.

Applications for leave to appeal

Thomas Martin Gerald Hogg, Stuart Osborne, Terence James Young and Mark Bradshaw applied for leave to appeal against the sentences imposed on them by His Honour Judge Hart QC at Ballymena Crown Court on several dates in early 1993 for various offences relating to the possession and supply of drugs. William Edward Guiney applied for leave to appeal against the sentence imposed on him by His Honour Judge Higgins QC at Belfast Crown Court on 18 June 1993 for similar offences. The facts are set out in the judgment of Hutton LCJ.

J Orr (instructed by Sheridan and Leonard) for Thomas Hogg and Stuart Osborne.

K M Denvir (instructed by John F Hickey, Coleraine) for Terence Young.

N Rafferty (instructed by J David Nagra, Limavady) for Mark Bradshaw.

J M Cushinan (instructed by Trevor Smyth & Co) for William Guiney.

G E Conner and P S Sefton (instructed by the Director of Public Prosecutions) for the Crown.

Cur adv vult

[1994] NI 258 at 2594 February 1994. The following judgment of the court was delivered.HUTTON LCJ (giving the judgment of the court).

The possession and supply of drugs has for a considerable time formed a major social problem in Northern Ireland, as in other parts of the United Kingdom. The incidence of these offences tends to fluctuate with changing social patterns and there are disturbing signs at the present time that the taking of prohibited drugs is increasingly prevalent among young people. Of particular concern is the use of Class A drugs such as lysergide (lysergic acid diethylamide), commonly known as LSD, and methylenedioxymethylamphetamine and its cognate compounds, known as ecstasy, whose effects can be even more unpredictable and dangerous. They are frequently sold clandestinely at gatherings known as 'raves', where it is widely known that they will be available. The sale and consumption of prohibited drugs at these functions appear to be such an inherent part of their attraction that it is hard to suppose that the organisers are unaware of what is happening at them. Numbers of drug vendors attend them and sell material quantities of controlled drugs, some of them to sustain their own drug habit out of the profits. In the process numerous young people, to the great detriment of their health and welfare, become introduced to drug-taking or find a continued source of supply for a habit which they have formed.

This court laid down principles and guidelines for sentencing in drug cases in the 1970s (see R v McCay [1975] NI 5), but has not had occasion to do so since. The bringing of several applications for leave to appeal against sentence in such cases led us to list them together, in order to review sentencing levels and to consider whether further guidance should be given by this court.

The applicants in the five cases which we heard on 20 December 1993 were all young men, four of them in their very early twenties. Each of them when apprehended had in his possession a quantity, which varied widely between the cases, both of Class A and Class B drugs. Hogg and Young were both charged with supplying Class A drugs and the others with possession of such drugs with intent to supply. Hogg, Young and Guiney were charged with supplying Class B drugs, and there were various charges of possession of drugs of this class. All were drug-users themselves, and it is apparent that the profits of dealing in drugs were used to sustain their habit. There are, of course, differences between the individual cases, to which their respective counsel drew our attention, and we shall examine these when we come to look at the details of each application.

The first four of the applicants were sentenced by His Honour Judge Hart QC at Ballymena Crown Court on several dates in the early part of 1993. Guiney was sentenced by His Honour Judge Higgins QC at Belfast Crown Court on 18 June 1993. All pleaded guilty to all charges (Guiney after re-arraignment). The offences and sentences may be summarised as follows:

Hogg: possession, possession with intent and supplying.

Total sentence 3 1/2 years' detention.

Osborne: possession and possession with intent.

Total sentence 3 years' detention.

Young: possession with intent and supplying.

Total sentence 2 years' detention.

[1994] NI 258 at 260Bradshaw: possession and possession with intent.

Total sentence 2 1/2 years' imprisonment plus 6

months' suspended sentence put into operation.

Guiney: possession, possession with intent and supplying.

Total sentence 2 1/2 years' imprisonment.

