

COURT OF APPEAL

2.

11th January, 1994.

Before: Sir Godfray Le Quesne, Q.C., (President),  
Lord Carlisle, Q.C., and  
Sir Charles Frossard, K.B.E.

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Thomas Lynch,  
Joseph Alexander Francis Ryan  
Markus Anthony Santos-Costa

-v-

Her Majesty's Attorney General

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Lynch.

Application for leave to appeal against a total sentence of 30 months' imprisonment imposed on 9th August, 1993, by the Royal Court (Superior Number) to which the applicant was remanded by the Inferior Number to receive sentence on 6th August, 1993, following guilty pleas to: 1 count of possession of a controlled drug (cannabis resin), contrary to Article 6(1) of the Misuse of Drugs (Jersey) Law, 1978, (count 3 of the Indictment laid against him and four co-accused), on which he was sentenced to 1 month's imprisonment; 1 count of supplying a controlled drug (cannabis resin), contrary to Article 5(b) of the said Law, (count 4), on which he was sentenced to 30 months' imprisonment, concurrent; and 1 count of possession of a controlled drug (cannabis resin), with intent to supply it to another, contrary to Article 6(2) of the said Law (count 5), on which he was sentenced to 30 months' imprisonment, concurrent.

Ryan.

Application for leave to appeal against a total sentence of 3 years' imprisonment imposed on 9th August, 1993, by the Royal Court (Superior Number) to which the applicant was remanded by the Inferior Number to receive sentence on 6th August, 1993, following guilty pleas to: 1 count of possession of a controlled drug (cannabis resin) with intent to supply, contrary to Article 6(2) of the said Law (count 8 of the said indictment), on which he was sentenced to 3 years' imprisonment; 1 count of supplying a controlled drug (cannabis resin), contrary to Article 5(b) of the said Law (count 9), on which he was sentenced to 3 years' imprisonment (concurrent); and 1 count of possession of a controlled drug (cannabis resin), contrary to Article 6(1) of the said Law (count 10), on which he was sentenced to 1 month's imprisonment (concurrent).

Santos-Costa.

Application for leave to appeal against a total sentence of 4 1/2 years' imprisonment imposed on 9th August, 1993, by the Royal Court (Superior Number) to which the applicant was remanded by the Inferior Number to receive sentence on 6th August, 1993, following guilty

pleas to: 1 count of possession of a controlled drug (cannabis resin), contrary to Article 6(1) of the said Law (count 11 of the said indictment), on which he was sentenced to 1 month's imprisonment; and 1 count of supplying a controlled drug (cannabis resin), contrary to Article 5(b) of the said Law (count 12), on which he was sentenced to 4½ years' imprisonment, concurrent.

**Advocate R.J. Renouf for Lynch.**

**Advocate S.E. Fitz for Ryan.**

**Advocate P. Landick for Santos-Costa.**

**Advocate A.D. Robinson, on behalf of the  
Attorney General.**

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**JUDGMENT.**

**CARLISLE J.A.:** These three applicants, Thomas Lynch, Joseph Alexander Francis Ryan and Markus Anthony Santos-Costa, appeared together with two other defendants before the Inferior Number of the Royal Court on 6th August, 1993.

On that occasion Lynch pleaded guilty to one offence of possession of a controlled drug, contrary to Article 6(1) of the Misuse of Drugs (Jersey) Law, 1978; to one count of supplying a controlled drug, contrary to Article 5(b) of the same Law; and to one count of possession of a controlled drug with intent to supply to another, contrary to Article 6(2) of the same Law.

Ryan likewise pleaded guilty to three similar counts; one the offence of possession of a controlled drug; one of supplying a controlled drug and one of being in possession with intent to supply.

Santos-Costa pleaded guilty to two offences; one of supplying a controlled drug, and one of possession of a controlled drug.

The drug referred to in each of these respective counts was cannabis resin.

On 9th August, 1993, before the Royal Court, sitting as the Superior Number, they were sentenced as follows:

**Thomas Lynch,** for the offences of supplying a controlled drug and of being in possession with intent to supply, received sentences of 30 months' imprisonment on each count, together with a sentence of 1 month's imprisonment for the offence of possession of a drug. These sentences were to run concurrently and therefore he received a total sentence of 30 months' imprisonment.

**Joseph Alexander Francis Ryan,** for the offences of supplying a controlled drug and of being in possession with intent to

supply, was sentenced on each count to a period of three years' imprisonment and also to 1 month's imprisonment for possession of a drug. Again in his case those sentences were to run concurrently, making therefore three years in all.

**Markus Anthony Santos-Costa** was sentenced to a period of 4<sup>1</sup>/<sub>2</sub> years' imprisonment for supplying a drug, together with a sentence of 1 month's imprisonment for possession of a controlled drug. Those sentences were again concurrent making therefore a total sentence of 4<sup>1</sup>/<sub>2</sub> years' imprisonment.

In applying to this Court for leave to appeal, they do so on the ground that each applicant claims that those sentences were manifestly excessive.

