

ROYAL COURT
(Samedi Division)

184.

20th September, 1995

Before: The Deputy Bailiff, and
Jurats Coutanche, Myles, Bonn, Orchard,
Le Ruez, Vibert, Herbert, Rumfitt,
Potter, and de Veulle.

The Attorney General

- v -

Nicolette Tegan Melville

Sentencing by the Royal Court (Superior Number), to which the accused was remanded by the Inferior Number on 27th July, 1995, following not guilty pleas and conviction on:

- 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: M.D.M.A.; and
 - Count 2: L.S.D.;

- 3 counts of supplying a controlled drug, contrary to Article 5 of the Misuse of Drugs (Jersey) Law, 1978:
 - Count 3: M.D.M.A.;
 - Count 4: L.S.D.; and
 - Count 5: M.D.M.A.

- 1 count of selling a poison, whilst not an authorized seller, contrary to Article 16(1)(a) of the Pharmacy, Poisons, and Medicine (Jersey) Law, 1952 (Count 6: Ephedrine):

- 2 counts of possessing a controlled drug, with intent to supply it to another, contrary to Article 6(2) of the Misuse of Drugs (Jersey) Law, 1978:
 - Count 7: L.S.D.; and
 - Count 8: M.D.M.A.;

- 4 counts of possessing a controlled drug, contrary to Article 6(1) of the Misuse of Drugs (Jersey) Law, 1978:
 - Count 9: L.S.D.;
 - Count 10: M.D.M.A.;
 - Count 11: Amphetamine Sulphate; and
 - Count 12: Cannabis Resin.

AGE: 26.

DETAILS OF OFFENCES:

Eight trafficking offences involving a total of over £34,000 of Class A drugs and Ephedrine over a four month period.

DETAILS OF MITIGATION:

Previous good character: some minor residuary benefit for youth.

PREVIOUS CONVICTIONS:

None.

CONCLUSIONS:

The starting point was 13 years; 1 year was allowed for what mitigating circumstances there were.

Counts 1-5 : 12 years' imprisonment on each count, concurrent.
Count 6 : £50 fine or 1 month's imprisonment in default of payment, concurrent.
Counts 7,8 : 12 years' imprisonment, on each count, concurrent.
Counts 9,10 : 3 months' imprisonment, on each count, concurrent.
Counts 11,12 : 1 month's imprisonment, on each count, concurrent.

SENTENCE AND OBSERVATIONS OF THE COURT:

Conclusions granted. This was the worst drugs case yet to come before the Court. The Defendant's involvement was palpably worse than that of Fogg and accordingly the 13 year starting point advocated by the Crown was correct. A one year allowance for the slight mitigating factors would be made. An order for the seizure and destruction of all the drugs was made, as was a confiscation order in the amount of £4,919.00.

Advocate A.D. Hoy for the Appellant.
A.J. Olsen, Esq., Crown Advocate.

JUDGMENT

THE DEPUTY BAILIFF: It will not be necessary for us to detail the facts of this case. They are to be found in the several previous Judgments of this Court.

5 Suffice it to say that Mrs. Melville was convicted of 12 counts concerning illegal drugs. The first two counts were concerned with the importation of Ecstasy and LSD; the next three

counts were the supply and selling of Ecstasy and LSD; 2 counts were for possession with intent to supply; the last four counts for possession of various drugs. There was also a count of unlawfully selling Ephedrine which - although not a controlled drug - is a poison.

Mrs. Melville, on her own admission, has been responsible for the importation and supply or possession with intent to supply of approximately 1,250 tablets, all of which (she thought) were Ecstasy. In fact about 800 to 840 of these were Ecstasy and the rest were Ephedrine. The tablets sell on the streets at £25 each. She was therefore involved in dealing with drugs having a total street value of some £31,250.

The LSD tabs were of an attractive design, presumably to make them marketable; they have a street value of £5 each. The defendant was responsible for the importation of 600 tabs with a total value of £3,000.

We have had set out before us an established dealing pattern in drugs with a street value of over £34,000. This was the largest combined value for an importation and distribution of Class A drugs with which the Drug Squad has been involved to date.

Crown Advocate Olsen has set out the procedural history of the case. It makes sad reading; it leaves Mrs. Melville in a situation where she says that her husband, Mark Melville, now living in another jurisdiction, is totally responsible for her present predicament. But it may be useful to remind ourselves of what we said in our Judgment of 26th July:

"The learned Jurats have taken great care over the facts of this trial and I have to say that they have excluded the hearsay evidence that was put before them. But they have reached a conclusion that Mrs. Melville is guilty of all the charges brought against her. They have no doubt whatsoever that she was the prime mover in a very dangerous and filthy trade which, but for the attentions of Drugs Squad Officers, could have caused untold misery in this Island."