In R v McCay [1975] NI 5 at 5–6 Lowry LCJ set out a number of principles to which a court should have regard in sentencing in drug cases. His remarks were as follows:

'We observe first that the learned county court judge made the correct general approach by condemning the practice of taking drugs otherwise than on a doctor's orders. This practice is a crime. The fact that the offender is usually the main sufferer distinguishes it from most other crimes, but cannot obscure the social evil which results. One may feel sympathy with the plight of an addict while maintaining a necessarily severe attitude in the interests of those who may be tempted to do likewise and indeed in the interests of the accused. The present cases do not exemplify physical or psychological addiction, but this fact removes one circumstance which is likely to promote a lenient approach.

There are, as in almost every criminal field, cases among drug-takers, and even suppliers—though they are both exceptional—in which great leniency may be justified, and a judge with the duty of sentencing will be vigilant, in the interests of the community as well as the accused, to recognise them.

The learned judge properly condemned even more the heinous practice of supplying drugs or providing a setting conducive to their use, practices which are more sordid

and worthy of punishment where the offender profits financially. He enumerated three principles:

1. Possession of a drug is less serious than supplying it to another;

2. Introducing drugs to someone with no previous experience is more serious than supplying drugs to someone who is already using them;

3. Possessing or supplying L.S.D. or heroin is worse than possessing or supplying cannabis.

As to the third point there is, no doubt, a further distinction to be made between heroin and L.S.D., but the latter is said to be so unpredictable as to constitute a grave danger to its users. We agree with the learned judge that it would be wrong to encourage the impression that the so-called "soft" drugs are not dangerous and destructive. Point is added to the learned judge's remarks by the emergence of liquid cannabis in concentrated form.

It may be helpful if we try to frame certain further principles:

4. In connection with the offences of supplying and permitting premises to be used, a previous conviction for a similar offence should weigh heavily against the accused;

5. A previous clear record in connection with drug offences is relevant but is not by itself a clear indication against a custodial sentence;

[1994] NI 258 at 2616. In possession cases, and to a lesser extent in cases of supply and permitting premises to be used, a previous criminal record unconnected with drugs is of minor importance;

7. 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;

8. The importation of drugs, especially when done for gain, ought to be very severely punished;

9. One who runs an establishment or organises parties or groups to encourage drug-taking should normally receive a heavy prison sentence;

10. The same principle applies strongly to those who in relation to drugs corrupt young people in this fashion or otherwise;

11. The fact that the offences involve a group or "cell" of people may constitute a circumstance calling for heavier punishment than would be appropriate in purely individual cases.'

We respectfully agree with what Lowry LCJ said in that case and consider that the principles remain valid today. We would add only a few further general observations distilled from subsequent cases. (i) The supply of any Class A drugs or their possession with intent to supply should generally be visited with a heavier sentence than in the case of Class B drugs. The legislature has drawn a distinction between them, and the Court of Appeal in England has consistently followed this course. In R v Martinez (1984) 6 Cr App R (S) 364 it was stated that distinctions should not be drawn between the different types of Class A drugs; (cf also R v Virgin (1983) 5 Cr App R (S) 148). In R v Aramah (1982) 4 Cr App R (S) 407 the court made no distinction within the categories of either Class A or Class B drugs. (ii) There are several different levels of gravity of involvement in the supply of drugs. In general, the importer of substantial quantities is to be regarded as the most serious offender, to receive the heaviest punishment. Below him is the wholesaler, who supplies the small retailers with drugs for distribution to the public on commercial arrangements which may be straight sale, sale or return or the retention by the retailer of a percentage of the selling price. The next category in descending order of culpability is the retailer who sells to the public for commercial gain. At the bottom of the scale is the person who supplies a small amount without a commercial motive, for example, where cannabis is supplied at a party (see R v Aramah). (iii) The offenders in drugs cases are generally young people, frequently of good backgrounds and without any previous criminal involvement. Not uncommonly the major suppliers use the services of such people for retailing, as the importers use young people of presentable appearance as couriers, in order to attempt to avoid detection of the traffic. In many cases a custodial sentence can blight a promising career. It is always right for a court to keep such considerations in mind when sentencing, but the importance of deterrence of others and the marking of the community's rejection of drug-taking will often prevail and lead to the imposition of an immediate custodial sentence (see the observations of Kelly J on sentencing in R v Magee [1975] 6 NIJB (6)). In sentencing Hogg and Osborne, Judge Hart added some observations which are worth repetition:

[1994] NI 258 at 262'I would add the following general points: (a) the prevalence of a particular type of offence in a particular area may require and justify deterrent sentences; (b) where, as here, suppliers are caught with substantial quantities of drugs in their possession, and on their person, which are clearly far above those which could be for their own use, a plea of Guilty to a charge of Possession with Intent to Supply, does not deserve as much of a discount as otherwise would be justified on a plea of Guilty because they are in effect caught red-handed; (c) however, where an accused admits other offences during questioning which could not otherwise be proved against him, this should be reflected in the sentence passed for those offences.'

