

COURT OF APPEAL

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15th April, 1996.

Before: J.M. Collins, Esq., Q.C., President,
R.C. Southwell, Esq., Q.C., and
J.G. Nutting, Esq., Q.C.

Paul Andrew Perchard,

- v -

The Attorney General

Appeal of Paul Andrew Perchard against a total sentence of 9 years' imprisonment, passed on 22nd November, 1995, by the Superior Number of the Royal Court, to which the appellant was remanded by the Inferior Number on 3rd November, 1995, 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 a sentence of 9 years' imprisonment was imposed;
 - count 2: (cocaine) on which count a sentence of 9 year's imprisonment concurrent was imposed.

- 4 counts of possession of a controlled drug, contrary to Article 6(1) of the Misuse of Drugs (Jersey) Law, 1978:
 - count 3: (diamorphine) on which count a sentence of 6 months' imprisonment, concurrent was imposed;
 - count 4: (cocaine) on which count a sentence of 6 months' imprisonment, concurrent was imposed;
 - count 5: (cannabis resin) on which count a sentence of 3 months' imprisonment, concurrent was imposed; and
 - count 6: (herbal cannabis) on which count a sentence of 1 month's imprisonment, concurrent was imposed.

Leave to appeal was granted by the Deputy Bailiff on 31st January, 1996.

Advocate R.G. Morris for the appellant.
The Solicitor General.

JUDGMENT

5 THE PRESIDENT: On 3rd November, 1995, the Appellant, Paul Andrew Perchard, together with another pleaded guilty before the Inferior Number of the Royal Court to a number of offences under the Customs & Excise (General Provisions) (Jersey) Law, 1972 and the Misuse of Drugs (Jersey) Law, 1978. They were remanded to the Superior Number for sentence and on 22nd November, sentences were passed of various lengths but all concurrent with two concurrent sentences of nine years' imprisonment.

10 Both Defendants applied for leave to appeal which was granted on 31st January, 1996, by the Deputy Bailiff, but the co-accused, John Phillip McConnachie, has since withdrawn his appeal.

15 The most serious of the offences, which carried the nine year sentences to which we have referred, related to a substantial importation of heroin and cocaine on 10th May, 1995. The two co-accused, acting in concert, were concerned with the fraudulent evasion of the prohibition of importation of these drugs in an aircraft which landed at Jersey Airport from Gatwick. The co-accused, McConnachie, was a passenger on the aircraft and the Appellant, Perchard, was a member of the cleaning staff employed at the Airport. McConnachie was a frequent traveller and on this occasion as on others was observed by the cabin crew to visit the lavatory ostensibly to clean his teeth. He was seen to go quickly to the front of the aeroplane on landing and then to leave the Airport and drive away. Meanwhile the Appellant, Perchard, was one of the crew who came on board to clean the aeroplane. He cleaned the middle and rear of the aircraft including the lavatories, and then when his team was asked to move on to another incoming aircraft he asked permission to stay on board, which he did for the space of some 20 minutes, instead of the expected few minutes only.

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35 Unknown to them they were each under surveillance at least from the time of his arrival in the case of McConnachie and from the time he finished his shift in the case of the Appellant, Perchard.

5 McConnachie drove to his home and then drove out again in the direction of the Airport; he made a telephone call from a telephone box at First Tower, no doubt to arrange or confirm a rendezvous with the Appellant, Perchard, who had been seen running to his van at the end of his shift carrying a small bag.

10 At Beaumont Hill they were seen driving in the opposite direction the one to the other, whereupon McConnachie turned his motor car around and followed Perchard to the Weighbridge. McConnachie got out of his vehicle and ran towards Perchard's van where he was seen crouching down by the passenger's door talking to McConnachie. He was then seen by the officers, who were by now approaching, to be leaning into the vehicle and handing something over. At this point Detective Sergeant Coles, one of the police officers, grabbed hold of Perchard. McConnachie, who was holding something in his hand, stood up and ran away through the Bus Station. Two officers, Detective Constables Beghin and Megaw gave chase, and caught and arrested him.

20 McConnachie in his flight dropped bags containing packages of heroin and cocaine. In total the contents of these packages taken together with spilt substances on the road comprised 102.12 grams of heroin and 10.02 grams of crack cocaine. The total street value of the heroin was estimated at between £20,424 and £30,636 and of the cocaine at some £2,000 to £5,000. It is to be observed that the evidence was that there was a recent increase in the price of heroin from £20 for a "deal" or "score bag" of heroin to £30. This serves to underline the attraction of this and similar Islands to drug dealers who are looking to make a profit on importation. Better prices are to be obtained in the Channel Islands than on the mainland, quite possibly because of the scarcity being created by the policy adopted by these Courts. This Court will look both to quantities and values of drugs imported or dealt with, as was made clear in the guideline case of A.G. -v- Campbell, Molloy, MacKenzie (4th April, 1995) Jersey Unreported CofA. An escalating price due to scarcity makes this approach all the more appropriate in considering the proper sentence to be imposed in such cases.

