

ROYAL COURT
(Samedi Division)

80.

25th April, 1994

Before: The Bailiff, and Jurats
Coutanche, Vint, Myles, Hamon, Le Ruez, Vibert,
Herbert, and Rumfitt.

The Attorney General

- v -

John Lawlor

Sentencing before the Superior Number, following a guilty plea before the Inferior Number on 8th April, 1994, to

- 1 count of being knowingly concerned in the fraudulent evasion of the prohibition on importation of a controlled drug (M.D.M.A.), contrary to Article 77(b) of the Customs and Excise (General Provisions) (Jersey) Law, 1972, (count 1 of the Indictment); and
- 1 count of possession of a controlled drug (M.D.M.A.), contrary to Article 6(1) of the Misuse of Drugs (Jersey) Law, 1978.

AGE: 41 male.

PLEA: Guilty.

DETAILS OF OFFENCE: Arrived from St. Malo with 855 tablets in his underpants. Courier. Street value £21,375.

DETAILS OF MITIGATION: Allegedly thought the tablets were 'speed'. Wife and family suffered from his bankruptcy in UK recession. He was vulnerable target for those closer to the source.

PREVIOUS CONVICTIONS: None for drugs. Bad juvenile record and up to 1983. Nothing since.

CONCLUSIONS:

- Count 1: 6 1/2 years' imprisonment.
- Count 2: 2 years' imprisonment (concurrent).

SENTENCE:

- Count 1: 5 years' imprisonment.
- Count 2: 2 years' imprisonment (concurrent).

This was to be treated not so much as a precedent as the Court's acceptance on this one occasion that there might be a sense of grievance if 6 1/2 yrs. was imposed because in Stewart, decided only one week earlier, a sentence of 5 1/2 yrs. was upheld by the CofA for approximately double the amount of a Class A drug. The Crown's conclusions (6 1/2 yrs) were not excessive. They reflected starting point of 9 yrs. which remains unaffected by the apparent leniency of Stewart.

Advocate J. Melia for the accused.
S.C.K. Pallot, Esq., Crown Advocate.

JUDGMENT

THE BAILIFF: We have looked at the recent Court of Appeal Judgment in Stewart -v- A.G. (18th April, 1994) Jersey Unreported C of A. where a sentence of 5¹/₂ years' imprisonment was upheld for importing the same sort of Class A drug. There, of course, the appellant used a young woman to assist in the importation and it is interesting to note the words of the Court in dismissing the appeal where it says at the bottom of p.5 of the Judgment:

"In our judgment it" ("it" that is to say 5¹/₂ years) "was an entirely proper sentence. But for the conclusions of the Attorney General, we would have been inclined to regard it as unduly lenient".

Having said that, however, we have taken very much into account that although this is a very serious offence, the accused was not close to the source of supply and therefore was not involved to the extent of MacKenzie, whom we sentenced on 18th April of this year and where the starting point was 10 years. We are satisfied that the starting point is in fact 9 years.

We also note that the accused has had a clean record since 1983, and that he has not before been convicted of any drugs offence.

Starting therefore with a 9 year bench mark it is customary, unless there are exceptional circumstances, to deduct one-third for a guilty plea, and although, as the Crown has said, a guilty plea is in many of these cases inevitable because the accused are generally caught with the drugs on them, nevertheless a guilty plea is one which we can properly take into account. Therefore we can start with the deduction of one-third. The Court had to ask itself whether, having considered Stewart and other matters - a 10 year period of working in London properly - we should substantially reduce the conclusions further.

The Court noted, having returned to find out the position, that the accused was only out of work for two weeks in London before he came to Jersey and was here for only four days before he committed the offences. That in our mind balances to a great extent a plea ably put forward by Miss Melia that the proper sentence should be one of four years. But we are nevertheless bound to the extent that Stewart's appeal was dismissed and the

sentence there stands at 5¹/₂ years and we feel that if we granted the conclusions of the Crown, there could well be a justifiable sense of grievance by the accused.

The Court was divided, four of the Jurats would have sentenced the accused to 5¹/₂ years, and four would have sentenced the accused to 5 years on count 1. In accordance, therefore, with practice I cast my vote in favour of the more lenient sentence and accordingly you are sentenced to 5 years' imprisonment on count 1 and two years' imprisonment concurrent on count 2. There will be an order for the forfeiture and destruction of the drugs.

Before you go I want to say this to the Crown. Mr. Pallot, having regard to the remarks of the Court of Appeal in Stewart, no doubt that will be reflected in future conclusions in cases of that nature, and in the circumstances of this case, we feel that it was something we had to have regard to.

Authorities

Clarkin and Pockett -v- A.G. (1991) JLR 213 C.of.A.

A.G. -v- Bate (22nd November, 1993) Jersey Unreported.

A.G. -v- Gotel (5th August, 1993) Jersey Unreported.

Stewart -v- A.G. (18th April, 1994) Jersey Unreported C of A.

Wood -v- A.G. (15th February, 1994) Jersey Unreported C of A.

Fogg -v- A.G. (1991) J.L.R. 31.