The conclusions which we would draw about the correct approach to sentencing in drugs cases, bearing in mind all the variants in individual cases, may be summarised as follows.

1. Importation of drugs on a large scale is the most serious offence in this area, and is invariably to be visited with a substantial custodial sentence. We respectfully agree with the guidelines set out by Lane CJ in R v Aramah (1982) 4 Cr App R (S) 407.

2. Supplying drugs is the next in descending order of gravity, with possession with intent to supply a short distance behind. In many cases there may be little distinction between them, for the charge may depend on the stage of the proceedings at which the defendant was apprehended. In all but exceptional cases they will attract an immediate custodial sentence, which may range from one of some months in the case of a small quantity of Class B drugs to one of four or five years or more in the case of supply of appreciable commercial quantities of Class A drugs. We do not find it possible to narrow the range any more closely, for much will depend on the circumstances of the supply, its scale, frequency and duration, the sums of money involved and the defendant's previous record, together with his or her individual circumstances.

3. More flexibility may be adopted by the sentencing court in the case of possession where there has been no supply of drugs or intent to supply them to other persons. Large-scale possession, even without supply to others, and repeated offending may still require an immediate prison sentence. Possession of Class B drugs may generally be regarded as less heinous than possession of Class A drugs. In many cases of the former at least there will be room to consider a suspended sentence or non-custodial methods of dealing with the offender.

We turn then to consideration of the individual applications for leave to appeal. In each case leave to appeal was refused by the single judge.

Thomas Martin, Gerald Hogg and Stuart Osborne
Hogg and Osborne were charged on one indictment on a total of 20 counts. Six of these were joint charges, involving respectively possession and possession with intent to supply of LSD, amphetamine (commonly known as speed) and cocaine. There were ten charges against Hogg alone, involving possession and supply of quantities of amphetamine, LSD and ecstasy on various dates, together with two offences in connection with a motor car. Four charges were brought against Osborne alone, involving possession of cannabis on 20 April 1992 and previous possession of amphetamine and

[1994] NI 258 at 263LSD. They both pleaded guilty at Ballymena Crown Court before Judge Hart, who sentenced them at the same time as he sentenced two other accused, Harbinson and Lundy, in another drugs case.

Hogg was sentenced on the drugs charges to concurrent terms of detention in the young offenders' centre. He received sentences of two years' detention in respect of each charge involving Class B drugs and three years and six months in respect of each charge involving Class A drugs. The judge did not differentiate in these sentences between possession, possession with intent to supply and supplying. His focus and that of counsel for the applicant was on the effective term of three years

and six months' detention. A suspended sentence of two months' detention, imposed in February 1991 on Hogg for obstructing the police, was put into effect, but was made to run concurrently with the other terms.

The learned judge followed the same pattern in sentencing Osborne. He imposed terms of three years' detention on the charges in respect of the Class A drugs (with the exception of count 20) and two years on those concerned with Class B drugs.

The applicants were stopped by police on the evening of 20 April 1992 at the Blue Pool, Portrush, when they were seen acting suspiciously among a group of people. Hogg was found to have in his possession a large pouch containing a total of 69 cellophane wraps of amphetamine. He had a bank bag in his hip pocket containing 20 capsules, which the police and he both thought were ecstasy but which turned out to be cocaine. In his wallet was another bank bag containing 74 LSD tablets. The retail value of these drugs was estimated at £1,608.

Osborne had a bank bag in his pocket containing 20 capsules which were eventually discovered to be cocaine. He also had a clear jiffy bag containing 17 wraps of amphetamine and 46 LSD tablets. The retail value of these drugs was estimated at £1,088.

