

ROYAL COURT

22nd July, 1991

102.

Before: The Deputy Bailiff, and  
Jurats Le Ruez and Vibert

---

The Attorney General

- v -

Paul Barrington Diamond

---

Police Court Appeal: appeal against sentence

---

Miss S.C. Nicolle, Crown Advocate.  
Advocate D.J. Petit for the appellant.

---

**JUDGMENT**

DEPUTY BAILIFF: This appellant was sentenced to six months' imprisonment for importing cannabis resin and six months' imprisonment for possession of cannabis with intent to supply, both sentences being concurrent. The ground of appeal is that the sentence is manifestly excessive, insufficient account having been taken of the many mitigating factors.

The appellant arrived in Jersey on the 20th April, 1991 - he was searched by Customs Officers. He had only some £8 in his possession, but concealed underneath the linings of his training shoes was a substantial quantity of cannabis resin - 129.38 grammes with a street value of £660. The appellant admitted that he intended to sell the cannabis. He had bought it for about £360 and so he would have made a substantial profit.

At first Judge Day on the 22nd April, having heard the evidence of the Customs Officer, intended to remand the case to this Court, obviously for a sentence in excess of six months.

However, Judge Trott re-heard the evidence on the 31st May, 1991, and had the benefit of the background report.

As Mr. Petit rightly said, in the Police Court these are serious offences and a custodial sentence was the only proper sentence, there being no exceptional circumstances in this case.

Counsel in the Police Court said that the appellant would have been selling the cannabis through a network of pubs in the Island. Using licensed premises for the sale of drugs is a serious matter and has to be dealt with severely because the Court has judicial knowledge that this is becoming a prevalent offence. The appellant had bought the cannabis in Huddersfield the previous evening which shows what a deliberate plan it was to import and sell cannabis here for gain.

The authorities to which we have been referred do not really assist us. In the case of Hatte there were exceptional circumstances. In the case of Matthews and Drewett although the amount of drugs was greater, they stood to make only £300 each, on each trip, because they were really only couriers. In the case of Bowman there were drugs to the value, apparently - I say

apparently because I am not convinced of the accuracy of the headnote - of £2,880. It is true that that is more than four times the amount in the present case, but that is not the only factor to be considered. There must be a minimum sentence for offences of this kind and Judge Trott was right when he said that there must be a deterrent. He was right to regard the maximum sentence available to him as the minimum sentence for offences of this kind. The case of Fogg was of a completely different character.

The Court accepts the principle, reiterated in the Ryan and Mesney case that it is wrong in principle to sentence an offender under 21 to imprisonment unless there are exceptional circumstances which really require the imposition of a custodial sentence. This Court has no hesitation in saying that drug trafficking is an exceptional circumstance which does require the imposition of a custodial sentence on a young man of 20 years.

Article 18 of the Children (Jersey) Law, 1969, has no application to the present case because a person of Borstal age can be sentenced to a term of imprisonment not exceeding six months.

I should add that the length of a term of imprisonment is not a matter for the Probation Service but is one exclusively for the Court.

In our judgment Judge Trott was entirely correct and this appeal, which is wholly without merit, is dismissed.

Advocate Petit will have his legal aid costs.

Authorities

AG -v- Hatte (8th February, 1991) Jersey Unreported.

AG -v- Matthews & Drewett (5th April, 1991) Jersey Unreported.

AG -v- Bowman (25th February, 1991) Jersey Unreported.

AG -v- Fogg (8th April, 1991) Jersey Unreported.

AG -v- Ryan & Mesney (20th April, 1990) Jersey Unreported.

Children (Jersey) Law, 1969: Article 18.

Thomas' "Current Sentencing Practice": Part B: B11-1.3(B).

R. -v- Adewoye (1988) 10 Cr. App. R. (S).

R. -v- Watson (1988) 10 Cr. App. R. (S).

R. -v- Harris (1989) 11 Cr. App. R. (S).