# COURT OF APPEAL

26th October, 1988

Before: J.M. Chadwick, Esq., Q.C., (President)
R.D. Harman, Esq., Q.C., and
E.A. Machin, Esq., Q.C.

---

The Attorney General
- v -
Dean Gary Marie

---

Application for leave to appeal against sentence of 4 years' imprisonment passed on him by the Royal Court (Criminal Assize) on the 1st June, 1988, following conviction on 1 count of illegal entry and larceny, 6 counts of malicious damage, 3 counts of breaking and entering and larceny, and 5 counts of larceny.

---

Advocate S.C. Nicolle, the Crown Advocate
Advocate S. Slater, for the Applicant.

---

**JUDGMENT**

THE PRESIDENT: We have before us an application by Dean Gary Marie for leave to appeal against sentence passed on him on the 1st June, 1988, on some 12 counts. The totality of the sentence was 4 years. Marie was charged with an accomplice, José de Freitas, on the 8th January, 1988. On the 22nd April, 1988, de Freitas appeared before the Inferior Number on pleas of guilty and was sentenced to a totality of 2 years on substantially the same matters on which Marie subsequently came to be tried. I say substantially because there was one additional matter on which de Freitas was sentenced. Marie pleaded not guilty. He was convicted on the 12th May, 1988, and came before the Royal Court for sentence, as I have said, on the 1st June.

In passing sentence the Bailiff referred to the sentence of 2 years that had been passed on de Freitas and posed the question whether that imposed a fetter on the Court's discretion in sentencing Marie. He came to the conclusion that there was a sufficient distinction in the two cases to justify the sentence of 4 years in total which was passed.

The application for leave which is before us has been advanced on the basis that, if leave were granted, the grounds of appeal would be that the two year sentence passed on de Freitas was appropriate, having regard to a discount of one-third. Accordingly, it is said, three years would have been appropriate for de Freitas had the plea been not guilty and that should govern the sentence to be passed on Marie.

In our judgment that is the wrong approach to this matter. The correct approach is first to consider what would be the appropriate sentence to pass on Marie, if he had been charged, indicted and convicted alone. In our judgment 4 years would not have been excessive on that basis and we would not have interfered.

The next step is to ask whether the disparity between that appropriate sentence of 4 years and the sentence passed on the accomplice, de Freitas, is so glaring that it can properly leave Marie with a real sense of grievance. If so, then it would be appropriate for an appellate Court to consider reducing the sentence that would otherwise have been considered appropriate for Marie.

We have taken into account what has been said to us on behalf of the applicant and the reasons given by the Bailiff for the disparity, which he recognised. In our judgment the disparity is not sufficient, in the circumstances of this case, to found an independent argument that the sentence of 4 years should be reduced.

Accordingly, we refuse the application for leave to appeal.

Authorities: (*referred to at the hearing).

Appellant's Authorities:

*Thomas' "Principles of Sentencing" (2nd Edn.) p.p. 64 - 73; p.174.

*Thomas' "Current Sentencing Practice" p.p. 1073 - 1074/3; p.1076.

The Crown's Authorities:

Thomas' "Principles of Sentencing" (2nd Edn.) p.p. 64 - 73; p.174.

Thomas' "Current Sentencing Practice" 1086/1; 1086/2.

A.G. -v- Aubin (1987) as yet unreported J.J. No. 87/25.

A.G. -v- Aubin (1987) as yet unreported J.J. No. 87/32.