40 The arrest of the two co-accused was followed by searches of their homes. These searches revealed minute quantities of heroin and cocaine at McConnachie's home and the same at Perchard's home together with a quantity of cannabis resin and herbal cannabis. These gave rise to the charges which are the subject of counts 3 to 6 of the indictment, in respect of which concurrent sentences were passed on McConnachie of six months and on Perchard of six months, one month and three months. From these sentences he does not appeal. A set of scales, such as form part of the equipment of a drug dealer, was found at McConnachie's home.

50 The offences which were visited by sentences of nine years' imprisonment were indeed grave ones. The importation of heroin

was the largest known to have been made into this Island. Crack cocaine is well known to be particularly addictive and again this was the first importation of crack to have come to light in the Island. The social effects of the development of a crack culture in a community are well known. It is not too much to say that the growth of a crack culture in Jersey would expose the community to risks of violent crime and social deterioration which cannot be tolerated as a possibility.

A further grave feature of this particular crime is that it was carried out by two people working together in a carefully laid plan, the one being the importer and the other making use of his position as an employee at the Airport.

It follows that both by way of the protection of the public and as a deterrent to others who may be tempted to seek easy money or an easy way of life by such importations or dealings as come before the Court the sentences of the Royal Court and of this Court can and must be expected to be severe, and the facts of this case place it high in the scale of gravity.

The nature of the submissions made to us make it necessary for us to deal in summary with the antecedent history of the co-accused McConnachie. He was at the time of the commission of the offence 30 years of age and a native of Jersey and single, living with his mother and brother. He was unemployed at the time of his arrest and is stated in the social enquiry report to have "*done occasional work for members of his family*". From the report of Dr. Riccio of the Priory Hospital we learn that since the age of 14 he had been abusing drugs of increasing seriousness. Over the years McConnachie had been convicted of a large number of offences, most of them drug related. The first was in 1983 when he was 19 years of age. This was followed by a series of offences of importing or being in possession of cannabis resin between 1984 and 1993. In 1984 he was sentenced to imprisonment in France and then in 1986 in Jersey, when he was sentenced to 6 months' imprisonment for possession of cannabis, followed by probation with a condition that he undergo treatment in respect of a similar offence in 1989, followed finally by a sentence of 18 months' imprisonment by the Royal Court for the supply and possession of cannabis.

The Appellant, Paul Perchard, on the other hand is of previous good character, having appeared before the Courts only in 1984 and 1988 for two offences of driving without due care and attention, those sentences having been rightly ignored by the Royal Court and which we likewise ignore. He is 29 years of age and has lived in Jersey all his life. He had a good upbringing and obtained a City and Guilds certificate as a carpenter. He has been in steady employment for all or most of his life on a full time or seasonal basis. Until sentence he lived with his fiancée by whom he has a very young child. Some six months before he

committed these offences he had moved from smoking occasional cannabis to using heroin. He is therefore an example of a man who has progressed from cannabis to a harder drug. He had been using heroin for some six months before he was arrested for these offences. He had on previous occasions purchased heroin from McConnell and when it became in short supply they had the idea of importing the drugs through the Airport at which he worked. He stated that he had considerable quantities of cannabis at home to enable him to manage without heroin when it came into short supply.

Against this background, we approach the mitigation which has been advanced on behalf of the Appellant, in reduction of a starting point of 13 years' imprisonment following the guidelines in Campbell. It was submitted to us that the appropriate sentence was one of 8 years' imprisonment rather than the 9 years imposed and that the mitigating factors applied to the starting point of 13 years' imprisonment justified such a variation of the sentence.

First it was submitted that there is a discrepancy between the sentences passed on the Appellant and on his co-accused and that this had given rise to feelings of injustice on the part of the Appellant.

At first sight it would appear inequitable that the same sentence should have been passed on McConnell with his bad record and on the Appellant who is to be treated as a man of good character. In addition it could be said that McConnell was more leniently treated than might be expected in the light of the psychiatric report on him.

However, we are of the view that the explanation for this apparent discrepancy is to be found in the fact that in the case of the Appellant there was a manifest abuse of his privileged position as an employee with access to aircraft and with the power to come and go in areas which would be prohibited to or at least would give rise to suspicion in the case of others. We find that this element counter-balances the effect of his previous good character in the making of any comparison with the sentence passed upon his co-accused, McConnell.

We would add that those who are tempted to abuse their position in this way should be aware of the fact that their punishment at the hands of the Courts in this Island is likely to be severe.

Secondly, reliance was placed on the fact already referred to that the Appellant has a fiancée and a young child born prematurely to her. Whether or not in the ordinary way this is to be regarded as a mitigating factor, it is in our view not sufficient to disturb the sentence passed in the light of the abuse of his privileged position to which we have made reference.

5 Thirdly, our attention was drawn to the terms of a good reference from his employers which had been before the Royal Court and was with our papers. As to this again we say that that is not sufficient to disturb the sentence having regard to the matters to which we have made detailed reference. Accordingly this appeal is dismissed.

Authorities.

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

A.G. -v- Melville (20th September, 1995) Jersey Unreported.

R. -v- Walsh (1980) 2 Cr.App.R.(S) 224

Butterworth's "Current Sentencing Practice": Release 25 1-iii-93:
A9-2G01: p.10905: R. -v- Tremarco (1979) 1 Cr.App.R.(S) 286.