24 pages.

COURT OF APPEAL

4th April, 1995 61.

Before: The Bailiff, (President),
The Deputy Bailiff,
Sir Godfray Le Quesne, Q.C.,
Sir Louis Blom-Cooper, Q.C., and
Lord Carlisle, Q.C.

Alan Thomas Campbell;
John James Molloy; and
Malcolm Lewis MacKenzie

- v -

The Attorney General

ALAN THOMAS CAMPBELL.

Appeal against a total sentence of 5½ years' imprisonment imposed on 15th September, 1994, by the Superior Number, to which the appellant was remanded by the Inferior Number on 9th September, 1994, following guilty pleas to:

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 1: (diamorphine), on which count the appellant was sentenced to 5½ year's imprisonment;

Count 2: (cannabis resin), on which count the appellant was sentenced to 1 year's imprisonment; and to

2 counts of possessing a controlled drug with intent to supply it to another, contrary to Article 6(2) of the Misuse of Drugs (Jersey) Law, 1978:

Count 3: (diamorphine), on which count the appellant was sentenced to 5½ years' imprisonment; and

Count 4: (cannabis resin), on which count the appellant was sentenced to 1 year's imprisonment.

All the said sentences of imprisonment to run concurrently with each other.

JOHN JAMES MOLLOY.

Appeal against a total sentence of 5½ years' imprisonment passed on 3rd November by the Superior Number, to which the accused was remanded by the Inferior Number, on 28th October, 1994, following guilty pleas to:

3 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 & Excise (General Provisions) (Jersey) Law, 1972:

Count 1: diamorphine hydrochloride (heroin), on which count a sentence of 2 years' imprisonment was passed;

Count 2: M.D.M.A, on which count a sentence of 5½ years' imprisonment, concurrent was passed;

Count 3: cannabis resin, on which count a sentence of 6 months' imprisonment, concurrent was passed;

1 count of — possessing a controlled drug (M.D.M.A.) with intent to supply it to another, contrary to Article 6(2) of the Misuse of Drugs (Jersey) Law, 1978, on which count a sentence of 5½ years' imprisonment, concurrent was passed.

MALCOLM LEWIS MACKENZIE.

Appeal against a sentence of 8 years' imprisonment imposed by the Superior Number of the Royal Court on 18th April, 1994, 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.

On 13th January, 1995, the appeal against the 'Newton' hearing finding was dismissed (*See Jersey Unreported Judgment of that date*).

Leave to appeal was granted by the Deputy Bailiff on 24th May, 1994.

Advocate P.C. Harris for the first and second named appellants.
Advocate S.E. Fitz for the third named appellant.
The Attorney General.

JUDGMENT

(Guidelines for sentencing in future cases involving drugs related offences.)

THE BAILIFF: On 9th January, 1995, the Court, under the presidency of Sir Godfray Le Quesne, QC, adjourned these three appeals against sentence which were listed for hearing on that day. The purpose of the adjournment was to create the opportunity for considering not only the sentences in these cases but also more general matters in order that the Court could afford guidance for sentencing in future drug cases. The Attorney General and counsel for the appellants were invited to make submissions on those general matters. They did so and the Court was assisted by all those submissions. We are, however, particularly grateful to the Attorney General not only for the outline written submissions which were prepared but also for the measured and careful way in which his arguments were presented. We gave the Attorney General leave under Article 32 (c) of the Court of Appeal (Jersey) Law, 1961, to place before us affidavits sworn by Anthony Leonard Renouf, the Agent of the Impôts, and Superintendent Roland John Jones of the States of Jersey Police. We shall refer to the substance of those affidavits in due course. We propose to deal first of all with the submissions made to us on general sentencing policy, to record our conclusions, and to lay down new guidelines for the future. Against the background of those new guidelines we shall consider the individual appeals.

BACKGROUND

The Attorney General began by reminding us that Jersey was a separate jurisdiction and was free to set its own sentencing levels as it thought fit to meet the social and penological needs of the Island. We were referred to a dictum of Neill JA in Pagett -v- A.G. (1984) JJ 57 CofA at 64:

"First, it could not possibly be right for this Court, on the basis of one case, and an examination of a restricted range of decisions for one type of offence, to enter into the broad policy argument as to whether sentencing policy here must follow every change in practice on the mainland. Secondly, it is apparent that there are very important differences in the way sentencing is approached in Jersey and the way it is dealt with on the mainland. We will mention three obvious points. First, in Jersey, it is the practice for the Crown to move for specific sentences. By long tradition, it is the accepted rôle of Crown counsel to give guidance and help on this matter and to represent the public interest. There is nothing comparable in England. Secondly, the sentence in this case was arrived at by the learned Deputy Bailiff sitting with ten Jurats. To this extent, the sentence reflects a much broader spectrum of judicial opinion than a sentence imposed by a single judge in

England. Thirdly, Jersey has no system of parole for sentenced men. These and many other features indicate that the systems have different traditions and different modalities. Over and beyond this is the point that the Royal Court sitting in Jersey will be aware of current attitudes here to sentencing and will know, in particular, what sort of crimes are prevalent and for what crimes it is desirable to retain a severe deterrent sentence".

