COURT OF APPEAL

11.

17th January, 1996.

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

Nicolette Tegan Melville

- v -

The Attorney General

Applications for leave to appeal: (1) against **conviction** before the Royal Court (Inferior Number) on 27th July, 1995; and (2) against a **total sentence of 12 years' imprisonment** passed on 20th September, 1995, by the Superior Number, to which the Appellant was remanded following not 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: (M.D.M.A), on which a sentence of **12 years' imprisonment** was passed; and
- Count 2: (L.S.D), on which a sentence of **12 years' imprisonment, concurrent,** was passed.

3 counts of — supplying a controlled drug, contrary to Article 5 of the Misuse of Drugs (Jersey) Law, 1978:

- Count 3: (M.D.M.A) on which a sentence of **12 years' imprisonment, concurrent,** was passed;
- Count 4: (L.S.D) on which a sentence of **12 years' imprisonment, concurrent,** was passed; and
- Count 5: (M.D.M.A) on which a sentence of **12 years' imprisonment, concurrent,** was passed;

1 count of — selling a poison, whilst not an authorized seller, contrary to Article 16(1)(a) of the Pharmacy, Poisons, and Medicine (Jersey) Law, 1952 (Count 6: (Ephedrine) on which a **£50 fine or 1 month's imprisonment in default of payment, concurrent,** was imposed.

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 7: (L.S.D) on which a sentence of **12 years' imprisonment, concurrent**, was passed; and

Count 8: (M.D.M.A) on which a sentence of **12 years' imprisonment, concurrent**, was passed;

4 counts of possessing a controlled drug, contrary to Article 6(1) of the Misuse of Drugs (Jersey) Law, 1978:

Count 9: (L.S.D) on which a sentence of **3 months' imprisonment, concurrent**, was passed;

Count 10: (M.D.M.A) on which a sentence of **3 months' imprisonment, concurrent**, was passed;

Count 11: (Amphetamine Sulphate) on which a sentence of **1 month's imprisonment, concurrent**, was passed; and

Count 12: (Cannabis Resin) on which a sentence of **1 month's imprisonment, concurrent**, was passed.

The Bailiff refused leave to appeal against conviction on 8th September, 1995, and refused leave to appeal against sentence on 26th October, 1995, directing that, in accordance with the provisions of Article 35(4)(b) of the Court of Appeal (Jersey) Law, 1961, no part of the time which may elapse, pending the hearing of the application, shall be disregarded for the purpose of computation of sentence.

Advocate A.D. Hoy for the Appellant.
A.J. Olsen, Esq., Crown Advocate.

Judgment on Conviction and Sentence.

THE PRESIDENT: On 27th July, 1995, Nicolette Tegan Melville was convicted by the Royal Court (Samedi Division) on all twelve counts in an indictment of drug trafficking - importation, supply and possession with intent to supply and possession of commercial quantities of two Class A drugs and other prescribed drugs. A confiscation order in the sum of £4,919 was made. She was sentenced on 20th September, 1995, to a total of 12 years' imprisonment. Her application for leave to appeal, on the ground that the verdict of the Royal Court was unreasonable or cannot be supported having regard to the evidence and thereby resulted in a substantial miscarriage of justice, was refused by the Bailiff on 8th September, 1995; her application for leave to appeal against her sentence, on the ground that the total was manifestly excessive having regard to all the circumstances of the case, was refused by the Bailiff on 26th October, 1995. Before this Court Mrs. Melville renews both applications, save that she does not pursue her application for leave to appeal against her conviction on counts 3, 5, 6 and 12.

At the conclusion of Advocate Hoy's submissions on the application for leave to appeal against conviction, this Court refused the application; it went on to deal with sentence. The application for leave was reserved, judgment to be given later, together with the reasons for refusing the application for leave to appeal against conviction. That we do now.

The prosecution of the applicant has had an awkward journey through the system of criminal justice which calls for some recounting in the light of this Court's approach to the question of sentencing.

