



Neutral Citation Number: [2011] EWCA Crim 32

Case Nos: 201003452 A6, 201003017 A9,
201003447 A3, 201004146 A7

IN THE HIGH COURT OF JUSTICE
COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM Bristol Crown Court
HHJudge Darwall Smith
T20100199, T20100204, T20100202, T20100198

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 01/02/2011

Before :

LORD JUSTICE PITCHFORD
MR JUSTICE CRANSTON

and

HHJ WARWICK MCKINNON, RECORDER OF CROYDON

Between :

Kirk Jordan Barclay
Noah Ntve
Francis Cowan
Trevor Junior Prince Campbell
- and -
Regina

Appellants

Respondent

David Miller (instructed by **Allen Hoole Solicitors**) for the **First and Third Appellant**
Mark Worsley (instructed by **Rodney King & Prtners**) for the **Second Appellant**
Ian Halliday (instructed by **Elite Solicitors**) for the **Fourth Appellant**
James Ward (instructed by **CPS**) for the **Respondent**

Hearing dates: 14 January 2011

Approved Judgment

Mr Justice Cranston :

Introduction

1. These four appeals are not formally linked because they were tried under separate indictments. However, the offending of which they are part was uncovered as a result of the same police operation. Called Operation Polar, it was conducted in late 2009 in the St Paul's area of Bristol with the intention of identifying and arresting street level Class A drug dealers. The catalyst for police action was the deleterious impact which open drug dealing had had on the St Paul's area. The community and those working there in local government, housing and welfare services had identified as a major concern the open drug dealing on the streets of St Paul's, the fear, nuisance and intimidation associated with it, and the general decline in the area which had resulted.

The appellants' offending and sentences

2. In the course of the police operation these four appellants all sold class A drugs to undercover police officers posing as retail purchasers. Mr Barclay was involved in five transactions, on 12 November, and 3, 4 and 9 December 2009. Each transaction involved a £10 deal of heroin or crack cocaine. The drugs were in the range of some 29-30 % purity. Upon his arrest, he was found with £1735 in cash. This offending was reflected on Mr Barclay's indictment in three counts of the supply of Class A drugs, and two of being concerned in the supply of class A drugs, between the dates we have mentioned.
3. Similarly, on 6 occasions in November and December 2009 Mr Ntuye sold drugs to undercover officers. These were wraps of heroin, at an average weight of .21grams and an average purity of 52%. When he was arrested in mid January and police searched his residence they found a further 18 wraps of heroin weighing a total of 2.92 grams with a purity of between 43 and 49%. Also recovered were 7 wraps of cocaine, weighing a total of 1.58 grams, and £560 in cash. The counts on Mr Ntuye's indictment covered the instances of supply of heroin to the undercover officers and his possession of heroin and cocaine with intent to supply, to reflect what was found at his home.
4. As for Mr Cowan, the 6 relevant counts on his indictment reflected his criminality in selling heroin to an undercover police officer on 2 and 3 November, offering to sell heroin on 14 December, and selling heroin and crack cocaine, or arranging for it to be sold, on 15 December 2009. All the heroin in Mr Cowan's case was over 40% purity.
5. Finally, there was Mr Campbell, who sold either heroin or cocaine to an undercover police officer on 3 occasions in late November and early December 2009. On one such occasion he sold two different types of drug, so he faced four counts of his indictment.
6. Ultimately, all four appellants pleaded guilty to counts on their indictment and it fell to HH Judge Darwall-Smith to sentence them at the Crown Court at Bristol.
7. Mr Barclay was 19 years old. He had 9 previous convictions for 15 offences, including three of possessing a Class C drug, two of possessing a Class B drug and one of possessing a Class A drug (heroin). There was also an offence of assaulting a

constable and one of battery. All these offences have been dealt with by the youth court or the magistrates and had led to community punishment or limited restrictions on his liberty. As well the appellant had warnings for possessing heroin, producing cannabis and possessing an offensive weapon.

