

ROYAL COURT
(Superior Number) 107.

9th August, 1993

Before: The Bailiff, and Jurats
Vint, Blampied, Myles, Bonn, Orchard,
Hamon, Gruchy, Le Ruez, Vibert, Rumfitt

The Attorney General

- v -

Mark David Duffy
Thomas Lynch,
Danny McCaig,
Joseph Alexander Francis Ryan,
Markus Anthony Santos-Costa.

Sentencing, following guilty pleas on 6th August, 1993, before the Inferior Number, to:

Duffy

- 1 count of possession of a controlled drug (cannabis resin), contrary to Article 6(1) of the Misuse of Drugs (Jersey) Law, 1978 (Count 1 of the Indictment);
- 1 count of supplying a controlled drug (cannabis resin), contrary to Article 5(b) of the said Law (Count 2).

Lynch

- 1 count of possession of a controlled drug (cannabis resin), contrary to Article 6(1) of the said Law (Count 3);
- 1 count of supplying a controlled drug (cannabis resin), contrary to Article 5(b) of the said Law (Count 4);
- 1 count of possession of a controlled drug (cannabis resin), with intent to supply, contrary to Article 6(2) of the said Law (Count 5).

McCaig

2 counts of possession of a controlled drug, contrary to Article 6(1) of the said Law (Count 6 [diamorphine]; Count 7 [cannabis resin]).

Ryan

1 count of possession of a controlled drug (cannabis resin), with intent to supply, contrary to Article 6(2) of the said law (Count 8);

1 count of supplying a controlled drug (cannabis resin), contrary to Article 5(b) of the said Law (Count 9);

1 count of possession of a controlled drug (cannabis resin), contrary to Article 6(1) of the said Law (Count 10).

Santos-Costa

1 count of possession of a controlled drug (cannabis resin), contrary to Article 6(1) of the said Law (Count 11);

1 count of supplying a controlled drug (cannabis resin), contrary to Article 5(b) of the said Law (Count 12).

AGE:

Duffy:	21
Lynch:	29
McCaig:	35
Ryan:	28
Santos-Costa:	23

PLEA: Guilty

DETAILS OF OFFENCE:

Santos-Costa was wholesale supplier found in possession of £20,000 in cash. He admitted supplying 6½ kilogrammes of cannabis resin. Ryan and Duffy were supplied by Costa. Ryan was in possession of 40 ozs; he admitted supplying 9 ozs over previous months. Lynch lodged with Ryan and was supplied by him. Admitted selling 13½ ozs. Duffy admitted selling 13 ozs of cannabis over 3 months; his supplier was Santos-Costa.

McCaig arrived at a friend's house while a search warrant was being executed by police. Found to be in possession of a wrap and piece of foil each containing traces of heroin. His explanation was that he had picked up the items from a friend's house intending to throw them away. The items were found in separate pockets.

**DETAILS OF MITIGATION:
(INCLUDING DOMESTIC CIRCUMSTANCES)**

Duffy: Youth (21), co-operative with police.
Lynch: Co-operative with police.
McCaig: Co-operative with police.
Ryan: Co-operative with police.
Santos-Costa: Unhappy background; father had introduced him to cannabis.

PREVIOUS CONVICTIONS:

Duffy: 3 for drugs.
Lynch: 3 for drugs.
McCaig: Several, including drugs.
Ryan: Minor.
Santos-Costa: Several, minor, none for drugs.

CONCLUSIONS:

Duffy: 2 years.
Lynch: 30 months.
McCaig: 15 months.
Ryan: 3 years.
Santos-Costa: 4 years.

SENTENCE AND OBSERVATIONS OF THE COURT:

Duffy: 2 years (in total).
Lynch: 30 months (in total).
McCaig: 6 months.
Ryan: 3 years (in total).
Santos-Costa: 4½ years (in total).

The Court noted the Court of Appeal case of Rawlinson and expressed its preparedness to scale up sentences for drug trafficking. It agreed with the Attorney General's submission that it was the nature and quality of the dealing and the proximity of the defendant to the source of supply which were important.

The Attorney General.
Advocate R.G. Morris for Duffy.
Advocate R.J. Renouf for Lynch.
Advocate P.M. Livingstone for McCaig.
Advocate S.E. Fitz for Ryan.
Advocate P.C. Harris for Santos-Costa.

JUDGMENT

THE BAILIFF: Before giving the Court's decision in respect of the sentences asked for by the Crown, there are a number of general observations the Court has asked me to make.

The Court has noted what the Court of Appeal said in Rawlinson, (9th January, 1993) Jersey Unreported, C.of.A., and as far as it lies within its power, rather than scale down the starting point for offences of this nature, the Court is quite prepared to scale them up in order to make it quite clear to those tempted to offend, particularly in respect of possession with intent to supply and supplying, that those offences are treated and regarded by this Court as very serious.