Hogg was born on 3 February 1973 and is now aged 20 years. At the time of commission of the offences he was 19 years. When interviewed by the police he admitted that his intention was to sell the drugs in his possession to young persons attending a rave at Kelly's Hotel in Portrush, a regular centre for such functions. He also admitted that he was regularly involved in drug dealing on commission for a supplier whom he would not name. He had a regular pitch in a cloakroom in Kelly's where he carried on his trade. He admitted to selling quite substantial amounts there, up to 70 wraps of amphetamine and 40 or 50 LSD tablets.

Hogg has a record of conviction of seven criminal offences of various kinds, including one in January 1992 for possession of a Class B drug, for which he was fined £150. He was subject to a suspended sentence of two months' detention for obstructing the police, which was imposed in February 1991. He is single and at the time of his arrest resided with his parents in Antrim, but in mid-1992 he moved in with his girlfriend. He was then unemployed, though he had obtained a job by the time of trial. He was a very heavy user of drugs, mainly at weekends, when he attended raves. Much, but apparently not all, of the quite significant sums which he made from drug dealing went to sustain his own drug habit, and he spent the rest. The judge described him as 'an active, though small-time drug retailer for profit, over a period of some 3 1/2 months.' Dr Davidson the clinical psychologist who examined him

[1994] NI 258 at 264considered that he was not addicted in a pharmacological sense, but that there was an element of psychological addiction and impulsive experimentation associated with his drug use. He thought that his use of ecstasy and amphetamines would decline if he gave up attending raves, and that given the

advantages of a job and a steady relationship he had the intellect and personality to develop a more stable life-style and as a consequence to be less attracted to the use of illegal drugs.

Osborne was born on 18 May 1973 and at the time of his arrest was almost 19 years' old. Osborne maintained throughout his interviews by the drugs squad officers that his sole function was to hold the drugs found in his possession for another person, whom he would not name. He denied that he had sold any drugs, either on this occasion or on previous occasions when he had had drugs in his possession. He had, however, accompanied Hogg to Portrush on 20 April 1992 for the purpose of taking drugs to Kelly's. He pleaded guilty to three charges of possessing a controlled drug with intent to supply. The evidence before the court did not establish that he sold any drugs or profited directly from their sale, and the judge, although justifiably sceptical about Osborne's story, correctly approached the case on this basis. We agree, however, with his observation that Osborne was nevertheless performing a function which was of assistance to a drug dealer and that he was in effect acting as a small-time retailer when apprehended.

Osborne has a record of two previous criminal offences, burglary and theft committed in February and May 1992, for which he was fined. He has not, however, stayed out of trouble since his arrest, and was convicted of theft in June 1992 and faced other charges of taking and driving away. His family background is stable and respectable, but he became involved in attendance at raves and the ancillary drug subculture. He had previously used cannabis, but when he became involved with raves he turned to ecstasy, amphetamines and LSD. He claimed to have cut down on attendance at raves and in consequence to have gone off the Class A drugs. Dr Davidson was inclined to accept this and regarded him as not addicted. The judge observed, however, that Osborne had told the probation officer that he had entirely ceased the use of illegal drugs, which was untrue, and that he had not severed his connection with the drug scene or abjured criminal activity. He plainly did not regard Osborne's accounts as reliable or Osborne himself as a responsible person.

The learned judge, after reviewing the case and all the relevant factors in a detailed and careful judgment, concluded that there were only two respects in which a distinction might be made between Osborne and Hogg, first, that Hogg had admitted being a dealer on previous occasions, and secondly, his previous drugs conviction and suspended sentence. He tended to discount the suspended sentence, because Osborne had offended again since his arrest. He accordingly imposed a slightly lighter sentence upon Osborne than on Hogg, making his term of detention three years.

We are of opinion that the judge approached these cases properly and by reference to the correct factors. We consider that the length of each of the sentences comes within the proper range for offences of this type. We also are of the view that the judge was correct in his approach to Osborne's case, in that he did not make a great deal of distinction between him and Hogg. He was quite entitled to take the view, with which we fully agree, that Osborne's

[1994] NI 258 at 265activities, even if they were as limited as he professed, were still an important link in the chain of trading in these dangerous drugs and that he knew very well what he was doing. We therefore would not fault him for making only a relatively minor difference between the two applicants.