8. In a pre-sentence report the probation officer recorded that Mr Barclay expressed remorse and demonstrated a good understanding of the impact of drug dealing on the community. There had been an escalation in his offending behaviour. He had decided to sell class A drugs to make a living. The report writer said that in the St Paul's area of Bristol young men who had not finished their education and had poor employment prospects were liable to be targeted to enter into drug dealing. That seemed to have been the case with him. There was a medium risk of re-conviction with a medium risk of serious harm to the public.
9. In passing sentence on 25 March 2010, the judge said that Mr Barclay was one of a gang of drug dealers in the St Paul's area of Bristol. He had previous convictions for the possession of drugs and thus was already part of the drug culture. His offending involved persistent selling of Class A drugs. The purity was high, indicating a closeness to the source of supply, and there were five matters. A sentence would be imposed of four years' detention in a Young Offender Institution on each count concurrent.
10. The judge also imposed an anti-social behaviour order ("ASBO") on Mr Barclay, despite submissions against this course. Under it he was prohibited from:

“1. Entering the Ashley Ward, namely St Paul's, Montpeller, Baptist Mills and St Andrews, as shown on the attached map.

2. Associating with Noah Ntve (9/3/86), Harvey Jackson (11/11/87), Trevor Campbell (22/11/90), Francis Cowan (1/3/91), Carlton Wood (18/7/89), Narwayne Parchmert (10/2/89), Dwayne Clemmings (4/11/83), Julio Ljyer (21/1/85), Natasha Amso (22/12/89), Bomani Sokoni (6/1/91), Jamie Ivers (19/1/91), Joshua Woodbyrne (8/12/90) and Samuel Smith (25/12/65).

3. Carry or use a mobile phone which is not registered to his name: the mobile used and owned must be registered with the intelligence officer at Trinity Road Police Station, Bristol.”

The judge said this in relation to the ASBO:

“[A]n Anti-Social Behaviour Order is necessary, for people like you, to keep you away from making what was a no go area and a danger to vulnerable persons, the old and the children who are subjected to harassment and the like when entering such an area.”

The judge said that given Mr Barclay's age he would make it for three years only. The form as completed by the Crown Court records that Mr Barclay had acted in an anti-social manner which caused or was likely to cause harassment, alarm or distress

to one or more persons not of the same household as the defendant, but without setting out details of this, and that an order was necessary to protect persons in England and Wales from further anti-social acts by Mr Barclay. It provides that the order is suspended until Mr Barclay is released from custody and that it is in force for 3 years.

11. With Mr Ntuve, the judge was faced with a 24 year old man of Tanzanian extraction, but of Swedish nationality, who had only arrived in this country in 2009 to visit his cousins living in St Paul's and to watch his brother boxing. He had received a caution for theft in the short time he was here, but had no convictions. The writer of the pre-sentence report opined that there was a medium risk of his re-offending. She said that he was evasive when asked about the offences, which he appeared to have committed in the context of financial difficulties, a negative perception of his self-image and his wish to experience a more affluent lifestyle. There was a medium risk of his re-offending.
12. On 29 April 2010 the judge passed on Mr Ntuve a sentence of 5 years concurrent on each count, remarking that there was no suggestion that Mr Ntuve was addicted to drugs but rather that he was dealing on a persistent scale purely for commercial profit. The drugs were from a source of high concentration indicating his fairly elevated place in the hierarchy of street dealers. The judge also imposed an ASBO, its terms mirroring those in Mr Barclay's ASBO, although it was to remain in force for 5 years from the date of release. In opening the facts prosecuting counsel, Mr Ward had explained that Mr Ntuve was part of a gang that controlled the streets around Argyll Road in St Paul's selling class A drugs. In his sentencing remarks the judge said this:

“But the seriousness of these offences is the fact that it blights the whole area of Bristol which the law abiding public are entitled to use without having to face those who have themselves chosen to sell class A drugs, to addicts mostly, in a particular area.”

