

ROYAL COURT
(Samedi Division)

117.

15th June, 1994

Before: The Bailiff, and Jurats,
Coutanche, Vint, Blampied, Myles,
Bonn, Orchard, Hamon, Gruchy, Le Ruez,
Vibert, Herbert, Rumfitt.

The Attorney General

- v -

**Michael Anthony McDonough,
Kevin Paul Proctor,
Trevor Edward Scott.**

Sentencing by the Superior Number, to which the accused were remanded by the Inferior Number on 20th May, 1994, after guilty pleas had been entered to the following charges:

McDonough

- 1 count of possession of a controlled drug (amphetamine sulphate), contrary to Article 6(1) of the Misuse of Drugs (Jersey) Law, 1978 (count 3 of the Indictment).
- 1 count of receiving stolen property (count 4).

Proctor

- 1 count of possession of a controlled drug (diamorphine), with intent to supply it to another, contrary to Article 6(2) of the said Law (count 5).
- 2 counts of supplying a controlled drug, contrary to Article 5(b) of the said Law (count 6: diamorphine; count 7: cannabis resin).

Scott

- 2 counts of supplying a controlled drug, contrary to Article 5(b) of the said Law (count 8: diamorphine; count 10: cannabis resin).
- 1 count of possession of a controlled drug (diamorphine), contrary to Article 5(1) of the said Law (count 9).

Counts 1 and 2 of the Indictment relate to a co-accused, who pleaded not guilty and is remanded for trial.

AGE:

McDonough : 32

Proctor : 22

Scott : 20

DETAILS OF OFFENCE:

Accused shared a house. 24 wraps amphetamine (total 9.34 grams = £360) found in McDonough's room. 3.07 grams heroin found in Proctor's room, with wraps and scales. Scott admitted supplying 1 g. of heroin for £180, and 1/2 oz. cannabis for £80 at no profit for himself, and having smoked a separate purchase of heroin in the past.

Under caution McDonough said that the amphetamine was his brother's and that he had reluctantly allowed his room to be used as a 'safe house'. Proctor said that he had merely been packaging the heroin as a paid service. Some months later he changed the story to one of personal use and part supply to a fellow addict. At the hearing McDonough changed his story to one of personal use.

DETAILS OF MITIGATION:

In each case co-operation (Scott 'drafted his own indictment'), In each case good character. Proctor and Scott = youth. McDonough already free on bail and contributing to the support of his brother's child while brother in custody.

PREVIOUS CONVICTIONS:

None relevant.

CONCLUSIONS:

McDonough

Count 3: 9 months' imprisonment
Count 4: 3 months' imprisonment (consecutive).

Proctor

Count 5: 2 1/2 years' imprisonment
Count 6: 2 1/2 years' imprisonment (concurrent)
Count 7: 12 months' imprisonment (consecutive).

Scott

Count 8: 18 months' youth detention
Count 9: 18 months' youth detention (concurrent)
Count 10: 3 months' youth detention (consecutive).

SENTENCE:

McDonough

Count 3: 1 year's probation; 240 hours community service (drugs involvement 'slight').
Count 4: £300 fine or 3 months' imprisonment in default (1 month to pay) (for receiving 2 stolen watches worth £300).

Proctor

Counts 5 & 6: 2½ years' imprisonment, concurrent
Count 7: 18 months' imprisonment, concurrent.

Scott

Counts 8 & 9: such sentence as will allow immediate release.
Count 10: 1 year's probation on condition of attendance at Drink and Drugs Counselling Service; 120 hours community service.

But for prosecution delay this would have been former Article 18 of the Children's Law, therefore sentenced to term of imprisonment allowing immediate release. Had served 7½ months' on remand. In future, Court will consider adopting Scottish system of discharging accused upon his application unless delay can be justified. (In this case the prosecution had not been asked to address the Court on the question of delay).

C.E. Whelan, Esq., Crown Advocate.
Advocate S.A. Meiklejohn for McDonough.
Advocate S.J. Crane for Proctor.
Advocate A.D. Hoy for Scott.

JUDGMENT

THE BAILIFF: This has not been an easy case to decide what the appropriate sentences should be, because at the back of the Court's mind is the clear distinction between Class A drugs and Class B drugs and particularly the supplying of a Class A drug.

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We have listened with particular attention to counsels' addresses as well as to that of the Crown and are struck by a number of factors.

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So far as McDonough is concerned, in view of his relatively slight involvement - although we accept that a large amount of a Class B drug could be considered as adding, so to speak, to the amount of drugs available - we think, in view of the recommendations in the background report, that we can deal with this case without imposing a prison sentence.

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Therefore, McDonough, so far as count 3 is concerned, you are placed on probation for one year, and you will have to perform 240 hours of community service; that means you will have to live and

work as directed by your Probation Officer and be of good behaviour during that time. If you commit further offences, you will come back here and you will be sentenced for this offence again, as an alternative sentence. On count 4, for receiving, you will pay a fine of £300, or, in default, three months' imprisonment.

In relation to Scott, we are minded to have regard to the point made by counsel which has merit: had he been indicted earlier than the provisions of the now defunct Article 18 of the Children's Law would have applied. Although there should certainly be a prison sentence in respect of such a serious offence as supplying heroin, we think that in this case the appropriate sentence in respect of count 8 is such a sentence of imprisonment as will allow Scott to be released today; similarly in respect of count 9. As regards count 10, you will be placed on probation for 1 year on condition that you attend the Drink & Drugs Counselling Service, and you will perform 120 hours' community service.

Proctor has given us even more difficulty, but we think that there has to be a prison sentence for the supplying of heroin. As regards count 5, there will be a sentence of 2 years' and 6 months' imprisonment; there will be a concurrent sentence of the same amount in respect of count 6. As regards count 7, there will be a concurrent sentence of 18 months' imprisonment, making a total sentence of two years' and 6 months' imprisonment.

There is something, however, in your second statement, Proctor, which I should like to read, and which I hope will be widely reported so far as those who might be tempted to advocate the legalising of this sort of drug. You, yourself, wrote this:

"Heroin's definitely a drug that I don't want to see coming to Jersey. I realise it's here, that it's got it's foot in the door and I just hope it doesn't become more readily available because it's one of those drugs that just seems to take you along with it, without you even realising."

It also seems to the Court that consideration might be given, Mr. Whelan, in due course, to the Scottish procedure under which, if a prosecution is not brought within a stated time, and a reason acceptable to the Court is not given for failure to do so, the accused is entitled to apply to be discharged.

Authorities

Whelan: Aspects of Sentencing in the Superior Courts of Jersey:
p.p. 29-30.

Dolgin (1988) 10 Cr. App. R. (S.) 447.

A.G. -v- Ward (7th July, 1992) Jersey Unreported.

A.G. -v- Bagen (9th June, 1989) Jersey Unreported.

Wood -v- A.G. (15th February, 1994) Jersey Unreported C.of.A.