The main thrust of the case advanced before us on behalf of these applicants was that of disparity with the sentences imposed by the same judge on the same day on two other drugs dealers (who have not appealed against their sentences), named Harbinson and Lundy. These defendants were sentenced on the same day as Hogg and Osborne, and the judge gave a combined judgment on that occasion covering the cases of all four.

Harbinson was 20 years and Lundy 21 years of age when they were arrested on 24 April 1992 and found to be in possession of 981g or 34·6 oz of amphetamine between them. They admitted that they had been to London to buy the drugs for £1,000, and said that they expected to double their money. The retail value of this amount, when diluted and made into individual doses, could have been as much as £60,000. It was their intention to sell the whole consignment to another wholesaler. Each of them had put up half of the money required to purchase the drug.

Harbinson admitted having sold 1,790 tablets of LSD for £4,000 on 13 April 1992, but it was in question whether he made any profit out of this transaction. He had a clear record. The judge took an adverse view of the fact that, although he had himself been a previous user of drugs and had given up some little time before because of their effect on his health, yet he still was willing to sell them to others.

Lundy had a criminal record involving various minor offences and one for grievous bodily harm in May 1990. His background was unhappy and his father had abused drugs. He admitted selling LSD and cannabis on two previous occasions. The learned judge sentenced each of these men to four years' detention and imprisonment respectively on the importation counts. He sentenced each to three years on the previous dealing charges.

Counsel for Hogg and Osborne submitted that since Harbinson and Lundy were further up the line of supply their offences were significantly more serious than those of Hogg and Osborne and that there should be a much bigger differential between the sentences. He argued that the sentences on Hogg and Osborne should therefore be regarded as being too high and should be reduced. We would observe, however, that the drug imported by Harbinson and Lundy, although a large quantity, was a Class B drug, and that on the Aramah guidelines that offence should be visited with a materially lower penalty than importation of Class A drugs. Hogg and Osborne, on the other hand, were dealing in Class A as well as Class B drugs, which brings them at once into a graver category of offence and sentence. We do not consider that there has been any unjust disparity between the sentences, when one bears this important distinction in mind.

Moreover, even if when considered together, there were an element of disparity between the sentences, we should regard this as an appropriate case in which to adopt the remarks of Gibson LJ in R v O'Neill [1984] NI 264 that if the applicants feel aggrieved on this ground their grievance is not justified. Their sentences were in our view proper and within the correct range, and an element of disparity alone is insufficient to cause this court to vary them. It is in our view a long way from that degree of disparity which might cause a
[1994] NI 258 at 266right-thinking person, knowing all the facts and looking at the sentences, to conclude that something had gone wrong in the administration of justice and had resulted in unfairness of treatment.

We accordingly conclude that the sentences imposed by the learned judge on Hogg and Osborne were neither wrong in principle nor manifestly excessive, and we dismiss their applications for leave to appeal.

Terence James Young
Young was charged on eight counts, one of possession of a Class A drug and one of possession of a Class B drug on the day of his apprehension with intent to supply, four of supplying drugs on previous occasions and two of possession on previous occasions of drugs with intent to supply. He pleaded guilty at Ballymena Crown Court and asked for three cases of possession and one of supply to be taken into consideration. He was sentenced by Judge Hart on 7 April 1993 to two years' detention in the young offenders' centre on each of the charges relating to Class A drugs and 18 months' detention on those relating to Class B drugs, all sentences to be concurrent. The judge also ordered the sum of £40 found in Young's possession to be confiscated in accordance with art 5 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990, SI 1990/2588.
On 24 July 1992 officers from the RUC drugs squad searched Young's home and found six LSD tablets, one tablet suspected and later confirmed to be LSD, and seven pieces of brown material wrapped in cling film, which was identified as cannabis resin. The total retail value of these drugs was estimated to amount to £189.

When interviewed Young admitted ownership of the drugs and his intention to sell them. He said that he had received the cannabis the previous day and sold two 'deals' for £20 each. He would normally sell his drugs at Kelly's Hotel in Portrush. He said that the previous Saturday he had had 15 LSD tablets 'laid on' to him, i e given him by a dealer to sell on commission, and had sold eight of them to people in Kelly's. He also admitted obtaining quantities of ecstasy tablets in the previous two or three months before, which were sent to him by post from London. He passed on some to an associate and retained some 199 for himself. He sold most of these in Kelly's for £20 each. There was some question how much he made from these sales. From the papers before us it looked as if he took half as his profit, but his counsel informed us that it was ultimately accepted that his total profit was of the order of £1,000.

