

ROYAL COURT
(Samedi Division)

31st January, 1994

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Before: The Bailiff, and Jurats
Coutanche, Vint, Blampied, Myles, Orchard,
Gruchy, Vibert, Herbert, and Rumfitt

The Attorney General

- v -

Alexander Robertson Stewart

Sentencing before the Superior Number following guilty pleas before the inferior Number on 26th November, 1993, to:

4 counts of being knowingly concerned in the fraudulent evasion of the prohibition on importation of a controlled drug (Count 1 of the indictment: MDMA; Count 2: cannabis; Count 3: cannabis resin; Count 4: temazepam), contrary to Article 77(b) of the Misuse of Drugs (Jersey) Law, 1978.

PLEA: Guilty.

CONCLUSIONS: Count 1: 5½ years' imprisonment.
Count 2: 6 months' imprisonment.
Count 3: 6 months' imprisonment.
Count 4: 3 months' imprisonment.
All concurrent.
Forfeiture and destruction of drugs; confiscation order: £211.95.

SENTENCE: Conclusions granted.

The Attorney General.
Advocate J.C. Gollop for the accused.

JUDGMENT

THE BAILIFF: The Court has said on many occasions that the importing of a Class A drug is a very serious matter and we are glad to note that counsel for the accused has not disagreed; nor does counsel take issue with the starting point in a case of this nature of 9 years. What counsel has suggested is that the appropriate reduction for mitigation is not the amount moved for by the Crown,

but in fact one of 5 years, making a proper sentence of 4 years in respect of Count 1 instead of 5¹/₂ years.

There are a number of matters relating to this offence which are relevant and which have been considered by the Court. The principal of these is whether or not it was a reasonable belief of the accused that the two packages concealed in the hire car were temazepam.

For the importing of those two packages he was to be paid at least £1,000, possibly a little more, from which of course he had to deduct his fare etc. He was to receive some temazepam for himself and his debt to his suppliers was to be thereby reduced.

We accept, after reading, when we retired, the case of R. -v- Bilinski (1987) 9 Cr.App.R.(S.) 360, reported in Thomas' Current Sentencing Practice: B11-23A01 at page 25604, that the extent of the accused's knowledge is relevant; but one should also look not only to that general principle but also at what was said at the foot of that judgment on page 25605 of Thomas, which is of importance, we think, to this particular case where Lord Lane C.J. said this:

"Where the defendant's story is manifestly false the judge is entitled to reject it out of hand without hearing evidence".
(It is the next sentence which is of relevance to this case)
"Whether that is so or not, we take the view that the exercise of only a small degree of curiosity, enquiry or care would have revealed the true nature of the drug in this case and that accordingly the mitigating effect of the belief, if held, was small".

This Court finds that the mitigating effect of that belief, if it were held at all, was small. The drugs were obtained from his suppliers, counsel says, and if that is so then it would have been easy for a small enquiry to have found out exactly what they were.

Secondly, the use of a young woman and a child is a device which is used by pushers and suppliers to try and get drugs through customs. That aggravates the offence; it certainly does not mitigate it.

Accordingly, we cannot find that the conclusions are manifestly wrong or excessive in any way. Proper allowance has been made by the Crown for the matters which we have on the file and which Mr. Gollop very kindly made available to us, and taking all these mitigating factors into consideration and balancing them with the seriousness of the offence we have come to the conclusion that the sentences which the Crown has asked for are correct.

Accordingly you are sentenced on Count 1, to 5¹/₂ years' imprisonment; on Count 2, to 6 months' imprisonment concurrent; on Count 3, to 6 months' imprisonment concurrent; on Count 4, to 3 months' imprisonment concurrent, making a total of 5¹/₂ years' imprisonment. There will be an order for the forfeiture and destruction of the drugs, together with a confiscation order of £211.95.

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Authorities

Clarkin, Pockett -v- A.G. (3rd July, 1991) Jersey Unreported
C.of.A.

A.G. -v- Stead (21st June, 1993) Jersey Unreported.

A.G. -v- Bate (22nd November, 1993) Jersey Unreported.

Thomas: Current Sentencing Practice:

B11-22002: R. -v- Aramah (1982) 4 Cr.App.R.(S.) 407.

B11-12001:

B11-23A01: R. -v- Bilinski (1987) 9 Cr.App.R.(S.) 360.