

ROYAL COURT
(Samedi Division)

89.

13th May, 1996

Before: The Deputy Bailiff, and Jurats
Blampied and Vibert

POLICE COURT APPEAL (The Relief Magistrate, Mr. Short)

Shaun Ian Owens

- v -

The Attorney General

Appeal against a sentence of 6 months' imprisonment, imposed on 22nd March, 1996, following a guilty plea to:

1 count of being knowingly concerned in the fraudulent evasion of the prohibition on the importation of a controlled drug (cannabis resin), contrary to Article 77(b) of the Customs and Excise (General Provisions) (Jersey) Law, 1978.

Appeal dismissed.

The Appellant on his own behalf.
Advocate P. Matthews on behalf of the
Attorney General.

JUDGMENT

THE DEPUTY BAILIFF: This is an appeal by Shaun Ian Owens who has ably represented himself before us this morning.

Owens arrived on the car ferry on 21st March, 1996, driving an English registered van. During a routine Customs examination a small quantity of white powder was discovered in the glove compartment. Owens admitted that it was amphetamine sulphate that he had forgotten about. The reason the search was carried out was that when Owens was asked by Customs Officers to turn out his pockets there was discovered what was described as certain drugs paraphernalia. It is important for us to note that the Customs Officer asked Owens specifically if he had any drugs with him and he was told that this was the opportunity to disclose them and that such action would be viewed favourably by the Court when the matter came to trial. He assured the Officer that he had no drugs and after the amphetamine sulphate was found in the glove compartment he was again invited to disclose the whereabouts of any drugs. Again, he was adamant that there were none.

Behind the driver's seat the drugs detector dog found a small amount of cannabis resin and then there was a further denial and a further search and that further search revealed the 9 oz. of cannabis concealed in the van, having a street value in Jersey of about £1,400.

The defence put forward by Advocate Pearmain, who was then representing Mr. Owens before Judge Short was that Owens was a self-employed carpet fitter. He is married, has two children aged ten and five. He apparently suffers from severe claustrophobia and takes cannabis and other drugs to alleviate his problem. He had apparently forgotten that there was cannabis in the van. He had it there because his wife did not allow cannabis in the house. The amphetamine was to keep him going during the long hours that he works as a carpet fitter and as a carpet fitter he was coming legitimately to Jersey.

He was not charged with intent to supply, but when he appeared before Judge Short, where all matters of mitigation were put by Mrs. Pearmain, he was sentenced to six months' imprisonment in what Judge Short described as an 'act of mercy'. We have to say that he has a criminal record but there is nothing in it which is drug related.

Owens appeals today on the grounds that the sentence was manifestly excessive and essentially what that comes down to is that he uses the cannabis for his own use because of his extreme nervous disposition and also he told us today that he had no idea that Jersey had a drugs policy which is as severe as it is. Although Mr. Owens argued before us that he had no intention of selling the cannabis, that point was not taken in the Court below and is not taken by Advocate Matthews before us.

Let there be no doubt in anybody's mind. Unless there are exceptional circumstances, the importation of drugs into this Island will always carry with it a sentence of imprisonment. We

do not need - despite the very helpful cases cited to us by Advocate Matthews - to compare case with case. The fact that Owens was unaware of the severity of the penalties imposed in this jurisdiction is neither here nor there. As was said only recently
5 by the Court of Appeal in the case of McHardy -v- A.G. (15th April, 1996) Jersey Unreported:

10 *"It was urged on behalf of the Applicant in mitigation before the Royal Court that he was not aware of the levels of sentencing in this Island. We take this opportunity of declaring that this was not in our view a mitigating factor and in general terms it would be right to say that if an offender elects to import forbidden drugs into the jurisdiction of this Court he or she takes the risk of*
15 *being punished in accordance with the laws and practice of this Island".*

Again, the fact that the drugs were not apparently for supply is irrelevant. In Campbell, Molloy, and MacKenzie -v- A.G. (4th
20 April, 1995) Jersey Unreported CofA, the Court of Appeal said this:

25 *"We also reiterate that no distinction is to be drawn between cases involving importation and those involving supplying or possession with intent to supply".*

We are faced with the question as to whether the circumstances as outlined to us were entirely exceptional. We have seen examples, one in Jersey of A.G. -v- Ingham (9th
30 February, 1996) Jersey Unreported; and two in England R. -v- Leatherbarrow (1992) 13 Cr.App.R.(S) 632; and R. -v- Green (1992) 13 Cr.App.R.(S); where there were real illnesses which were potentially life threatening where sentences were reduced.

