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COURT OF APPEAL

28th September, 1992. 168

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

Application of Stuart Terence Campbell for leave to appeal against a sentence of 3½ years imprisonment passed on him by the Royal Court (Superior Number) on 1st July, 1992, following a guilty plea before the Inferior Number on 19th June, 1992, to 1 count of importation of a controlled drug, contrary to Article 23 of the Customs and Excise (General Provisions)(Jersey) Law, 1972.

Leave to appeal was refused by G.M. Dorey, Esq., a Judge of the Court of Appeal, on 6th August, 1992.

The Attorney General.
Advocate A.D. Hoy for the applicant.

JUDGMENT.

THE PRESIDENT: Stuart Terence Campbell, on the 19th June of this year before the Royal Court, pleaded guilty to importation of a controlled drug into the Island, and on the 1st July he was sentenced by the same Court to three and a half years imprisonment. He now seeks leave to appeal, leave having been refused by a single judge of this Court.

The seriousness of the offence lies both in the nature of the drug imported and in its quantity. It was a class A drug, namely MDMA, more commonly known as "ecstasy", and the applicant was in possession of over 350 tablets which were found concealed in a Johnsons baby powder container in his luggage. The applicant, originally from Liverpool, had flown on a flight from Birmingham and attempted to pass through the "Nothing to Declare" channel at

the customs. He was stopped and searched and it was upon that search that this container was found in his luggage. He was not willing to disclose his source but he was prepared to co-operate to the extent of allowing a customs officer to borrow some of his clothing in an attempt to catch the person to whom, he said, he was to pass the drugs at the airport.

The Royal Court appears to have accepted that he was telling the truth as to the nature of the arrangement to hand the drugs over at the airport, and as to the reality of the co-operation to which I have just referred. We do not approach the matter in any different way in this Court.

Ecstasy is a drug which has recently been the subject of much publicity and which has a particular appeal to young people who may be tempted to take it at clubs and parties where they congregate and at present it constitutes one particular form of social mischief. Its dangers are recognised by its classification as a class A drug.

In the recent case of the Attorney General -v- Schollhammer, (5th March, 1992) Jersey Unreported, the Royal Court pointed to an increase in the use of drugs in the Island over the last two or three years. It is clearly perceived to be the duty of the Royal Court and of this Court to do all that it can to reduce this evil tendency. That is not to say that regard is not to be had to the facts of each individual case or to the mitigation which can be put forward in the case of a particular offender. It was at one time thought in this Island that in the case of drugs cases mitigation was to play little part, but that approach was expressly disapproved by this Court in Schollhammer -v- A.G., Reissing -v- A.G. (14th July, 1992) Jersey Unreported C. of A. when the President said ***"First we reject the premise that mitigation is not of significance in drug cases".***

The applicant was acting as a courier. He was importing drugs into the Island for gain in the sense that he had incurred a debt of in excess of £400 for the purchase of drugs in Liverpool, and at least felt himself under threat of physical injury if he were not to discharge that debt. He expressed the matter to the probation officer in these terms: he said that on his release from his last prison sentence he had returned to Liverpool and had run up a debt of £480 from purchasing "speed". When he stopped taking the drug, around Christmas, the suppliers became insistent on repayment; he was placed in the position of paying back the money immediately or being physically punished. The applicant had said to the probation officer that he had been badly beaten up in the past as a result of non-payment of drug suppliers. The only alternative was to carry a container to Jersey. He was not so much worried about his own safety as about that of his girlfriend and family.

It has been urged upon us that that factor is something which should go to reduce the sentence imposed in his case below the three and a half year period which was in fact imposed. We have considered the following factors as being relevant in this case.

First the fact that he pleaded guilty. In respect of that factor we do, of course, make a reduction from the general tariff which has been expressed in this Court previously to be one of one of six years before any reductions are made. However, in considering how much weight to give to the guilty plea and what percentage to deduct from the general tariff, we think it right to bear in mind that the applicant was caught "red handed" and without any apparent scope for a defence, the materials being found in his luggage after he had gone through the "*Nothing to Declare*" channel in the way I have described. While it is right, therefore, that there should be a real deduction in respect of the

guilty plea, it is a reduction which does not lie at the high end of the percentage reduction which is right to make.

We next look at the two other matters to which I have already referred, namely, the degree of co-operation which he gave to the authorities in permitting the customs officer to dress in the appellant's clothes with the possible prospect of luring and entrapping the person to whom he was to supply the drugs, and secondly, the likelihood that the applicant was, to some extent at least, in fear for the safety of himself and of his family, if he did not co-operate. That being said, he had himself created the problem which put him under that pressure, in that it was he himself who was not merely purchasing the drugs contrary to the law, but was also doing so without earning any money, whilst unemployed.

Bearing all these factors in mind, we consider that the facts make a three and a half year sentence the appropriate one in this case, having regard to the bracket set in the recent past.

We would repeat the position set out in the judgment in the Schollhammer case: in a case of this type, an overall tariff of something like six years might be reduced to three and a half to four years to allow for a plea of not guilty; there is no question of a tariff of three years having been established as was urged upon the Court in that case. In that case, the Court of Appeal said "***the true position is that there is no tariff of 3 years. As a starting point of six years, and in practice after mitigation, one finds a band of sentences in the range of 4 - 3 years***".

After considering all the factors which have been urged upon us by Counsel for the applicant, we feel that for the reasons I

have given, this sentence is correct. Accordingly we dismiss this application for leave to appeal.

Authorities

Clarkin & Pockett -v- A.G. (3rd July, 1991) Jersey Unreported.

A.G. -v- Carr & Feeney (11th February, 1992) Jersey Unreported.

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

Taonis (1974) Cr. App. R (S) 160.

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

A.G. -v- Davidson (6th August, 1992) Jersey Unreported.