

COURT OF APPEAL

172

26th September, 1996.

Before: Sir Godfray Le Quesne, Q.C., (President)
Sir David Calcutt, Q.C., and
Miss E. Gloster, Q.C.

Giacomo Marella
Maria Christina Couto Viana Lago
Natalina Caldeira Benedito

- v -

The Attorney General

Application of Giacomo MARELLA for leave to appeal against a total sentence of 8¹/₂ YEARS' IMPRISONMENT imposed by the Superior Number of the Royal Court, to which the appellant was remanded by the Inferior Number on 1st March, 1996, following guilty pleas to the following counts:

- 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 and Excise (General Provisions) (Jersey) Law, 1972 (count 1), on which count a sentence of 8¹/₂ YEARS' IMPRISONMENT was imposed;
- 1 count of possession of a controlled drug (diamorphine) with intent to supply, contrary to Article 6(2) of the Misuse of Drugs (Jersey) Law, 1978 (count 3), on which count a sentence of 8¹/₂ YEARS' IMPRISONMENT was imposed;
- 2 counts of possession of controlled drugs, contrary to Article 6(1) of the said Law:
count 4: diamorphine, on which count a sentence of 3 YEARS' IMPRISONMENT was imposed;
count 6: cannabis resin, on which count a sentence of 1 MONTH'S IMPRISONMENT was imposed;
- 1 count of possession of utensils for the purposes of committing an offence, contrary to Article 8 of the said Law (count 7), on which count a sentence of 1 MONTH'S IMPRISONMENT was imposed.

[This appellant pleaded not guilty before the Inferior Number on 1st March, 1996, to count 2 (being knowingly concerned in the fraudulent evasion on importation of a controlled drug, contrary to Article 77(b) of the Customs and Excise (General Provisions) (Jersey) Law, 1972: diamorphine) and to count 5 (possession of a controlled drug (cocaine hydrochloride), contrary to Article 6(1) of the Misuse of Drugs (Jersey) Law, 1978), which pleas the Crown accepted].

Leave to appeal was refused by the Deputy Bailiff on 11th June, 1996.

Application of **Maria Christina Couto Viana LAGO** for leave to appeal against a total sentence of **8 1/2 YEARS' IMPRISONMENT** imposed by the Superior Number of the Royal Court, to which the appellant was remanded by the Inferior Number on 1st March, 1996, following guilty pleas to the following counts:

- 2 counts of being knowingly concerned in the fraudulent evasion of the prohibition on importation of a controlled drug, contrary to Article 77(b) of the Customs and Excise (General Provisions) (Jersey) Law, 1972:
 - count 8: diamorphine, on which count a sentence of **8 1/2 YEARS' IMPRISONMENT** was imposed.
 - count 9: cocaine hydrochloride, on which count a sentence of **8 1/2 YEARS' IMPRISONMENT, CONCURRENT**, was imposed.

- 1 count of possession of a controlled drug (diamorphine) with intent to supply, contrary to article 6(2) of the Misuse of Drugs (Jersey) Law, 1972 (count 10), on which count a sentence of **8 1/2 YEARS' IMPRISONMENT, CONCURRENT**, was imposed.

- 1 count of possession of a controlled drug (cocaine hydrochloride), contrary to article 6(1) of the said Law (count 11), on which count a sentence of **6 MONTHS' IMPRISONMENT, CONCURRENT**, was imposed.

- 1 count of possession of utensils for the purposes of committing an offence, contrary to Article 8 of the said Law (count 12), on which count a sentence of **1 MONTH'S IMPRISONMENT, CONCURRENT**, was imposed.

Leave to appeal was refused by the Deputy Bailiff on 11th June, 1996.