Mr. Renouf on behalf of Lynch, in an argument adopted by counsel on behalf of the other applicants, urged that the sentences of 30 months in his case were manifestly excessive and were wholly out of line with other sentences which had been passed by the Royal Court in cases of a similar nature involving similar amounts of cannabis resin.

Whilst accepting that the sentences previously passed by the Court in other cases could not act as a strict precedent, he nevertheless argued that the Court should where possible always maintain a consistent sentencing policy in dealing with cases of a similar nature. He said that otherwise the defendant felt a justified sense of grievance.

This Court accepts the importance of trying to achieve consistency in sentencing but wishes to make it clear that that does not mean that because sentences of a particular length have been considered appropriate at one time that they should always be adhered to thereafter.

What is the appropriate length of sentence to be passed at any time will depend, among other matters, upon the prevalence of the offence. The disturbing increase in the number of drug offences coming before the Courts in Jersey fully justifies the Royal Court in reconsidering the adequacy of the length of sentences being imposed.

It was further argued before us that it would be wrong for the Court to make any change in an established and recognised range of sentences without giving in advance clear and unequivocal notice of its intention to do so. We do not accept that is so, but in any event we are satisfied that the Royal Court has in fact given very adequate warning of its intention to review its sentencing policies in drugs cases.

In the case of A.G. -v- Rawlinson (23rd November, 1992) Jersey Unreported, the Royal Court said as follows:

**"The Court has asked me to say that in view of the continued flow of drugs into this Island and the use of illegal drugs, it is seriously considering its policy in relation to the length of sentences for drugs offences. This does not affect today's case of course; it cannot be dealt with ex post facto. But it is a warning which the Court wishes me to give to persons who are minded to import drugs into this island, that the Court may revise its starting point for sentencing".**

In our view no clearer warning could be given.

The sentence in the case of Rawlinson was upheld by the Court of Appeal on 19th January, 1993. In the course of that Judgment, the Court of Appeal reviewed current sentencing policy. They referred in particular to the well-known English case of Aramah (1982) 4 Cr.App.R.(S.) 407, where the Court of Appeal in England laid down guidelines for sentencing in drug cases. In the case of Aramah, it had been stated that the appropriate length of sentences for importation of amounts of up to 20 kilograms of cannabis would be from 18 months to 3 years' imprisonment; and for supplying cannabis, the bracket should be within 1 and 4 years other than for cases of massive quantities which would justify sentences of up to 10 years' imprisonment.

In commenting on the case of Aramah in relation to the offence of importation, the Court of Appeal in the case of Rawlinson said this:

**"The Aramah Judgment was given 10 years' ago. In the light of the more recent developments to which this Court referred in the passage which we have just quoted we think that the reference in the Aramah Judgment to sentences between 18 months and 3 years must now be read as though it referred to sentences of between 18 months and 4 years. We see nothing inconsistent with this in any of the local cases".**

In the view of this Court the figures given for supply in Aramah should also be adjusted accordingly.

Mr. Robinson for the Crown argued that the figures in Aramah should be looked upon as the length of sentence to be passed once all allowance had been made for any mitigating circumstances. We cannot accept that this is so. A sentencing bracket must be intended to include, at one parameter, a case at the top of the range with no mitigating features, and at the other parameter, a case at the lower end of the range, with substantial mitigating features such as, for example, a plea of guilty, previous good character, or assistance to the police. And indeed a reading of the full case of Aramah makes it clear that that was what was intended in that case.

That the Royal Court has in fact revised its sentencing policy is borne out by the case of A.G. -v- Stead (21st June, 1993) Jersey Unreported, to which we were referred, where in a case of importation of 26 kilograms of cannabis the Court took as its starting point a sentence of 7 years.

Having made these general observations on the submissions that have been made to us, I now turn to consider the facts of the individual cases that we have before us since in the end the appropriateness of each sentence in each case must depend on the facts of that individual case.

I turn first to the case of Santos-Costa. As well as the count for possession of cannabis for which he received a sentence of 1 month's imprisonment, he pleaded guilty to one offence of supplying cannabis involving we are told in all some 6½ kilograms. There is no doubt that this was a serious case of supply. The evidence to justify the count of supplying 6½ kilograms of cannabis depended on the fact that he was found in possession of some £20,000 and also of a deal list containing nine different names, together with his own admissions to the police. The circumstances of the case in our view fully justified what was said by the Royal Court in sentencing Santos-Costa when they said: **"You were involved to a high degree in a very carefully planned supplying to other people; you were the main person in this group of offenders; and you were also quite close to the source of supply"**.

A complaint was made by Mr. Landick, on behalf of Santos-Costa, that in coming to their decision the Court may have been unfairly influenced by the terms of a probation report written about Mr. Santos-Costa which, he claimed, gave a distorted picture of his client's attitude to the offence, and one which his client did not accept. We find no justification in that complaint. There is nothing in the reasons given by the Bailiff that led the Court to its conclusion, to justify the view that they were unduly influenced by what was said to be the adverse nature of that probation officer's report.