Secondly, the Court agrees with the Attorney General that in cases of this nature, where a number of persons have been indicted in respect of possession with intent to supply or supplying, even of a Class B drug, the nature and quality of what they were doing is important, as is the drug itself and the proximity of the accused persons to the main source. Of course, the degree of respective involvement is also something that has to be taken into account most carefully by the sentencing Court.

In A.G. -v- Sambor (14th February, 1992) Jersey Unreported, the Court said this: **"The Court cannot accept cash flow problems as a mitigating factor in relation to the supply of drugs"**. Therefore, shortage of money is not, in the opinion of this Court, and the Court confirms what was said in Sambor, a mitigating factor.

Secondly, it is not a mitigating factor that hardship will result on an accused person's family because of that person's activities, or, as in Sambor's case, on a girlfriend. The Court in Sambor said: **... "it is not a matter to be taken into account by a sentencing Court"**. The Court also added: **"It is a matter which**

Sambor should have reflected upon before he embarked on his offences". Those two remarks which I have mentioned are endorsed today by the full Court.

So far as the sentences themselves are concerned, we accept that the starting point in the case of Santos-Costa should, as the Crown has suggested, be 6 years. But the Court unanimously considered that an allowance of 18 months is sufficient for the mitigating factors involved and therefore the Court is going to increase the sentence, as regards Santos-Costa, by 6 months. You were involved to a high degree in a very carefully planned supplying to other people; you were the main person in this group of offenders; and you were also quite close to the source of supply.

Under all the circumstances we think that an appropriate sentence in your case for the main offence is one of 4¹/₂ years. Therefore, as far as Count 11 is concerned, you are sentenced to 1 month's imprisonment; and on Count 12, to 4¹/₂ years' imprisonment, concurrent.

The Court is going to grant the conclusions, as regards the other accused, except in the case McCaig, whom I will come to in a moment.

So far as Ryan is concerned, we do not think that we should place him in the same position as Lynch. In our opinion Lynch was a little further down the scale. It cannot be overlooked that in spite of Ryan's assistance to the police, that was more than counter-balanced by the fact that he was prepared to provide a safe house for Santos-Costa for the drugs.

Ryan, you are therefore sentenced on Count 8 to 3 years' imprisonment; on Count 9, to 3 years' imprisonment; and on Count 10, to 1 month's imprisonment, all concurrent.

Lynch, you are sentenced on Count 3 to 1 month's imprisonment; on Count 4, to 30 months' imprisonment; and on Count 5, to 30 months' imprisonment, concurrent.

Duffy, you are sentenced on Count 1, to 1 month's imprisonment; and on Count 2, to 2 years' imprisonment, concurrent.

McCaig, we are going to reduce the conclusions of the Attorney General slightly. We think we cannot concur with the conclusions of the Probation Officer. Possession of a Class A drug, even in small amounts, merits - unless there are exceptional circumstances - a prison sentence, but we accept that you should not be sentenced as if you were involved in the trafficking of drugs, which the other four were. Therefore, so far as Count 6 is concerned, you are sentenced to 6 months' imprisonment; and on Count 7, 1 month's imprisonment concurrent.

There will be an order for the forfeiture and destruction of the drugs.

Authorities

- A.G. -v- Hulme (11th January, 1991) Jersey Unreported.
- A.G. -v- Bowman (25th January, 1991) Jersey Unreported.
- A.G. -v- Matthews, Drewett (5th April, 1991) Jersey Unreported.
- A.G. -v- Bartley (26th July, 1991) Jersey Unreported.
- A.G. -v- Taylor (20th March, 1992) Jersey Unreported.
- A.G. -v- Cash (27th March, 1992) Jersey Unreported.
- A.G. -v- McConnachie (26th March, 1993) Jersey Unreported.
- A.G. -v- Sambor (14th February, 1992) Jersey Unreported.
- A.G. -v- Russell-Biggie, Gooch (15th March, 1993) Jersey Unreported.
- A.G. -v- Rawlinson (23rd November, 1992) Jersey Unreported.
- Rawlinson -v- A.G. (19th January, 1993) Jersey Unreported
C.of.A.
- A.G. -v- Stead (21st June, 1993) Jersey Unreported.
- Korner -v- A.G. (25th July, 1985) Jersey Unreported.
- Thomas: "Principles of Sentencing" (2nd Ed'n) p.p.183, 189.
- Thomas: "Current Sentencing Practice" B11-1: p.p.25510-25514/2.
- Aramah (1982) 4 Cr.App.R.(S.) 407.
- Rudi Fortson: "The Law on the Misuse of Drugs and Drug Trafficking Offences" (2nd Ed'n) paras. 14-16; 14-51.