

ROYAL COURT  
(Superior Number)

24th September, 1992

166.

Before: The Bailiff, assisted by Jurats  
Blampied, Myles, Bonn, Hamon, Gruchy,  
Le Ruez, and Herbert

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Attorney General

- v -

Jennifer Toone and Gary McNally

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Sentencing, following guilty plea before the Inferior Number on 7th July, 1992, to one count of being knowingly concerned in an attempt at evasion of the prohibition on Importation of a controlled drug, contrary to Article 77(b) of the Customs and Excise (General Provisions) (Jersey) Law, 1972.

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AGE:

McNally: 21.

Toone: 22.

PLEAS: Guilty.

**SYNOPSIS OF OFFENCE:**

Familiar drug courier pattern. On 17th April, 1992, both non-Jersey resident defendants arrived at St. Helier Harbour on the ferry from Poole, Toone as a foot passenger, McNally as a passenger in a car with other men including another defendant, Lovejoy, to be sentenced on 2nd October, 1992. An overbody search of Toone revealed package in her groin area which she immediately removed from her under-clothes and handed to the Customs Officer saying that she believed the contents to be Ecstasy (Class A) tablets. Toone co-operated and implicated McNally who, after initial denials, (in the plural) eventually made a statement admitting that he had been commissioned in Jersey to procure 500 Ecstasy tablets for £4,500. He travelled to London. Having located but not purchased the drugs, he decided to look for a female to get the drugs to Jersey and was introduced to Toone who for £500 agreed to be the courier. He then purchased the drugs. He sampled one and thought they were "amphetamines" not Ecstasy. He then re-visited

Toone and handed the package to Toone, paid her cash on account, drove to Poole with her, gave her money for her return ticket and they both travelled over separately according to McNally's plan. On analysis the package contained not Ecstasy as Toone had believed but 451 tablets of Amphetamine Sulphate (Speed) plus 30 more such tablets crushed. Total street value £12,025. McNally was to get £1,000. He was a roofer by trade who had not worked since 1990 but had nevertheless visited Jersey on a number of occasions. Crown offered Customs and Police evidence to the Court to explain why criminals are importing Class B tablets instead of Class A tablets. That evidence had been supplied to both Counsel in advance of sentencing. Crown's submission was that the range of sentence for similar Class A offences should now be applied to Class B offences. McNally was unable to name supplier or Intended Jersey consignee. Crown's submission was that although A.G. -v- Davies was not a benchmark decision which bound the Instant Court in this case, it was nevertheless a sentencing decision which the Crown was obliged to put before the Instant Court.

**MITIGATION:**

Guilty pleas. Neither had deprived background. Both single. Toone was an auxiliary nurse on a low wage with no previous convictions. She was in debt and badly needed to earn money. She gave full details of her debts to investigating officers which details had the ring of truth. Her father was present in Court and supportive. She had co-operated fully with Customs. In Crown's submission she had been corrupted by McNally who planned the whole operation for greed. McNally had previous convictions but none for drug related offences. He said he had done it because he owed money to a person he could not name nor could he give the circumstances in which his debt had been incurred. Counsel for McNally urged that there should be no departure from the earlier range of sentence for similar Class B offences (arguably 18 months) (unaffected by A.G. -v- Davies) but that if the Court was minded to follow the uplift in A.G. -v- Davies then Counsel could not urge a lesser sentence than that moved for.

**PREVIOUS CONVICTIONS:**

**McNally:** 5 Court appearances. 17 offences plus 4 taken into considerations. Principally burglary and theft.

**CONCLUSIONS:**

**McNally:** 3 years' imprisonment.  
**Toone:** 2 years and 6 months' imprisonment.  
Confiscation Order.

**SENTENCE:**

**McNally:** conclusions granted.  
**Toone:** conclusions reduced to 2 years' imprisonment.

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**The Solicitor General.**

**Advocate A.D. Hoy for Toone.**

**Advocate R.J.F. Pirie for McNally.**

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**JUDGMENT**

**THE BAILIFF:** The Court has approached this case in the light of the charge - that is to say the importation of what is a Class B drug. It is not prepared at the moment to regard the importation as if it were a Class A drug; it is not.

However, the street value far exceeded the value of the amounts that have so far been imported into this Island and for which lower sentences have been imposed by this and other Courts.

We have come to the conclusion that this was a carefully arranged importation by McNally, who brought in the other accused. We cannot see that the Solicitor General's conclusions are out of line, in the light of the amount and the street value of this Class B drug and accordingly, McNally, you are sentenced to three years' imprisonment.

As regards Toone, the Court is going to make a slight reduction in the conclusions asked for. As was said by the Solicitor General, you did it because of your need; but nevertheless, you did it with your eyes open.

Balancing against that the fact that you were a tool of McNally, we have come to the conclusion that the proper sentence for you is one of two years' imprisonment, and accordingly you are so sentenced. There will be an order for the forfeiture and destruction of the drugs.

Authorities

A.G. -v- Davies (10th September, 1992) Jersey Unreported.

Carr -v- AG (6th April, 1992) Jersey Unreported C. of A.

A.G -v- Thomas (15th November, 1992) Jersey Unreported.

A.G. -v- Schollhammer (5th March, 1992) Jersey Unreported.

Schollhammer -v- A.G.; Reissing -v- A.G. (14th July, 1992) Jersey  
Unreported C. of A.

Thomas; "Principles of Sentencing" (2nd Ed'n): p.p. 184-189.