13. Aged 19 years, Mr Cowan entered guilty pleas on the agreed basis that he was involved in the supply of drugs, as reflected in the indictment, in order to feed his addiction to crack cocaine and heroin. There was a previous conviction for burglary, albeit that it did not lead to a custodial sentence. He committed the offences during the currency of a referral order. On 1 June 2010 the judge sentenced him to concurrent terms of 3 ½ years detention in a Young Offender Institution in respect of each count. There was a pre-sentence report which recommended an adjournment for an assessment of his suitability for a drug rehabilitation requirement as part of a community order. The report writer said this:

“In supplying illegal drugs to others, Mr Cowan was observed by the police to have worked closely with associates involved in such activities. Different individuals were responsible for supplying different types of drugs but they co-ordinated their activities.”

Mr Cowan informed her that he was aware of the impact of drug use on himself and other users, but explained that his need for the substance he craved overrode considerations of the negative effects of selling the drugs. He was assessed as

presenting a medium risk of re-offending. Mr Cowan was also made the subject of an ASBO for 3 years from release, along the lines of Mr Barclay's ASBO. In imposing it the judge referred to St Paul's becoming a "no go" area. He continued:

"Young people, children, vulnerable people, old people want to be able to move round the City freely. Why should they have to be inhibited when an area is taken over by drug dealers as the area was?"

14. As for Mr Campbell, the judge sentenced him on 29 April 2010 to a total of 3 ½ years in respect of the 4 counts on his indictment. He was also subject to an ASBO, its term reflecting those of the other appellants' ASBOs. He was 19 years old with multiple convictions as a juvenile for burglary, robbery and assault with intent to rob. At the time of his arrest he was subject to a community order for possession of class A and class C drugs. The Crown accepted his basis of plea, that he took drugs, that he was selling the drugs on behalf of another to pay a drug debt owed to the true owner, and that he had no stocks of his own. He told the probation officer who prepared the pre-sentence report that he had started smoking heroin and crack cocaine 8 months prior to the offences as a result of the company he kept. The report writer said that there was a high risk of reconviction and a medium risk of serious harm to the public.
15. Before the judge the imposition of the ASBO in relation to Mr Campbell was opposed as not demonstrably necessary, given the custodial sentence with ultimate release on licence; as disproportionate, in terms of the area covered and the individuals named when there was no evidence of Mr Campbell's association with them; and as a restriction on freedom of association, because of the conditions about any mobile telephone Mr Campbell might have. In imposing the ASBO the judge observed that he considered it "entirely necessary and proportionate to make an ASBO in terms of the Crown's draft" and that it was "necessary to keep this area clear of people like you and your colleagues". The judge also added that he had already made ASBOs in 3 other Operation Polar cases, all without opposition.

Mr Barclay's sentence appeal

16. It is said that Mr Barclay's custodial sentence is manifestly excessive, insufficient account being taken of his age. He was 18 at the time of the first offence on 12 November, although he had turned 19 by the time of the further 4 offences. A starting point of 6 years, discounted to 4 years because of his guilty plea at the earliest opportunity, was simply too high. A sentence of 3 to 3 ½ years was appropriate.
17. In our view there was nothing wrong with a sentence of 4 years in the circumstances of this appellant's case. The guidance case of R v Djahit [1999] 2 Cr App R(S) 142 establishes a starting point of 5-6 years for a street retailer of class A drugs. Despite his age the appellant had previous convictions for possession of class A, class B and class C drugs. There were also the other offences we have mentioned. All this indicated a lack of respect for the authority of the courts and law-abiding behaviour. As the judge expressed it, there was an escalating pattern of offending. The pre-sentence report spoke of the future prospects being a medium risk of serious harm to the public. Although the sentence is severe, none of this suggests in any way that it is manifestly excessive, notwithstanding the appellant's age which was, after all, 19 when most of the offending occurred.

