

ROYAL COURT
(Samedi Division)

176.

1st October, 1996

Sir Philip Bailhache, Bailiff, and Jurats
Blampied, Myles, Gruchy, Rumfitt,
de Veulle and Querée

The Attorney General

- v -

Jack Robert Gregory.

Sentencing by the Superior Number of the Royal Court, to which the accused was remanded by the Inferior Number on 30th August, 1996, following guilty pleas to:

3 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: Diamorphine;
Count 2: Methadone;
Count 3: Dexamphetamine; and

1 count of possession of utensils for the purposes of committing an offence, contrary to Article 8 of the Misuse of Drugs (Jersey) Law, 1978. (Count 4).

Age: 50.

Details of Offence:

3 Counts of being knowingly concerned in the fraudulent evasion of the prohibition on importation of a controlled drug. Count 1 - diamorphine 8.54g. Count 2 - 139 tablets of methadone hydrochloride 695 mgs. 1 tablet of dexamphetamine sulphate 5 mgs.

Details of Mitigation:

Guilty plea but limited benefit as caught "in flagrante delicto". Unco-operative. Long term heroin addict. Although not mitigation argued case fell outside Campbell guidelines as drugs for personal use - not commercial trafficking. Expert prosecution evidence that enough drugs for minimum 2 weeks consumption on standard higher user.

Previous Convictions:

Several including importation (1978); possession (1987); possession (1990); possession with intent to supply (1992); possession (1995)

Conclusions:

Count 1 : 8 years' imprisonment.
Count 2 : 8 years' imprisonment.
Count 3 : 1 month's imprisonment.
Count 4 : 1 month's imprisonment.
All the sentences to run concurrently.
Starting point for counts 1 and 2: 9 years; mitigation: 1 year.

Sentence and Observations of the Court:

Count 1 : 6 years' imprisonment.
Count 2 : 6 years' imprisonment.
Count 3 : 1 month's imprisonment.
Count 4 : 1 month's imprisonment.
All the sentences to run concurrently.

J.A. Clyde-Smith, Esq., Crown Advocate.
Advocate J. Martin for the accused.

JUDGMENT

5 THE BAILIFF: This Defendant arrived in Jersey on Sunday, 28th April, 1996, having arranged to stay for two or three days in the "Greenwood Lodge Hotel" in St. Helier. He arrived on the Ferry and made his way to the hotel. He spent the evening at the hotel and for the major part of the following day (Monday, 29th April) he also remained in the hotel.

10 At 4.20 p.m., in execution of a search warrant, the police entered the room where he was staying and found Gregory leaving the bathroom with two plastic 'Kinder' eggs which had shortly before, apparently, been excreted from his body. Inside the first egg was discovered a small bag of 139 white tablets, later found to be Methadone, a Heroin substitute, and inside the second egg were two bags of brown powder, later identified as Heroin. The States' Analyst reported that the Heroin weighed 8.54 grams and had a purity of 57% to 64%, which is high in relation to Heroin commonly sold on the streets.

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Before coming to Jersey Gregory had received £667 in arrears of benefit from the Department of Social Security upon which he relied for his means of survival. Of that amount, counsel told us, he had spent £70 on the ticket to Jersey; £250 on the Heroin; together with £70 on the Methadone, making a total of £320 for the drugs. He brought with him to Jersey £150 in cash, although he claimed to have made arrangements for other money to be transferred to him by an unidentified friend.

The evidence of Detective Constable de la Haye was that the street value of the Heroin amounted to some £2,500 while the street value of the Methadone was between £500 and £1,300.

The defendant claimed on being interviewed by the police that the drugs which he had imported into Jersey had been for his personal use. In the light of that assertion the Attorney General sought advice from Dr. Stephen Robinson, an honorary lecturer in clinical forensic medicine at the University of Manchester, and a police surgeon with many years' experience, who is an acknowledged expert on drugs. Dr. Robinson concluded that in relation to the drugs imported by Gregory "On standard high usage, he had in his possession enough Heroin to last for almost two weeks, Methadone to last for almost two weeks. There is no question in my mind that to be carrying this amount of illegal substances, there must have been an intention of supplying a personal need for a minimum of two weeks and possibly in excess of four weeks to other persons".