Application of **Natalina Caldeira BENEDITO** for leave to appeal against a total sentence of **7 1/2 YEARS' IMPRISONMENT** imposed by the Superior Number of the Royal Court, to which the appellant was remanded by the Inferior Number on 1st March, 1996, following guilty pleas to the following counts:

- 2 counts of being knowingly concerned in the fraudulent evasion of the prohibition on importation of a controlled drug, contrary to Article 77(b) of the Customs and Excise (General Provisions) (Jersey) Law, 1972:
 - count 19: diamorphine, on which count a sentence of **7 1/2 YEARS' IMPRISONMENT** was imposed.
 - count 20: cocaine hydrochloride, on which count a sentence of **7 1/2 YEARS' IMPRISONMENT, CONCURRENT** was imposed.

- 1 count of possession of a controlled drug (cocaine hydrochloride), contrary to Article 6(1) of the Misuse of Drugs (Jersey) Law, 1978 (count 22), on which count a sentence of **6 MONTHS' IMPRISONMENT, CONCURRENT** was imposed.

- 1 count of possession of utensils for the purposes of committing an offence, contrary to Article 8 of the said Law (count 23), on which count a sentence of **3 MONTHS' IMPRISONMENT, CONCURRENT** was imposed.

Leave to appeal was refused by the Deputy Bailiff on 11th June, 1996.

[Counts 13-18 of the Indictment relate to co-accused Manuel Antonio da Silva SE, and counts 24-32 to co-accused Carlos Alberto RODRIGUES, neither of whom have entered appeals.]

Advocate J.D. Melia for Marella.
Advocate R.G. Morris for Lago.
Advocate D.M.C. Sowden for Benedito.
A.J. Olsen, Esq., Crown Advocate.

JUDGMENT

5 **CALCUTT JA:** On 2nd May 1996, these three applicants, Marella, Lago and Benedito, together with two others, Se and Rodrigues, who were also defendants before the Royal Court, were sentenced by the Superior Number of the Royal Court to terms of imprisonment for trafficking in drugs.

Marella was sentenced to 8½ years' imprisonment, Lago to 8½ years' imprisonment and Benedito to 7½ years' imprisonment.

10 Leave to appeal against sentence was refused by the single judge and these three applicants now renew their applications before the full Court.

15 The Royal Court also had to consider and deal with related offences of possession, and lesser (concurrent) sentences were passed; but this court has focused its consideration on the overall periods of imprisonment.

20 The facts of the case may be briefly summarised in this way. One of the five defendants before the Royal Court - the defendant Se - in order to finance his addiction to heroin, had stolen holiday-makers' property from their hotel room in Jersey. This led the police not only to the defendant Se, but also to his co-defendants (including the three applicants now before the Court),
25 all of whom were found to be involved in the importation of Class A drugs, in substantial quantities, and over a significant period of time.

30 The source of supply was in Rotterdam, and the five defendants were at the top end of the supply chain in Jersey. Although there was some dispute about it, this Court is satisfied that the homes both of Rodrigues/Benedito and of Marella/Lago had effectively been run as drug shops.

35 It is plain to this Court that each of the five defendants before the Royal Court was an active participant in an established and active drug-dealing ring.

40 In our view the Royal Court was right to regard this as a joint enterprise and to take the view that the responsibility for the commission of these offences was to be borne by each of the defendants equally. The Royal Court could see no ground for distinguishing between the criminality of each of the defendants in the drug-trafficking activities which had taken place, and this

5 The prosecution concluded that the correct starting point for each of the defendants was 13 years' imprisonment. The Royal Court, however, took the view that the proper starting point was 12 years'. Having regard to the seriousness of these offences, and in the light of authority, no complaint could have been made had the Royal Court accepted the conclusion that 13 years' was the correct starting point; but the Royal Court was entitled to take the view which it did.

