

ROYAL COURT
(Samedi Division)

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18th April, 1994

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

Her Majesty's Attorney General

-v-

Malcolm Lewis MacKenzie

Sentencing, before the Superior Number, following a not guilty plea on 5th November, 1993, changed to a guilty plea on 18th March, 1994, before the Inferior Number, and a "Newton" hearing before the Superior Number on 22nd and 23rd March, 1994, on

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

AGE: 38

DETAILS OF OFFENCE:

(Cross reference the cases of Amanda Vellam; Martin Ferri; Colette Ferri). McKenzie was sentenced as prime mover of the offence of importing 79.6 grams heroin (50% purity). Value between £8k and £40k depending upon further adulteration. Sentenced on basis i) largest amount ever seized in Jersey; ii) substantial commercial quantity; iii) worth thousands of pounds.

Accused took Vellam and the others to Liverpool booking and paying for the tickets, Vellam's in a false name. Persuaded her to secrete package of heroin internally, organised her solo return to Jersey, this time in her own name.

DETAILS OF MITIGATION:

Lost home and business as a result of his involvement; voluntary return to Jersey; degree of co-operation inherent in the plea albeit on a limited basis.

PREVIOUS CONVICTIONS:

2 relevant = 2 x possession of cannabis. Short term of imprisonment on latest occasion.

CONCLUSIONS: 8 years' imprisonment.

SENTENCE: Conclusions granted.

C.E.Whelan, Esq., Crown Advocate.
Advocate S.J.Willing for the accused.

JUDGMENT

THE BAILIFF: This is the last sentence which this Court has to impose arising out of a case involving the importation of heroin and concerning a number of people. The Court is quite satisfied, MacKenzie, that you were the guiding light in the importation. The Court has already rejected your version of the facts at the "Newton hearing" last month. We have, nevertheless, to consider whether further mitigation would entitle the Court to make more allowance than has the Crown from its starting point.

But, first of all I have to say that the Court is satisfied that the proper starting point is one of ten years as set out by the Crown. There is a distinction to be drawn between this case and that of Foqq -v- A.G. (1991) JLR 31 C.of.A., and Clarkin and Pockett -v- A.G. (3rd July, 1991) Jersey Unreported C.of.A., (1991) JLR 213 C.of.A., because the Court accepts that, as far as Jersey is concerned - we are not talking of England - you were the source of supply.

Dealing briefly with the "Newton" hearing and the allowance that we were urged to make by your counsel; we think that the Crown has already made sufficient allowance. Any further allowance which we might have made is more than off set by the circumstances of the "Newton" hearing and the fact that really very little time was saved and the principal witness remained Miss Vellam who was required, yet again, to give her evidence before this Court; it was clearly a very difficult occasion for her. So, we think that under all the circumstances the Crown has more than taken into account the slight mitigating factors of the "Newton" hearing and we do not feel justified in making any further reduction.

In the light of the words of the Court of Appeal in Ferri (27th September, 1993) Jersey Unreported C.of.A., and having regard to all that the Crown has said regarding the necessity for a deterrent sentence in cases of this nature, the Court is unanimously of the opinion that the proper sentence is, as asked for by the Crown, one of 8 years and you are sentenced accordingly.

Authorities

Fogg -v- A.G. (1991) JLR 31.

Clarkin and Pockett -v- A.G. (3rd July, 1991) Jersey Unreported
C.of.A.; (1991) JLR 213 C.of.A.

Ferri -v- A.G. (27th September, 1993) Jersey Unreported C.of.A.

Aramah (1983) 76 Cr.App.R. 190.

Stevens (1986) 8 Cr.App.R.(S) 297.

Jauncey (1986) 8 Cr.App.R.(S) 401.

Williams (1990-1) 12 Cr.App.R.(S) 415.