

22
89/0

ROYAL COURT

10th February, 1989

Before: The Deputy Bailiff, and
Jurats Lucas and Gruchy

Her Majesty's Attorney General

- v -

David Carl Peacock

Two counts involving the importation and possession of a controlled drug, contrary to Article 23 of the Customs and Excise (General Provisions) (Jersey) Law, 1972, and Article 6(1) of the Misuse of Drugs (Jersey) Law, 1978, respectively. The accused, a young man of 27 who had no connection with the Island, was a cocaine addict. He was unco-operative with the authorities and had a bad criminal record including convictions for drug related offences. The drug imported was for personal use only.

Advocate S.C. Nicolle for the Crown
Advocate A. Messervy for Peacock.

JUDGMENT

DEPUTY BAILIFF: The Court wishes to make a number of points. First, we accept that we must not sentence Peacock on his record but that we must sentence him only for the offences with which he is charged. We follow that principle exactly, but of course in every case the Court has first to decide the proper sentence and then consider mitigation and the presence of a very bad record negatives mitigation that may exist in other cases. In the present case there really is no mitigation at all and the offence is, in the view of the Court, to some extent aggravated by the deception practised - having the drug in his plaster cast might well have led to a sympathetic officer not making a thorough search.

Secondly, we also accept that we must not allow any suspicion of any other offence being committed to influence us - we have put out of our minds altogether any suspicion of an intent to supply.

Thirdly, we have read all the papers very carefully, which is why we have been so long, however they are of only limited assistance since everybody, including Peacock and his counsel, accept that the only proper sentence here is a custodial one. Alpha House and any other form of rehabilitation will still be available to Peacock when he has completed his sentence, whatever its term.

The fourth point that we wish to make again, because the Court has said it many times, is that the importation of drugs into Jersey is a serious matter. I want to read an extract from the judgment of the Full Court in the case of Young in 1980: "It was put to us, first of all, that the nature of the importation was really no more than a mere physical transport of drugs, which were already in the possession of the appellant, from a part of the United Kingdom into Jersey; he was merely carrying with him, as it were, his personal goods, and whilst it was accepted that even in such a case as that importation must be considered more serious than possession, it did not merit being considered as twice more serious than possession. The Court takes the view that even importation of that type, which we agree is the least serious type, if one can say anything is least serious in the area of drugs, even that type of importation, we feel, is or should be properly considered as being twice as serious as possession, because this is a separate jurisdiction, and the importation of drugs into Jersey, even for personal use, means that there is

that amount of drugs extra in the Island which can lead (as indeed it did in this case, even if there was no previous intention) to drugs coming into the possession of other people as well. It is the duty of this Court, as far as it is possible, to prevent the importation of drugs, so as to prevent generally the misuse of drugs. Therefore we take a serious view of the importation of drugs even when they are brought in as part of the person's personal belongings."

Now, we are bound by the Full Court and therefore the sentence for importation should be double the sentence for possession. Even on Mr. Messervy's own submission that a nine month prison sentence would be correct for possession, the sentence for importation, should be eighteen months and not twelve. The Court departed from that principle in the case of Hervey, but it may be of course that the Young judgment was not read to the Sentencing Court when it dealt with Hervey whereas we have had the opportunity of reading it this morning.

The Superior Number of the Court as recently as the 25th January of this year, in dealing with Clohessy and Roberts, having referred to an English case, said: "It is not binding and as we have said in the past we are inclined to have a slightly stricter approach in respect of drugs and as counsel will gather from what I have said at the beginning, that approach is going to be continued if not indeed increased."

Having considered all the facts, we are satisfied that the conclusions are right and proper because we are satisfied that a two year prison sentence is the correct and proper sentence for importation and that there is no mitigation from it.

Therefore, Peacock, on count 1, you are sentenced to two years' imprisonment; on count 2, you are sentenced to twelve months' imprisonment, concurrent, and the Court orders the forfeiture and the destruction of the drugs.

Authorities referred to:-

- A.G. -v- F.W.J.A. Hervey J.J. 7th October, 1988 - as yet unreported.
- A.G. -v- R.E. Young 1980 J.J. 281, at p. 282.
- A.G. -v- J.M. Clohessy and C.M. Roberts J.J. 25th January, 1989 - as yet unreported.
- R. -v- D.K. Heather - C.A.R. April 9th, 1979, (and commentary in the 1979 Criminal Law Review).
- D.A. Thomas - Principles of Sentencing (2nd edition), at p.p. 182, 183, 184 re. "Offences connected with drugs"; and at p.p. 209, 210, 211 re. "Drink".