10 So far as ordinary matters of mitigation were concerned, the prosecution concluded that an appropriate resultant "bench mark" sentence of 8 years' would be appropriate, subject to appropriate adjustments, in the case of each of the defendants. In the cases of Marella and Lago, the prosecution concluded that reductions of slightly more than one-third should be allowed. The Royal Court, however, took the view that the Crown had been over-generous in the discounts which it had proposed for the guilty pleas which had been entered and for the other mitigating circumstances. Having regard to the starting point adopted by the Royal Court, the reductions for mitigation which were in fact made, in the cases of Marella and Lago, were in fact rather less than one-third. In the view of this Court the Royal Court was perfectly entitled in its discretion, to make the reductions which it did, and to pass the sentences which it did on Marella and Lago. Accordingly their applications are dismissed.

15 This leaves the application of Benedito. She is the youngest of the five defendants who were before the Royal Court, having been born on 11th December 1975. When she was before the Royal Court, it was mistakenly believed, on all sides, that she was then twenty-one years of age, when in truth she was twenty. The Crown moved for a sentence of 7½ years' imprisonment, the added discount reflecting her personal circumstances and her youth. The Court accepted the conclusion that there should be a sentence of 7½ years' imprisonment, recognising that she was entitled to additional discount on account of her youth.

20 Benedito was, however, as I have already indicated, no more than twenty years of age when she was before the Royal Court; she had pleaded guilty before the Royal Court on 1st March 1996, and had been sentenced on 2nd May 1996. In these circumstances she fell to be sentenced in accordance with the provisions of the Criminal Justice (Young Offenders) (Jersey) Law, 1994. By Article 3(1) it is provided that:

25 *"No court shall pass a sentence of imprisonment on a person under the age of twenty-one".*

0 By Article 4(1) it is provided (so far as is relevant) that:

(1) *"Where a person who is aged not less than fifteen but under twenty-one is convicted of an offence which is, in the case of a person aged twenty-one*

or over, punishable with imprisonment, the court may pass a sentence of detention in a young offender institution.

5 (2) A court shall not pass a sentence of youth detention unless it considers that no other method of dealing with him is appropriate because it appears to the court that...

10 (c) the offence or the totality of the offending is so serious that a non custodial sentence cannot be justified..."

15 Advocate Sowden, appearing for Benedito, accepted that a non custodial sentence could not properly be passed in this case; but, quite independently of that, this court considers that no method of dealing with Benedito other than passing a sentence of ;youth detention is appropriate because the offences of which she was convicted, whether considered individually or collectively, are so serious that a non-custodial sentence cannot be justified.

20 The next matter which arises is the appropriate length of that sentence. This Court has had regard to all the matters urged upon it by Advocate Sowden. In particular it is right to observe that the Royal Court, having taken the view that Benedito's youth entitled her to special consideration, sentenced her in the mistaken belief that she was twenty years old at the time when she committed these offences in September 1995, rather than nineteen years, as, in truth, she was. As against that, however, Benedito, in the Court's view, was distinctly unco-operative with the police. This Court has reached the conclusion that 7½ years' youth detention is an appropriate overall sentence in the case of Benedito.

35 Accordingly, Benedito's application for leave to appeal will be granted. This hearing will be treated as the hearing of the appeal and her appeal will be allowed, but only to the extent of substituting periods of youth detention for the periods of imprisonment which were imposed on her on counts 19, 20, 22 and 40 23, but the length of those periods will remain the same on each count, and the sentences will, as before, run concurrently. Accordingly, Benedito will be sentenced effectively to a period of youth detention of 7½ years'.

Authorities

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

Raffray -v- A.G. (17th January, 1996) Jersey Unreported CofA.

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

Melville-v-A.G. (17th January, 1996) Jersey Unreported CofA.

A.G. -v- Coutanche (26th February, 1992) Jersey Unreported; (1992) JLR. N.10.

A.G. -v- Vellam (5th March, 1993) Jersey Unreported.

A.G. -v- Sambor (14th February, 1992) Jersey Unreported.

Criminal Justice (Young Offenders) (Jersey) Law 1994: Article 4(2) (c).