ASBOs: legal principles

18. The preconditions to imposing post-conviction ASBOs are laid down in section 1C (2) of the Crime and Disorder Act 1998.

“(2) If the court considers –

(a) that the offender has acted at any time ... in an anti-social manner, that is to say in a manner that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as himself, and

(b) that an order under this section is necessary to protect persons in any place in England and Wales from further anti-social acts by him,

it may make an order which prohibits the offender from doing anything described in the order.”

An ASBO’s commencement can be suspended until the offender has been released from a custodial sentence: s. 1C (5). That in the case of a determinate sentence is as a matter of statute the half-way point, subtracting also appropriate periods of time spent on remand or under curfew (Criminal Justice Act 2003, ss. 240, 240A, 244). In practice an offender may be released before that point under an early release scheme. An offender is free to apply for the variation or discharge of a post conviction ASBO once 2 years have elapsed from the date when it was made: s. 1CA.

19. The language of section 1C (2) demands that the ASBO be tailored to the anti-social behaviour of the particular offender. It must be necessary to protect persons from further anti-social acts “by him”. That means as well that an ASBO’s terms must be proportionate to the risk of further anti-social behaviour which the offender poses. It follows also from basic principles that an ASBO must be precise and capable of being understood by the person subject to it: R v P (Shane Tony) [2004] EWCA Crim 287; [2004] 1 Cr App R (S) 343. In R v Boness [2005] EWCA Crim 2395; [2006] 1 Cr App R (S) 690 this court held that since the ASBO must be necessary to protect persons from further anti-social acts by the offender, the court should not impose an order which prohibits an offender from committing a specified criminal offence if the sentence imposed on conviction for the offence should be a sufficient deterrent: [30].
20. R v Avery (Gregg) [2009] EWCA Crim 2670; [2010] 2 Cr. App R (S) 33 considered this latter principle. There a number of fanatical animal-liberation protestors were sentenced to terms of imprisonment ranging from 9 to 11 years. In each case an ASBO was imposed for an indefinite period. The judge said that given their fanaticism he had little if any confidence that the offenders would desist from their activities in the future. On appeal the ASBO was submitted to be unnecessary – it was premature and a counsel of despair – since it was impossible to say how prison might affect the applicants. This court said that the judge was uniquely well-placed to assess the gravity of the offence, the part played by each of the applicants and, most importantly, the need for public protection for those who had been the victims of their conduct. It was a matter of judgment and assessment: [29]. The judge’s assessment was, in the court’s view, overwhelmingly supported by the evidence. The likelihood

of a Damascene conversion to good behaviour following release from prison was slight. There was the safeguard that if there was a genuine change of heart, the offenders could apply to have the order discharged or varied. “In our judgment it was not a counsel of despair but rather a counsel of reality”: [30].

21. Especially relevant to the ASBOs imposed in this case is R v Dyer [2010] EWCA Crim 2096. That was an appeal by a 26 year old offender also caught up in Operation Polar and sentenced to four years imprisonment. The ASBO for Dyer was for 5 years but otherwise its terms mirrored those in these appellants’ cases. In giving the judgment of the court, Thomas LJ referred to the relevant considerations in considering the impact of a sentence on the necessity for a post-conviction ASBO. As summarised in paragraph 9.5 of the Guidance on ASBOs, produced by the Judicial Studies Board, these are the nature and length of the sentence; its likely effect on the offender; the nature, length and effect (if any) of previous sentences; and the duration, conditions and likely effect of any period of licence. Thomas LJ said that the assessment was one for the trial judge. In that case it was open to the judge to decide that an ASBO was necessary and that the pre-conditions for the making of a post conviction ASBO were met.
22. In Dyer the court went on to consider the terms of the ASBO and held that it should be modified in two respects. First, the area from which the appellant should be excluded was confined to the area of St Paul’s, bounded by Ashley Road and Lower Ashley Road, which is where on-street drugs dealing had occurred. In the absence at the appeal hearing of the prosecution there was no justification available for extending the prohibited zone beyond this to the whole of the Ashley ward: [13]. Secondly, that aspect of the ASBO requiring registration of any mobile phone with intelligence officers at the Trinity Road police station was an intrusion of liberty and, in the absence of the prosecution at the hearing, there was no obvious justification advanced for it: [16]. However, the court upheld the condition that any mobile phone the offender had should be registered in his own name, since the use by drugs dealers of mobile phones, sometimes “pay as you go” mobile phones, was well known: [15]. Moreover, the court held that the prohibition of association with various named persons was justified.