We accept that those observations remain as valid today as they were a decade ago. The Island cannot be impervious to outside influences, but nevertheless there are important differences between the sentencing process in Jersey and that which obtains in England. The Attorney General went one step further and invited us to accept that this Court should give greater leeway to the Royal Court than might be appropriate for a Court of Appeal in England. We agree that the views of the Royal Court are an important consideration for this Court to take into account in laying down sentencing guidelines. Once those guidelines have been set, however, we consider that the system of judicial hierarchy requires that proper regard should be paid to them by the Royal Court in imposing sentence.

Considerable argument was addressed to us in connection with the differences or perceived differences between current sentencing policy in Jersey and current sentencing policy in England. The Royal Court has stated in several case that it has a stricter or more severe sentencing policy than that of English courts. The submissions made to us suggest that in certain respects this may not be so, although it is clear that the approach to sentencing in Jersey is different from that of English courts. We are not persuaded however that anything really turns upon the differences or perceived differences between the two jurisdictions. As we have already stated, Jersey is a separate jurisdiction and entitled to fix its own proper sentencing levels. The approach approved by this Court in relation to offences of dealing in Class A drugs was laid down in Clarkin and Pockett -v- A.G. (1991) JLR 213 at 219, line 5 *et seq.*, in the following terms:

"The correct view of the judgment of the Court of Appeal, therefore, is that it was saying, and we wish to reiterate what it was saying, that for cases of this nature the starting point before effect is given to any mitigation on any ground must be a sentence of eight to nine years' imprisonment. By 'cases of this nature' the Court meant cases of possession of a Class A drug with intent to supply to others when the involvement to the defendant in drug dealing was comparable to that in Fogg (1990) JLR 206.

The degree of the appellant's involvement in *__Fogg__* *was shown by the amount of LSD found in his possession, by the other offences which he had committed and by his behaviour between his arrival in the Island and his arrest. We refer there to the fact that he had only been in the Island a few hours and in the course of those few hours had himself received this large quantity of LSD and had set about the sale of it. Those were the factors which showed the degree of his involvement. It is possible that in other cases a defendant's degree of involvement might be shown by other factors.*

The possession of a Class A drug must always be a grave offence but if the involvement of the defendant in drug dealing is less than that in *__Fogg__*, *if, as it is sometimes put, there is a greater gap between him and the main source of supply, the appropriate starting point would be lower. It is very seldom that the starting point for any offence of possessing a Class A drug within intent to supply it on a commercial basis can be less than a term of six years.*

We repeat, so that there may now be no doubt, that the figures which we have stated are figures for starting points before any mitigation is taken into account on any ground."

The Attorney General informed us that this approach had been very helpful and, indeed, had been adopted both by the Crown in moving conclusions and by the Royal Court in passing sentence in many subsequent cases.

THE CHANGING SCENE

The Attorney General submitted however that the local scene had changed since the Court had issued those guidelines in Clarkin and Pockett. There had been a dramatic increase in the amount of drugs coming into Jersey. He pointed out that this was a prosperous Island with low unemployment where the average disposable income was relatively high. There existed, particularly during the summer months, a comparatively young and transient population. Jersey was accordingly an attractive market for drug traffickers. That last submission was lent force by the evidence of Superintendent Jones as to the street value of drugs in Jersey compared with Glasgow and Liverpool, from which cities a large quantity of the drugs in Jersey came. A table of comparative street values was placed before us from which it is evident that Jersey is indeed a potentially attractive market. The evidence of both Superintendent Jones and Mr. Renouf showed that there had been a significant increase in the amount of drugs coming to Jersey. The street value of drugs seized by the police

rose from £257,865 in 1993 to £347,336 in 1994. The street value of drugs seized by customs officers rose from £55,000 in 1991 to £243,333 in 1994. The evidence also showed the emergence of a new dimension in the form of heroin abuse. In 1991 very little heroin was imported into Jersey. Indeed until the end of 1992 only two or three heroin users were receiving counselling at the Drug and Alcohol Abuse Unit of the General Hospital. During 1993 and 1994 the number of referrals to that unit rose dramatically; fifteen were referred in 1993 and another sixty-nine were referred in 1994. The Attorney General submitted that those who had reached the stage of wanting counselling were likely to be the tip of the iceberg. The estimate of the Director of the Drug and Alcohol Abuse Unit was that by the end of 1994 there were over four hundred regular heroin users in the Island. The affidavit of Superintendent Jones showed that in the first six weeks of 1995 twice as much heroin had been seized as during the whole of 1994. The Attorney General also drew our attention to the fact that an increasing number of offenders incarcerated at La Moye Prison were drug offenders. Even making due allowance for the potential of statistics to mislead, these indicators point inexorably, in our judgment, to the conclusion that there has been a considerable increase in the level of drug abuse in Jersey since 1991. The Attorney General submitted that this increase, particularly in relation to heroin abuse, created the risk of mounting acquisitive crime. He referred us to a consultation document entitled "Tackling Drugs Together" published recently by Her Majesty's Government. This document estimated the extent of acquisitive crime in England which was attributable to the abuse of heroin. There is, as yet, no firm evidence that heroin abuse is generating such crime in Jersey, but we accept that it has the potential to do so. The Attorney General invited us to consider how such acquisitive crime, particularly burglaries and muggings, might adversely affect the quality of life in the Island. We were told that the States were taking this problem of drug abuse extremely seriously. Various initiatives were under consideration by different officials and the Defence Committee had formed a strategic policy group which would consider how best to tackle the problem. The Attorney General submitted that the Courts should play their part and send out a clear message that stiff sentences would be imposed on those who trafficked in drugs. He referred us to the judgment of this Court in Schollhammer and Reissing -v- A.G. (1992) JLR 165 CofA where Neill J.A. stated:

