**ROYAL COURT**
**(Superior Number exercising appellate jurisdiction)**

25th July, 1991

Before: The Bailiff, and
Jurats Vint, Bonn, Orchard,
Le Ruez, Vibert and Herbert.

---

The Attorney General

- v -

Geraldine Nicolas

---

Appeal against sentence of 18 months' imprisonment passed by the Royal Court (Inferior Number) on 30th May, 1991, following guilty plea to conspiracy to import controlled drug contrary to Article 23 of the Customs and Excise (General Provisions) (Jersey) Law, 1972 (1 count: 18 months) and to possession of controlled drug, contrary to Article 6(1) of the Misuse of Drugs (Jersey) Law, 1978 (2 counts: 2 months plus 2 months, all concurrent). See (30th May, 1991) Jersey Unreported.

---

C.E. Whelan, Esq., Crown Advocate.

Advocate A.D. Robinson for the appellant.

---

**JUDGMENT**

BAILIFF: This is an appeal on a sentence of 18 months' imprisonment imposed by the Inferior Number on the appellant for

conspiring with a co-accused to import a quantity of cannabis resin into this Island.

That is a serious offence and merits in our view (unless there are exceptional circumstances which are certainly not present here) a custodial sentence.

However, when the matter came before the sentencing court it was obvious to us that the Crown then regarded both the parties as equally to blame as regards the conspiracy and not necessarily the means by which the cannabis (as it was thought to be) was going to be imported into the Island.

It is not in my view relevant that the cannabis turned out not to be cannabis because the actus reus, or the physical act and the guilty mind or mens rea of a conspiracy consists in making the agreement. That is the important factor and I cannot agree with counsel for the appellant that we should therefore have taken into account the arguments which he put forward (very persuasively let me add) in respect of importation of an actual illegal substance which was found to be of less strength than the importer believed it to be.

The Court below decided that the degree of culpability of the appellant's co-accused was less than that of the appellant. Although there may be some argument as to whether the Court was justified in finding that she was infatuated with this man who was some seven years or so her junior, there is no doubt in this Court's mind that the sentencing court was correct, looking at the documents which it had and which we have had, including questions and answers and interviews, that the idea for the importation of cannabis was instigated by the appellant. We think therefore that the Inferior Number was justified in

finding that the appellant had a greater degree of culpability in the conspiracy to import the cannabis.

Having said that we do not think therefore that a sentence of 18 months was wrong in principle or manifestly excessive; and we do not think that the Inferior Number was wrongly influenced by the very unpleasant and unhappy way in which the appellant used her daughter for the purpose of importing the cannabis as it was thought to be. Had the Court done this it might well have increased the conclusions beyond 18 months and then there would have been some substance in Mr. Robinson's suggestion that to take that into account would have been wrong. Equally of course we can well understand the abhorrence of the sentencing court as expressed by the learned Deputy Bailiff and of course of the public that a child should be used in this way for the importation of an illegal drug, especially by her mother, and especially when in fear and in distress.

Now, having found that we cannot say that the sentencing court imposed the wrong sentence of 18 months, we have then to decide whether it was right that the Court dealt with the co-defendant by imposing 12 months. When I say right, we cannot of course interfere with that sentence.

Although we have some doubts as to whether the distinction is quite as great as six months, we would have thought that perhaps three months might have been more appropriate. We do not think, as I have said, that the sentence of 18 months is either wrong in principle or manifestly excessive.

As regards the sense of grievance to which you have referred, Mr. Robinson, it is quite clear that in Thomas' Principles of Sentencing the references referred only to a sense of grievance by the appellant and at p.72 the author says this:

"In some cases the Court is confronted with an appellant whose sentence appears to be correct in every respect...." (and that is the position here) "but whose co-defendant has received a sentence which is in the Court's view unduly lenient". (We thought that it might be somewhat lenient). And the author goes on: "The Court has no power to increase the co-defendant's sentence, whether or not he has appealed, and is therefore faced with the choice between upholding the sentence and leaving the appearance of injustice or reducing the sentence to what it considers an inappropriate level".

As regards the matter of injustice we are grateful to Mr. Whelan for drawing our attention to the cases of R. -v- Towle and R. -v- Wintle reported on 23rd January, 1986, a case in the Court of Appeal in England. This is in the Monthly Review and the note on those two cases is as follows: "It has been held that a Court considering an appeal against sentence based on disparity is concerned with whether members of the public knowing all the facts of the case would think that something had gone wrong in the administration of justice which had resulted in one or more convicted persons being treated unfairly. It is not relevant that particular convicted persons have a sense of grievance".

We do not think that it is likely that members of the public knowing all the facts of the case which have been before us today would think that something had gone wrong and would think that 18 months was wrong.

There is one other matter, however, which has disturbed us slightly. It is the reference by the Crown in the course of the case which is reflected in the Deputy Bailiff's report to the Court of the fact that in the course of the investigations the appellant had indicated that she had used her child in the past

for previous importation of cannabis. I cannot stress too strongly that for the Crown to rely on that admission in respect of offences - if they were offences - for which she has not been prosecuted - and to draw the conclusion that the appellant is not a person of good character for that reason, is we think an undesirable practice. I refer to Archbold section 5 paragraph 11.

> "The principle that an offender must be sentenced only for the offences of which he has been convicted or to which he has admitted either by his plea or by asking for the offences to be taken into consideration has been stated in many decisions of the Court of Appeal and we think that is a principle which should not be breached".

However, for the reasons I have given the appeal is dismissed and the sentence stays at 18 months' imprisonment. You will have your legal aid costs, Mr. Robinson.

## Authorities

R. -v- Azfal, Arshad (25th June, 1991) T.L.R.

Archbold (43rd Ed'n): para 28-42: p.p. 2681-2: Common Law Conspiracies.
para 5-10: p. 622.

Verrier -v- Director of Public Prosecutions (1967) 2 A.C. 195.

R. -v- Cairns (1974) Crim. L.R. 674.

Thomas: Principles of Sentencing (2nd Ed'n): p.72.

Halsbury Monthly Review: February, 1986: p.41: J.675:
R. -v- Towle; R. -v- Wintle.