

ROYAL COURT
(Samedi Division)

99.

1st June, 1995

Before: The Deputy Bailiff, and Jurats
Coutanche, Blampied, Myles, Orchard, Rumfitt,
de Veulle.

The Attorney General

- v -

Gareth John Bowen
Anne Marie Goodman

Sentencing by the Superior Number following a guilty plea by Bowen and a not guilty plea by Goodman before the Inferior Number on 10th March, 1995, and Goodman's conviction before the Inferior Number on 4th May, 1995, on the following counts:

Bowen

3 counts of being knowingly concerned in the fraudulent evasion of the prohibition on importation of a controlled drug, contrary to Article 77(b) of the Customs and Excise (General Provisions) (Jersey) Law, 1972:

Count 1 : cannabis resin.
Count 2 : cannabis resin.
Count 3 : herbal cannabis.

Goodman

1 count of being knowingly concerned in the fraudulent evasion of the prohibition on importation of a controlled drug, contrary to Article 77(b) of the Customs and Excise (General Provisions) (Jersey) Law, 1972:

Count 1 : cannabis resin.

AGE:

Bowen : 34
Goodman : 28

DETAILS OF OFFENCE:

Bowen:

Count 1 : Importing approximately 5.08 kilos of carinabis resin having a street value of £28,000.
(Concealed in car driven by Bowen).

Count 2 : Importing 6.07 grammes of cannabis resin (concealed in sock).

Count 3 : Importing 1.48 grammes of herbal cannabis (concealed in sock).

Goodman:

Count 1 : Importing 5.08 kilos cannabis resin in a car owned by Goodman and driven by her co-accused Gareth John Bowen.

DETAILS OF MITIGATION:

Bowen:

Co-operative with Customs Officers save that he refused to disclose supplier. Guilty plea throughout. Minor previous convictions (only one for possession of drugs in 1980) but Bowen admitted he was an habitual drug user.

Goodman:

No previous convictions. A weak and naive character.

PREVIOUS CONVICTIONS:

Bowen:

Four. Obtaining money by forged instrument (2 counts) and possessing controlled drug. Theft.

Goodman:

None.

CONCLUSIONS:

Bowen : Count 1 : 3½ years' imprisonment.
Count 2 : 2 months' imprisonment,
Count 3 : 2 months' imprisonment, all concurrent.

Goodman : Count 1 : 3½ years' imprisonment.

SENTENCE OF THE COURT:

Bowen : Conclusions granted.
Goodman : 2 years' imprisonment.

OBSERVATIONS OF THE COURT:

There were unusually strong mitigating features in the case of Goodman which the Court had taken fully into account and which allowed the Court to reduce the sentence moved for by the Crown. In particular, Court regarded her as having less involvement than her co-accused and also being a weak and naive character. The

appropriate sentence was one of two years' imprisonment. Appropriate starting point was 4 years not 4½ as suggested by Crown.

J.G.P. Wheeler, Esq., Crown Advocate.
Advocate P.S. Landick for Bowen.
Advocate H. Tibbo for Goodman.

JUDGMENT

THE DEPUTY BAILIFF: The facts of this case present themselves in a manner which has been repeated in this Court over and over again.

On 28th November, 1994, an English registered car was stopped by Customs Officers as it came off the Car Ferry from Weymouth. There were two occupants, Bowen, and his girlfriend, Anne Marie Goodman. They said they had come to Jersey for a five-day break. They had booked no accommodation and the car had been purchased by Miss Goodman the previous Thursday for £250 in cash.

When asked if they had anything to declare they said that they did not. A search was undertaken and some cannabis was found in one of Bowen's socks. A search of the car revealed hidden in the inside lining of the back seat 5.8 kilograms of cannabis resin, with a street value of £28,800.

Bowen, when interviewed, was asked what he intended to do upon arrival in Jersey. He said, "I was to telephone a London number to obtain instructions." When asked what the number was, he informed the Customs Officer that he had destroyed it by chewing a card, which had the telephone number upon it. He produced a piece of chewed card from his mouth.

Bowen told the Officers that the purpose of his visit to Jersey was two-fold: to drop the 'hash' off; and to have a short break. He refused to name his contacts. He had been offered a week's holiday and £1,000. Some of the money he would have received in Jersey, the rest, apparently, when he returned to England. The number on the card that he had destroyed was the contact number of the dealer who would have told him where to leave the drugs. He had destroyed the card to avoid trouble when he came out of prison.

Miss Goodman was present when Bowen concealed the drugs and had been in the car when he had distributed them about the car in order to better conceal them. She, however, pleaded not guilty, but at trial, on 3rd and 4th May, was found guilty and was remanded for sentencing to today.

There were three charges: count 1 involves both Bowen and Miss Goodman and relates to the substantive amount of cannabis that was found. The statement of offence says that the accused were being knowingly concerned with the fraudulent evasion of the prohibition on importation of a controlled drug, contrary to Article 77(b) of the Customs & Excise (General Provisions) (Jersey) Law, 1972. The other counts, 2 and 3, relate to Bowen alone and deal with the smaller amounts.

Bowen is now aged 34, Miss Goodman is 28. We have had the opportunity to read detailed social enquiry reports on both the accused and we have had letters passed to us by counsel.

We have also had the advantage of the Court of Appeal Judgment in Campbell, Molloy, Mackenzie -v- A.G. (4th April, 1995) Jersey Unreported, which lays down the guidelines for drug sentencing cases of this nature.