> *"In conclusion I would add this. There is a lamentable flow of drug cases coming before the courts of Jersey. The Attorney General in the Schollhammer case rightly referred to a change which has been taking place over the last two to three years. He referred to the growing social problem of drugs, with the corrupting influence that they bring with them, creating inducements, for example, to carry out these smuggling runs.*

What we have said about the starting points for sentencing and the normal bands may one day have to be reviewed in the light of this growing social menace. These sentences are not set in stone. However, that is for another day".

The Attorney General submitted that that day had now come and that the guidelines set out in Clarkin and Pockett should be revised to provide for higher sentences for those involved in the importation and supplying of Class A drugs on a commercial basis.

We have no doubt that the courts should indeed play their part in suppressing the evil of drug trafficking which has the capacity to wreak havoc in the lives of individual abusers and their families. Lord Lane C. J. in R. -v Aramah (1982) 4 Cr. App. R. (S.) 407 referred in the context of Class A drugs to the ***"degradation and suffering and not infrequently the death which the drug brings to the addict".*** Sadly the lives which are blighted by the abuse of drugs are usually young lives. We agree that circumstances have changed since this Court issued its guidelines in Clarkin and Pockett in 1991. The courts cannot by themselves provide a solution to the problem but they can play their part by adopting a sentencing policy which marks the gravity of the crime. We desire therefore to make absolutely clear what is the policy of the courts in this jurisdiction in relation to the sentencing of offenders who import or deal in drugs on a commercial basis. That policy is that offenders will receive condign punishment to mark the peculiarly heinous and antisocial nature of the crime of drug trafficking.

CLASS A DRUGS

We begin by endorsing the sentencing approach laid down by this Court in Clarkin and Pockett -v- A.G. The proper approach is that the sentencing court should adopt a starting point which is appropriate to the gravity of the offence. Having established the starting point, the Court should consider whether there are any mitigating factors and should then make an appropriate allowance for any such mitigating factors before arriving at its sentence. A substantial allowance may be expected where a defendant has identified his supplier or otherwise provided information which is of significant assistance to the authorities.

In the passage from the judgment in Clarkin and Pockett which we have cited above, this Court laid down a band of starting points between six and nine years' imprisonment. A starting point of nine years' imprisonment was considered to be appropriate for an offender whose involvement in drug dealing was akin to that of Fogg. Fogg had been arrested in possession of 1,000 units of LSD. He had arrived in the Island only a short time before his arrest. Within a few hours he had received this large quantity of LSD and

had set about selling it. He was also sentenced at the same time for other offences involving the possession and supply of cannabis. He was a mature man with one previous conviction for a drugs offence. In our judgment the appropriate starting point for a case of drug trafficking of that nature would now be one of twelve years' imprisonment. If the involvement of a defendant in drug trafficking is less than that of Fogg, the appropriate starting point will be lower. If the involvement of a defendant in drug trafficking is greater than that of Fogg the appropriate starting point will clearly be higher. Much will depend upon the amount and value of the drugs involved, the nature and scale of the activity and, of course, any other factors showing the degree to which the defendant was concerned in drug trafficking. We propose also to vary the lowest point of the band established in Clarkin and Pockett; we accordingly state that it is seldom that the starting point for any offence of trafficking in a Class A drug on a commercial basis can be less than a term of seven years. We have employed the term "trafficking" deliberately. In the past, some distinctions may have been drawn between offences involving the importation of Class A drugs and offences involving their supply or their possession with intent to supply. In our judgment there is no justification for any such distinction. The guidelines which we have set out above apply to any offence involving the trafficking of Class A drugs on a commercial basis. We acknowledge that the maximum penalty for supplying or for possession with intent to supply a Class A drug is life imprisonment, whereas the maximum penalty for involvement in the importation of a Class A drug is only fourteen years imprisonment. We were told that that discrepancy resulted from a legislative oversight which would shortly be rectified. In the context of the offences embraced by these guidelines however, the different maximum penalties are not relevant.

