

7 pages.

ROYAL COURT  
(Samedi Division)

101.

5th June, 1995

Before: The Deputy Bailiff, and Jurats Coutanche,  
Blampied, Orchard, Le Ruez, Vibert,  
Herbert, Potter, de Veulle.

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The Attorney General

- v -

Peter Anthony Gaffney

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Sentencing by the Superior Number, following guilty pleas before the Inferior Number on 28th April, 1995, to:

- 3 counts of possession of a controlled drug, contrary to Article 6(1) of the Misuse of Drugs (Jersey) Law, 1978:
  - Count 1: diamorphine hydrochloride.
  - Count 3: cannabis.
  - Count 4: diamorphine hydrochloride.
- 2 counts of possession of utensils for the purposes of committing an offence, contrary to Article 8 of the said Law (Counts 2, 5).
- 1 count of breaking and entering and larceny (Count 6).
- 3 counts of larceny (Counts 7, 8, 9).
- 1 count of failing to furnish information required by an examining officer, contrary to Article 4 of the Prevention of Terrorism (Supplemental Temporary Provisions) (Jersey) Order, 1984.

AGE: 23.

**DETAILS OF OFFENCES:**

Found in possession of utensils contrary to Article 8 of the Misuse of Drugs (Jersey) Law, 1978 - Admitted using same for purposes of taking heroin, "chasing the dragon". Subsequently broke into commercial premises - stole goods to the value of £2,027.94. Search of premises revealed further utensils and Defendant admitted further possession of heroin. Went on shoplifting spree. None of items recovered. Tried to leave Island - jumped bail - arrested at airport for providing false details on embarkation card.

**DETAILS OF MITIGATION:**

Age; drug addict; proceeds of crime spent to satisfy his addiction; breaking and entering and larceny committed in commercial premises at night when no other person threatened; at the time of the offences the Defendant was in the course of splitting up with his girlfriend and was under emotional pressure; guilty plea; expressed remorse.

**PREVIOUS CONVICTIONS:**

TDA; malicious damage; drunk and disorderly; road traffic offence; receiving; aggravated burglary.

**CONCLUSIONS:**

Count 1: 12 months' imprisonment.  
Count 2: 1 month's imprisonment.  
Count 3: 1 month's imprisonment.  
Count 4: 12 months' imprisonment.  
Count 5: 1 month's imprisonment.  
Count 6: 24 months' imprisonment.  
Count 7: 1 month's imprisonment.  
Count 8: 1 month's imprisonment.  
Count 9: 1 month's imprisonment.  
Count 10: 1 month's imprisonment.

The sentences imposed on counts 1 to 5 to run concurrently with each other. The sentences imposed on counts 6 to 9 to run concurrently, but to follow consecutively with those imposed on counts 1 to 9. The sentence imposed on count 10 to follow consecutively to those imposed on counts 6 to 9.

TOTAL: 37 months' imprisonment.

**SENTENCE AND OBSERVATIONS OF THE COURT:**

Count 1: 12 months' imprisonment.  
Count 2: 1 month's imprisonment, concurrent.  
Count 3: 1 month's imprisonment, concurrent.  
Count 4: 12 months' imprisonment, concurrent.  
Count 5: 1 month's imprisonment, concurrent.  
Count 6: 18 months' imprisonment, consecutive.  
Count 7: 1 month's imprisonment, concurrent.  
Count 8: 1 month's imprisonment, concurrent.  
Count 9: 1 month's imprisonment, concurrent.  
Count 10: 1 month's imprisonment, consecutive.

TOTAL: 31 months' imprisonment.

Drugs to be forfeited and destroyed.

Difficult to set a benchmark for cases of breaking and entering and stealing from commercial premises. The Court preferred to remain within the context of the case of *Dring*.

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D.E. Le Cornu, Esq., Crown Advocate.  
Advocate P.S. Landick for the accused.

JUDGMENT

THE DEPUTY BAILIFF: This is an unusual case. Gaffney faces 10 counts before this Court. They are inter-related and stem from his addiction to heroin.

5 On 22nd October, 1994, a search warrant was issued at his home address in New Street. Certain items were seized - a cigarette filter, a spoon and a roach end. The roach end was analysed and found to contain substances derived from cannabis; the spoon and the cigarette filter contained traces of heroin and  
10 the States Analyst indicated that the filter had been used to filter a solution of heroin for injection.

15 Later that evening Gaffney was apprehended. He was taken into custody. He had apparently overdosed on drugs and was admitted to Intensive Care at the Hospital. The next day he had discharged himself from the Hospital and after being interviewed by the Police Surgeon, was arrested on suspicion of being in possession of a controlled drug. He was cautioned but made no  
20 reply.

25 Later in the afternoon of that day, he told the police in a question and answer interview under caution that he had injected himself with two £30 bags of heroin. He had purchased this heroin in the "Bath Hotel" but as is normal in such cases he declined to name his supplier.

30 He admitted that the spoon had been used for burning heroin but he denied that the roach end had been used for smoking cannabis. He was released and warned to attend a Parish Hall enquiry on 23rd December, 1994. Before that date, he had broken into a commercial property in St. Helier and stolen goods. Later a further spoon was found relating to his heroin addiction and that contained compounds which were the constituents of street heroin. He was charged on 20th December with stealing items from  
35 various shop premises. Again he declined to name his supplier from whom he had bought the drug.

