

COURT OF APPEAL

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17th January, 1996.

Before: Sir Godfray Le Quesne, Q.C., (President),
Sir Louis Blom-Cooper, Q.C., and
Lord Carlisle, Q.C.

Duncan Carl Raffray.

- v -

The Attorney General.

Application for leave to appeal against a sentence of 10 years' imprisonment imposed on 20th July, 1995, by the Superior Number of the Royal Court, to which the Appellant was remanded on 21st June, 1995, by the Inferior Number, following a not guilty plea and conviction on:

1 count of being knowingly concerned in the fraudulent evasion of the prohibition on importation of a controlled drug (diamorphine) contrary to Article 77(b) of the Customs & Excise (General Provisions) (Jersey) Law, 1972.

Leave to appeal was refused by the Bailiff on 8th September, 1995.

Advocate Mrs. S.A. Pearmain for the Appellant.
A.J. Olsen, Esq., Crown Advocate.

JUDGMENT

5 **CARLISLE, J.A.:** Duncan Carl Raffray applied to this Court for leave to appeal against a sentence of 10 years' imprisonment imposed on him by the Superior Number of the Royal Court on 20th July, 1995. That sentence was in respect of one offence of being knowingly concerned in the fraudulent evasion of the prohibition on the importation of a controlled drug, contrary to Article 77(b) of the Customs and Excise (General Provisions) (Jersey) Law, 1972, an offence for which he had been convicted by the Inferior Number of

the Royal Court on 21st June, 1995, following a trial, he having pleaded not guilty.

5 The particulars of the offence were that on 11th January, 1995, in Jersey, he was knowingly concerned in the fraudulent evasion of the prohibition on importation of a controlled drug specified in Part 1 of the second schedule of the Misuse of Drugs (Jersey) Law, 1973, namely diamorphine, in other words, heroin. 10 The drug, therefore, was a Class A drug, heroin, the amount involved was 55.4 grams, which was substantial, it was said to have a street value of between £11,080 to £16,600 depending on how it was retailed.

15 The facts can be stated concisely. On 11th January at 6.45 in the morning a customs officer working at the Postal Headquarters intercepted a brown letter package. It was addressed to a "Mr. Lopez, Flat 10, Roseville House, Roseville Street, St. Helier". That in fact was the address of the applicant, Mr. Raffray. 20

25 Inside the package the heroin was found in a clear bag which had been tied at each end with some dark shoelaces and itself placed into another bag. The customs officers removed the contents and replaced them with an innocent substance.

30 Shortly after 9.00 a.m. on the following day, officers commenced observations on Flat 10, Roseville House, and Raffray was observed watching out of the window looking up and down the road. At 9.20 a.m. the packet was delivered to his house, which was put partly through the letter box and was immediately collected by the applicant and apparently quickly ripped open. Officers maintained their watch for another hour on the building and saw Raffray on a further sixteen occasions at the window, looking anxiously up and down the road. 35

40 At 10.30 a.m. the officers entered the premises and conducted a search. The black shoelaces were found in a bin-liner in the kitchen. The contents of the package and the letter package itself were found in a large cardboard box in a cupboard on the landing outside the flat, rolled in some raffia matting.

45 The applicant at first denied having opened the package. Later, however, having been shown the bootlaces, he admitted having done so and said he did it out of curiosity. He was unable to give any explanation of how the contents of that package came to be in the cupboard and claimed, somewhat implausibly, that he had put them on a low wall outside his flat.

50 In Court, he said that, at about lunch-time on the day prior to the customs' raid, a couple had called to see him at his flat and asked him if he had received any mail for them in the name of Lopez claiming they had been earlier inhabitants of the flat. He

attempted to describe the couple in some detail and said that he had never heard of them nor met them prior to the lunch-time meeting on the previous day.

5 His explanation was, however, unfortunately contradicted by a Mrs. Rennell, who was the caretaker of No. 10 Roseville Street, a house across the way from where Raffray lived, who gave evidence that on the previous day, at about 10.30 a.m., Raffray himself had
10 been to her house and asked her if she had received any mail addressed to someone called Lopez. He told her that he had been awaiting the arrival of certain important mail for three days and it is equally clear that he had also approached a postman and asked him if he had a parcel for his address.

15 The other evidence against him was that when a sample of urine was taken, it was shown to contain cannabis and also two separate opiates, one of which was morphine. The evidence was that heroin, when taken, quickly breaks down in the body into morphine. His explanation was somewhat bizarre. So far as the
20 cannabis was concerned, he said it must have been sprinkled on some food that he had eaten at a party on the Monday night of that week and so far as the morphine was concerned he said it had come from a medicine that he had been taking called "Dr. Collis Browne's Mixture".