We turn now, as requested by the Attorney General, to deal with a number of subsidiary points. First, we are asked to consider the extent to which an erroneous belief in the identity of a drug in the possession of an offender can be a mitigating factor. In R. -v- Bilinski (1987) 9 Cr. App. R. (S) 360 the English Court of Appeal held that it was relevant to punishment and that *"the man who believes he is importing cannabis is indeed less culpable than he who knows it to be heroin"*. The extent to which the punishment should be mitigated would however depend upon all the circumstances, amongst them being the degree of care exercised by the defendant.

In A.G. -v- Campbell (15th September, 1994) Jersey Unreported, the Royal Court declined to follow Bilinski, and decided that in general an erroneous belief should not be held to be a mitigating factor. The Royal Court expressly stated however that it was not laying down a rigid rule. It acknowledged that there could be exceptional circumstances which would entitle it to consider the effect of a person's belief on the proper sentence.

In our judgment a courier who knowingly transports illegal drugs must be taken to accept the consequences of his actions. As the Attorney General put it, the moral blameworthiness is the same, whatever the nature of the drugs transported. Furthermore, viewed from the perspective of the community, the evil consequences flowing from the dissemination of Class A drugs are not mitigated in the slightest by the erroneous belief of the courier that he was transporting a Class B drug. There may be very exceptional circumstances in which a genuine belief that a different drug was being carried might be relevant to sentence. But in general we endorse the Royal Court's view in Campbell that an erroneous belief as to the type of drug being carried is not a mitigating factor.

Secondly, the Attorney General drew our attention to cases in which the view had been expressed that a guilty plea carried an entitlement to a discount of one third. He submitted that this view was incorrect and that the discount to be allowed for a guilty plea depended upon the particular circumstances of the case. For example, where a courier was found with the drugs concealed inside him, he was really caught *in flagrante delicto* and had no option but to plead guilty. We agree, and we reaffirm the statement made by this Court in Carter -v- A.G. (28th September, 1994) Jersey Unreported CofA in the following terms:

> *"The Court now turns to such mitigation as there is. The applicant pleaded guilty to the indictment, and for this he is entitled to a substantial discount. In Clarkin and again in Wood -v- A.G. (15th February, 1994) Jersey Unreported CofA, this Court made a deduction of one third for the plea of guilty. We accept that such a reduction is customary and in line with a well-established principle. Nevertheless we take the view that such a reduction is in no sense an inflexible rule, and the precise deduction in each case must depend upon the circumstances in which the guilty plea came to be made. In some circumstances the evidence will make a guilty plea all but inevitable, but in other cases that may not be so."*

This statement is, of course, equally applicable to cases involving Class B drugs with which we will deal below.

Thirdly, the Attorney General asked us to consider whether the test laid down by the English Court of Appeal in R. -v- Aranguren (1994) 16 Cr. App. R. (S) 211 for gauging the gravity of an offence was apt for adoption in Jersey. In Aranguren the Court held that reference to the street value of the drug should be abandoned in favour of a formula related to weight and purity. This case was considered by the Royal Court in A.G. -v- Campbell, cited above, where Crill, Bailiff stated:

> *"It has never been the practice of this Court to have regard solely to one or the other. This Court has had regard to both the weight and the street value; it has never been disjunctive. It has been conjunctive and the Court takes both into account. The Court cannot sentence purely on the market principle alone and it must be stressed, as I said at the opening, that the effect on Jersey, of importing even a small amount, is far greater in proportion than it would be in England."*

This approach appears to us to be entirely satisfactory having regard to the nature of drugs cases coming before the courts in this jurisdiction. Both the street value and the weight of the drugs are relevant factors for the Court to know in assessing the level of involvement of the defendant in drug trafficking.

CLASS B DRUGS

Hitherto the sentencing policy of the courts in relation to Class B drugs has been guided by the English case of R. -v- Aramah, cited above, modified by a decision of this Court in Rawlinson -v- A.G. (19th January, 1993) Jersey Unreported CofA. Aramah laid down sentencing bands for the importation of Class B drugs as follows:

	Amount	Sentence
A	Large scale or wholesale importation of massive quantities	At or around ten years
B	Medium quantities, i.e. between 20 and 60 kg	3 to 6 years
C	20 kg and below	18 months to 3 years

In Rawlinson this Court increased band C from three years to four years. The sentencing bands laid down in Aramah for supplying Class B drugs were marginally different.

The Attorney General told us that in only one case (A.G. -v- Stead (21st June, 1993) Jersey Unreported) had the amount of cannabis involved (26 kg) taken the case into band B. There had been no case before the Jersey courts in band A. It is clear, therefore, that the Aramah guidelines are of limited assistance in this jurisdiction. Furthermore there are difficulties in determining whether the bands relate to starting points or to the sentence actually to be imposed.

The Attorney General invited us to lay down the same sentencing approach for Class B drug cases as was done for Class A drug cases in Clarkin and Pockett. He submitted that there should be three bands as set out in tabular form below.

Amount		Approximate Street Value	Starting Point
A	Over 30 kg		10 years plus
B	10-30 kg	£56,000-168,000	6-10 years
C	1-10 kg	£5,600-56,000	2-6 years

Mr. Harris reminded us that the Class B drugs most commonly abused in Jersey were cannabis and amphetamines. He suggested that the Attorney General's suggested bands would not necessarily be apt for amphetamines.

