ROYAL COURT

22

6th February, 1990

Before: The Deputy Bailiff, and
Jurats Blampied and Orchard

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Police Court Appeal: Ian Bernard Sweeney

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Appeal against a total sentence of fourteen days' imprisonment imposed following convictions on one charge of importation and one charge of possession of a controlled drug, namely cannabis resin.

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Advocate S.C. Nicolle for the Crown
Advocate S.E. Fitz for the appellant.

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JUDGMENT

DEPUTY BAILIFF: This is an appeal against a sentence of fourteen days' imprisonment for the offence of importation into the Island of a small quantity of a Class B drug, namely cannabis resin, weighing 6.613 grammes, and a sentence of seven days' imprisonment concurrent for the offence of possession of the same drug, on the grounds that the sentence was manifestly excessive and wrong in principle.

The facts are not in dispute. The appellant arrived at Jersey Airport from Liverpool. A customs officer stopped him in a routine green lane check. The officer found certain items in the appellant's luggage which made him suspicious. A search ensued. Between his

trousers and his underpants, the appellant was wearing a pair of shorts, inside which the drug was concealed. It was common ground between prosecution and defence that the drug was for the appellant's personal use and that he had been fully co-operative with the officer and the police. In Court the appellant apologised for any inconvenience caused.

The Magistrate, saying that the penalty for importing cannabis into the Island is severe, forthwith passed sentence as we have stated. The appellant is 22 years of age. There is one previous conviction recorded against him. On the 12th September, 1985, in the Liverpool City Magistrates' Court he was fined £25 for theft - it was a shoplifting offence. The appellant is on bail of £300 pending the hearing of this appeal.

Miss Fitz, for the appellant, relies on four previous decisions of this Court.

The first is that of Baines, 1st June, 1987. The Court stressed that under normal circumstances, a prison sentence is the appropriate sanction for the importation of drugs. But the Court took a number of factors into account. Baines was only 22, he had no record of any sort, he was fully co-operative, he had named his supplier which is very unusual in such cases, and a probation officer present in Court said that he would recommend a Community Service Order. The Court allowed the appeal and imposed a two year Probation Order with 100 hours of Community Service.

The second is that of Rogers, 13th November, 1989. A probation report was before the Court, which had not been before the sentencing court. The Court applied the decision in Baines, the learned Bailiff repeated the principle that in normal circumstances a prison sentence is the appropriate sanction for persons who import drugs into the Island, a general principle, he said, which this Court and the Police Court are not going to depart from lightly. The other undoubted principle is that it is unusual for a first offender to be sentenced to prison without the Court having had the benefit of a background report. Where the two principles conflict it is the second

principle that should prevail. The appeal was allowed and fines of £200 and £50 were substituted.

In this case the appellant is not a first offender; he has a previous conviction, involving dishonesty; the question we have had to ask ourselves therefore is whether we should treat him as a first offender and substitute a non-custodial sentence.

We find the case of Young perplexing. The Court there said that a prison sentence was fully justified. It went on to acknowledge a general rule that a report should be obtained where an offender is likely to go to prison for the first time - but did not itself obey that general rule but merely reduced the sentence to avoid a sense of grievance. We do not in those circumstances place much reliance on Young and in any event the sentence in the present case is already a short one.

We do follow the principles in the McEwan case in the short paragraph read to us by Miss Fitz.

In our opinion the existence of the previous conviction does mean that the Magistrate did not breach the second principle by passing sentence without the benefit of a background report. This appellant is not a young person, albeit he is a young adult. We recognize that he is the same age as Baines, but Baines had no record of any sort. The words "of any sort" must mean something - they emphasise the previous good character of the appellant. This appellant's previous conviction did involve dishonesty and on this occasion there was an element of deception in that the cannabis was hidden in his under-clothing. So we find that the second principle does not apply in this case. Consequently the first principle applies and a prison sentence is the correct sanction. In our opinion a total sentence of fourteen days is not manifestly excessive. Therefore we dismiss the appeal. Miss Fitz will have her legal aid costs.

Authorities referred to:

PCA: JDD Rogers (13th November, 1989) Jersey Unreported.

PCA: ML Baines (1st June, 1987) Jersey Unreported.

AG -v- WB McEwan (appellant) (1967) JJ 719.

PCA: AC Young (20th December, 1989) Jersey Unreported.