“14. The second condition related to a prohibition of associating with various named persons. It is submitted on the appellant’s behalf that he does not know any of these people and they happen to be people who were arrested as part of the same operation. We consider that the prohibition should be in force. The overwhelming likelihood is that drug dealers of this kind are known to each other, although maybe not by the name set out here but otherwise. Providing that sufficient identification is provided to this appellant so he knows who these people are, we consider that condition was necessary.”

The appellants’ submissions

23. On behalf of these appellants it was submitted first, that there is no necessity for an ASBO in the light of the sentences passed and other factors; and secondly, that even if we uphold the ASBOs their specific terms should not in all respects be maintained. Overall, it was said, when imposing these ASBOs the judge failed as required by R v

P to spell out the justification for them in the special circumstances of each appellant's case. It seemed to be a matter of police policy to apply for a standard ASBO for each offender caught up on Operation Polar. The judge, it was said, appeared to rubber stamp the applications, most evident in his remarks in Mr Campbell's case.

24. Regarding necessity, Mr Miller submitted on behalf of Mr Barclay, it had not been established that the ASBO was in fact necessary for him. He had been sentenced to a period of 4 years' detention. During the period in custody he would undertake a number of programmes to address his offending. On release he would be subject to a package of licence conditions. The operative period of the ASBO, if it was taken as 3 years from his release, would not substantially exceed the licence period. He was a young man, and the experience with young people was that offending was a passing phase. In his case the probation officer had suggested in the pre-sentence report that he had just been caught up in dealing drugs like others of his background in the St Paul's area. There was nothing to suggest that he would not learn from what had happened and respond to the sentence passed on him.
25. The submissions for Mr Barclay were echoed by those on behalf of the other appellants. For Mr Ntuye Mr Worsley submitted that given that he had had not previously been convicted of offences - any convictions of his in Sweden would be readily known to the police here - the judge could not properly have concluded that such a substantial prison sentence would not have a deterrent effect, making the ASBO unnecessary. On Mr Cowan's behalf, Mr Miller highlighted his youth, the agreed basis of his plea (his involvement was to feed his own habit) and the three year period of the ASBO. On Mr Campbell's behalf, Mr Halliday submitted that his bad record was in unrelated areas of offending, and that the probation officer who prepared the pre-sentence report must have thought that Mr Campbell was readily redeemable given the recommendation of a non-custodial sentence. As well as referring to the failure of the judge to consider the deterrent effect of the sentence, and the control Mr Campbell would be subject to as a result of the licence conditions, Mr Halliday made the additional point that the conduct which the court was attempting to prevent, dealing in class A drugs, is punishable with penalties far in excess of those available for breach of an ASBO, so that it is unclear why the lesser deterrent of the ASBO would be effective if the greater failed to secure the desired end.
26. As for the specific prohibitions in the ASBOs, objection was taken first, to the exclusion zone. On behalf of the appellants it was said that even its reduction in Dyer from the Ashley ward as a whole, to the St Paul's area bounded by Ashley Road and Lower Ashley Road, could not be justified. Mr Barclay's mother lived within that area, even if he lived elsewhere in Bristol at the time of his arrest. Mr Ntuye's aunt lived in the St Paul's area, as did Mr Cowan's grandparents. Mr Campbell told the probation officer that at the time of the offence he lived in St Paul's at his brother's and his mother's, although that he would occasionally fall out with his family and live elsewhere. Moreover, it was contended, to prohibit these young appellants from entering the St Paul's area was to exclude them from the centre of cultural and community activities for the black community in Bristol.
27. The association prohibition was also challenged. In general terms that was because of what was said to be the lack of a firm evidential basis. All that was said by the prosecution was that all those mentioned had been caught up in Operation Polar.

