

7 pages.

ROYAL COURT
(Samedi Division)

169.

31st August, 1995

Before: The Deputy Bailiff, and Jurats
Coutanche, Orchard, Le Ruez, Vibert, Herbert,
Rumfitt, Potter, de Veulle

The Attorney General

- v -

Nicholas John Russell-Biggie,
Joanne Bernadette Phelan.

Sentencing by the Superior Number of the Royal Court, to which the accused were remanded by the Inferior Number on 4th August, 1995, following guilty pleas to:

Nicholas John Russell-Biggie:

- 1 count of possession of a controlled drug, (diamorphine) contrary to Article 6(1) of the Misuse of Drugs (Jersey) Law, 1978. (Count 1).
- 1 count of possession of a controlled drug (diamorphine) with intent to supply it to another, contrary to Article 6(2) of the said Law. (Count 2).
- 2 counts of possession of utensils for the purpose of committing an offence, contrary to Article 8 of the said Law. (Counts 3 & 4).

Joanne Bernadette Phelan:

- 1 count of possession of a controlled drug, (diamorphine) contrary to Article 6(1) of the said Law. (Count 1).
- 5 counts of larceny. (Counts 5, 6, 9, 10 & 11).
- 1 count of assault. (Count 7).
- 1 count of receiving stolen goods. (Count 8).

AGE:

Russell-Biggie: 25.

Phelan: 25.

DETAILS OF OFFENCE:

Russell-Biggie: Accused had recently become addicted to heroin. To fund his addiction he had to sell quantities of the drug supplied to him. Powder found at his lodgings weighed 6.75 grams and contained 55.9% by weight of diamorphine. He insisted that the drugs were for his use and that of his girlfriend who was in a lesser state of addiction. Only on arraignment did he change his plea to guilty of possession of heroin with intent to supply. Estimated street value of the drug between £1,350 and £2,025 [street price of heroin can now be as high as £300 per gram on the basis of 'score bags' selling in the current market at £30 each].

Phelan: Accused shared accommodation with Russell-Biggie. Both Phelan and Russell-Biggie in varying degrees of addiction to heroin. Phelan shared heroin with Russell-Biggie and attempted to cover for him when the couple were arrested. She herself not involved in supply, but knew of Russell-Biggie's intentions and need to supply to fund his own more severe addiction. The charges of theft and receiving connected with drug dependency. Assault involved punching and kicking someone whom she alleged was connected with the drugs.

DETAILS OF MITIGATION:

Russell-Biggie: Addict with history of overwhelming restless anxiety. Guilty plea. Remorse - earnest wish to change. SER recommendation of treatment at Alpha 2000.

Phelan: First drugs offence. Not 'hopelessly enmeshed' in drugs. Guilty plea. Remorse.

PREVIOUS CONVICTIONS:

Russell-Biggie: 1988: possession of cannabis and supplying cannabis; 1989-1992: several road traffic offences; 1993: supplying LSD, amphetamine sulphate and cannabis resin and possession with intent to supply cannabis resin and herbal cannabis. 2½ years' imprisonment for latter offences [released from prison June, 1994].

Phelan: One previous theft [fined £100].

CONCLUSIONS:

Russell-Biggie:

Count 1 : 12 months' imprisonment.
Count 2 : 5½ years' imprisonment, concurrent.
Count 3 : 3 months' imprisonment, concurrent.
Count 4 : 3 months' imprisonment, concurrent.

TOTAL : 5½ years' imprisonment.

Phelan:

Count 1 : 12 months' imprisonment.
Count 5 : 2 months' imprisonment.
Count 6 : 2 months' imprisonment.
Count 7 : 1 month's imprisonment.
Count 8 : 2 months' imprisonment.
Count 9 : 2 months' imprisonment.
Count 10 : 2 months' imprisonment.
Count 11 : 2 months' imprisonment.

The sentences imposed on counts 5, 6, 8, 9, 10 and 11, to run concurrently with each other, but to follow consecutively that imposed on count 1.

The sentence imposed on count 7 to follow consecutively all other sentences.

TOTAL : 15 months' imprisonment.

SENTENCE AND OBSERVATIONS OF THE COURT:

Russell-Biggie:

Count 1 : 12 months' imprisonment.
Count 2 : 6 years' imprisonment, concurrent.
Count 3 : 3 months' imprisonment, concurrent.
Count 4 : 3 months' imprisonment, concurrent.

TOTAL : 6 years' imprisonment.

Conclusions increased. Whereas Crown had moved for a starting point of 8 years, the appropriate starting point was 9 years with a one-third discount on account of the available mitigation.

Phelan:

Count 1 : 9 months' imprisonment.
Count 5 : 2 months' imprisonment.
Count 6 : 2 months' imprisonment.
Count 7 : 1 month's imprisonment.
Count 8 : 2 months' imprisonment.
Count 9 : 2 months' imprisonment.
Count 10 : 2 months' imprisonment.
Count 11 : 2 months' imprisonment.

The sentences imposed on counts 5, 6, 8, 9, 10 and 11, to run concurrently with each other, but to follow consecutively that imposed on count 1.

The sentence imposed on count 7 to follow consecutively all other sentences.

TOTAL : 12 months' imprisonment.

A custodial sentence was unavoidable in respect of possession of heroin - and the other offences. However a sentence of 9 months' imprisonment would be substituted for the 12 months' imprisonment moved for re. possession of heroin.

