

ROYAL COURT
(Samedi Division)

9.

20th January, 1997

Before: The Deputy Bailiff, and Jurats
Myles, Bonn, Gruchy, Le Ruez, Vibert, Herbert,
Rumfitt, Potter, de Veulle and Quérée

The Attorney General

- v -

Robert Benjamin Busby

Sentencing by the Superior Number of the Royal Court, to which the accused was remanded by the Inferior Number, following a guilty plea to:

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

Plea: Guilty.

Age: 27 years.

Details of Offence: Defendant imported a total of 4 packages secreted internally containing a total of 92.75 grams of heroin with a street value of between £14,840 and £27,825. This was sufficient to provide up to 2,780 individual doses.

Details of Mitigation: Guilty plea, but this was inevitable. Originally denied carrying any prohibited substances but very soon co-operated with Customs. Defendant an heroin addict. Claimed that he was indebted to a dealer and was acting simply as a courier because he had received threats that his wife and children would be harmed if he did not carry drugs into the Island - Courier under duress.

Previous Convictions: Two previous drug related convictions. N.B. - Defendant at time of sentencing awaiting trial before Cambridgeshire Crown Court for a number of drug related offences including possession of heroin with intent to supply.

Conclusions: 9 years' imprisonment. Starting point 12 years, reduced to take account of such mitigating circumstances as their were.

Sentence and Observations of the Court: 8 years' imprisonment. Very significant amount of heroin. Court took into account Defendant's co-operation and plea of guilty but not much else by way of mitigation. Court remarked that although Defendant maintained that his daughter had been threatened Court had to think of the possible harm to the sons and daughters of the Island of Jersey, the possible ultimate recipients of the drug. Appropriate starting point 11 years.

D.E. Le Cornu, Esq., Crown Advocate.
Advocate J. Martin for the accused.

JUDGMENT

5 THE DEPUTY BAILIFF: Busby comes before us, charged with a
contravention of Article 77(b) of the Customs & Excise (General
Provisions) (Jersey) Law, 1972. It was, perhaps, not surprising
that Busby was detained when he came into Jersey on 'Condor' 12 on
Saturday, 7th September, 1996, as a foot passenger. He told
Customs Officers that he had come to Jersey for the first time and
for the weekend; that he had never been to Jersey before; he knew
no one in the Island and did not know where he was going to stay.
10 His one-way ticket was in the name of a Mr. S.F. Creek, whom he
said was a friend who had fallen ill.

15 Later, his urine sample gave a positive indication of the
presence of cocaine, heroin and methadone, and he was found to be
carrying heroin in three 'Kinder' eggs and a package stuffed in
his rectum.

20 He is a registered heroin addict and the 'Kinder' eggs and
the package contained 92.75 grams of heroin of a purity by weight
of 38%-41%. There was enough heroin to make 927 score bags with a
value at the going rate of some £14,840, although the Attorney
General's statement says that that figure could, in fact, have
been as high £27,825. Perhaps what is more important than the
financial aspect of the matter is that there was sufficient heroin
for 2,780 individual doses. This is again a very significant
25 amount of heroin.

30 Apparently Busby owes money to a drug dealer which is again
not surprising when one considers that his drug habit was costing
him up to £250 per week and that he had a drug debt of some £500
and other heavy, legitimate debts. Apparently his weekly wage was
£100 but he and his wife, of course, received British Government
support for accommodation and income. Busby says that his
daughter had been threatened by his dealer. That is unfortunate,

but this Court has to think of the daughters and sons of those living in Jersey for whom Busby, as a mercenary in this war on society, had not the slightest consideration.

5 It is always better, it seems to us, to go back to the case of Campbell, Molloy and Mackenzie -v- A.G. (1995) JLR 136 CofA, rather than to compare recent cases which may or may not be similar. In Campbell, these oft repeated words appear at p.144 of the judgment:

10 *"In our judgment the appropriate starting point for a case of drug trafficking of that nature (in the case of Fogg) would now be one of twelve years' imprisonment. If the involvement of a defendant in drug trafficking is less than that of Fogg, the appropriate starting point will be lower. If the involvement of a defendant in drug trafficking is greater than that of Fogg the appropriate starting point will clearly be higher. 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".*

25 The Court went on to say:

30 *"We propose also to vary the lowest point of the band established in Clarkin and Pockett; we accordingly state that it is seldom that the starting point for any offence of trafficking in a Class A drug on a commercial basis can be less than a term of seven years".*

35 We believe, after looking at some of the other cases cited to us by Miss Martin, that, perhaps, eleven years is an appropriate starting point. We have not taken into account the fact that Busby faces a trial in Cambridge having pleaded guilty to certain drug offences and not guilty to others in a case which involves a range of dangerous drugs, but we have taken into account that he has, to a certain extent, been co-operative with the Customs Officers and of course he has pleaded guilty, although we must say again that there is not much else that he could have done in the circumstances.

45 We fully accept the arguments put forward by the Crown but having taken the starting point at eleven years we are going to pass sentence as follows. Stand up, please, Busby. We are going to sentence you to eight years' imprisonment. We order the forfeiture and destruction of the drugs.

Authorities

Campbell, Molloy and MacKenzie -v- AG (1995) JLR 136 CofA.

AG -v- Marella, Lago, Se, Benedito & Rodrigues (2nd May, 1996)
Jersey Unreported.

AG -v- Perchard, McConnachie (22nd November, 1995) Jersey
Unreported.

AG -v- Cain (9th September, 1996) Jersey Unreported.