

ROYAL COURT

(Superior Number, exercising the appellate jurisdiction conferred upon it by Article 22 of the Court of Appeal (Jersey) Law, 1961).

12th February, 1992

19.

Before: The Deputy Bailiff, and Jurats Vint, Myles, Bonn, Orchard, Gruchy, and Vibert.

Application of **Stephen Nicholas Dring** ("the applicant") for leave to appeal against the sentence of 15 months' imprisonment, passed on him by the Royal Court (Inferior Number) on 25th October, 1991, in respect of Count 1 only of the indictment laid against him (illegal entry and larceny). The applicant appeared before the Inferior Number with a co-accused, who abandoned his appeal.

Leave to appeal was refused by the Deputy Bailiff on 8th November, 1991.

W.J. Bailhache, Esq., Crown Advocate.
Advocate R.J.F. Pirie for the applicant.

JUDGMENT

THE DEPUTY BAILIFF: Because I had refused leave to appeal I retired to my room and took no part in the consideration, by the learned Jurats, of their decision in this case.

As the learned Bailiff rightly said when passing sentence, the appropriate level of tariff sentence for the illegal entry and larceny of commercial premises by night is of the order of fifteen months' imprisonment.

In the present case, the value of the stolen jewellery was nearly £4,000 so that the sentence might well have been increased to say eighteen months' imprisonment by reason of that aggravating factor, when compared with a larceny of property of perhaps a value of only a few hundred pounds or less.

This was a joint venture where both accused are jointly and severally responsible for the whole amount of property involved and for any other damage caused. The fact that one of them defecated on the carpet is an aggravating factor.

The applicant claimed that both his drug habit and his abuse of alcohol were not without relevance (I use the words in the background report) to the events at Jersey Pearl. He told the Probation Officer that he was quite drunk at the time. The Court again stresses that self-induced drug influence and intoxication are aggravating factors.

This was the applicant's fourth conviction for offences involving dishonesty - a record of dishonesty of this kind effectively negates any mitigation there might otherwise be. A sentence of fifteen months' imprisonment is therefore fully justified for the offence of illegal entry and larceny.

However the appellant relies on another ground, that is to say disparity of sentence between himself and his co-accused and calls in aid the case of A.G. -v- Lynch (24th July, 1991), Jersey Unreported. There a sentence of nine months' imprisonment was reduced to six months on the ground that there

should have been a disparity between Lynch and his co-accused; the co-accused had a long criminal record, whereas Lynch was to all intents and purposes a first offender and had an excellent army record.

Thomas' "Principles of Sentencing" (2nd Ed.) p.72 was cited:

"In some cases the Court is confronted with an appellant whose sentence appears to be correct in every respect, but whose co-defendant has received a sentence which is in the Court's view unduly lenient. The Court has no power to increase the co-defendant's sentence, whether or not he has appealed, and is therefore faced with the choice between upholding the sentence and leaving the appearance of injustice or reducing the sentence to what it considers an inappropriate level. In such a case the practice of the Court is to reduce the more severe sentence only if there is "such a glaring difference between the treatment of one man as compared with another that a real sense of grievance would be engendered"."

In Lynch the Superior Number were satisfied that there would be a real sense of grievance and although the sentence which they substituted for that imposed was "totally inappropriate for what he did" they reduced the sentence imposed to one of six months' imprisonment.

Mr. Pirie urges the Court to apply the same principle in the present case and reduce the fifteen month sentence imposed on the applicant on the ground that the co-accused McDonough, who has abandoned his appeal, received a sentence which was unduly lenient. On the night before the Jersey Pearl incident McDonough had broken and entered Fauvic Stores, Grouville, and had stolen cigarettes to the value of £637.43 and cash of £60. For that offence he also received a sentence of fifteen months' imprisonment, but the two sentences were made concurrent; Mr. Pirie argues that they should have been consecutive; the

applicant, he says, suffers a real sense of grievance because he received the same sentence, in practical terms, for a single offence as did McDonough for two separate and distinct offences.

This application is unusual because the Crown took the contrary view and moved for a sentence of twelve months' imprisonment on both counts concurrently for McDonough and a sentence of fifteen months' imprisonment for the applicant, that is to say the Crown sought a disparity in McDonough's favour. The sentencing Court decided that there was no reason to distinguish between them and increased the conclusions in respect of McDonough to fifteen months. Mr. Pirie now urges this Court to go further in the other direction and to create a disparity in favour of the applicant.

The applicant has failed to satisfy the Court that he has any justification for a real grievance. In the words used in Thomas, there is not such a glaring difference between the treatment of the applicant as compared with McDonough that a real sense of grievance could reasonably be engendered.

McDonough's record shows three offences involving dishonesty, two of them minor offences as a juvenile and the third when he was but seventeen years of age. There are no offences at all between 1980 and 1987, a striking factor. Subsequent offences are all of a breach of law and order nature associated with heavy drinking, with the exception of two road traffic matters.

The applicant, on the other hand, has previous convictions involving dishonesty in 1987, 1990 and 1991, with the effect that this was his second conviction for dishonesty in the same year. On the 3rd July, 1991, he was convicted of a number of road traffic offences and was fined and disqualified for holding

or obtaining a licence to drive for three years. Six days' later, on the 9th July, 1991, he drove whilst disqualified, with an alcohol concentration above the prescribed limit and uninsured. The sentences for those offences are not subject to appeal but this Court is entitled to have regard, as part of the character of the applicant, to his wilful disregard, indeed contempt, of the law and the courts. When confronted by the police he gave a false name. He was bailed for the offences committed on the 9th July, 1991, and committed the Jersey Pearl offence on the 14th July, 1991, whilst on bail, a further seriously aggravating factor.

The sentencing Court took the view that the two offences that McDonough had committed made up for the disparity in the respective records and that, accordingly, the proper sentence was the same for both.

In this Court's judgment that was a reasonable view for the sentencing Court to take and there was no glaring difference in treatment such as would require this Court to intervene. Accordingly, the application for leave to appeal is dismissed. Mr. Pirie will have his legal aid costs.

Authorities

Lynch (24th July, 1991) Jersey Unreported.