

ROYAL COURT
(Samedi Division)

24th July 1995. 146.

Before: The Deputy Bailiff and Jurats
Myles and Gruchy

Police Court Appeal
(The Magistrate)

Allen Darrell Wass

-v-

Attorney General

Appeal against a total sentence of 4 months imprisonment passed on 5th July, 1995, following guilty pleas to:

1 count of possession with intent to supply a controlled drug (cannabis resin) contrary to Article 6(2) of the Misuse of Drugs (Jersey) Law, 1978, (Count 1, on which a sentence of 4 months imprisonment was imposed; and

1 count of being knowingly concerned in the fraudulent evasion of the prohibition on importation of a controlled drug (cannabis resin) contrary to Article 77 (b) of the Customs and Excise (General Provisions)(Jersey) Law, 1972, (count 2, on which a sentence of 4 months' imprisonment, concurrent was imposed).

Appeal allowed; total sentence of 3 months imprisonment substituted.

J. G. P. Wheeler, Esq., Crown Advocate
Advocate R. G. S. Fielding for the Appellant.

JUDGMENT

THE DEPUTY BAILIFF: According to the transcript we have studied this morning, Wass brought 250 grams of cannabis into Jersey and it had a street value of £1,500. This was a calculated attempt to make a profit. Wass had worked in Jersey for some time before he was

made redundant and has no other ties to Jersey, but he was well aware of the sentencing policies of this Court.

5 He was targeted and in the recent appeal case of Campbell, Molloy, MacKenzie v. A.G. (4th April, 1995) Jersey Unreported CofA the Court helpfully said this at p.7:

10 *"We have no doubt that the courts should indeed play their part in suppressing the evil of drug trafficking which has the capacity to wreak havoc in the lives of individual abusers and their families".*

The Court went on to say this:

15 *"That policy is that offenders will receive condign punishment to mark the peculiarly heinous and antisocial nature of the crime of drug trafficking".*

20 The Court of Appeal then usefully set out bands which this Court has to consider and the case which is on appeal before us today is of course below the band set in Campbell.

25 The learned Magistrate determined to deal with the matter himself. We would say this as a matter of guidance: any form of dealing or importation with intent to supply for commercial gain of even small amounts of drugs should be remitted by the Police Court Magistrates to this Court. This enables the Attorney General to continue to build on the helpful guidelines clearly set out by the Court of Appeal.

30 On the face of it this is a relatively straightforward case of a targeted but planned importation of drugs with a commercial value.

35 The learned Magistrate had all the factors by way of mitigation before him. There was a detailed report from the Probation Officer and a detailed prognosis after interview by Dr. Gwyn Evans, the Consultant Psychiatrist. Both reports in their own way recommended mercy.

40 What makes this case unusual is that Wass suffers from multiple sclerosis. That is an awful disease. He is 30; he has no drug related record and his disease of course, by its very nature, is progressively deteriorating.

45 Mr. Fielding, in an address which was very helpful to us, asked for clemency. He referred us to the case of A.G. v Quénault (8th December, 1989) Jersey Unreported where the Court said this:

50 *"Quénault is fortunate because he fully deserves a long custodial sentence. We are not changing the sentencing principles of this Court. We are applying an exceptional*

5 sentence to wholly exceptional circumstances. Whatever the pressure, whatever the other mitigating factors this was an appalling story of drug trafficking over a long period. Fortunately the Confiscation Order we have made ensures that there has been no gain from it. We are satisfied that Quénault's health is such that he could not cope with a sentence of imprisonment. Therefore, on health grounds alone we grant the conclusions".

10 We also had a look at other cases of a similar nature and we studied these carefully and just for the reference of this judgment we have had regard to A.G. v. Roberts & Gleeson (23rd November, 1992) Jersey Unreported; to A.G. v. Crossan (8th May, 1992) Jersey Unreported; and to Kramer v. A.G. (16th March, 1992) Jersey Unreported; (1992) JLR N10. We also had regard to the English case of R. v. Leatherbarrow (1992) 13 Cr.App.R.(S.) 632, where Laws J said this:

20 *"There is no doubt in this Court's view, and the contrary has not been submitted, that the sentences passed in this case were wholly correct in principle; indeed unimpeachable as an objective sentencing exercise. The case made by Mr. Somerville is put fairly and squarely as a plea for mercy, given the serious medical condition from which this man suffers and from which he has suffered for a long time. The Court has in the past taken an exceptionally merciful course by reason of the medical condition of an appellant who, but for his illness, would have merited severe punishment".*

30 The Court then went on to suspend eight months of the 12 months sentence, but of course this Court has no power to give a suspended sentence.

35 Mr. Fielding has been urging upon us that there is no part in the sentencing policy of this Court which is meant to increase hardship in sentencing because, as he says, sentencing Wass for a long time will have considerable effect upon him.

40 We take all that on board. We feel that the learned Magistrate was absolutely right - if we may say this - in the decision that he made and the way that he approached his decision subject, of course, to our direction that in future cases of this nature should be referred to this Court to deal with. But there is very little else that we can see as an alternative that we can do because Wass is not based in Jersey. He has already spent six weeks in prison and bail was refused.

50 On the basis of clemency and on clemency only we are going to reduce the four months sentence of imprisonment imposed to one of three months' imprisonment which will of course take into account the amount which has already been spent in custody.

Authorities

Thomas: "Principles of Sentencing" (2nd Ed'n): pp. 214-216.

Whelan: "Aspects of Sentencing in the Superior Courts of Jersey":
pp. 49-50.

A.G -v- Quénault (8th December, 1989) Jersey Unreported.

A.G -v- Roberts & Gleeson (23rd November, 1992) Jersey Unreported.

A.G -v- Crossan (8th May, 1992) Jersey Unreported.

Kramer -v- A.G (16th March, 1992) Jersey Unreported; (1992)
JLR.N.10.

R. v. Leatherbarrow (1992) 13 Cr.App.R.(S.) 632.

A.G -v- Burns (13th March, 1992) Jersey Unreported.

A.G -v- Welsh & Anor (26th March, 1995) Jersey Unreported.

A.G -v- McGough (26th June, 1992) Jersey Unreported.

Current Sentencing Practice:

Release 25: 1-iii-93: pp. 3503-4.

Campbell, Molloy, Mackenzie -v- A.G (4th April, 1995) Jersey
Unreported CofA.