We agree with the Attorney General that it would be desirable to adopt the same sentencing approach for all drug offences irrespective of whether the drug involved is in Class A or Class B. We also agree that in cannabis cases the appropriate starting points in the case of quantities, over 30 kilograms are a minimum of ten years' imprisonment, in the case of quantities between 10 and 30 kilograms, are six to ten years' imprisonment and in the case of quantities between 1 and 10 kilograms are two to six years' imprisonment. We reiterate, for the avoidance of doubt, that these figures are starting points before any mitigation is taken into account on any ground. We also reiterate that no distinction is to be drawn between cases involving importation and those involving supplying or possession with intent to supply. The guidelines set out above apply equally to all cases involving the trafficking of Class B drugs on a commercial basis. We accept that analysis by the weights described in the bands above will not be appropriate for offences involving amphetamines. The approximate street values will however afford some guidance to the Royal Court in dealing with such offences on a case by case basis.

We turn now to deal with the individual appeals.

ALAN THOMAS CAMPBELL

A term of five and a half years' imprisonment was passed on Alan Thomas Campbell by the Royal Court (Superior Number) on 15th September, 1994, for certain drug offences to which he pleaded guilty. The offences, committed on 12th June, 1994 at Jersey airport, comprised two counts of fraudulent evasion of the prohibition on the import of diamorphine (heroin) and cannabis resin; and two counts of possession of the same drugs with intention to supply. For the two counts relating to heroin - a

Class A drug - the sentence of five and half years' imprisonment was passed. On the two counts relating to the cannabis resin - a Class B drug - the sentence was one year's imprisonment. All four sentences were made to run concurrently with each other.

The Appellant gave notice of appeal on 16th September, 1994. The grounds of this appeal, drafted in his own handwriting and amplified before this Court by Advocate Harris, are that the sentences were wrong in principle and/or manifestly excessive. He complains that no regard was paid to his having no previous convictions for drug offences. He added:

> *"I also feel that no real consideration was made due to my age"* - he is 22 - *"There are also other inmates at La Moye who are presently serving less of a sentence for drugs of both a larger quantity and street value than myself".*

The Appellant had imported heroin from England, having a total weight of 11.68 grammes which contained approximately 48% in weight of diamorphine. In that condition the estimated street value was £3,504. The cannabis resin weighed 21.30 grammes, at a street value of £128. The Bailiff in the court's judgment on sentence said:

> ***"If the heroin had been further 'cut' to 10% diamorphine, its potential street value would have been approximately £16,000. The heroin had been packed in two balloon packages...".***

No expert evidence was adduced to substantiate an enhanced street value of any diluted heroin.

The Appellant, who was born and brought up in Jersey, had agreed to act as a courier of the drugs. His fare for the trip to Manchester was paid for by those organising the drug-running episode, and he expected to receive payment of between £100 and £200. At Manchester he concealed the four packages of drugs in his rectum, travelling by air to Jersey. He had, in advance of his journey, concocted a story, should he be stopped by Customs Officers. He would say that he was going, or had gone to Manchester to attend a funeral, for which purpose he had included in his baggage a black suit and tie. When the drugs were discovered by means of x-ray and had been expelled from his body, he told a false story. It was only some two weeks after he had been charged and appeared before the Police Court that he admitted the facts as presented to the Royal Court.

The Attorney General in his conclusions submitted that a sentence in total of five and half years' imprisonment would be appropriate. The Royal Court concurred. In his argument before

this Court, the Attorney General has submitted that, since the volume of the heroin smuggled into Jersey was not an insubstantial amount, the sentence passed by the Royal Court should not be disturbed in this Court.

Given the new guidelines now adopted by this Court, it would be impossible to say that the sentence of five and a half years was in any way excessive; indeed it would fall within the range of sentences commensurate with the seriousness of the offence. We would, therefore, not be disposed to alter the sentence, except for one factor relevant to the assessment of the seriousness of the offence, which has troubled us.

Advocate Harris submitted boldly that the Royal Court had drifted into error by relying on the street value of the imported heroin, by assessing it not at the moment of its importation but at some later date in a potentially diluted condition and hence at an enhanced market price. Since the Royal Court stated that it had never been its practice to have regard exclusively to the weight of the imported drugs, but regarded both the weight and the street value of the drugs as relevant for sentencing purposes, consideration must have been paid by the Royal Court to the street value. Did that consideration, however, include its enhanced value of £16,000? If so, it is our view that an improper and imbalancing factor was introduced into the sentencing process.

The Attorney General submitted that the value of the drugs in both undiluted and diluted form was not an error, although he conceded that, given the imprecision of the value of the diluted drug - depending on the degree of any dilution - it was inapt of the Royal Court to refer to a dilution to the extreme level of 10%. Indeed, the Attorney General told us that he has given instructions that henceforth the street value of the drug in its potentially diluted form will not be relayed to the Royal Court. We endorse that practice.

