

COURT OF APPEAL

6th April, 1992

59.

Before: Sir David Calcutt, Q.C., (President)
L.J. Blom-Cooper, Esq., Q.C., and
Lord Carlisle, Q.C.

Her Majesty's Attorney General

- v -

Annette Carr

Appeal against sentence of 3 years' imprisonment imposed on the appellant on 11th February, 1992, by the Royal Court (Superior Number) (see Jersey Unreported Judgment of that date), following guilty plea before the Inferior Number, on 7th February, 1992, to 1 Count of conspiracy to import a controlled drug, contrary to Article 23 of the Customs and Excise (General Provisions) (Jersey) Law, 1978.

Leave to appeal was granted by the Bailiff on 24th February, 1992.

APPEAL POINTS:

- a) Manifestly excessive.
- b) Disparity with co-accused John Feeney. She had given information to the police, he had not. Both received the same sentence. Appellant argued for a differential in her own favour.

JUDGMENT OF THE COURT:

Appeal dismissed. No case made out for a differential in sentence. Any additional culpability in co-accused balanced out by mitigation of youth available to him (he was 20 and therefore subject to Childrens Law - appellant was beyond its ambit).

C.E. Whelan, Esq., Crown Advocate.
Advocate Mrs. M.E. Whittaker for the
appellant.

JUDGMENT

THE PRESIDENT: On 7th February, 1992, this appellant, together with another defendant, John Feeney, pleaded guilty to conspiring together to import a controlled drug, known in its abbreviated form as MDA, popularly known as ecstasy.

On 11th February, 1992, the appellant and Feeney were each sentenced to a term of 3 years' imprisonment.

The appellant, Annette Carr, now appeals against that sentence.

Her counsel, in addressing us, made it plain that there was no quarrel with a sentence of effective imprisonment in this case, but took two points.

First she said that the length of the sentence passed on Annette Carr was excessive.

Secondly she said that whatever sentence had been passed on Feeney, the sentence passed on her should have been less; that is to say that the circumstances were such that there should have been a disparity of sentence.

She was granted leave to appeal and thus this matter now comes before us as an appeal.

The outline of the facts are these. In or about October, 1991, Feeney inquired of the appellant whether she would be willing to undertake a drugs run with him to and from the North of England. She agreed to do that.

They travelled by air to Manchester, though the tickets for the journey were purchased separately, and they also travelled separately. Having reached Manchester they went on to Liverpool and once they had reached Liverpool, it was the defendant Feeney who negotiated and purchased 423 MDA tablets for a price of £3,500. We understand from what has been said to us that this quantity would have had a street value in Jersey of about £10,500.

The appellant then concealed the drugs which had been purchased internally in her body. They travelled back to Jersey and each passed through the green channel; each was stopped; and the appellant was subjected to a medical examination as the result of which the drugs were found in her person.

The appellant admitted her involvement and she pleaded guilty.

There are several points. First of all there is the undoubted fact that where a conspiracy is charged, rather than

an importation with intent to supply, that cannot affect the sentence in the circumstances of a case such as this.

Secondly, for an offence of this kind, in our view there is nothing wrong with a sentence of three years' imprisonment; and indeed, looking at the earlier Jersey cases to which our attention has been drawn, a sentence of three years' imprisonment for an offence such as this appears to us to have been on the light side.

The only question to our mind is whether there should have been a disparity, that is to say if three years was the correct sentence for Feeney, can it also be the correct sentence for this appellant?

Taking the case of Feeney first. He was undoubtedly the prime mover. Secondly, he was not fully co-operative with the police. Thirdly he does have previous convictions, though it has to be said that none of those were for drug offences.

As against that, Feeney was at the material time, under 21 years of age and he did, too, plead guilty to the charge.

Coming to the case of this particular appellant, there is no doubt she was not the prime mover, she did co-operate with the police and she pleaded guilty. It is important to remember that she has no previous convictions at all. As against that, she is older than Feeney. She is over 21 years of age. At the time when this offence was committed she was 24 years of age.

In our view she went into this with her eyes open knowing full well what was involved and she did it, as did Feeney, for money. She played her part by concealing these drugs internally in her body.

In our view this was in every sense a joint exercise, a true conspiracy. It was jointly planned and planned in some detail and it was jointly executed. Each of these two offenders played a significant part. In our view there has been no case made out for a disparity. There are differences undoubtedly in the case of these two people, but in our view they balance each other out.

In the view of the Court the appeal based on these two grounds must fail and must therefore be dismissed.

Halsbury Monthly Review: February, 1986: J675:
Sentence - disparity in sentences
passed on co-defendants - relevant
considerations.

Authorities

- AG -v- Matthews & Drewett (5th April, 1991) Jersey Unreported.
- AG -v- Fogg (11th December, 1990) Jersey Unreported.
- AG -v- Fogg (8th April, 1991) Jersey Unreported CA.
- AG -v- Clarkin (16th April, 1991) Jersey Unreported.
- AG -v- Pockett (16th April, 1991) Jersey Unreported.
- AG -v- Nicolas & Charles (30th May, 1991) Jersey Unreported.
- AG -v- Saunders & Ors. (31st May, 1991) Jersey Unreported.
- AG -v- Clarkin & Pockett (3rd July, 1991) Jersey Unreported CA.
- AG -v- Bartley (26th July, 1991) Jersey Unreported.
- AG -v- Thomas (15th November, 1991) Jersey Unreported.
- AG -v- Cappie & Hailwood (4th December, 1991) Jersey
Unreported.
- AG -v- Cappie & Hailwood (20th January, 1992) Jersey
Unreported CA.
- AG -v- Bouhsine (10th February, 1992) Jersey Unreported.
- Aramah (1983) 76 Cr. App. R. 190.
- Bilinski (1988) 86 Cr. App. R. 146.
- Archbold (44th ed.) pp. 738-748; 1074-1077.
- Thomas: Principles of Sentencing (2nd ed.): pp.64-73; 182-190.
- Thomas: Current Sentencing Practice: pp.1074/2-1076.
- A9.3(b) R -v- Quirke (1982) 4 Cr. App. R.(S) 187.
R -v- Sykes (1980) 2 Cr. App. R.(S) 173.
R -v- Ross (1983) 5 Cr. App. R.(S) 318.
- A9.3(e) R -v- Spratley (22nd June, 1971).
- AG -v- Welsh (26th March, 1992) Jersey Unreported.
- R -v- Oluwatoyin Lawson (1987) 9 Cr. App. R.(S) 52.