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ROYAL COURT
(Samedi Division)

69.

13th April, 1995

Before: The Bailiff, and Jurats
Coutanche, Myles, Orchard, Gruchy, Le Ruez,
Vibert, Rumfitt, and Potter.

The Attorney General

- v -

John Morley,
Robert Campbell,
William Stuart Swinburne.

Sentencing by the Superior Number, to which the accused were remanded by the Inferior Number, Morley and Swinburne on 27th January, 1995, following guilty pleas, and Campbell on 14th March, 1995, following not guilty pleas and conviction on the following counts:

Morley

- 2 counts of supplying a controlled drug (cannabis resin), contrary to Article 5(b) of the Misuse of Drugs (Jersey) Law, 1978 (counts 1 & 2 of the indictment).
- 2 counts of possession of a controlled drug (cannabis resin), with intent to supply to another, contrary to Article 6(2) of the said Law (counts 3 & 4).
- 1 count of possession of a controlled drug (cannabis resin), contrary to Article 6(1) of the said Law (count 5).

Campbell

- 1 count of possession of a controlled drug (cannabis resin) with intent to supply to another, contrary to Article 6(2) to the said Law (count 6).

Swinburne

- 2 counts of supplying a controlled drug (cannabis resin), contrary to Article 5(b) of the said Law (counts 7 & 8).

AGE:
Morley: 39
Campbell: 40
Swinburne: 39

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DETAILS OF OFFENCE:

Morley

Accused found in possession or constructive possession of 9.759 kilogrammes of Cannabis resin. Value of consignment estimated at just under £57,600. A 10 Kilogram consignment represents £2,880 individual "deals" each "deal" would provide sufficient Cannabis for twenty hand rolled cigarettes. Accused obviously close to main supply into the island.

Campbell

Accused found in possession of 3.75 kilogrammes of Cannabis resin passed to him by co-accused William Swinburne to hold as safe custody for co-accused John Morley. Not Guilty plea based on premise that in law there could be no supply when the intention was to return the goods held to the original supplier.

Swinburne

Swinburne assisted co-accused Morley in dividing up 10 kilos of Cannabis and carrying approximately 3.75 kilos to a co-accused Campbell for safekeeping as part of the scheme.

DETAILS OF MITIGATION:

Morley

Guilty plea. last drug conviction over nine years previously. No other mitigation offered.

Campbell

Not a bad previous record. Better character than co-accused. Good reference from employer. Submitted that contrary to the Crown's view, the accused should have the benefit of guilty plea as he only entered a not guilty plea as a result of advice from his lawyer on a legal objection which could be taken. Delay in prosecution left accused with a legitimate sense of grievance.

Swinburne

Guilty plea; he was alleged by defence not to have seen the quantity of Cannabis and to be unaware as to exactly how much was there; he made a mistake. No evidence that he made the supply for money, nor that he arranged importation. Co-operative and made admissions to the Police. Stable home background and support of employer.

PREVIOUS CONVICTIONS:

Morley

Several previous convictions including convictions for unlawful possession Cannabis, conspiracy to import Cannabis, and in 1986 importation of a Class A drug.

Campbell

Two previous convictions for possession of Cannabis.

Swinburne

Various convictions from 1974 to 1986 including two convictions for possession of Cannabis.

CONCLUSIONS:

Morley:

Count 1: 5 years' imprisonment.
Count 2: 5 years' imprisonment.
Count 3: 5 years' imprisonment.
Count 4: 5 years' imprisonment.

Count 5: 3 months' imprisonment, all concurrent.

Campbell:

Count 6: 2½ years' imprisonment.

Swinburne:

Count 7: 1½ years' imprisonment.

Count 8: 6 months' imprisonment, concurrent.

SENTENCE & OBSERVATIONS OF THE COURT:

Morley

Conclusions granted. Morely a prime mover. 6 years the appropriate starting point and discount of 12 months for a guilty plea was generous.

Campbell

Conclusions granted. Campbell was aware he was helping in general scheme and his age and experience led him to be aware of the risks he was taking. Accused had a choice on his plea and as a result of the not guilty plea he forfeited the discount which he would otherwise have received. There was not justification for reducing the sentence moved for.

Swinburne

Conclusions granted. Court considered involvement of Swinburne similar to that of Campbell. Court assumed Swinburne must have known of the weight of drugs, and while it accepted moderate co-operation with the Police and good employment record, accused a mature man and must accept consequences of actions.

W.J. Bailhache, Esq., Crown Advocate
Advocate H. Tibbo for Morley.
Advocate Mrs. S.A. Pearmain for Campbell.
Advocate J.C. Gollop for Swinburne.