The Crown Advocate moved conclusions on the basis of the guidelines in A.G. -v- Campbell, Molloy & MacKenzie (4th April, 1995) Jersey Unreported CoFA:

"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. We propose also to vary the lowest point of the band established in Clarkin and Pockett; we accordingly state that it is seldom that the starting point for any offence of trafficking in a Class A drug on a commercial basis can be less than a term of seven years. We have employed the term "trafficking" deliberately. In the past, some distinctions may have been drawn between offences involving the importation of Class A drugs and offences involving their supply or their possession with intent to supply. In our judgment there is no justification for any such distinction. The

guidelines which we have set out above apply to any offence involving the trafficking of Class A drugs on a commercial basis".

5 The Crown Advocate invited the Court to find that this was a case of trafficking and that the guidelines in A.G. -v- Campbell accordingly applied.

10 Miss Martin for the defendant submitted that the words "on a commercial basis" from the extract which I have just cited were significant. She submitted that there was no evidence that the defendant was engaged in any commercial activity and that he intended to use all the drugs which he had imported for his own purposes.

15 The Court has given careful consideration to all these submissions. We reject the explanation of the defendant that he imported the drugs for his personal use. This was, therefore, in our judgment, an importation for commercial purposes and the guidelines in A.G. -v- Campbell apply.

20 The Crown Advocate took a starting point of nine years' imprisonment, having regard to the amount of drugs involved and, in general, we understand his reasons for doing so. We have, however, given anxious consideration to this question also and have taken note in particular of the submission of defence counsel that Gregory is a man who has been addicted to Heroin for some 25 years. We consider that this an unusual circumstance and we accept that a proportion of the drugs which he imported were
25 intended for his own use and, on that basis, the commercial purpose associated with the importation was more limited than might otherwise have been expected to be the case, having regard to the quantity of the drugs in question. Taking the most sympathetic view of the surrounding circumstances which it is
30 possible to take we consider that the appropriate starting point in this case is one of seven years' imprisonment.

35 In mitigation Gregory pleaded guilty to the indictment but did not otherwise assist the police to any significant degree. He was caught in *flagrante delicto* and the value of the guilty plea is, in our judgment, limited. The one year reduction applied by the Crown Advocate in moving conclusions is, in our judgment, appropriate.

45 Gregory, stand up, please. The sentence of the Court therefore, is that you will be sentenced on count 1, to six years' imprisonment; on count 2, you will be sentenced to six years' imprisonment, on count 3, you will be sentenced to one month's imprisonment; and on count 4, you will be sentenced to one month's
50 imprisonment, concurrent in each case, making a total of six years' imprisonment, and we order the forfeiture and destruction of the drugs.

Authorities

- R. -v- Dolgin (1988) 10 Cr.App.R.(S) 447.
- A.G. -v- Pringle (12th July, 1993) Jersey Unreported.
- A.G. -v- Plowright (13th February, 1995) Jersey Unreported.
- Plowright -v- A.G. (3rd July, 1995) Jersey Unreported CofA.
- A.G. -v- Raffray (20th July, 1995) Jersey Unreported.
- Raffray -v- A.G. (17th January, 1996) Jersey Unreported CofA.
- Campbell, Molloy, & MacKenzie -v- A.G. (4th April, 1995) Jersey Unreported CofA.
- A.G. -v- Cain (9th September, 1996) Jersey Unreported.
- A.G. -v- Akehurst (29th July, 1996) Jersey Unreported.
- A.G. -v- McDonough (24th May, 1996) Jersey Unreported.
- A.G. -v- Russell-Biggie (31st August, 1995) Jersey Unreported.
- Whelan: "Aspects of Sentencing in the Superior Courts of Jersey":
pp.29-35.
Ibid: Noter-up, 1994-1995: pp.1-27.
Ibid: Noter-up, 1995-1996: pp.1-17.
- A.G. -v- Brown (26th April, 1985) Jersey Unreported.
- A.G. -v- Ellis (1st July, 1988) Jersey Unreported.
- A.G. -v- Hervey (7th October, 1988) Jersey Unreported.
- A.G. -v- Peacock (10th February, 1989) Jersey Unreported.
- A.G. -v- Quirke (13th May, 1994) Jersey Unreported.