As we have said, because of the tortuous procedural history of this case and the claim that her husband and not her was the prime mover, Mrs. Melville has no benefit of a plea of guilty. But in any case, as was said in the case of A.G. v. Cappie and Hailwood (4th December, 1991) Jersey Unreported; (1991) JLR N.13:

"In the case of drugs, as the Court has already said on more than one occasion, the usual strong mitigating factors of being a first offender and of youth will not carry much weight."

We were asked by the learned Crown Advocate to consider yet again the guidelines of the Court of Appeal in Campbell, Molloy and MacKenzie v. A.G. (4th April, 1995) Jersey Unreported CofA. At p.7 of that Judgment the Court said this:

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"We have no doubt that the courts should indeed play their part in suppressing the evil of drug trafficking which has the capacity to wreak havoc in the lives of individual abusers and their families. Lord Lane C. J. in R. -v Aramah (1982) 4 Cr. App. R. (S.) 407 referred in the context of Class A drugs to the "degradation and suffering and not infrequently the death which the drug brings to the addict". Sadly the lives which are blighted by the abuse of drugs are usually young lives. We agree that circumstances have changed since this Court issued its guidelines in Clarkin and Pockett in 1991. The courts cannot by themselves provide a solution to the problem but they can play their part by adopting a sentencing policy which marks the gravity of the crime. We desire therefore to make absolutely clear what is the policy of the courts in this jurisdiction in relation to the sentencing of offenders who import or deal in drugs on a commercial basis. That policy is that offenders will receive condign punishment to mark the peculiarly heinous and antisocial nature of the crime of drug trafficking."

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Mr. Hoy who has, if we may say so, said everything that he can in this difficult matter, has argued that Melville was charged before the Court of Appeal gave its guidelines on 4th April, 1995, and therefore this Court should apply the earlier guidelines of Clarkin and Pockett. We do not take that view. We did not take that view in A.G. v. Raffray (20th July, 1995) Jersey Unreported and we will not do so now. The appeals in Campbell, Molloy and MacKenzie gave the Court of Appeal a unique opportunity not only to consider the particular sentences under appeal but also to afford guidelines for sentencing in future drug cases. We can see that it was inevitable that, although the Court would increase the sentencing parameters, it would not, in fairness, deal with the three appeals that were then before it on the new basis. But there is no contract between an accused and this Court and we can see no reason why the Campbell guidelines should not apply to this case and we intend to apply them.

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On p.8 of the Campbell Judgment the Court of Appeal said this:

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In our judgment the appropriate starting point for a case of drug trafficking of that nature (that is the nature of the offences in Fogg) would now be one of twelve years' imprisonment. If the involvement of a defendant in drug trafficking is less than that of Fogg, the appropriate starting point will be lower. If the involvement of a

defendant in drug trafficking is greater than that of Fogg the appropriate starting point will clearly be higher. Much will depend upon the amount and value of the drugs involved, the nature and scale of the activity and, of course, any other factors showing the degree to which the defendant was concerned in drug trafficking.

There is, as we see it in this case, much worse involvement than that of Fogg. Mrs. Melville has not only collected drugs, met suppliers, made lists, used her home as a drug depôt and arranged banking of the proceeds, but she was right at the heart of this dreadful trade. Fogg was concerned with £5,000 or 1,000 units of LSD. As we have said, Mrs. Melville was dealing with £34,000 worth of drugs. There were four separate importations and there was trafficking over several months. This is undoubtedly the most serious drugs case to come before this Court.

The learned Crown Advocate took 13 years as his starting point and reduced that 13 years' starting point to 12 years with the mitigating factors (which were very small) that were available to him.

If we look at that sentence overall and compare it with Raffray, who had heroin sufficient to make 1,100 to 1,650 individual doses and who received 10 years and Lundy who, despite his youth, received 8 years' youth custody we have no doubt that the 12 years suggested by the Crown Advocate is correct and we intend to uphold that sentence.

Mrs. Melville, stand up, you are therefore sentenced, on counts 1, 2, 3, 4 and 5, to 12 years' imprisonment, concurrent; on count 6, £50 fine, or 1 month's imprisonment in default of payment, concurrent; counts 7 and 8, 12 years' imprisonment, concurrent; on counts 9 and 10, 3 months' imprisonment, on each count, concurrent; on counts 11 and 12, 1 month's imprisonment, on each count, concurrent. We order the seizure and destruction of the drugs.

Authorities.

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

A.G. v. Lundy (20th July, 1995) Jersey Unreported.

A.G. v. Raffray (20th July, 1995) Jersey Unreported.

A.G. v. Cappie and Hailwood (4th December, 1991) Jersey
Unreported; (1991) JLR N.13.