Young was born on 9 December 1972, and was aged 19 years at the time of his apprehension. He lived with his parents and brothers in Coleraine. His family

background is stable and respectable. He started work in the butchery trade, but after being made redundant he commenced to train as a joiner, and at the time of his arrest he was working as a trainee with Enterprise Ulster. He had no previous criminal record.

He told the probation officer who interviewed him that he had started to take drugs after being offered them at a disco some eighteen months before. He began to buy them for his own use, then sold on some of his purchases to meet a demand. He saw this as a source of easy extra money and does not appear to have thought of the consequences of his actions. It seems that he was uneasy about his trading and tended to sell the drugs off rather cheaply.

[1994] NI 258 at 267The probation officer considered that he was genuinely remorseful and wanted to put his drug-taking and dealing completely behind him. He co-operated fully with the police and handed over all the drugs in his possession.

Young's counsel urged upon us the importance of the mitigating factors in his case, and submitted that the learned judge had not given sufficient weight to them. He suggested that the applicant had acted more out of immaturity than greed, which was a clear distinguishing feature from most other cases. He laid stress upon the co-operation which he had given to the police, a factor which was emphasised in R v Aramah as one which would mitigate the penalty.

We have considered the facts of the case and the mitigating factors with care. In our opinion the learned judge gave due credit to the applicant for these factors, otherwise as a supplier of drugs to other young people he would have certainly have received a heavier sentence. Having regard to the consideration that some of the drugs were Class A drugs, we think that the total sentence of two years' detention was not wrong in principle or manifestly excessive, and we dismiss the application for leave to appeal.

Mark Bradshaw
Bradshaw was charged on eight counts, three of possession of a Class B drug, two of possession of such a drug with intent to supply, one of possession and one of possession with intent to supply a Class A drug, and one of obstructing the police. He pleaded guilty to all charges at Ballymena Crown Court. He was sentenced on 27 May 1993 by Judge Hart to two years and six months' imprisonment on the charges relating to Class A drugs, 18 months' imprisonment on those relating to Class B drugs and six months' imprisonment on the charge of obstruction. The judge also put into operation a suspended sentence of six months' imprisonment imposed at Ballymena Magistrates' Court on 9 June 1992 for assault occasioning actual bodily harm, to run consecutively to the other sentences.

The applicant's house at 4 Shetland Park, Ballymena was searched on 7 August 1992. When the police officers sought to enter the house, one of them was assaulted by a person who had been standing outside the rear of the house. When the officers succeeded in entering the house, they saw the applicant gathering up cellophane-

wrapped packages and running to the bathroom upstairs. The police forced their way into the bathroom, and found the applicant sitting on the toilet and attempting to flush packages down it. He would not move and had to be removed by police officers. They retrieved these packages and found other items in the house, together with two lots of cash, £78 from a tin box beside the sink and £770 in an upstairs bedroom. At the police station £146 in cash was found on Bradshaw's person.

The packages were found to contain 95 doses of LSD, two amphetamine tablets and a quantity of cannabis resin and herbal cannabis sufficient to make approximately 200 'joints'. The retail value of these drugs was said by counsel to be between £900 and £1,100. When first apprehended Bradshaw tried to maintain that the drugs were for his personal use. He claimed that the cash found was his girlfriend's club money, his savings for a holiday and money which he was keeping for his mother. When interviewed he admitted that he intended to sell the LSD and the cannabis. He said that he had been

[1994] NI 258 at 268dealing in drugs for a couple of weeks, but had not really sold anything yet. He told the probation officer that he had sold his car a short time before and decided to use the proceeds for the purchase of drugs from pushers at Kelly's, which he planned to resell at a profit. He had been a user of cannabis for several years and graduated to taking occasional tablets of ecstasy. The probation officer accepted that Bradshaw had attempted to cut down his use of drugs to an occasional smoke of cannabis.

