

ROYAL COURT
(Samedi Division)

93.

17th May, 1996

Before: The Deputy Bailiff, and Jurats
Myles and Herbert

The Attorney General

- v -

Andrew James McAteer

1 count of being knowingly concerned in the fraudulent evasion of the prohibition on the importation of a controlled drug, (cannabis resin) contrary to Article 77(b) of the Customs and Excise (General Provisions) (Jersey) Law, 1972.

Age: 26.

Plea: Guilty.

Details of Offences:

Defendant apprehended at Elizabeth Harbour having just returned to the Island from Scotland. Total of 1.88 kg. of cannabis resin in 17 packets found concealed in panel of his car. Initially denied knowledge of the packets but later acknowledged that they were cannabis resin and claimed to have been offered a total of £700 to import the drug. Street value of the drugs was estimated to be £10,619.20.

Details of Mitigation:

Guilty plea (though largely inevitable); exemplary Army career including two tours of duty in Northern Ireland; honourable discharge from Army shortly following death of mother (aged then 49) from cancer; of previous good character; employment and relatives in Jersey; financial difficulties; strong recommendation for probation and community service in S.E.R. Court did not accept the fact that Defendant was a mere courier constituted mitigation.

Previous Convictions: None.

Conclusions:

1 year, 8 months' imprisonment; starting point: 2½ years; one-third could be allowed for mitigating factors.

Sentence and Observations of the Court:

2 years' probation with 240 hours community service to be completed within 1 year.

No exceptional circumstances regarding offence. The Crown's starting point of two and a half years' imprisonment was "precisely right". However, Defendant's exemplary Army record, fact of no previous convictions, guilty plea and tragic personal history could together be taken to constitute exceptional circumstances and thus allow the Court to take the "most unusual course" of not imposing a custodial sentence for a serious Class B trafficking offence.

A.J. Olsen, Esq., Crown Advocate.
Advocate P.C. Harris for the accused.

JUDGMENT

5 THE DEPUTY BAILIFF: The facts of this case are, sadly, all too familiar to us. McAteer was stopped by Customs Officers as he drove his Jersey registered car from the Ferry. When questioned he denied the possession of any illicit substances. A drug detector dog indicated that toward the rear righthand panel of the vehicle drugs were present. McAteer continued to deny that drugs were hidden there. A search revealed 66.37 oz. or 530 "deals" of one-eighth of an ounce each of cannabis. The estimated street value is £10,619.20. They were packed in 17 packages.

10 McAteer is 26 years old; he is apparently heavily in debt, owing some £10,000 which he has borrowed in Scotland from loan sharks who, as their name implies, are not overly sympathetic to those who do not pay them. He has lived in Jersey only since 15 August, 1995, after a career in the Army was curtailed for reasons beyond his control.

20 We read, after leaving the Army, that he suffered for a substantial period from alcohol and wide-ranging drug abuse brought about by the deep upset over the early death of his mother from cancer. He said he was offered £700 in Jersey by two men whom he knew vaguely to make this drugs run and it was when he made contact in Scotland and was asked to wrap the cannabis that he realised the amount he was being asked to bring into Jersey was 25 substantial. By then he says it was too late. That may well be so but when he was approached in Jersey by two drug dealers and offered a substantial sum of money he must have realised that there were going to be large amounts of drugs to be imported.

Let us firstly remind ourselves what is said in Campbell, Molloy, and MacKenzie -v- A.G. (4th April, 1996) Jersey Unreported CofA at p.11 where the Court of Appeal stated:

5 *"The Attorney General invited us to lay down the same sentencing approach for Class B drug cases as was done for Class A drug cases in Clarkin and Pockett. He submitted that there should be three bands as set out in tabular form below.*

10	<u>Amount</u>	<u>Approximate Street Value</u>	<u>Starting Point</u>
	A Over 30 kg		10 years plus
15	B 10-30 kg	£56,000-168,000	6-10 years
	C 1-10 kg	£5,600-56,000	2-6 years."