25 Finally, there was evidence, although the prosecution informed this Court that they put little weight upon it, that two men known to have an interest in drugs were seen arriving at the applicant's flat that evening, one of them with some £500 in his
30 pocket.

On that evidence it is not surprising to this Court that the Royal Court convicted Mr. Raffray of the offence and, as I have said, passed a sentence of 10 years' imprisonment. The grounds of
35 appeal were that that sentence was manifestly excessive.

Before us, Mrs. Pearmain's arguments were clear, succinct and robust. She said she had four grounds. First, that the Courts, in sentencing for offences of drug trafficking, had failed to
40 distinguish between offences of importation (for which Mr. Raffray had been convicted) and offences of supplying and possession with intent to supply as, she said, they should have done, due to the fact that the offences have different maximum penalties.

45 Secondly, that the policy of deterrent sentencing with regard to drug trafficking offences, which she claimed the Court followed, had failed and should be reviewed.

50 Thirdly, that the sentences imposed for drug offences were disproportionate to the offences imposed for other serious types of offences.

Finally, that the sentence passed was, in this case, disproportionate to that passed in the case of A.G. -v- McConnachie and Perchard (22nd November, 1995) Jersey Unreported.

5 This Court reviewed its approach to sentencing in Jersey for drug offences recently in the case of Campbell, Molloy and MacKenzie -v- A.G. (4th April, 1995) Jersey Unreported CofA.

10 On that occasion, at a sitting of the full Court made up of five members, the learned Bailiff stated that the purpose was to allow the Court to consider general matters in order to afford guidance for sentencing in future drug cases.

15 On line 20 of p.4 of the Jersey Unreported text of that Judgment the President stated:

20 *"Once those guidelines have been set, however, we consider that the system of judicial hierarchy requires that proper regard should be paid to them by the Royal Court in imposing sentence".*

25 That judgment, as I say, was given less than one year ago and this Court proposes to consider the submissions made by Mrs. Pearmain, in this case, in the light of that decision.

I therefore turn to Mrs. Pearmain's submissions.

30 Mrs. Pearmain submits that, since the maximum sentence for importation is only 14 years and that for supply is life imprisonment, it is wrong to have only one guideline figure for offences of trafficking, and that offences for importation should always have a lower starting point than those for supplying, thereby reflecting, at all levels of sentencing, the difference in the maximum sentence provided.

35 The Court does not accept that argument.

40 In the case of Campbell, at p.8 of the Jersey Unreported text, after laying down what it considered to be the appropriate guideline figures for trafficking, the Court said in terms, and I quote:

45 *"We have employed the term "trafficking" deliberately. In the past, some distinctions may have been drawn between offences involving the importation of Class A drugs and offences involving their supply or their possession with intent to supply. In our judgment there is no justification for any such distinction. The guidelines which we have set out above apply to any offence involving the trafficking of Class A drugs on a commercial basis. We acknowledge that the maximum penalty for supplying or for possession with intent to supply a Class A drug is*

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5 *life imprisonment, whereas the maximum penalty for involvement in the importation of a Class A drug is only fourteen years' imprisonment. We were told that that discrepancy resulted from a legislative oversight which would shortly be rectified. In the context of the offences embraced by these guidelines however, the different maximum penalties are not relevant".*

10 That is and remains the view of this Court.

15 As was said in the course of argument, as long as different maximum penalties exist, all they indicate is that the legislature have decided that the worst possible case of supplying may be of greater gravity than the worst imaginable case of importation.

15 It has no relevance in cases, either of importation or of supplying, where the sentence passed is within the maximum limits provided for either offence.

20 I turn now to Mrs. Pearmain's second ground.

Mrs. Pearmain submitted that the guideline figures were based on the principle of what she described as "deterrent sentencing".

25 She claimed that this could be established by the repeated escalation of the bench marks between the years 1980-1995 quoting the cases of Young (1980) JJ 281, A.G. -v- Foqq (8th April, 1991) Jersey Unreported CofA, Clarkin & Pockett -v- A.G. (3rd July, 1991) Jersey Unreported CofA, A.G. -v- MacKenzie (18th April, 1994) Jersey Unreported, and Campbell, Molloy and MacKenzie -v- A.G. (4th April, 1995) Jersey Unreported CofA.

35 She claimed that this escalation in the level of sentencing had failed to protect the public in that, she said, it had failed to prevent an increase in the volume of drug offences.

40 It is quite impossible to produce evidence either to substantiate or deny that contention. Mrs. Pearmain, however, maintained that the policy had failed and should be changed.

40 The Court wishes to reiterate that in the case of Campbell they specifically did not refer to any argument based on the principle of "deterrent sentencing" in fixing the guidelines.