On 21st July, 1994, customs officers raided a flat at No. 4 Commercial Buildings, St. Helier, which the applicant shared with her husband. There they discovered a large quantity of Class A drugs - Ecstasy (MDMA), Lysergide (LSD) and Ephedrine. Both were arrested. The applicant was charged essentially with supplying and dealing in these drugs, the estimated value being around £34,000. Mr. Melville was convicted in the Police Court of possessing cannabis and was bound over to keep the peace for six months. He appears to have left Jersey in November, 1994, for Australia and has not returned. These events disclosed a centre for drug-dealing, in which the applicant was considered to be the organiser in Jersey, with her husband playing, if anything, a minor rôle. The respective parts played by the Melvilles constituted the main plank of the applicant's defence to the charges.

The applicant made a statement on 22nd July, 1994. After this first interview, police officers, led by Detective Sergeant Shaun Du Val (head of the Jersey Police Force's Drug Squad), became aware that the applicant wished to talk to her parents and her husband, and granted the applicant's request. Following those meetings she made a second statement on 23rd July, 1994, which was tantamount to a complete confession to drug dealing on a large scale. After the statement there took place another interview, unrecorded electronically but given in evidence at the subsequent trial by Detective Sergeant Du Val. It is to be noted that Advocate Hoy disavows any suggestion that there was any impropriety in the method chosen for taking the written statements. At no stage was it ever contended that the evidence was inadmissible. The challenge was directed at the alleged failure of the Jurats to give proper consideration to the effect on the applicant of the pre-confession meetings with her parents and husband. More particularly it was submitted to this Court that there had been a failure to understand the impact upon the applicant of having read statements made by two co-accused, to whom the drugs had been supplied, in which the applicant was heavily and directly implicated as the supplier of the drugs. Of the two co-accused, Paul Watson and Anthony Doyle, Doyle, at the applicant's trial, retracted his statement to the effect that the

applicant had been the prime mover in the supply of the drugs, and Watson said that she was not the 'big fish' she was thought to be.

On 13th January, 1995, the applicant, when first asked to plead to the indictment, pleaded guilty to the two charges alleging importation of MDMA and LSD. To the rest of the indictment she pleaded not guilty. The Crown declined to accept those pleas; accordingly the applicant was remanded for trial before the Inferior Number *("en police correctionelle")* on 9th March, 1995. That trial was ineffective, because just before the trial date an indication was given that the applicant would be entering pleas of guilty to all twelve counts. The witnesses were de-warned and a date was fixed for sentencing by the Superior Number. On 9th March, 1995, the applicant did her first turnabout. Upon arraignment she pleaded not guilty to all counts, except two minor counts. The trial was re-fixed for 4th April, 1995. That, coincidentally, was the date on which the five judge Court gave its judgment in Campbell, Molloy and MacKenzie -v- A.G. (4th April, 1995) Jersey Unreported CofA, fixing the new guidelines for drug offences.

At noon on 3rd April, Crown counsel received by fax a letter from the applicant's advocate indicating yet again a change of pleas. Faced with the applicant's previous vacillating conduct, the witnesses were kept on alert. They all appeared on 4th April, when the applicant pleaded guilty to all counts before the Bailiff. The case appeared then ready for sentencing. It came before the Court on 2nd May, when Advocate Olsen opened the facts and moved to the Crown's conclusions. He indicated that the starting point for the totality of the twelve offences was twelve years (he had clearly in mind the Campbell guidelines). At that time the Crown was proceeding on the assumption that the applicant, being entitled to credit for her guilty pleas and being regarded as someone who was acting under instructions, was entitled to a discount. The final sentence suggested was eight years' imprisonment. Had matters ended there the applicant would undoubtedly have succeeded in obtaining a much lighter sentence than was warranted by the actual criminal events which emerged later in the proceedings.