The question for us is whether the inclusion of the reference by the Royal Court to the street value of the diluted drug affected its decision as to the proper length of the term of imprisonment. We conclude that it is not possible to say that the recitation of the alternative valuation of the drug in its diluted form had no impact upon the Royal Court. Since the enhanced value was stated without any qualification as to its applicability, it must have made some, however immeasurable impact. Consequently, in these exceptional circumstances - unlikely to be repeated - some reduction in the sentence length should be made. We think that the adjustment in the sentence length should be to reduce it to 5 years' imprisonment. To that extent this appeal is allowed.

<u>JOHN JAMES MOLLOY.</u>

John James Molloy appeared before the Royal Court on the 28th October, 1994, when he pleaded guilty to:

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1. An offence of being knowingly concerned in the fraudulent evasion of the prohibition on the importation of a controlled drug, contrary to Article 77(b) of the Customs & Excise (General Provisions) (Jersey) Law, 1972, the drug being Heroin.

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2. A similar offence in relation to the Class A drug Ecstasy.

3. A similar offence to the Class B drug Cannabis.

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4. An offence of possession of the Class A drug Ecstasy with intent to supply, contrary to Article 6(2) of the Misuse of Drugs (Jersey) Law, 1978.

On the 3rd day of November, 1994, he was sentenced by the

20 Royal Court as follows:

Count 1 2 years' imprisonment.
Count 2 5½ years' imprisonment.
Count 3 6 months' imprisonment.
25 Count 4 5½ years' imprisonment.

All these sentences to run concurrently.

He now appeals by leave of the Deputy Bailiff against the two

30 sentences of 5½ years relating to the importation, and to the possession with intent to supply of the drug Ecstasy.

The facts are as follows. The Applicant arrived in Jersey on the 15th May, 1994. He had come over on a flight from Manchester,

35 together with his common-law wife and their four children. They checked into the Sandringham Hotel.

Early that evening, Molloy was detained by Police Officers acting under their powers under the Misuse of Drugs (Jersey) Law,

40 1979. Molloy was searched and thereafter his room at the Sandringham Hotel was searched. The search revealed 665 tablets of Ecstasy as well as a small quantity of Heroin and Cannabis.

So far as the Ecstasy tablets were concerned Molloy admitted

45 that he had smuggled them into the Island in the front of his trousers. When asked what he was intending to do with them he said *"I had to wait at the Hotel. I was told that I would receive a phone call and somebody would be sent round to collect them"*.

50 Molloy told the Police that he had been given the money for the air tickets for himself and his family to fly to Jersey and that he was expecting to receive between a further £500 to £1000

for importing the tablets. Other than that he gave no further information about his source of supply of the drugs and declined to name the person who had given him the money for his air tickets.

So far as the Heroin was concerned, this was some 2.35 grams in quantity. Molloy, who said that he was a Heroin addict, mentioned that this and the small amount of Cannabis which he had in his possession were for his own use.

Mr. Harris, on behalf of the Appellant, in support of his contention that the sentences of 5½ years were excessive made two particular points.

Firstly he claimed that the sentences were excessive when compared with other sentences passed by the Royal Court in other cases of a similar nature and in particular with the cases of A.G. -v- Lawlor (25th April, 1994) Jersey Unreported and Stewart -v- A.G. (18th April, 1994) Jersey Unreported C.of.A. Secondly he claimed that the Court may well have been misled by the fact that they had been told that both the Heroin and the Cannabis had only been found as a result of the search of the Applicant's hotel bedroom, whereas in fact Molloy had himself told the Police of the existence of these drugs and where they could be found, although only after the Police had found the far greater quantity of the drug Ecstasy.

So far as this second ground of appeal is concerned, we consider it devoid of any merit. We do not believe that the Royal Court would have been in any way influenced by such an error in the opening, which was of merely minimal effect. In any event, if it did have any such effect it would be relevant to the sentences passed on Counts 1 and 3 and not to the sentences passed in relation to the Ecstasy to which this appeal relates.

Turning to the first ground of appeal this Court has often made it clear that comparison between the sentences passed in different cases of a generally similar nature is of limited value. However, following upon the guidelines which we have laid down in the course of this Judgment, the value of sentences passed in similar types of drug cases before today becomes of historic value only.

Molloy was 40 years of age. He had some 30 previous convictions, although it is right to say that he had only one previous conviction for an offence of possession of a controlled drug for which he had received a 12 month conditional discharge.

On any view this case concerned the commercial importation for gain of a substantial quantity of a Class A drug, which the Court was informed had a street value of some £16,500.

The prosecution in moving for a sentence of 5½ years said that they had taken as a starting point a sentence of 8 years and then had made an allowance for the fact, in particular, that Molloy had pleaded guilty.

This Court is satisfied that the sentences of 5½ years imposed on Molloy on both Counts 2 and 4 of this indictment were the correct sentences and this appeal is therefore dismissed.