JUDGMENT

5 THE BAILIFF: It is clear from the facts outlined by the Crown Advocate and largely accepted by the defence that Morley was the prime mover in the trafficking of this very substantial quantity of cannabis, weighing nearly 10 kilograms. We reiterate that the policy of this Court is to discourage, so far as we can, the trafficking of drugs and to impose severe sentences to punish those who engage in it and who thus enable the misuse of drugs to spread its tentacles throughout the community.

10 The extent of a defendant's involvement in drug trafficking is clearly a relevant factor in determining the sentence to be imposed.

We adopt - and we agree with the Crown Advocate that we are bound to adopt - the guidelines laid down by the Court of Appeal in Campbell, Molloy, MacKenzie -v- A.G. (4th April, 1995) Jersey Unreported CofA.

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We have considered carefully the argument of counsel for Campbell and for Swinburne that they might have a grievance on account of the delay which has taken place in bringing this matter to a conclusion. We do not consider that that argument has any substance because the Court of Appeal, while laying down a new sentencing approach for class B drugs sentencing, was not invited by the Attorney General to increase the sentencing levels for class B offences and did not do so.

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The sentencing bands laid down in Campbell, Molloy, MacKenzie -v- A.G. are consistent with the previous sentences imposed by this Court. The defendants should not therefore feel any sense of grievance arising out of the delay which has undoubtedly taken place, which we may say we deplore, in bringing this case to a conclusion.

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Morley, as I have said, you were the prime mover in the dissemination of this very substantial quantity of cannabis resin. We agree with the Crown Advocate that the appropriate starting point, having regard to the gravity of the offence which you have committed, is a sentence of 6 years' imprisonment. This Court can see little by way of mitigation. Your guilty plea was, indeed, inevitable, having regard to the circumstances, and we consider that the Crown was generous in allowing 12 months in respect of it.

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We, therefore, grant the conclusions and you are accordingly sentenced, as moved for by the Crown, on count 1, to 5 years' imprisonment; on count 2, to 5 years' imprisonment, concurrent; on count 3, to 5 years' imprisonment, concurrent; on count 4, to 5 years' imprisonment, concurrent; on count 5, to 3 months' imprisonment, concurrent; making a total of 5 years' imprisonment.

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Campbell, we accept that you were involved to a lesser extent. You were, nevertheless, aware that you were helping to distribute a substantial quantity of cannabis. The Court cannot accept that a man of your age and experience - and we note that you have two previous convictions for drug offences - was not aware of the risks which you were taking. Whether it was motivated by friendship or by greed you must face the consequences of your actions. We have noted that you do, indeed, have a very good employment record but we do not consider that that factor alone warrants a reduction in the conclusions.

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You pleaded not guilty to the charge laid against you and even if that plea was engendered by the legal advice which you had received, you had a choice. You could have accepted the position

and acknowledged that you had done wrong; instead you chose to take a technical legal point which you were, of course, perfectly entitled to do. Having taken that point, however, you have forfeited the discount which is otherwise available to a defendant who acknowledges his guilt and pleads guilty to the indictment.

We agree with the Crown Advocate that we can see no justification for reducing the sentence below the starting point, which is appropriately set at 2½ years' imprisonment, and you are accordingly sentenced on count 6, to 2½ years' imprisonment.

Swinburne, we again agree with the Crown Advocate that your involvement was similar to that of Campbell.

We have taken very careful account of the submissions eloquently made by your counsel. At the end of the day, however, you are a mature man with a number of previous convictions, including previous convictions for the misuse of drugs. You entered this arrangement with your eyes open. You must have known, from the weight of the drugs which you carried from Morley's flat to the public house, that you were helping to distribute a substantial quantity of an illegal drug.

We accept in mitigation that you were moderately co-operative with the police. We accept again that you have a good employment record and we have taken careful note of the references put before us; and we have of course taken account of your guilty plea to the indictment. You are entitled to credit for all those factors, and we think that the appropriate allowance has been made by the Crown in moving for conclusions. The conclusions are accordingly granted and you are sentenced on count 7, to 1½ years' imprisonment; and on count 8, you are sentenced to 6 months' imprisonment, concurrent; making a total of 1½ years' imprisonment. We make an order for the forfeiture and destruction of the drugs.

Authorities

Young -v- A.G. (1980) JJ 281 Ccfa.

Campbell, Molloy, MacKenzie -v- A.G. (4th April, 1995) Jersey
Unreported CofA.