45 What was actually said is to be found at p.7 of the Jersey Unreported text of that Judgment. There the learned President said:

50 *"We have no doubt that the Court should indeed play their part in suppressing the evil of drug trafficking which has the capacity to wreak havoc in the lives of individual abusers and their families".*

And having referred to a quotation by Lord Lane C.J. from the case of Aramah went on to say:

5 *"The Courts cannot by themselves provide a solution to the
problem but they can play their part by adopting a
sentencing policy which marks the gravity of the crime.
10 We desire therefore to make absolutely clear what is the
policy of the Court in this jurisdiction in relation to
the sentencing of offenders who import or deal in drugs on
a commercial basis. That policy is that offenders will
receive condign punishment to mark the peculiarly heinous
and antisocial nature of the crime of drug trafficking".*

15 If the length of a sentence likely to be imposed based upon
the gravity of the offence has the effect of operating as a
general deterrent to potential offenders - then so much the
better. But I can only repeat that it was solely on the grounds
20 of the gravity of the offence, that the Court was led in
Campbell's case to set out the guidelines that it did.

I turn now to Mrs. Pearmain's third argument.

25 Mrs. Pearmain claimed that the sentences passed for offences
of drug trafficking were disproportionate to the sentences passed
in other serious cases. She referred in particular to the
sentence passed in a case of rape, a sentence in a case of sexual
abuse of young children, and to an offence of being an accessory
after the fact to murder.

30 It is quite impossible for the Court to comment on the
particular sentences passed in any of those cases without
knowledge of the full facts, and nor would we wish to do so.

35 All we would wish to say is that we do not believe that the
Court could receive any possible assistance from an attempt to
compare the sentences passed for any type of offence with the
sentences imposed for totally different types of offences.

40 We are here, in this case, concerned with the sentence
imposed for an offence of drug trafficking and we have to look at
its appropriateness only in the light of the sentences passed by
the Court for similar offences.

45 We would merely add that one of the particular qualities of
the gravity of offences of this nature is that they may well wreak
havoc in the lives of many hundreds or indeed thousands of young
people.

50 Finally, Mrs. Pearmain maintained that a sentence of 10 years
on this applicant was unreasonable and unfair when compared to the
sentence of 9 years imposed in the case of McConnachie (22nd

November, 1995) Jersey Unreported, where the volume of drugs concerned was, in general terms, twice as great as in this case.

5 She accepted that comparisons of this nature are always difficult and it was pointed out to us by counsel for the Crown that in the case of McConnachie the Crown, in moving for its conclusions, had taken a substantially higher starting point than they had in this case, and that it was the difference in the allowance made for mitigating factors, rather than the volume of
10 the drugs concerned, that had led in the end to McConnachie receiving a shorter sentence.

15 I turn therefore to consider the appropriateness of the sentence in this case in the light of the guidelines laid down in the case of Campbell.

(In that case the Court stated that, in any case of trafficking, up to the gravity of the case of Fogg, which involved the possession with intent to supply of 1,000 tablets of LSD, the appropriate starting point would be between 7 and 12 years. "Much" it was said "will depend upon the amount and value of the drugs involved".

25 Here the amount of drugs as I say was substantial, some 55.4 grams. Their value was between £11,000 - £16,000. Furthermore the Court was told that that amount of heroin could provide from between 1,100 - 1,650 individual doses.

30 Sentencing the applicant, the Deputy Bailiff, at p.4 of the Jersey Unreported text of his Judgment, at line 15, stated as follows:

(*"The amount imported by Raffray was enough to make 1,100 to 1,650 individual doses of heroin. The harm that might have been done to young people, in particular, and to the fabric of society as a result of the filthy trade in which Raffray was involved is incalculable"*.

40 The Crown, in moving for its conclusions, took as its starting point a figure of 11 years. This Court considers that to have been the correct starting point.

45 The only mitigation was said to be the applicant's good character and a reduction of 1 year was made to that effect.

Finally, it was urged upon us that, on any view, the resulting sentence of 10 years imposed on a man of good character is a very substantial punishment.

50 We accept that that is so, but we consider that it is justified by the gravity of the offence and is in accordance with

the sentencing guidelines laid down by this Court. Accordingly this application for leave to appeal is refused.

Authorities.

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

Whelan: "Aspects of Sentencing in the Superior Courts of Jersey":
pp. 11-12, 44.

Young (1980) JJ 281.

Fogg -v- A.G. (8th April, 1991) Jersey Unreported CofA.

Clarkin and Pockett -v- A.G. (3rd July, 1991) Jersey Unreported
CofA.

A.G. -v- MacKenzie (18th April, 1994) Jersey Unreported.

A.G. -v- Heuzé (30th January, 1995) Jersey Unreported.

A.G. -v- Newall and Newall (8th August, 1994) Jersey Unreported.

A.G. -v- Crowley (2nd October, 1995) Jersey Unreported.

A.G. -v- MConnachie and Perchard (22nd November, 1995) Jersey
Unreported.