MALCOLM LEWIS MACKENZIE

1. This Appellant pleaded guilty before the Inferior Number of the Royal Court on the 18th March, 1994, to a charge of being knowingly concerned in the fraudulent evasion of the prohibition of the importation into Jersey of a controlled drug. The particulars of the offence in the indictment alleged that the drug was diamorphine (i.e. heroin), and the Appellant had been party to the importation of diamorphine by Amanda Vellam.

2. The Appellant had originally, on the 5th November, 1993, pleaded not guilty to this charge. When he changed his plea on the 18th March, 1994, he did not accept the Crown's version of his part in the importation. A 'Newton' hearing was therefore held before the Superior Number of the Royal Court, and on the 23rd March, 1994, the Court found that the Crown had proved beyond reasonable doubt its version of the events leading to the offence. On the 18th April, 1994, the Superior Number sentenced the Appellant to eight years' imprisonment.

3. The Appellant appeals to this Court against his sentence. He challenged the finding of the Royal Court on the 'Newton' hearing, and this Court dismissed that part of the appeal on the 13th January, 1995. We have now to deal with the sentence.

4. For an account of the facts of the case, as found by the Royal Court on the 'Newton' hearing and by this Court on appeal, we turn to this Court's judgment of the 13th January, 1995. The following are extracts from the judgment:

"On 11th November, 1992, a party of four travelled on a flight from Jersey to Manchester. They were the Appellant, his girlfriend, Colette Ferri, her brother, Martin Ferri, and his girlfriend, Amanda Vellam. All of them lived in the Appellant's house in St. Helier. The Appellant had arranged the journey and bought the tickets, but the ticket used by Amanda Vellam bore not

her name but the name of the Appellant's sister, Nadine Lewis.

When they arrived at Manchester the Appellant hired a car and drove the party to the house [in Liverpool] of a friend of his, Steve Dring, with whom he had arranged for them to stay.

While they were there Amanda Vellam was persuaded to carry a package back to Jersey for a reward of £1,000. The package was inserted in her vagina the following morning, 12th November.

Either the Appellant or Colette Ferri booked a flight for Amanda Vellam back to Jersey and all four drove to Manchester Airport. Amanda Vellam returned to Jersey alone. She was stopped by customs officers at the Airport and the package was discovered in her vagina. It was found to contain 79.6 grams of heroin of 50% purity.......

Amanda Vellam was arrested after this discovery and an interview with her was conducted under caution later on 12th November. In it she said that the Appellant had asked her to bring the package back to Jersey and that Martin Ferri had helped with the concealment of the package in her vagina. A few days later she made another cautioned statement in which she repeated this version of events.

Martin Ferri returned to Jersey on 16th November. He was arrested and charged with being knowingly concerned with evasion of the prohibition of the importation of heroin. The committal proceedings against him took place on 17th December and in those proceedings Amanda Vellam gave evidence on the lines of what she had said in her statements.

We anticipate events to say that Martin Ferri's trial took place on 20th April, 1993, and Amanda Vellam gave evidence against him, again to the same effect.

He was convicted and sentenced to seven years' imprisonment. He appealed against that sentence, but his appeal was dismissed by this Court in May, 1994.

To go back to what happened to Amanda Vellam. On 5th March, 1993, she appeared before the Court charged with importation of the heroin. She pleaded guilty to this and was sentenced to two years' imprisonment.

The other two members of the party returned to Jersey at different times. Colette Ferri came first in the course of May, 1993. She appeared before the Court on 25th June, 1993, when she pleaded guilty to being knowingly concerned with the importation and was sentenced to eight months' imprisonment. The Appellant did not return until the beginning of October, 1993. He was arrested on 4th October and on 2nd November came before the Magistrates' Court charged with being knowingly concerned in evading the prohibition of the importation of the heroin.

Amanda Vellam gave evidence against him at the committal proceedings again to the same affect as on earlier occasions.

The Appellant was remanded by the Magistrate to the Royal Court for trial but before the trial came on he changed his plea to guilty but maintained, contrary to the Crown's contention, that he had not been the prime mover in the importation of the heroin.

A 'Newton' hearing was therefore held to establish on what basis of fact the appellant was to be sentenced......

The 'Newton' hearing took place before the Superior Number of the Royal Court constituted by the Bailiff and eight Jurats on 22nd and 23rd March, 1994. Amanda Vellam gave evidence again. She was a young woman of 24 without convictions before this affair. She had been employed as a shop assistant at Boots. Her evidence was essentially, if not perfectly, in accord with the statements and evidence which she had given at the earlier stages. Her explanation of how she came to go on the expedition was that the other three asked her if she would like to go away with them for a few days, and they were going round the car auctions.

As to events at Liverpool she said it was the Appellant who, on 12th November, asked her to take the package to Jersey and promised her money in return for doing so. She said she was dubious about doing this but the Appellant assured her that everything would be O.K.