35 We have had the benefit of a very detailed and careful psychiatric report and the conclusions of the psychiatrist, Dr. Blackwood, at the end of his report are these:

40 *"Given his personality disorder and his current need for medication and close watch, it seems clear to me that his imprisonment is having a markedly deleterious effect on his mental state and ability to function. It is possible though difficult to predict that the stress on him will*
45 *have prolonged adverse effect on his mental state, and that it may take him some considerable time to regain the somewhat tenuous equilibrium he had over the last few years".*

50 Balanced against that, of course, we have the case of Joseph Brian Kay (1980) Cr.L.R. 284 which was decided in England on 21st July, 1980, where the Court said:

5 *"The offender's individual reaction to prison life is not a matter which should affect the sentence. When sentencing a man the court is concerned with the character of his crime and his individual circumstances as revealed in his criminal background, if any".*

The decision went on to say this:

10 *"....the Court could not accept the submission that if a person was shown to suffer extraordinarily as a result of prison, the Court could take his reaction into account on considering his appeal against sentence. How a man reacts to prison life is not a matter which should affect the principle of the sentence; when sentencing a man the court is concerned with the character of his crime and his individual circumstances".*

20 We are faced with a difficulty on the appeal because it is quite clear that the sentence was not wrong in principle. Indeed, had Mr. Short referred the matter to this Court instead of sentencing Owens in the Court below the sentence might have been higher. It is also clear to us that the sentence was not, on that basis, wrong in principle and the only ground of appeal is that
25 there are exceptional circumstances and we have given very close regard to everything which Mr. Owens has said to us in his appeal this morning. We have very carefully re-read the psychiatric report and the background report but in the circumstances we regret that we cannot find that there was anything so exceptional
30 that this relatively lenient sentence has to be interfered with in any way at all and therefore the appeal is dismissed.

Authorities

A.G -v- Broadhurst & Anor. (27th October, 1995) Jersey Unreported.

McHardy -v- A.G. (15th April, 1996) Jersey Unreported CofA.

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

A.G. -v- Pringle (12th July, 1993) Jersey Unreported.

Joseph Brian Kay (1980) Cr.L.R. 284.

A.G. -v- Ingham (9th February, 1995) Jersey Unreported.

Thomas Leatherbarrow (1992) 13 Cr.App.R.(S) 632.

Paul Palmerston Green (1992) 13 Cr.App.R.(S) 613.

Commentary on Leatherbarrow and Green (1992) Cr.L.R. 520.

Authorities.

Khanna -v- Lovell White Durrant [1994] 4 All ER 267.

ROYAL COURT
(Samedi Division)

13th May, 1996.

90.

P.R. Le Cras, Esq., Lieutenant Bailiff,
Single Judge.

Between:	Pacific Investments Limited	Plaintiff
And:	Robert Christensen	First Defendant
And:	Alison Mary Holland	Second Defendant
And:	Michael Allardice	Third Defendant
And:	Graeme Elliott	Fourth Defendant
And:	Firmandale Investments Limited	Fifth Defendant
And:	James Hardie Industries Limited	Sixth Defendant
And:	James Hardie Finance Limited	Seventh Defendant
And:	Govett American Endeavour Fund Limited	Eighth Defendant

Advocate N.F. Journeaux for the Plaintiff.
Advocate M. St.J. O'Connell for the First, Second,
Third and Fourth Defendants.

Application by the First, Second, Third, and Fourth Defendants for an Order that a date be fixed (for the trial of their application to strike out or stay the Plaintiff's Order of Justice) for the purpose only of receiving documents in response to their *subpoena duces tecum* issued against Ian David Moore.