

187.

ROYAL COURT

13th November, 1989

Before: The Bailiff and
Jurats Coutanche and Hamon

Police Court Appeal: John Dyke Derby Rogers

Appeal against a total term of imprisonment of five days imposed following convictions on one account of importation of a controlled drug and one count of possession of a controlled drug, contrary to Article 23 of the Customs and Excise (General Provisions) (Jersey) Law, 1972, and Article 6(1) of the Misuse of Drugs (Jersey) Law, 1978, respectively.

Advocate S.C. Nicolle for the Crown
Advocate S.A. Pearmain for the accused.

JUDGMENT

THE BAILIFF: The first thing I want to say about this appeal is that it is not incumbent upon the Magistrate to announce a change of policy. If circumstances require it the Magistrates are entitled, if there is an increase in importing drugs into this Island as soon as it occurs, to consider whether their existing sentencing policy is adequate to deter people. If it is not they are entitled to increase it as and when they wish. However, having said that,

this is a peculiar case inasmuch as the probation report and the other papers which Mrs. Pearmain has produced to us today were not before the Court and it is impossible for us to say, if they had been, whether the Magistrate would have imposed the sentence he did.

There are two observations I wish to make in connection with an appeal of this nature; the first refers to the case of Marcus Leslie Baines; it is quite clear that under normal circumstances a prison sentence is the appropriate sanction for persons who import drugs into this Island. That is a general principle which this Court and I know the Police Court are not going to depart from lightly. To balance that principle one has to take into account the other undoubted principle that it is unusual for a first offender to be sentenced to prison without the Court's having had the benefit of a background report. As I say we think it impossible to be sure that had the Magistrate had the benefit of a background report in this case and of the other matters referred to by you, Mrs. Pearmain, he would have imposed a prison sentence. The third thing I wish to say is this: where the two principles conflict, that is to say the principle of imposing a prison sentence for people who import cannabis or other drugs into the Island, and the principle that a person should not go to prison if he is a young person and a first offender, in the absence of exceptional circumstances and of a background report, it is the second principle, (that is to say that a young person and a first offender should not be sentenced to prison without the Court's having first had the benefit of a background report and indeed should not be sentenced to prison at all if it is at all possible to avoid it) that should override the first principle. We are therefore prepared to allow the appeal in these circumstances and will substitute a fine. As regards count 1, you will be fined £200 or seven days' imprisonment; as regards count 2, you will be fined £50 or three days' imprisonment concurrent.

Mrs. Pearmain, you will get your legal aid costs.

Authorities referred to:

A.G. -v- Franz Wickenhauser, (23 Oct:87) Jersey Unreported; (1987-88)J.L.R. N5
Police Court Appeal: Marcus Leslie Baines, (1st June, 1987) Jersey Unreported.