* * * * * *

When the Crown evidence was completed the Appellant himself gave evidence. We summarise the most relevant features of what he said. His account of how Amanda

Vellam came to be in the party was this: on an occasion which he described only as 'around the time of 11th November' his sister came to see him and told him that she was not satisfied with the running of her car. He therefore suggested that when he went to England to attend car auctions she should come with him and see if she could pick up a second-hand car in England where, he said, they would be cheaper than in Jersey. She said that she would be able to do that at any time. The Appellant then promptly booked passages for a journey to Manchester either the next day or within a few days. Having done this he rang up to tell his sister what he had done and she then said that she could not come. When Amanda Vellam heard that the Appellant and the two Ferri's were going, she asked if she could come too. We may add that the Appellant called his sister to give evidence and she admitted that in December, 1992, she had made a statement in which she had said that she had not seen the Appellant since August and nobody had ever asked her to travel to Manchester in November.

As to the events at Liverpool the Appellant's evidence was that while they were all in Steve's house, Steve had said "does anyone want to take a package to Jersey?" Martin Ferri and Colette Ferri had both said that they would be recognised and so could not take the package. Martin Ferri had then asked Amanda Vellam if she would take it but, the appellant said, the decision had been left to her.

* * * * * *

As to the facts, this was a straightforward case. Two versions of the criminal event were before the Court. Steve in Liverpool was obviously a dealer in heroin. The Appellant had had him to stay for a time in his (the Appellant's) house in Jersey. In October, 1992, the month before the expedition out of which this case arises, the Appellant and Steve had travelled together both out of Jersey and into Jersey. On their entry they had been checked by customs officers, and the Appellant had given the same explanation of their journey as he gave of the journey in this case - that they had been to a car auction in Manchester. The Appellant arranged this further expedition to Steve's house. He bought a ticket for his sister, who admitted that in a statement made in December, 1992, she had said she had not seen him since August, 1992, and nobody had asked her to travel to Manchester in

November. This ticket was then used by Amanda Vellam, but the name on it was not changed. The Appellant's sister, who he said would not have carried heroin, was thus replaced by someone who was persuaded to do so, and that person travelled out under a false name, with the result that customs officers would not be looking out for someone of her name when she returned. It was, on the Appellant's story, just a coincidence that when they reached Liverpool Steve had a consignment of heroin to be taken to Jersey. It was also a coincidence that the Appellant had brought with him someone who could be persuaded, and was persuaded, to carry it. He was present when - according to his story - Steve persuaded her, and Martin Ferri and Colette Ferri were present too. Yet when Amanda Vellam returned to Jersey and was arrested and said that the Appellant had persuaded her to carry the heroin, he did not return to defend himself against this falsehood, but stayed in England for ten months, while his business in Jersey was put en désastre and his house in Jersey was repossessed. When ultimately he found himself putting forward his story at the 'Newton' hearing, Colette Ferri and Martin Ferri were both available to give evidence, but he did not call either to confirm his account of what had happened at Liverpool.

It is difficult to see how the Jurats could have come to any conclusion except that the Appellant's story was false; and no less difficult to see how they could then avoid the conclusion that the only other explanation of the facts before them, which was the Crown's version, was true."

5. The 79.6 grams of heroin found in Amanda Vellam's vagina was the largest seizure of heroin yet made in Jersey. It could have provided about 800 deals. The Appellant made careful plans to get it imported into Jersey, those plans including the exploitation of Amanda Vellum for his criminal purpose. The Appellant was an associate of Dring, the heroin dealer in Liverpool. The Appellant himself constituted the local source of supply.

6. This is a very serious case. The Appellant's degree of involvement in the distribution of heroin distinguishes it from all previous cases in this Island. We can see no substantial mitigation. The plea of guilty was offered at a late stage, and even then on a basis which led to a 'Newton' hearing, at which the Appellant tried to conceal his part in the affair. He did in the end return voluntarily to Jersey, and told an officer of the Customs that he was coming. When

he got here, however, he did not give himself up, but was arrested at his sister's house.

7. Mr. Robinson, who is the Surveyor of Anti-Smuggling in the Department of Customs and Excise, gave evidence in the 'Newton' hearing that the street value of 79.6 grams of heroin in Jersey in November, 1992, was £7,960. He also said that the purity of this heroin was 50%; if it had been mixed with inert matter to reduce its purity to 10% (a level, he said, which had been found in some heroin seized in the United Kingdom), the bulk would have been increased to about 400 grams and the value to about £40,000. The potential value of the heroin was therefore anything between £7,960 and £40,000.

8. Advocate Fitz submitted that the reference to £40,000 was unduly prejudicial to the Appellant. We do not think it was particularly helpful to the Court. As we have already noted, the Attorney General has now ordered that evidence of the potential value of drugs in a weakened state is not to be used by the Crown. In this case, however, there is no reason to think that the evidence caused any prejudice. In passing sentence the Bailiff did not mention it, but referred to other factors which we have set out as showing the serious nature of the case and the absence of any but slight mitigating factors.

9. The Royal Court took as its starting point a sentence of 10 years. Applying the principles which we have set out, we think this starting point was too low, nor do we think that there were any circumstances to justify a reduction of as much as two years. The Appellant is therefore fortunate not to have received a longer sentence than 8 years. However, we indicated in the course of the hearing that we did not intend to increase any of the sentences and accordingly we refrain from doing so. The appeal is dismissed.

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