S.C.K. Pallot, Esq., Crown Advocate.
Advocate P.M. Livingstone for Russell-Biggie.
Advocate S.A. Meiklejohn for Phelan.

JUDGMENT

5 THE DEPUTY BAILIFF: Miss Phelan, your advocate has said everything that can be said on your behalf. We have read the references which have been supplied most carefully. We think you are indeed a "Jekyll" and "Hyde" character, caught in a dreadful web of your own making. But possession of heroin must, in our view, warrant a prison sentence.

10 However, we are going to take into account the matters raised by your advocate and we are going to sentence you to 9 months' imprisonment on count 1. On counts 5, 6, 8, 9, 10 and 11, to a term of two months' imprisonment to run concurrently with each other, but to follow consecutively the sentence of nine months' imprisonment on count 1; and on count 7, to one month's imprisonment to follow consecutively; making a total of 12 months' imprisonment.

15 We now deal with Russell-Biggie. The case involves heroin addiction. However sad that may be, even a case of heroin possession for personal use must be marked, in our view, by a prison sentence to show the disapproval of society unless there are really exceptional circumstances.

20 In Russell-Biggie's case he has admitted that he also had heroin with intent to supply - 6.75 grams with an estimated street value of £1,350 - and score bags of heroin can sell at £30 each. We were told by the Crown Advocate that the street price of heroin can be as high as £300 per gram.

25 That is perhaps irrelevant in the context of the damage which heroin abuse will cause to the fabric of society because heroin addicts require funds to feed their habit.

30 D.C. de la Haye said this in a particularly cogent form in the statement which was read out by the Crown Advocate and I shall read it now:

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"It would be unusual for a personal abuser of heroin to be in possession of more than a gram, or a gram and a half, at any one time due to the financial outlay required. Certainly, as in this case, for a person to be in possession of 6.75 grams of heroin and to have a set of scales in his personal possession would suggest to me that he was a retailer of the drug. Additionally, I have been asked to comment on the statement made by Nicholas Russell-Biggie on 5th April, 1995, in which he states that he was using half a gram of heroin a day. Assuming he was purchasing the heroin in gram quantities at £200 per gram, his habit would be costing him £100 per day, or £700 per week. He further states that at the time of his arrest

his habit had increased to a gram per day. This would mean a weekly cost of £1,400. In my experience addicts at this level of addiction invariably have to be dealers and supplying a drug to others in order to cover the cost of their own habit".

Russell-Biggie had stocked commercial quantities to allow him to retail a drug which is both extremely dangerous and highly addictive. Of course, he did not name his supplier.

As we said, even possession of heroin will attract a custodial sentence. We have said before in other contexts that drug dealing is a filthy trade and the quicker that people who trade in drugs in this Island realise this fact, the better. The Court will not extend mercy to drug dealers.

Let us understand that statement in its context. In the Court of Appeal case of Campbell, Molly, MacKenzie v. A.G. (4th April, 1995) Jersey Unreported CofA, the Court said this:

"The evidence also showed the emergence of a new dimension in the form of heroin abuse. In 1991 very little heroin was imported into Jersey. Indeed until the end of 1992 only two or three heroin users were receiving counselling at the Drug and Alcohol Abuse Unit of the General Hospital. During 1993 and 1994 the number of referrals to that unit rose dramatically; fifteen were referred in 1993 and another sixty-nine were referred in 1994. The Attorney General submitted that those who had reached the stage of wanting counselling were likely to be the tip of the iceberg. The estimate of the Director of the Drug and Alcohol Abuse Unit was that by the end of 1994 there were over four hundred regular heroin users in the Island.

.....

The Attorney General submitted that this increase, particularly in relation to heroin abuse, created the risk of mounting acquisitive crime.

.....

The Attorney General invited us to consider how such acquisitive crime, particularly burglaries and muggings, might adversely affect the quality of life in the Island".

Advocate Livingstone has said everything that he can possibly say, but we view your future, Russell-Biggie, with some pessimism.

Despite everything that has been said, this Court is particularly concerned at the way that you have behaved since you

came out of prison for your last offence. In the Court's view you were sentenced with some compassion at that time.

5 The Crown Advocate took for count 2, the most serious of the offences, a starting point of 8 years. Mr. Livingstone argued that 7 years was a suitable starting point. We have no doubt that the Crown Advocate was right to increase the minimum. But the Court is going to set the starting point at 9 years and allow the full one-third mitigation for the plea of guilty, albeit it was a
10 late plea. The Court can see no other mitigating factors that would affect the sentence in any material way.

15 Stand up, please. On count 1, you are sentenced to 12 months' imprisonment; on count 2, you are sentenced to 6 years' imprisonment, concurrent; on count 3, you are sentenced to 3 months' imprisonment, concurrent; on count 4, you are sentenced to 3 months' imprisonment, concurrent; making a total of 6 years' imprisonment and we order the confiscation and destruction of the drugs and the utensils seized at the premises.

Authorities

R. v. France (1984) 6 Cr.App.R.(S) 283.

R. v. Gee (1984) 6 Cr.App.R.(S) 86.

R. v. Guiney (1985) 7 Cr.App.R.(S) 200.

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

Whelan: "Aspects of Sentencing in the Superior Courts of Jersey":
p.17.