We have to say this: in the Probation report on Bowen, there appears this report of the interview with the Probation Officer:

"He knew that what he was doing was against the law, but at the time he committed the offence it appears that he was not aware that Jersey had a separate legal system from the United Kingdom. He did not know that the penalties he would face (should he be detected) would be more severe than those in force in England."

It is that very point that the Court addressed in Campbell, Molloy and Mackenzie, and, if we may say so, it little helps a courier of drugs in such a commercial quantity to express surprise if he is dealt with strictly in this jurisdiction.

We also need to say that Bowen, apparently, does not regard the taking of cannabis as particularly anti-social. This Court has no sympathy with that view and will do its utmost to deter those who directly or indirectly prey upon the young and vulnerable for mere financial gain. In that context the letters concerning Bowen's saving an English tourist with gangrene in India, while praiseworthy, carry little weight in the light of this cynical venture.

In Campbell, Molloy and MacKenzie the Court said this, at p.7 of the unreported Judgment:

"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. Lord Lane C. J. in R. -v Aramah (1982) 4 Cr. App. R. (S.) 407 referred in the context of Class A drugs to the "degradation and suffering

and not infrequently the death which the drug brings to the addict". Sadly the lives which are blighted by the abuse of drugs are usually young lives. We agree that circumstances have changed since this Court issued its guidelines in Clarkin and Pockett in 1991. The courts cannot by themselves provide a solution to the problem but they can play their part by adopting a sentencing policy which marks the gravity of the crime. We desire therefore to make absolutely clear what is the policy of the courts in this jurisdiction in relation to the sentencing of offenders who import or deal in drugs on a commercial basis. That policy is that offenders will receive condign punishment to mark the peculiarly heinous and antisocial nature of the crime of drug trafficking.

CLASS A DRUGS

We begin by endorsing the sentencing approach laid down by this Court in Clarkin and Pockett -v- A.G. The proper approach is that the sentencing court should adopt a starting point which is appropriate to the gravity of the offence. Having established the starting point, the Court should consider whether there are any mitigating factors and should then make an appropriate allowance for any such mitigating factors before arriving at its sentence. A substantial allowance may be expected where a defendant has identified his supplier or otherwise provided information which is of significant assistance to the authorities."

And then, again, at p. 8, the Court said:

"Much will depend upon the amount and value of the drugs involved, the nature and scale of the activity and, of course, any other factors showing the degree to which the defendant was concerned in drug trafficking".

And, finally, at p.9, the Court said:

"Secondly, the Attorney General drew our attention to cases in which the view had been expressed that a guilty plea carried an entitlement to a discount of one third. He submitted that this view was incorrect and that the discount to be allowed for a guilty plea depended upon the particular circumstances of the case. For example, where a courier was found with the drugs concealed inside him, he was really caught in flagrante delicto and had no option but to plead guilty. We agree, and we reaffirm the statement made by this Court in Carter -v- A.G. (28th September, 1994) Jersey Unreported CofA in the following terms:

5 "The Court now turns to such mitigation as there is. The applicant pleaded guilty to the indictment, and for this he is entitled to a substantial discount. In Clarkin and again in Wood -v- A.G. (15th February, 1994) Jersey Unreported CofA, this Court made a deduction of one third for the plea of guilty. We accept that such a reduction is customary and in line with a well-established principle. Nevertheless we take the view that such a reduction is in no sense an inflexible rule, and the precise deduction in each case must depend upon the circumstances in which the guilty plea came to be made. In some circumstances the evidence will make a guilty plea all but inevitable, but in other cases that may not be so".

15 This statement is, of course, equally applicable to cases involving Class B drugs with which we will deal below."

20 We have had regard to these guidelines laid down by the Court of Appeal.

25 There is much said in mitigation. Bowen, albeit caught red-handed with the drugs first found in his sock, pleaded guilty and did not prevent the Customs Officers from finding the large quantity of drugs which he had concealed in the car. He regrets his actions, but then, so do most in his position, particularly when they realise the consequences of their actions, not only the penal consequences, but also as regards their lives in the future, when they come out of prison.

30 We would say this: he has, in a letter, exonerated Miss Goodman and perhaps it may be necessary just to read a part of that letter. He says:

35 "I know you should not be here and I am going to do everything and anything in my power to make it better for you. I have this and only this in my head. I think that it's the guilt that has been keeping me awake at night. You're innocent of all so-called crimes so try to be positive as you've not done anything. You're only guilty of being a beautiful trusting person which seems to be a failing not a crime."

40 That may be so, but he has, in our view, abused her vulnerability and trust disgracefully, but he did not attempt to implicate her further when he might have done so.

45 Miss Goodman is a quite different case. We have read most carefully a letter from her mother, from the prison psychiatrist, the prison chaplain, and others who have written on her behalf. One of the Jurats has observed her at trial when she entered an

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unsuccessful plea of not guilty on technical grounds. She really does strike us as extremely vulnerable.

5 In Bowen's case the Crown took a starting point of 5 years' imprisonment and was able to reduce this, because of the co-operation, to a total of 3 1/2 years' imprisonment. We are not willing to alter that conclusion despite Mr. Landick's strenuous arguments. Miss Goodman is different. We intend to take her starting point, because she was not a prime mover, at 4 years and 10 reduce her sentence - and we have treated each of the accused as a first offender although Bowen has a criminal record and Goodman does not - to 2 years' imprisonment.

15 Bowen, you are sentenced to 3 1/2 years' imprisonment on count 1; 2 months' imprisonment on count 2, concurrent; and 2 months' imprisonment on count 3, concurrent.

20 Miss Goodman you are sentenced to 2 years' imprisonment and, although it was not asked for, we order the forfeiture and destruction of the drugs.

Authorities

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