

ROYAL COURT
(Samedi Division)

223.

25th November, 1996

Before: F.C. Hamon, Esq., Deputy Bailiff, and
Jurats Myles, Gruchy, Le Ruez, Herbert,
Rumfitt, Potter and Querée.

The Attorney General

- v -

Kelly Jayne Newcombe,
Peter James Wall.

Sentencing by the Superior Number of the Royal Court, to which the accused were remanded by the Inferior Number on 20th September, 1996, after entering guilty pleas to the following counts:

KELLY JAYNE NEWCOMBE

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

Count 1 : diamorphine.

Age: 22.

Details of Offence: Newcombe and co-accused, Wall, stopped by Customs at Elizabeth Harbour. Newcombe found to be carrying 28.63 grams of Diamorphine - 57% purity concealed in her rectum. Newcombe pregnant at the time with Wall's child. Street value of drugs between £4,580.00 and £8,589.00.

Details of Mitigation: Not prime mover - under influence of co-accused Wall. Believed life to be at risk if did not bring drugs to the Island. Self-confessed heroin addict. Risk of losing child if sent to prison. Remorse.

Previous Convictions: None.

Conclusions: 4 years' imprisonment.

Sentence and Observations of the Court: 2½ years' imprisonment. Court took account of Newcombe's youth, previous good character and the fact that she was not the prime mover. Nevertheless Court could not depart from its sentencing policy although prepared to reduce conclusions.

PETER JAMES WALL

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

Count 2 : diamorphine.

Age: 29.

Details of Offence: Arrested with co-accused Newcombe at Elizabeth Harbour. 28.63 grams of Heroin found secreted in Newcombe's rectum. Wall prime mover. Took Newcombe with him to Southampton so that he could meet with supplier. Originally drugs carried by Wall but transferred to Newcombe on ferry as she was less likely to be stopped because of her pregnant state.

Details of Mitigation: Co-operation with Police. Wall acting under duress - received death threats. Badly beaten up in prison - received serious injuries. Prepared to give evidence at trial of assailants - would be put in segregated cell. Risk of further retribution in prison. Remorse - self confessed Heroin addict.

Previous Convictions: Numerous including convictions on 16th August, 1993, for Possession with Intent to Supply Class A drugs for which received sentence of 4 years imprisonment. Released from prison in January, 1996.

Conclusions: 7 years' imprisonment.

Sentence and Observations of the Court: 5 years' imprisonment, by a majority; pleaded Guilty. Did not try and distance himself from Newcombe who was actually carrying the drugs - bleak future in prison - prime mover - Crown correct to move for starting point of 10 years. Court has regard to Akehurst.

D.E. Le Cornu, Esq., Crown Advocate.
Advocate S.E. Fitz for K.J. Newcombe.
Advocate C.J. Scholefield for P.J. Wall.

JUDGMENT

5 THE DEPUTY BAILIFF: Both Kelly Newcombe and Peter Wall are charged with the importation of heroin. They arrived in Jersey at 1.20 p.m. on Saturday, 1st June, 1996. The Jersey Customs had received information from the Customs in Weymouth. They were travelling
10 under false names but admitted their real names shortly after they were stopped. When searched nothing was found on either of them but later that evening Newcombe, 2 1/2 months pregnant, said that she could not be x-rayed. It transpired that Wall had inserted two packages into Newcombe's rectum during the journey. He had
15 originally had them in his own rectum but transferred them to her at some time. The heroin was wrapped in clingfilm and contained in two condoms.

20 Wall and Newcombe had apparently discussed the most effective way of avoiding customs checks and Wall stated that because of Newcombe's pregnancy she would be more likely to succeed than he would. Newcombe told the police that it was Wall's suggestion that she carried the drugs. The heroin weighed 28.63 grams in all with a purity by weight of 57%, higher than the national average figure of 44% purity by weight. This commercial quantity of drugs, if sold by the gram at £160, would have a street value of £4,580.90, but if sold in score bags which is the usual form by

which it is sold in Jersey apparently at £300 per gram, would be worth £8,589. It is interesting that Wall, in his detailed question and answer session, valued the haul at £9,000 which is remarkably close to that figure.

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In Campbell, Molloy, MacKenzie -v- A.G. (1995) JLR 136 CoFA that Court said that in any case of trafficking up to the gravity of the case of Fogg which involved the possession with intent to supply of 1,000 tablets of LSD the appropriate starting point would be between seven and twelve years. Much, it was said, will depend upon the amount and value of the drugs involved. But this is not a usual case, in fact it is such an unusual case as to be unique.

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After hearing the sordid facts, we wish that all those who would liberalise drug taking could hear of the evil of those who control these unfortunate couriers.

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Let us immediately say how grateful we are to both counsel for their addresses before us. Miss Fitz has argued that her client obtained no benefit from this drug run, and that threats have now been made to her. Miss Newcombe has in our view a wholly exceptional involvement. She is a self-confessed heroin addict, but she has youth on her side and has no criminal record. She says that she is deeply ashamed but her probation report is, sadly, not encouraging and we feel that she has a long way to go before she is re-habilitated.

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The Crown Advocate, Mr. Le Cornu, asked for a sentence of four years' imprisonment to be imposed upon her. We would say this in passing: we cannot see how anyone who professes to care for an unborn child could stuff this large amount of heroin into herself, but in the particular circumstances - stand up, please, Miss Newcombe - we sentence you to 2½ years' imprisonment.

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We turn now to deal with Wall. He is 29 years old. We are left with no doubt that he suffered a life-threatening attack upon him in prison and that, of course, makes obvious that his belief in the threats made to him was horribly real. He pleaded guilty; he did not attempt to put blame on Miss Newcombe; he has given and apparently will continue to give assistance to the authorities against those who assaulted him. He came close to dying in hospital and his future in prison remains bleak. He was under great pressure when he committed the present offence by travelling to England to carry out this drug run. But he has a previous conviction for a drugs drug offence: he was sentenced to four years' imprisonment in 1983 for supplying Class A drugs and the present offence was committed within months of his release from prison. He was undoubtedly the prime mover.

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Having regard to Campbell, Molloy, MacKenzie and the case of Fogg, we do not need to repeat here that the learned Crown

Advocate is perfectly correct when he asks for a starting point of ten years which he was able, in the circumstances, to reduce to seven years.

5 We have also had some regard to the case of A.G. -v- Akehurst
(29th. July, 1996) Jersey Unreported where a recommended sentence
of seven years was reduced to three because of co-operation in a
pending matter. We are persuaded by Mr. Scholefield that the
10 pressure on Wall in the form of threats became real in the assault
upon him. It may be said that this is a case of *post hoc, ergo*
propter hoc and, for once, it is a valid example. We have found
this case truly disturbing but a large amount of heroin was
discovered - and our customs officers are to be congratulated for
15 their continuing vigilance.

Wall, stand up, please. By a majority the Court sentences
you to five years' imprisonment. We order the forfeiture and
destruction of the drugs.

Authorities

Campbell, Molloy, MacKenzie -v- A.G. (1995) JLR 136 CofA

A.G. -v- Bartlett, Mawdsley (20th March, 1996) Jersey Unreported.

Mawdsley -v- A.G. (8th July, 1996) Jersey Unreported CofA.

A.G. -v- Nicolas, Charles (30th May, 1991) Jersey Unreported.

A.G. -v- Akehurst (29th July, 1996) Jersey Unreported.

Nield -v- A.G. (28th September, 1994) Jersey Unreported CofA.