At some point in the proceedings on 2nd May, 1995, the applicant's counsel produced a bundle of documents headed 'Mitigation' which included a handwritten letter from the accused. The letter contained a chronicle of events designed to minimise the applicant's rôle in the drug-dealing. It concluded:

> *"I would like to ask the Court to accept that I am pleading guilty for practical and pragmatic reasons. I am aware that the evidence is against me. This is the reason for my guilty plea although I am not responsible for the crimes charged".*

Faced with that equivocation in the pleas, the Royal Court had no option but to acknowledge the equivocal pleas and ordered the applicant to stand her trial on all twelve counts. The Bailiff stated:

> *"That statement gives rise, upon mature reflection by the Court, to an ambiguity. The defence is perfectly entitled to say "I committed the offences but the primary responsibility was that of my husband". That is a matter of mitigation and whether the Court accepts the mitigation will depend upon what is said by counsel and upon what evidence, if any, is called in support of such mitigation".*

The case was adjourned to 31st May with the idea of a 'Newton' hearing being conducted to discover which of the rival versions of events should prevail. But a 'Newton' hearing can be conducted only after a guilty verdict. On that occasion - that is to say on 31st May - the Deputy Bailiff noted:

> *"The central theme of Mrs. Melville's mitigation is that she was not the prime mover nor the prime protagonist in the dealings described by the prosecution".*

On 13th June, 1995, the Court did not proceed to a 'Newton' hearing; in the light of the equivocal pleas it ordered the applicant to stand trial before the Inferior Number. The trial took place on 26th/27th July, 1995. It was for all intents and purposes a 'Newton' hearing within the context of a trial of the accused. The Court heard the applicant repeat her claim that she could not escape conviction on at least some of the main counts but that she was a minor actor in the criminal events.

The Court found the applicant guilty on all counts, in the course of which it recorded its findings on mitigation as if it was ruling on a 'Newton' hearing. The Deputy Bailiff said:

> *"This case has taken its course over a very long period. It is of chameleon complexity. We have had to remind ourselves of one thing: we are here only to consider the guilt or innocence of the accused, Mrs. Nicolette Tegan Melville, née Forde.*
>
> ....
>
> *The learned Jurats have carefully considered all the evidence and, of course, Mrs. Melville's defence, which was that she gave to the police, after a series of sterile answers in a question and answer session, a confession, that she made that after she had spoken with her parents and after she had spoken with her husband in emotional circumstances. She now says, quite unequivocally, that*

she lied. Her husband was convicted in the Police Court of possessing cannabis and bound over for six months. It now appears, according to Mrs. Melville, that he was the prime mover.

Two other accused, drug dealers Anthony John Doyle and Paul John Watson, also implicated her most seriously. They have been tried and sentenced. Mr. Doyle - according to Crown Advocate Olsen - was said at trial to have co-operated fully by naming her. Both their statements are now said by them to be false.

The learned Jurats have taken great care over the facts of this trial and I have to say that they have excluded the hearsay evidence that was put before them. But they have reached a conclusion that Mrs. Melville is guilty of all the charges brought against her. They have no doubt whatsoever that she was the prime mover in a very dangerous and filthy trade which, but for the attentions of Drugs Squad Officers, could have caused untold misery in this Island".

Conviction

Advocate Hoy directed his submissions almost entirely to the circumstances surrounding the applicant's confession on 23rd July, 1994, which, he submitted, had such a powerful influence as to render it unreliable for the purpose of the Jurat's findings. He pointed out three ingredients which produced the undue influence - the two statements by the co-accused, Doyle and Watson; the pressure on the applicant by her parents to tell the truth; and the lamentable state which she found her husband was in. All these, he urged, had a confusing and detrimental effect upon the applicant's will that induced her to make an untrue statement.

There is no doubt that the applicant was in a difficult position, but there is no suggestion that any inducement to make a false statement came from anybody in authority. The statements were self-induced as a result of the predicament in which the applicant found herself. The question for the Court was: did the applicant make a true or a false statement? The Jurats who heard her give evidence on 26th July, 1995, expressed no doubt about the veracity of her statement a year earlier. Even if this Court had any doubt about the matter (and this Court entertains no such doubt) there could be no question of intervention in the Jurats' findings. It would be necessary to demonstrate that no reasonable body of Jurats could have concluded that the statement of 23rd July, 1994, was true. Despite the valiant efforts of Advocate Hoy, his submissions do not begin to move this Court in the direction of questioning the Jurats' verdict. The Court has clearly noted the exclusivity, in Advocate Hoy's submissions, of

