

ROYAL COURT
(Samedi Division)

19th December, 1997

**Before: F.C. Hamon, Esq., Deputy Bailiff, and Jurats
Gruchy and Le Brocq**

The Attorney General

- v -

Francis Wilfred Joseph Dowse

Representation of the Attorney General seeking an Order, empowering the Viscount to sell the assets of the Defendant, which were seized by way of *saisie judiciaire* granted by the Court on 13th March, 1997, under Article 9 of the Drug Trafficking Offences (Jersey) Law, 1988.

On 27th December, 1996, the defendant having been found guilty on one 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 and one count of possession of a controlled drug with intent to supply, contrary to Article 6(2) of the Misuse of Drugs (Jersey) Law, 1978; was actioned by Her Majesty's Attorney General to receive sentence before the Superior Number of the Court on 20th January, 1997. The Court, by virtue of the provisions of Article 3 of the 1988 Law, made a confiscation order ordering the accused to pay the sum of £16,137.

On 11th July, 1997, the defendant appealed against conviction to the Court of Appeal. The Court of Appeal allowed the defendant's appeal against the conviction for importation of a controlled drug, but upheld his conviction in respect of possession of a controlled drug with intent to supply, reducing the defendant's sentence by 1½ years to 12 years. The Court of Appeal did not disturb the confiscation order.

**Mrs. S. Sharpe, Crown Advocate.
Advocate C.J. Scholefield for the accused.**

JUDGMENT

THE DEPUTY BAILIFF: We have before us a Representation by Her Majesty's Attorney General requesting the Court to authorise the Viscount to sell certain property of Francis Wilfred Joseph Dowse under Article 10 of the Drug Trafficking Offences (Jersey) Law, 1988.

On 30th March, 1996, this Court declared itself satisfied on three grounds:

1. The proceedings had been instituted in the Island against Dowse for a drug trafficking offence;
2. Such proceedings had not been concluded, and
3. That there was reasonable cause to believe that Dowse had benefited from drug trafficking.

A saisie judiciaire was granted.

On 20th January, 1997, the Superior Number heard the Solicitor General and the advocate for the accused on the application of the Attorney General for a Confiscation Order in accordance with the provisions of Article 3 of the Drug Trafficking Offences (Jersey) Law, 1988, and the Court pursuant to that Article:

- (a) determined that the accused had benefited from drug trafficking;
- (b) determined in accordance with Article 6 of the Law the amount to be recovered from the accused, Dowse, was the sum of £16,137; and
- (c) ordered the accused to pay those amounts.

The Superior Number then went on to sentence Dowse and his then co-accused and sentenced Dowse to a term of imprisonment of 13 years and 6 months.

The matter then went to the Court of Appeal and it must be pointed out here that, before it went to the Court of Appeal, the Attorney General by an oversight had failed to ask for a Power of Sale in its application on the 13th March. Had this happened matters might well have been concluded at that stage.

The matter went to the Court of Appeal which delivered its judgment on 11th July, 1997. The Confiscation Order was not disturbed in any way by the Court of Appeal.

Mr. Scholefield says that an appeal to the Privy Council is being considered, although no leave to appeal was granted by the Appeal Court and Her Majesty in Council has not granted leave to appeal.

Under the Court of Appeal (Jersey) Law, 1961, there is no further appeal open to the defendant beyond the Court of Appeal, although, under Article 41 of the 1961 Law, the Home Secretary can refer matters to the Court of Appeal if appropriate, and so the only recourse open to the defendant, Dowse, is under the Judicial Committee (General Appellate Jurisdiction) Rules Order 1982 where leave to appeal to Her Majesty in Council is dealt with in Rule 2 in these terms:

“No appeal shall be admitted unless either -

- (a) leave to appeal has been granted by the Court appealed from; or*
- (b) in the absence of such leave, special leave to appeal has been granted by Her Majesty in Council.”*

Special leave - as was said to us this morning by Crown Advocate Sharpe - is only granted by the Privy Council on very limited matters and the Attorney General considers it extremely unlikely that special leave will be granted in this case.

However, Mr. Scholefield has pointed out to us this morning that the Bâtonnier has issued a legal aid certificate to Dowse for the appointment of an advocate to act for him in his application for special leave and it was submitted this morning that this may

constitute an appeal pending capable of acting as some form of a stay on the disposal of the defendant's assets.

Mr. Scholefield argues that the application is, in any event, too hasty. He says the delay is no fault of the defendant and the order should not have been made because Dowse was finally convicted after his appeal on only one offence and he was arrested for that offence before he could hand over the heroin in his possession to anyone for reward.

We would say that that is hardly the point. If we look at the Attorney General's statement there can be no doubt that the Court on 13th March was right to state that there was reasonable cause to believe that the defendant had benefited from drug trafficking. That finding was never challenged in the Court of first instance nor in the Superior Number nor in the Court of Appeal. We must remember of course that the standard of proof required to determine whether a person has benefited from drug trafficking is the standard applicable in civil proceedings.

We have no doubt that the application is well founded. The Attorney General's statement under Article 5 of the Law is extremely well detailed and in our view very much in conformity with the facts as we understood them at trial.

We therefore are going to authorise the Viscount by virtue of the provisions of Article 10 of the 1988 Law to sell the assets by public auction or by private treaty as the Viscount may think fit. If the learned Attorney General has any reservations at all about the jewellery then we will give the Attorney a discretion as to whether he wishes to retain the jewellery for a time to see what happens vis à vis the Privy Council proceedings or not, but that is entirely in his discretion and we make no order in that regard

Authorities.

Drug Trafficking Offences (Jersey) Law, 1988.

Judicial Committee (General Appellate Jurisdiction) Rules Order 1982: Rule 2.