

ROYAL COURT
(Samedi Division)

34

5th March, 1993

**Before: The Bailiff, and
Jurats Bonn and Gruchy**

The Attorney General

- v -

Amanda Jane Vellam

1 Count of Importation of a controlled drug, contrary to Article 23 of the Customs and Excise (General Provisions) (Jersey) Law, 1972.

AGE: 24 (23 at time of offence).

PLEA: Guilty.

DETAILS OF OFFENCE:

Courier. 79.6 grammes of heroin concealed in vagina. Value £8,000. If adulterated from its purity (50%), could be as much as £40,000. Largest single seizure in Jersey. Courier's reward was to have been £1,000, which she intended to give to her boyfriend.

DETAILS OF MITIGATION:

The boyfriend and two others took the accused to Liverpool, and prevailed upon her to smuggle the drug. Her main motivation was the emotional pressure under which she was placed by the boyfriend. She was of good character and described as entirely naive. She assumed the package to be "probably some cannabis". High level of co-operation.

PREVIOUS CONVICTIONS:

Nil.

CONCLUSIONS:

2 years' imprisonment.

SENTENCE AND OBSERVATIONS OF THE COURT:

The policy of the Court is well-known. The circumstances of this case are not sufficiently exceptional to warrant a departure. In view of certain mitigation peculiar to the case, conclusions granted i.e. 2 years' imprisonment.

C.E. Whelan, Esq., Crown Advocate.
Advocate Mrs. D.J. Lang for the accused.

JUDGMENT

THE BAILIFF: Mrs. Lang, you were quite right to draw the Court's attention to a passage in Chapter 14 of Rudi Fortson's "The Law on the Misuse of Drugs and Drug Trafficking Offences" (2nd Ed'n) which indicates that in cases of this nature the Court is in a difficult position which we have attempted to resolve in the only way open to us, that is to say by keeping firmly to the principles which have guided this Court before. There have to be exceptional circumstances in cases of this nature to entitle us to depart from the principle of a custodial sentence.

That principle was very clearly enunciated by the Court of Appeal in the case of Schollhammer -v- A.G.; Reissing -v- A.G. (14th July, 1992) Jersey Unreported C.of.A., and at p.3 of the Judgment the Court said this:

"We add the weight of this Court to statements which have already been made by the Royal Court that in those circumstances, those who import, or attempt to import, these substances...." (they were in fact talking of a different substance, but nevertheless a Class A drug) "into Jersey as a commercial venture must, in spite of youth and previous good record, anticipate severe punishment".

We accept that your client was not importing it in order to sell it here, but she was importing it in return for £1,000 which, it is true, she was then going to hand over to her boyfriend. Nevertheless the words of that extract from the Court of Appeal Judgment in Schollhammer and Reissing are those which we have taken into account.

The next authority I turn to is that of Oluwatoyin Lawson (1987) 9 Cr.App.R.(S.) 52, where the Judge in sentencing the appellant said this:

"But the trouble is that people like you are all too easily picked upon by evil men who want to get drugs into this country and make a lot of money out of it. In those circumstances the court has no alternative but to show to you and others who may be tempted like you that this kind of conduct, which is literally trafficking in death, is not to be tolerated, and if you are caught doing it then to prison you will go and for a long time. The proper sentence in your case is one of six years' imprisonment and I shall recommend you for deportation".

In that case, the Court of Appeal upheld the sentence, although they thought it was slightly on the high side. In the light of that statement, the Court is bound to say that we think it was, perhaps, misplaced kindness on the part of the Probation Officer to suggest that we should impose a non-custodial sentence. This Court has laid it down time and time again that cases of the importation of a Class A drug - even by a naive person such as yourself - carry a custodial sentence.

This was a deliberate importation, and although the Court has taken into account that you may have thought it was cannabis you were importing, nevertheless you knew that it was an illegal substance. I refer to the case of Bilinski (1988) 86 Cr.App.R. 146, where the headnote says: **"Held that (1) it was no answer to a charge of importing a Class A drug that the importer thought it was a Class B drug"**. Even if you thought it was cannabis, it is no defence to what you did. The headnote goes on: **"To what extent the punishment should be mitigated by that factor depended upon all the circumstances, amongst which was the degree of care exercised by the defendant"**.

We think you were prepared to take a deliberate risk for your boyfriend, and indeed for your own personal relationship with him, and that misfired. You were the kind of person, innocent, naive, who would attract evil men to make use of you for the purpose of importing drugs.

Therefore, Mrs. Lang, although we feel sympathy for your client, we do not feel that this is a case where we can depart from our principle of sentencing.

We now come to the starting point for sentences of this nature which, as the Crown has said quite correctly, is 6 years. Under the circumstances - for reasons which I shall not mention in public but which are referred to in the résumé kindly provided by the Crown, and which you have also seen, Mrs. Lang, - we feel that the Crown has made a sufficient reduction of 4 years from that starting point to allow for the mitigating circumstances which you have mentioned, Mrs. Lang, and which have been put in the Crown's résumé. We accordingly sentence you to two years' imprisonment. We further order the forfeiture and destruction of the drugs.

Authorities

Archbold (1992 Ed'n) s.26-80.

Schollhammer -v- A.G.; Reissing -v- A.G. (14th July, 1992) Jersey
Unreported C.of.A.

Oluwatoyin Lawson (1987) 9 Cr.App.R.(S.) 52.

Bilinski (1988) 86 Cr.App.R. 146.

McCullough (1982) Cr.App.R. 363.

A.G. -v- Roberts and Gleeson (23rd January, 1992) Jersey
Unreported.

R. -v- Hussain and Quddus (27th June, 1990) T.L.R.

R. -v- Afzal (14th October, 1989) T.L.R.

Rudi Fortson: "The Law on the Misuse of Drugs and Drug
Trafficking Offences" (2nd Ed'n): Chapter 14: Sentencing.