COURT OF APPEAL.

7th February, 1985.

Criminal Cases

Aubin, Michael
(Advocate C.M.B. Thacker)

Application for an extension of time in which to give notice of application for leave to appeal against sentence of 2½ years' imprisonment imposed by the Superior Number on the 2nd July, 1984. (Robbery) Refused by Deputy Bailiff.

Before: President: Sir Patrick Neill, Q.C., D.C. Calcutt, Esq., Q.C., J.J. Clyde, Esq., Q.C.

Judgement

In this matter, there are two applications before the Court. One is an application for leave to appeal out of time against the imposition of a sentence of 2½ years imprisonment in a case in which the accused threatened a taxi-driver with a knife, and in effect extorted the sum of £10 from him. The application is several months out of time; it was imposed on the 2nd July. The time for appealing was 10 days later, and leave would have been needed to appeal in any event. The second appeal before us is the application for leave to appeal. Now, the first hurdle, therefore, which Counsel had to overcome is to explain the delay and, I take two ways in which this matter is put - first of all in Archbold: substantial grounds must be shown for the delay before the Court will exercise its discretion; and in the case of "La Solitude", a decision of the Court of Appeal in Jersey, on the 20th April, 1983, (according to the transcript, second page): the Court said that "leave would only be given out of time where special circumstances of an important character are disclosed". Both tests come to probably much the same thing; in effect when, after listening to argument of

of Counsel with care, what one discerns here is really vacillation in the mind of the accused person, deciding at one moment that he wanted to appeal, and at another moment that he did not want to appeal and in the opinion of this Court, vacillation of that character, extended over 2 to 3 months cannot possibly amount to substantial grounds or be the special circumstances of an important character which would justify the application being granted here. There is one point that we think we should, in fairness to Aubin, deal with: it was argued by his Counsel that it was relevant to our consideration of this matter that there was a strong possibility of success, or a possibility of success of the substantive appeal against sentence, given when it was heard; now to get that point off the ground, it was necessary for Counsel to persuade us that the Court, when reviewing the sentence, would be likely to conclude that the sentence of 2% years here was wrong in principle. The tariff from the English textbook, Thomas, for mugging offences shows that the bracket is there 2 to 4 years. The two relevant Jersey cases are cases where sentences of 3 years were imposed, where the circumstances are certainly comparable to the present case; in the particular case here the prosecution, in the conclusions, moved for 3 years in line with those two authorities. But various mitigating factors were placed before the Court below and as a result the sentence they, in fact, imposed was $2\frac{1}{2}$ years, not the 3 years sought in the conclusions.

It seems to us that it would be quite impossible for an Appellate Court to hold that that sentence of 2½ years was wrong in principle or manifestly excessive, therefore that point which was strongly argued as being something which we should take into account in granting leave, falls to the ground.

is refused, and, of course, it follows that the other application falls to the ground with it.