40 On 18th January, 1995, he was granted bail in the sum of £500 on condition that he report daily to the police. He was remanded in custody until 25th January, as at first he could not raise the bail, but eventually the sum was found and he was formally charged. Shortly after that he was observed shoplifting. He was identified from a close-circuit camera stealing from a supermarket. Then, whilst still on bail, he attempted to escape  
45 from the Island and was only caught by the vigilance of a woman police officer at the Airport.

5 We need, for a moment, to consider whether we have to set a guideline for criminally breaking and entering commercial premises at night. We have examined very carefully all the authorities that have been cited to us but we must say that we find it extremely difficult in this particular case to set a benchmark. Each case will have an infinite number of variations and will depend, for example, on the amount of force used, the quantity of goods stolen and their value, the time of day, and whether the act was impulsive or planned.

10 Despite the urging of the learned Crown Advocate we prefer to remain within the context of the case of Dring v. A.G. (12th February, 1992) Jersey Unreported. In that case the Court said this at p.2 of the Judgment:

15 *"As the learned Bailiff rightly said when passing sentence, the appropriate level of tariff sentence for the illegal entry and larceny of commercial premises by night is of the order of fifteen months' imprisonment".*

20 We feel that in 1995 the order of imprisonment should now be in the region of 18 months. We do not intend to take the matter any further than that despite the urging that has been made upon us.

25 If we leave the matter as it is set out in Dring, it allows us to consider aggravating or mitigating factors in each particular case. In this particular case, the Crown Advocate, Mr. Le Cornu, relies on the case of Young v. A.G. (1980) JJ 281 CofA and says that all self-induced drug influenced intoxication in crime is an aggravating factor. It appears in the headnote to the Judgment which is a Judgment of the Superior Number where the Court says this:

30 *"Obiter, Court states that persons in unlawful possession of Class A drugs ("hard" drugs) will receive custodial sentences, unless there are exceptional circumstances, even if the conduct is in the least serious category, and importing will correspondingly attract longer sentences".*

35 There is clearly no sustainable argument that will mitigate where an accused - as in this case - says that because he could not get work he required money to feed his drug habit. But whether some argument on those lines should be an aggravating factor, particularly in this case, we are not at all certain. Nor are we certain that when the crimes which were made in order to feed the drug habit were undertaken Gaffney was in fact under the influence of drugs.

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50 What we do know from our careful examination of this case, is that the goods have not been recovered. That the accused has almost consistently given false information, not only to the

Probation Officer, to the Policewoman at the Airport, and to those that were investigating him, but it is only because of the surveillance cameras, the vigilance of that Policewoman, and forensic skill, that most of these charges have been brought at all. He has wasted an inordinate amount of police time and although he eventually admitted everything when he was finally charged, one cannot say that he has been particularly helpful as a mitigating factor in this case.

We have no doubt that the conclusions asked for by the learned Crown Advocate on the drug offences are correct and we do not intend to interfere with those at all.

However, when we move on to the second band of offences we are not certain that 24 months is a proper sentence in this particular case and we say that again well aware of the fact that the Court in Dring said this at p.2:

***"The Court again stresses that self-induced drug influence and intoxication are aggravating factors".***

It was perfectly proper for the learned Crown Advocate to bring those matters to our attention.

We feel, however, that on count 6, the 24 months asked for could properly be reduced to 13 months and we are going to reduce the sentence in that way. Therefore Gaffney will be sentenced on counts 1 - 5 as follows: 12 months' imprisonment on count 1; 1 month's imprisonment on count 2; 1 month's imprisonment on count 3; 12 months' imprisonment on count 4; 1 month's imprisonment on count 5; and those are all concurrent.

When we move on to what we describe as the second batch of offences, however, we are going to reduce the sentence on count 6, 18 months' imprisonment; on count 7, 1 month's imprisonment; on count 8, 1 month's imprisonment; on count 9, 1 month's imprisonment; and those offences are all to run concurrently but to follow consecutively the sentences imposed on counts 1 - 5.

The last offence, of course, is the offence under the Prevention of Terrorism (Supplemental Temporary Provisions) (Jersey) Order, 1984 and we feel that that is too serious an offence for us to interfere with in any way at all and we leave that one at the conclusion of 1 month's imprisonment. We have looked at this very carefully and that 1 month is to follow consecutively the other sentences. Having done that, and as Mr. Landick recommended that we should, we have looked very carefully at the totality principle and overall we consider that 2 years and 7 months' imprisonment is right for the offences of this nature. We can only hope that Gaffney will benefit from his time in prison to make use - as he can in Jersey - of the help that will be given to him to try to cure himself of this dreadful habit.

We order that the drugs be confiscated and destroyed together with the utensils and we rescind the binding over order.

## Authorities

Young v. A.G. (1980) JJ 281 CofA.

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A.G. v. Peacock (1989) JLR N.12.

Hickson v. A.G. (29th July, 1991) Jersey Unreported CofA.

A.G. v. McLees (23rd October, 1992) Jersey Unreported.

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A.G v. Coyle (29th January, 1993) Jersey Unreported.

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