However, there was no evidence, even when particular appellants knew persons on the list, about whether they had associated with them, or the nature of the association. How, it was said on the appellants' behalf, would they be able to check that the people they met were on the list? How, if they were in groups in social and other settings, could association with those on the list be prevented? What was the objection to the appellants associating with those on the list in private, when the anti-social behaviour objected to had occurred in public spaces?

28. Finally, it was submitted, the condition that appellants not carry or use a mobile phone, other than one which has been registered in his name, was a restriction upon an appellant's freedom of association. Albeit that mobile phones can be used to facilitate crime, they are arguably a necessity in promoting freedom of association in a modern society. The proposed restriction would prevent the use of another's mobile phone even in an emergency situation, or where an appellant's own phone had run out of credit or power. Moreover, the enforcement of this condition would lead to intrusion, the harassment and even the arrest of the appellants, in the course of the police checking whether a mobile phone found on them was registered as required.

The necessity for these ASBOs

29. In our view the challenge that the judge omitted to set out the factual basis for the ASBO in the case of each of these appellants fails. As this court said in R v Dyer, it will assist if judges making ASBOs consider the Guidance produced by the Judicial Studies Board. That will enable them readily to spell out the reasons behind the ASBO and its particular prohibitions. In these cases, however, the elliptical character of the judge's reasons must be seen against the background of the information before the court on the occasion of the sentencing of these appellants.
30. In the case of each of these appellants, the judge had before him the application pack from the Avon and Somerset Constabulary for an anti-social behaviour order. At the outset that stated the reason for the application:

“in order to protect the residents of St Paul's from the nuisance and intimidation caused by his drug dealing and to prevent re-offending ...

Community meetings and surveys have revealed that drug dealing, and the associated nuisance and intimidation, continues to be the primary concern for local people.”

Each application then detailed the relevant offending of the appellant, including any previous offences, and was otherwise tailored to his own circumstances. For example, with Mr Ntuve it was said that although he had previously claimed to live at 32 Argyll Road in St Paul's, PC Adams' statement, which was attached, confirmed that the legal tenants of that address did not want him at the property. It also stated that he had never been a tenant of the address, but had simply been allowed to use it as a bail address once. Bristol City Council confirmed that he was not registered as a legal tenant anywhere in Bristol and was not in receipt of any benefits. Mr Ntuve was officially of no fixed abode, and had no links with St Paul's. He had no need to enter the area since he did not live or work there.

