

101.

ROYAL COURT
(Samedi Division)

2nd June, 1997

Before: F.C. Hamon, Esq., Deputy Bailiff, and Jurats
Myles, Bonn, Gruchy, Le Ruez,
Vibert, Rumfitt, Potter,
de Veulle, Jones, Quérée.

The Attorney General

- v -

Avelino Fernandes de Sousa

Sentencing, after a 'Newton' hearing, before the Superior Number of the Royal Court, to which the accused was remanded by the Inferior Number on 6th December, 1996, following a guilty plea to:

1 count of being knowingly concerned in the fraudulent evasion of the prohibition on the importation of a controlled drug, contrary to Article 77(b) of the Customs and Excise (Jersey) Law, 1972:
Count 1 : Diamorphine (heroin).

Age: 42

Details of Offence:

The Defendent travelled to Lisbon and bought for circa £400 (100,000 Escudos) 26.06 grams of heroin (purity by weight of 40%). Returned to Jersey with drugs inserted internally. Value of drugs between £4,190.60 and £7,818.00. Defendant stopped by Customs Officers at the Airport. Caught in flagrante delicto. Following 'Newton' hearing Court by a majority found that drugs were for Defendant's personal use. Not particularly co-operative with officers conducting investigation and told a number of lies during interview.

Details of Mitigation:

GUILTY plea but caught in flagrante. Heroin addict for over 15 years. No intention to supply drugs to others.

Previous Convictions:

A number of convictions for theft but no previous drugs convictions

Conclusions:

Starting point 7 years. No mitigation save GUILTY plea.
Count. 1: 6 years imprisonment.

Sentence and Observation of the Court:

5 years imprisonment. Campbell not applicable.
Starting point 6 years.

Forfeiture and destruction of drugs ordered

N.B. Court refused application by Defence for costs of Newton hearing as Court had no power to award costs under Article 2 of Costs in Criminal Causes (Jersey) Law, 1961.

D.E. Le Cornu, Esq., Crown Advocate.
Advocate J. Martin for the accused.

JUDGMENT

5 THE DEPUTY BAILIFF: On a majority, the Jurats, following the 'Newton' hearing which we heard today, found that they could not be satisfied beyond reasonable doubt that de Sousa was importing heroin for commercial purposes. But this was a considerable amount of this dangerous drug, 26.06 grams concealed internally. There was hardly any frankness in the answers that he gave to Customs Officers when he was arrested.

10 We must remember, however, what the Court of Appeal said in the case of Gregory -v- AG (15th January, 1997) Jersey Unreported CofA:

15 *"Once it is established and accepted that sentence has to be passed on the basis that the importation was not for a commercial purpose the guidelines in Campbell are not applicable. That case deals only with cases of trafficking on a commercial basis".*

20 This is a case where the accused has no previous drugs record although he has received prison sentences in Madeira for dishonesty and it must be recalled that there was nothing connected with drug paraphernalia in his flat when it was raided by police.

25 We feel in the circumstances that the starting point could be six years. His plea of guilty has not been of much use to him but we have seen a reference which shows that he is a good worker. One of the dangers of importation of heroin of such a large amount is that there is always the fear that this dangerous drug could have got into the market and we must always bear that in mind.

30 Stand up, please, de Sousa. You are sentenced to five years' imprisonment. We order the forfeiture and destruction of the drugs.

Authorities

Gregory -v- AG (15th January, 1997) Jersey Unreported CofA.

MacKenzie -v- AG (13th January, 1995) Jersey Unreported CofA.