20 The Court of Appeal went on to say this:

20 *"We also reiterate that no distinction is to be drawn between cases involving importation and those involving supplying or possession with intent to supply".*

25 We have here 1.88 kg. of cannabis resin, a Class B drug, so we are at the lower range of the band.

30 Comparing cases is of little assistance as each case essentially turns on its own facts, but Crown Advocate Olsen was quite right to cite the cases of A.G. -v- Jeffrey (5th January, 1996) Jersey Unreported and A.G. -v- Turner (8th December, 1995) Jersey Unreported because they are a clear indication that his starting point of 2½ years for an offence of this nature is precisely right. In his conclusions, Mr. Olsen recommended 20 months' imprisonment.

40 Let us look at what is to be said in mitigation. There was a guilty plea; that we feel was inevitable but deserves some credit. McAteer eventually co-operated with the authorities without, of course, giving any positive lead to help prosecute the Jersey dealers or the Scottish suppliers. What is perhaps more important is that he has no previous convictions. That means that at the age of 26 this is his first conviction for any offence at all. He has now been in custody for four months. We have read his Army record and of his exemplary conduct which included two tours of duty in Northern Ireland.

45 We have to say this, he came to this Island in 1995 and has grossly abused the hospitality that the Island has given to him.

50

 Despite all that, with a first offender, albeit one who is not a stranger to the drug scene, we have an unusual circumstance.

Let us just for a moment refer to Kramer -v- A.G. (16th March, 1992) Jersey Unreported, where the Court said this:

5 *"This case involved a Class 'A' drug. The policy of this
Court is clear. In the case of a Class 'A' drug, even for
simple possession, there will be a custodial sentence
10 unless there are 'exceptional circumstances', which
expression I interpret as referring to the circumstances
of the offence or of the offender, or both (as opposed to
the term 'special reasons' which has a technical meaning
in some statutes and must relate only to the offence and
not to the offender) However it is open to the Court
15 to resort to an act of mercy or clemency in a particular
case, without eroding its sentencing policy in the matter
of drugs offences".*

20 At pp.47-8 of Mr. Whelan's book "Aspects of Sentencing in the
Superior Courts of Jersey" there are a line of cases which analyse
matters which the Court has not adjudged to be exceptional
circumstances. There were arguments that the accused was a mere
courier importing drugs or transporting them within the
jurisdiction for a small profit; or to achieve cancellation of a
debt; or as a mere favour; or for the purpose of social supply; or
25 for exclusive personal use. We have to say this, there are quite
clearly, as far as we can see, no special reasons which relate to
the offence with which McAteer is charged. But we are looking, as
we have said, at a young man with no previous convictions, with an
exemplary Army character, who was in gainful employment in Jersey,
30 where he has cousins living.

35 This Court does not share the so-called enlightened view of
McAteer set out in the Probation Report that there is any
distinction between classes of drugs. For those who have ears to
hear within this Island, we will say again that we regard dealing
in any class of drug as a filthy trade and this Court will
continue to give condign punishment whenever we feel it is due.

40 However, this case is exceptional. McAteer stand up, please.
Because you are a first offender; because of your exemplary
record; and because of the tragic personal circumstances that you
had to endure; and because you have already had four months'
imprisonment we are going to take an unusual course and we are
going to sentence you to two years' probation, with 240 hours of
45 community service, to be completed within twelve months. I have
to say this, if you come back to Court for breach of that
Probation Order, or for any other offence, then imprisonment will
be inevitable and this particular offence will, of course, then be
taken into consideration. It is entirely up to you - we are
50 taking a very unusual course - but I hope you will benefit from
it. The Court orders the forfeiture and destruction of the drugs.

Authorities

A.G. -v- Moore (1st March, 1995) Jersey Unreported.

Whelan: "Aspects of Sentencing in the Superior Courts of Jersey":
pp.47-48.

A.G. -v- Jeffrey (5th January, 1996) Jersey Unreported.

A.G. -v- Turner (8th December, 1995) Jersey Unreported.

Campbell, Molloy, and MacKenzie -v- A.G. (4th April, 1996) Jersey
Unreported CofA.

Kramer -v- A.G. (16th March, 1992) Jersey Unreported; (1992) JLR
N.10.