31. Each application also referred to the appellant's involvement in open street drugs dealing and to the misery, fear and frustration to the area's residents that this caused. To support this, attached to each application was a statement of Police Sergeant Aston. That began with a general account of how open street drug dealing can undermine a community's cohesion. This usually emerges in diverse, transient communities, where the criminals involved already have a foothold, and by the use of threats and intimidation to force residents to turn a blind eye. Often the residents are sympathetic to the plight of the drug addicts. It is in the drug dealers' interest to create conflict with authoritative figures to create an atmosphere of high tension so that all the community witnessed is a high profile, reactive style of policing. Vulnerable individuals such as the young and elderly are often coerced by fear or payment into taking small roles, such as runners, lookouts or allowing their properties to be used. Service providers are not welcome since broken street lights, damaged roadside furniture, derelict houses, abandoned cars, litter and overhanging shrubs are all conducive to the operation of the market. The surrounding area becomes unattractive to new businesses and those already in existence come under threat.
32. Specifically in St Paul's, Police Sergeant Aston's statement covers the open drug dealing. Attempts at conventional community policing had proved to be ineffective since it depends on consultation and interaction with local people. In St Paul's they were too frightened to speak out. Drug dealers had gained support for their operations by infiltrating local communities, seeking their support when the police and local authority attempted to tackle the problems. Police used stop and search powers on the group but it escalated into a violent confrontation. The drug dealers claimed they were being unfairly targeted. This was raised at a community meeting. Attempts by the local authority to remove abandoned vehicles in Argyll Court could not be completed due to a large crowd gathering, from the gang. In conjunction with Bristol City Council a number of initiatives had been attempted by the Safer Bristol Partnership. The gating of Argyll Court, street cleans, and the boarding up of vacant premises were examples of work carried out in the face of extreme intimidation by the group of drug dealers who congregated. Within days of completion it had been rendered useless. Patrolling beat and community officers, housing officials, in fact anyone in authority had been met with the threat of violence and missiles, such as bottles and stones. While these people were on the streets service providers could only carry out their work while escorted by police. In October 2009 scaffolders employed by a housing authority were forced to leave Brighton St by the group, who threatened to use guns. There were regular reports by housing association representatives and local service providers, who were being confronted when attending St Paul's by groups in the street, questioning them about their presence and accusing them of being undercover police officers. Some of these workers had been patted down and searched. Several local businesses, which are established in the local area, have come under threat from the gangs.
33. Against all the background material, which the judge had obviously read, we can well understand how he concluded that the statutory requirement of necessity for an ASBO was met in the case of each of these appellants. First to be considered was the potential deterrent impact of the sentence. In the case of Mr Barclay the background material before the judge was that, although he was only 19 years old, he had been in the drug culture since the age of 16 and had not responded to the previous punishments for earlier offending. As the judge expressed it, he had been caught up

in the drug culture. There was an obvious basis for concluding that the custodial sentence might not dissuade him from future offending. Similarly with Mr Ntuve: he had had to be cautioned for theft, soon after he arrived in this country, and the pre-sentence report was hardly evocative of remorse. Mr Ntuve was older than the other appellants, had made a deliberate decision to enter the drugs' trade and, as the judge put it, occupied a fairly elevated place in the hierarchy. By contrast Mr Cowan was an out of work addict, whose motivation was to finance his addiction. He had previous convictions but had not been subject to custody. It might well be that a period of custody, and drug treatment work there, could have been the basis for concluding that the statutory test had not been met on the basis of Mr Cowan's individual circumstances. As for Mr Campbell, the judge could well have concluded that the ASBO was necessary, because the custodial sentence would not have the desired effect, given Mr Campbell's failure to respond to the previous sentences of detention and community punishment. If a sentence involving a restriction on liberty had not deterred him in the past, an ASBO might be a useful tool to thwart any future attempts on his behalf to embark on the path to further offending.

34. Moreover, these post-conviction ASBOs were not simply directed at future drugs offending by these appellants but also, as each application said at the outset, at their involvement in the anti-social behaviour associated with the open street dealing of drugs and their contribution to making St Paul's a "no go" area. This was not a point addressed in Dyer nor, we conceive, central in previous decisions of this court on post-conviction ASBOs, where the focus has been on whether the deterrent effect of the sentence made an ASBO necessary to address future offending of the same character. In the present appeals the evidence of Police Sergeant Aston identified a range of anti-social behaviour associated with open drug dealing on the streets, including making life difficult for local service providers in the maintenance of the St Paul's area as a decent place for people to live. Open drug dealing in itself constituted only part of the problem, since there were the other factors conducive to an environment in which it could flourish. In the passages we quoted earlier, the judge referred to the need to protect people, the vulnerable in particular, and to prevent St Paul's from becoming a "no go" area. It goes without saying there can be no "no go" areas in this country. St Paul's, he also said, had been taken over by drugs dealers and it was necessary to clear it of those such as Mr Campbell. In other words, these ASBOs were also targeted at the nuisance, fear and intimidation which were conducive and preparatory to open drug dealing. The appellants had to be prohibited from contributing to this type of anti-social behaviour separate from, but essential to, the open market in drugs. So although his sentence may have deterred Mr Cowan from offending, the ASBO was necessary in his case, as for all appellants, to address other aspects of anti-social behaviour than the drugs offending itself.
35. So if ASBOs were justified in the case of these appellants, what of their scope? Before us the prosecution attempted to justify making the Ashley ward as a whole the exclusion zone on the basis that it is a clearly defined area and that, if exclusion is confined to the area identified in R v Dyer, the dealing will simply move to a few streets away outside it. We fail to see how the Ashley ward is any more definite than the area decided on by the court in R v Dyer, the St Paul's area bounded by Ashley Road and Lower Ashley Road. As to the contention that drug dealing will simply move outside this area, the prosecution relies on assertion, rather than evidence. The assertion might be correct, but there is nothing in Police Sergeant Aston's statement to

