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COURT OF APPEAL

63.

4th April, 1995.

Before: Sir Godfray Le Quesne, Q.C., President,
E.A. Machin, Esq., Q.C., and
Lord Carlisle, Q.C.

Peter William Whitmore

- v -

The Attorney General

Appeal against a total sentence of 4½ years' imprisonment, imposed on 13th February, 1995, by the Royal Court (Superior Number) to which the appellant was remanded on 6th February, 1995, by the Inferior Number, following guilty pleas to:

2 counts of being knowingly concerned in the fraudulent 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.

count 1: (amphetamine sulphate), on which count a sentence of 4½ years' imprisonment was imposed; and

count 2: (herbal cannabis), on which count a sentence of 4½ years' imprisonment, concurrent, was imposed.

Advocate P.M. Livingstone for the Appellant.
S.C.K. Pallot, Esq., Crown Advocate.

JUDGMENT.

THE PRESIDENT: This appellant arrived here by boat from Weymouth on 8th August, 1994. The car which he was driving was searched by the Customs and concealed behind the panels of the car were found five packages. These turned out to contain just under 3 kilograms of herbal cannabis, the actual figure was 2.85 kilograms and also a quantity of amphetamine sulphate; the figure for that was 2.605 kilograms.

The appellant in consequence was prosecuted for being knowingly concerned in the fraudulent evasion of the prohibition on importation of a controlled drug. There were two counts in the indictment, the first related to the amphetamine sulphate and the second to the herbal cannabis.

The appellant pleaded guilty to these charges and when he appeared for sentence before the Superior Number of the Royal Court on 13th February of this year, he was sentenced to imprisonment for 4 years and 6 months on each count; those two sentences to run concurrently.

In presenting his case before us today Mr. Livingstone has put first an argument which makes it necessary to say something about the appellant's personal position.

He lives in Liverpool and is married with a son. His son, some years ago, was involved in a car accident in which his brain was damaged. As a result the son is now severely mentally handicapped and requires a great deal of care and support and is very difficult to look after. Mr. Livingstone explained in his written submissions to the Court the strain which this has imposed, both upon the appellant, and perhaps even more upon his wife.

As a result of this the appellant gave up his employment and, among other things, took to gambling. He eventually found himself with a gambling debt of £1,800 which he was unable to pay. In these circumstances an offer was made to him by somebody - he has not told anyone who - that if he would drive a car to Jersey containing some drugs his gambling debt would be remitted. The appellant accepted that invitation with the result which I have already described.

Mr. Livingstone told us that he accepted that the effect which a long custodial sentence unfortunately is bound to have on Mr. Whitmore's wife and son was not something which he could urge upon the Court as a proper ground for reducing the sentence. He did, however, submit that attention should be paid to the pressure under which the appellant found himself at the time when this proposal was made to him. This pressure, he submitted, was something which should have been taken into account and should have led to a sentence being passed upon this appellant less severe than that which would have been passed upon someone who had done the same thing without suffering from the same pressure.

It may be - I say no more than that - that in the case of a drug courier who introduces into Jersey even the amount that this appellant did, if he satisfied the Court that he had acted as the result of the coercion of direct and serious threats, some allowance might be made for that when the Court comes to sentencing. This is not such a case. Mr. Livingstone has told us

of the pressure which the existence of this debt necessarily placed upon the appellant, but it has not been suggested to us that there was any direct specific threat of any kind as a result of which the appellant undertook the service which he rendered to the person who wanted the drugs brought here.

It is perhaps hardly necessary to say that no one can contemplate the circumstances which I have described without feelings of sadness at the position of the appellant and his family.

This Court has also to bear in mind, however, the consequences which may be involved for persons in Jersey as a result of the importation of drugs which the appellant's action made possible.

We find that it is not within our power to make allowance on the ground of the pressure to which the appellant was exposed for reduction of his sentence.

Mr. Livingstone then relied upon the second argument. This involved the valuation of the amphetamine sulphate. It is accepted that when passing sentence for an offence involving amphetamine sulphate the Court is obliged to act upon evidence of its street value rather than upon evidence of its weight. The evidence about the amphetamine sulphate which was given in this case was that it was of a level of purity of only 1.4%.

Mr. Livingstone submitted that since the purity was as low as this the street value was also likely to have been lower than it would have been if the purity had been higher. Therefore, he submitted, the evidence which had been given by Sergeant Du Val that the value of the amphetamine sulphate in the street here was about £39,000 might have been unreliable and, he submitted, if that were so then the Court would have been fixing a level of sentence by reference to an unreliable valuation of the drug.

Reference to what was actually said by Sergeant Du Val, in our judgment, makes it impossible to give effect to this argument. Sergeant Du Val said that amphetamine sulphate was normally sold on the streets of Jersey in "wraps" containing 1 gram of powder more or less. And such a "wrap", he said, commanded a price of £15. It was on the basis of £15 per gram that he calculated that 2.6 kilos represented a street value of about £39,000.

He went on to say that to his knowledge amphetamine sulphate seized in the streets of Jersey in recent years had often been of a purity below 4% and it was not unusual for it to be as low as 1.4%. He further said that he thought on this basis that the value of this consignment was not less than the figure of £39,000 which he had put upon it. In these circumstances, there being no evidence contrary to this, the Royal Court was perfectly entitled

to accept that figure as the valuation of the amphetamine sulphate.

In a judgment which was delivered only today this Court has given guidance on the level of sentence appropriate in cases of trafficking in Class B drugs. What it said was this: that for an importation of between 1 and 10 kilograms of cannabis the appropriate starting point for consideration of the sentence was something between two and six years. The Court acknowledged in that judgment that analysis by weight would not be appropriate for sentences involving amphetamines and that in dealing with such cases the lower courts would have to proceed on an approximate street values. They further said that for importations of a value between £5,600 and £56,000 the starting point again would be somewhere between two years and six years.

In this case the Court was dealing with a consignment consisting partly of cannabis and partly of amphetamines. As we say it is not possible to add together weight and value. However, taking the weight of the cannabis involved and the value of the amphetamines it is in our judgment plain that this was a case which came near to the top if not at the top of the band to which I have referred. It was therefore appropriate for the Court to select the starting point; to make whatever they thought was the proper deduction; to arrive at the sentence and then to impose that sentence concurrently upon each count.

The Court, in our judgment, would have been justified in taking the starting point of six years. On that a deduction has to be made for the plea of guilty. We are unable to find any other circumstance which justified a reduction of the sentence. In the circumstances of this case a deduction of 25% for the plea of guilty would, in our judgment, have been justifiable and could not have been criticised as being too little. We say that because while the plea of guilty certainly saves the time and expense of a trial this was a case in which the circumstances of the discovery of the drugs rendered the possibility of offering any sort of defence in a contested trial remote. Accordingly, it appears to us that no criticism can be made of the sentence of 4½ years and the appeal must be dismissed.

Authorities.

Aramah (1982) 4 Cr. App. R. (S) 407.

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

A.G. -v- Rayson (13th February, 1995) Jersey Unreported.

Hamouda (1982) 4 Cr.App.R.(S.) 137.

Anderson [1981] Cr.L.R. 270.

Campbell, Molloy, MacKenzie -v- A.G. (4th April, 1995) Jersey Unreported CofA.