In any event the Court wishes to make it clear that the probation officer in preparing his report does so as an independent officer of the Court, providing the Court with a report intended to assist them in the difficult task of sentencing and he is in no way to be looked upon as the agent for the defendant. A copy of the probation officer's report is always provided to the defendant's advocate who, if he wishes to comment on it or challenge its contents, is free to do so.

We were told that no such objection was taken in this case.

We therefore come back to the actual sentence passed in relation to the actual facts of this individual case. The prosecution submitted to the Court that the appropriate starting point for any sentence, before considering any mitigation, was one of 6 years' imprisonment. Even allowing for what this Court has said about the general range of sentencing for drugs offences being higher than that previously adopted, we have come to the conclusion that for a single offence of supplying involving 6½ kilograms of cannabis by a man with no previous convictions for dealing in drugs, the starting point of 6 years was in itself too high. In saying that we are strengthened in our view by the inadequate differential between such a starting point and that of 7 years accepted by the Royal Court in the case of A.G. -v- Stead as appropriate for a case of importation of over 26 kilograms of cannabis with a street value of £145,000. We consider therefore that 5 years would have been the appropriate starting point.

We see no reason to disagree with the Royal Court when they said that on the facts of this case, the appropriate deduction should be one of 18 months. Accordingly, we allow the application for leave to appeal by Mr. Santos-Costa and, treating the application as the appeal, we substitute a sentence of 3½ years' imprisonment on count 12 for that of 4½ years' imprisonment at present imposed which together with the period of 1 month's imprisonment on count 11 which we confirm, makes a total sentence of 3½ years' imprisonment.

I turn now to the cases of Lynch and Ryan. Whereas Santos-Costa could be said to be a wholesaler, we were told that Lynch and Ryan should be treated as retailers. In Ryan's case the amount of cannabis involved in all three counts amounted in total to some 49 ounces, of which it was said that 27 ounces were drugs belonging to Santos-Costa that he was keeping for him at a safe house. It was urged on us by Miss Fitz, on behalf of Ryan, that a substantial proportion on those drugs at least were only recovered due to Ryan's co-operation with the police in showing them where they were hidden. Again, we consider that on the facts of this individual case the starting point in his case of 5 years' imprisonment, as submitted by the Crown, was too high and that the correct sentence in Ryan's case would have been one of 2 years' imprisonment rather than the 3 years that was imposed. Accordingly, again, we allow the application for leave to appeal, as far as Ryan is concerned, and treating that application as the hearing of the appeal, we substitute a period of 2 years' imprisonment for the 3 years on counts 8 and 9 and confirm the sentence of 1 month's imprisonment on count 10. All those sentences will run concurrently, making 2 years' imprisonment in all.

I turn finally to the case of Lynch. Lynch, as I have said, also pleaded guilty to three offences similar to those to which Ryan had pleaded, although it was maintained on his behalf that

his pleas related only to some 26 ounces. There was clearly some dispute as to whether or not he was also in possession of other cannabis found at the premises which he shared with the applicant, Ryan.

However, it was accepted both by Ryan as well as by other parties that it was he, Ryan, who had introduced Lynch to drugs and that he, Lynch, was lower down the chain of supply than was Ryan. In those circumstances we consider the 6 months differential in sentence imposed by the Royal Court in these two cases to be right and accordingly we again allow the application for appeal so far as Lynch is concerned and, dealing with the application as the hearing of the appeal itself, we propose to substitute a sentence of 18 months' imprisonment on counts 4 and 5 in place of the sentences of 30 months' imprisonment imposed by the Court. We also confirm the sentence of 1 month's imprisonment imposed on count 3, all three sentences to run concurrently. Therefore in Lynch's case, the total sentence will be one of 18 months' imprisonment.

So far as Santos-Costa is concerned, therefore, the total sentence of this Court is one of 3½ years' imprisonment; so far as Ryan is concerned, it is one of 2 years' imprisonment; and so far as Lynch is concerned, it is one of 18 months' imprisonment.

### Authorities

- A.G. -v- Bowman (25th January, 1991) Jersey Unreported.
- A.G. -v- Taylor (20th March, 1992) Jersey Unreported.
- A.G. -v- Cash (27th March, 1992) Jersey Unreported.
- A.G. -v- McConnachie (26th March, 1993) Jersey Unreported.
- A.G. -v- Russell-Biggie, Gooch (15th March, 1993) Jersey Unreported.
- A.G. -v- Rawlinson (23rd November, 1992) Jersey Unreported.
- Rawlinson -v- A.G. (19th January, 1993) Jersey Unreported  
C.of.A.
- A.G. -v- Stead (21st June, 1993) Jersey Unreported.
- Aramah (1982) 4 Cr.App.R.(S.) 407.
- A.G. -v- Gotel (5th August, 1993) Jersey Unreported.
- Emmins on Sentencing (2nd Ed'n): pp. 14-20.
- A.G. -v- Timmins (15th January, 1993) Jersey Unreported.
- A.G. -v- Bate (22nd November, 1993) Jersey Unreported.
- A.G. -v- Coutanche (26th February, 1992) Jersey Unreported.