explain why the movement of the drugs trade will be to other parts of the Ashley ward, rather than to elsewhere in Bristol.

36. As far as these appellants are concerned, however, we do not regard their exclusion from the part of St Paul's identified in R v Dyer as disproportionate. The only one living there at the time of his arrest was Mr Campbell. Mr Barclay's mother lives there, but Mr Barclay himself was living elsewhere in Bristol. Mr Ntuye had only recently arrived from Sweden, albeit that his aunt and cousins live in the location. Mr Cowan was not a resident of the exclusion zone. In each case, even Mr Campbell's, we cannot regard exclusion from the area as disproportionate given the individual circumstances of these appellants and the broader picture which Police Sergeant Aston has painted.
37. Nor, for the reasons given in R v Dyer, do we regard the association prohibition as unnecessary or disproportionate, although providing each of the appellants with photographs and street names of those with whom they must not associate will make that part of the ASBO clearer, more understandable by them and easier to enforce. Nothing we have heard persuades us that it is unnecessary for these appellants to register their mobile phones in their own names, or that registration in their own names is a disproportionate response, trenching on their freedom of association. In that regard we adopt the reasoning of this court in R v Dyer. During the course of the argument, the prosecution accepted that the additional condition for registering mobile phones with the intelligence officers at Trinity Road police station was otiose, given the other registration requirement.
38. Thus we dismiss these appeals against the imposition of ASBOs. However, we vary the ASBOs so as to reduce the area from which the appellants are to be excluded from the Ashley ward as a whole to the St Paul's area bounded by Ashley Road and Lower Ashley Road. We have marked that area on the map attached to the judgment. We also vary these ASBOs to remove the requirement that the appellants should register their mobile phones with the intelligence officers at Trinity Road Police Station. Otherwise the prohibitions the judge imposed in their ASBOs stand.
39. Finally, to facilitate certainty in respect of these ASBOs, we accede to the prosecution's request to set definite dates for their duration. These are contained in the schedule to this judgment. As we explained earlier, the judge made orders which in effect meant that the ASBOs would run from release of the appellants from custody. As we have also explained, this may be prior to the half way point of the sentence, under early release arrangements. In the interests of certainty, however, we agree with the prosecution submission that although the ASBOs begin on release measuring their duration from the half way point is desirable. Unlike the prosecution, however, we have taken the last day of the previous month as the end date, which results in slightly more generous treatment.

ANNEX

Duration of ASBOs

	Mr Barclay	Mr Ntuye	Mr Cowan	Mr Campbell
Sentence Date	1/6/10	8/4/10	1/6/10	29/4/10
Length of custody	4 years	5 years	3 ½ years	3 ½ years
Time on remand s240	137 days	104 days	137 days	104 days
ASBO length	3 years from release	5 years from release	3 years from release	5 years from release
Approximate Release date	February 2012	July 2012	November 2011	October 2011
End date	31/1/2015	30/6/2017	31/10/2014	30/9/2016

Ashley Polling Districts