Bradshaw was born on 14 August 1970 and was almost 22 years of age when apprehended. He lived in Ballymena with his girlfriend, by whom he has a young child. He has a bad criminal record, going back to 1983 and involving offences of dishonesty and violence, but none relating to drugs.

It was represented on behalf of Bradshaw that his involvement in drugs traffic was of very small compass, and that he had not gone so far as to sell any yet. In view of the amounts of cash found in his house, for which his explanations were far from convincing, we think that this submission may rest on a somewhat shaky foundation. Even if it is correct, however, we consider that the sentences imposed were justified and within the proper parameters for such offences involving Class A drugs. In our opinion the sentences were not manifestly excessive. We dismiss Bradshaw's application for leave to appeal.

William Guiney

Guiney was charged with seven counts on the indictment, and on 21 April 1993 he was re-arraigned and pleaded guilty to four of them. He was sentenced on 18 June 1993 at Belfast Crown Court by Judge Higgins to two years and six months' imprisonment on one count of possession of a Class A drug with intent to supply, 18 months on another charge of the same offence, nine months for possession of a Class B drug and nine months for supplying a Class B drug, all sentences to be concurrent. The judge also ordered the sum of £1,620 found in his house to be confiscated. The applicant did not oppose the making of this order.

On 21 July 1992, officers of the RUC drugs squad searched the house at 104 Tate's Avenue, Belfast, occupied by the applicant together with his girlfriend Aine Rush and her young son. When asked if there were any drugs in the house Guiney handed over a quantity of tablets and cannabis. Materials for smoking cannabis were also found in the house. The tablets consisted of 92 LSD and 82 ecstasy tablets. The total retail value of the drugs was estimated to be £2,950. The sum of £1,500 was found beneath a mattress, and a further sum of £120 was in the house.

When interviewed Guiney acknowledged ownership of all the drugs found. He stated that he was going to sell them for profit. He claimed that he was not a seller of drugs and had not sold any, and that the money belonged to Miss Rush. He had paid £1,300 for the ecstasy, which he had gathered up doing bits of jobs here and there. He bought the drugs to make money to get the house fixed up.

Guiney was pressed further about the money in another interview, when he admitted that the money found was his. He said that he got together about £800 of it by selling cannabis, and that he had obtained the rest from gambling wins. He admitted that he was going to sell the ecstasy and LSD to make more money in order to finance his dealings in cannabis.

[1994] NI 258 at 269Notwithstanding these admissions by Guiney, Miss Rush continued to lay claim to the money when interviewed by the probation officer after Guiney's remand in custody in April 1993.

Guiney was born on 1 July 1961, and at the time of his apprehension was aged 31 years. He lived with Miss Rush and her six-year-old son by another relationship. Miss Rush was at the time expecting Guiney's child, which has since been born. He was unemployed and both he and Miss Rush were in receipt of state benefit. He obtained occasional employment with Opera Northern Ireland and at the time of sentence was considering work as a disc jockey.

Guiney had a very disturbed childhood, and in his late teens indulged in severe alcohol abuse. He developed pancreatitis in consequence, and turned more to the use of drugs, which he had also commenced in his teens. He was a regular user of cannabis, though he had at times tried harder drugs. Dr Fleming regarded his personal history as typical of that associated with alcohol and drug abusers. He thought that here was some evidence of increasing stability and maturity, again not uncommon in drug abusers by the time they reach their thirties. There was some character evidence which impressed the judge, including some from the Church of Ireland, where he had assisted with youth work. Guiney has a bad criminal record, which includes offences of dishonesty and violence, as well as many motoring offences. Significantly, it includes five convictions between 1986 and 1991 for drugs offences, including one of supplying for which he was sent to prison for six months. He told the probation officer that the charge of supplying arose out of his passing a cannabis 'joint' around in company.

Counsel attempted to minimise Guiney's involvement in drug dealing and to stress his increasing stability, but nothing can gainsay the fact that he was concerned in supplying Class A drugs and had been a regular trafficker in cannabis. With his record for drugs offences—even bearing in mind what the applicant told the probation officer about the conviction for supplying—he was in our view clearly into the bracket of a smallish scale retailer. On this basis the learned judge's sentence was amply justified, and it is impossible to say that it was wrong in principle or manifestly excessive. We therefore dismiss the application for leave to appeal.

Applications dismissed.