the confession and subsequent question-and-answer interview on 23rd July, 1994. But the applicant's conviction by the Royal Court was based also on her admissions to the police officers and in the course of the trial she made, under oath, a number of inculpatory answers, such as the supply to Watson of 50 tablets which she said came from her husband. Another supply of 150 tablets took place on the night before her arrest. At one point in her cross-examination, Advocate Olsen asked her: *"So this ex-paratrooper, hard man, villain of the piece, drugs-dealer* [referring to a man called Steve McEwan] *for some reason or another has £3,000 going from your account into his?"* A: *"Not from my account, no"*. Q: *"Well, whose account was it, then?"* A: *"It was always cash and it got put into his account, and it wasn't always me that did it. I did it twice, I believe and Mark did it a few times"*. That is only one of a number of examples of evidence from the applicant of her complicity in the extensive drug-dealing.

Sentence

The Crown, in the light of the evidence emerging in the course of the trial, adjusted its conclusions originally decided at the abortive hearing of 2nd May, 1995. It no longer took the view that the applicant played a lesser rôle than others in the supply of drugs in Jersey. On the evidence the Crown was wholly justified in fixing the starting point at 13 years, adjusting that downwards to 12 years, giving credit for the applicant's youth and previous good character. It gave no discount for the earlier pleas of guilty, on the basis that the benefit to be derived from saving Court-time had been thrown away by the applicant's prevarication in May, 1995. In all this, the Court was acting in accordance with the Campbell guidelines. Up-to-date, the applicant's case was the worst in the depressing saga of illicit drug-dealing in the Island.

The thrust of Advocate Hoy's submissions was the failure, he submitted, of the Royal Court to take full note of the evidence of Doyle and Watson at the applicant's trial intended to reflect a minimising of the applicant's rôle. These two co-accused were clearly seeking to remove from their earlier statements to the police the suggestion that the applicant was the prime mover. The Royal Court was fully entitled to disregard the evidence.

This Court sees no reason to interfere with the view of the Royal Court which the Deputy Bailiff stated on 20th September, 1995, when citing the passage (cited above) on the finding of guilt on 27th July, 1995. He said:

> ***"On p.8 of the Campbell Judgment the Court of Appeal said this:***

> *'In our judgment the appropriate starting point for a case of drug trafficking of that nature (that is the nature of the offences in Fogg) 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'.*

The Deputy Bailiff concluded:

> *"There is, as we see it in this case, much worse involvement than that of Fogg. Mrs. Melville has not only collected drugs, met suppliers, made lists, used her home as a drug depôt and arranged banking of the proceeds, but she was right at the heart of this dreadful trade. Fogg was concerned with £5,000 or 1,000 units of LSD. As we have said, Mrs. Melville was dealing with £34,000 worth of drugs. There were four separate importations and there was trafficking over several months. This is undoubtedly the most serious drugs case to come before this Court".*

This Court's only hesitation in endorsing the Royal Court's correct application of the Campbell guidelines is whether some credit ought to be given for the initial pleas of guilty. While the criminal justice process after 2nd May, 1995, was protracted as a direct result of the change of plea, brought about entirely by the applicant's prevarication, nevertheless this Court thinks that some small discount ought to be given to the applicant. She did maintain her guilt on all counts on 4th April, and even previously - in January, 1994 - she had pleaded guilty to the first two counts of smuggling MDMA and LSD.

Leave to appeal against sentence is granted and the appeal is allowed to the extent that this Court substitutes a sentence of 11 years for that of 12 years' imprisonment. In addition this Court varies the confiscation order from £4,919 to £3,919. Mr. Olsen has pointed out that an amount of £1,000 which was held as a deposit on the flat at Commercial Buildings was wrongly included in the calculation of drug trafficking. Under Article 29(3) of the Court of Appeal (Jersey) Law, 1961, this Court varies the confiscation order made at the trial.

Authorities.

Campbell, Molloy and MacKenzie v. A.G. (4th April, 1995) Jersey Unreported CofA.

A.G. v. Lundy (20th July, 1995) Jersey Unreported.

A.G. v. Raffray (20th July, 1995) Jersey Unreported.

A.G. v. Cappie and Hailwood (4th December, 1991) Jersey Unreported; (1991) JLR N.13.

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