

COURT OF APPEAL

128.

7th July, 1997.

Before: Sir David Calcutt, Q.C., (President)  
R.D. Harman, Esq., Q.C., and  
R.C. Southwell, Esq., Q.C.

Derrick Connolly,

- v -

The Attorney General

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Application of Derrick Connolly for leave to appeal against a total sentence of 11 years' imprisonment, passed on 10th February, 1997, by the Superior Number of the Royal Court to which the Appellant was remanded by the Inferior Number on 24th January, 1997, following guilty pleas to:

- 1 count 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 11 years' imprisonment was passed; and
- 1 count of supplying a controlled drug, contrary to Article 5(b) of the Misuse of Drugs (Jersey) Law, 1978:
- Count 2: diamorphine, on which count a sentence of 11 years' imprisonment, concurrent, was passed.

Leave to appeal was refused by the Deputy Bailiff on 7th April, 1997.

*[A co-accused, Lynda Alice Hines, who pleaded guilty to counts 1,3,4, and 5 and was sentenced to a total of 18 months' imprisonment, has not applied for leave to appeal; Co-appellant, Stephen John Taylor, who pleaded guilty to count 6 and was sentenced to 9 years' imprisonment, applied for leave to appeal. The application which was refused by the Deputy Bailiff on 7th April, 1997, was renewed to the plenary court under Article 39 of the Court of Appeal (Jersey) Law, 1961, and was abandoned on 9th June, 1997].*

Advocate J.D. Melia for the Applicant.  
J.A. Clyde-Smith, Esq., Crown Advocate.

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JUDGMENT

HARMAN JA: On 15th November, 1996, this applicant, Derrick Connolly, appeared before the Inferior Number of the Royal Court together with Lynda Alice Hines and Stephen John Taylor charged in an indictment containing seven counts. In count 1 he was charged jointly with Hines with being knowingly concerned in the fraudulent evasion of the prohibition on importation of a controlled drug, namely diamorphine, that is heroin, contrary to Article 77(b) of the Customs and Excise (General Provisions) (Jersey) Law, 1972. In count 2 he was charged alone with supplying the same controlled drug to his co-accused, Taylor. Hines was charged in count 3 with being concerned in the supply of the heroin by the applicant to Taylor and in counts 4 and 5 with separate offences relating to the possession of cannabis and cannabis resin. Finally Taylor was charged, in count 6, with possession of the same heroin with intent to supply it to another, contrary to Article 6(2) of the Misuse of Drugs (Jersey) Law, 1978 and in count 7 with the offence of simple possession which realistically was an offence charged in the alternative. At this stage the applicant, Connolly, pleaded not guilty to counts 1 and 2 and Hines not guilty to counts 1 and 3. Hines pleaded guilty to counts 4 and 5, and Taylor pleaded guilty to both counts 6 and 7. Connolly and Hines were then remanded for trial to take place on 21st January, 1997, and Taylor was remanded for sentence.

On 13th January, Hines indicated through Mr. Gollop to the Crown Advocate that she intended to change her plea and expressed willingness to give evidence for the prosecution against Connolly. This was at once communicated to Connolly's counsel. On 15th January Connolly notified his change of plea on counts 1 and 2. These pleas were then taken on 24th January when all three defendants were remanded to be sentenced by the Superior Number on 10th February. On that day Connolly was sentenced to concurrent sentences of eleven years' imprisonment on counts 1 and 2. Taylor was sentenced to nine years' imprisonment on count 6. Finally, for completeness, Hines was sentenced to a total of eighteen months' imprisonment for her minor rôle in this story.

On 7th April the Deputy Bailiff refused leave to appeal against the sentences of Connolly and Taylor; Connolly alone now renews his application for leave before this Court.

The facts are as follows: the heroin with which he was concerned amounted to 57.96 grams with a street value of approximately £17,000. The applicant lives in Birmingham. On 1st July, 1996, he flew from Luton to Amsterdam. His purpose was to collect a consignment of heroin in Holland and bring it to Jersey. There he was to pass it on to Taylor. Arrangements were made with the assistance of Hines for an air ticket to be available for him in Jersey so that he would be able to return to Birmingham on 3rd July under an assumed name. However, this was not to be.

On the evening of 2nd July he arrived in Jersey by Ferry from Carteret. He walked to a nearby public house where he made several telephone calls; one was apparently to Hines who was to meet him with the air ticket. This meeting took place shortly afterwards at another public house call "Chimes". They then both went and sat in Hines' car. In due course Taylor arrived in a car and parked close by. Connolly thereupon walked over to Taylor's car and put a cellophane package containing the heroin into it. Connolly had been under observation by police officers throughout and all three were promptly arrested. The cellophane package was recovered from Taylor's car. The following day, 3rd July, Connolly was interviewed but declined to answer any questions.

He is aged 53. He has a long record of convictions for dishonesty and violence but this is his first conviction for a drugs offence.

At his trial the Crown Advocate moved for a starting point of eleven years' imprisonment for both men but the Court decided that the applicant's involvement was greater to a small degree. The Bailiff when sentencing said:

*"Connolly was at the heart of a vicious and evil trade, pedalling misery and degradation."*

The Bailiff also said:

*"We have examined your involvement, Connolly, against the involvement of Fogg as referred to in the Campbell case and we can find no material difference. It is true that Fogg had a previous conviction for a drugs offence, but, on the other hand, you have a very bad record and you were, in relation to this quantity of heroin, the source of supply."*

The Bailiff was, of course, referring to the case of Fogg -v- AG (1991) JLR 31 CofA. The Bailiff also referred to AG -v- Raffray (20th July, 1995) Jersey Unreported which was considered by the Court of Appeal in 1996; and to the case of AG -v- Cain (9th September, 1996) Jersey Unreported but said that the Court had found them to be of little assistance. In the case of Raffray as has been pointed out to us today Raffray provided an address to which a similar quantity of heroin was imported through the post and he was charged with the same offence as is charged in this case against Connolly, but the facts of the case were markedly different. The Bailiff finally stated:

*"It is the Campbell case which lays down the guidelines and we consider the appropriate starting point in your case is one of twelve years' imprisonment."*

This Court has been reminded that in Fogg it was emphasised that if the Royal Court increases the conclusions of the Crown that is not *per se* a ground for allowing an appeal against the sentence imposed but it does mean that in an appeal where those facts apply then the circumstances of the conviction require the most careful scrutiny of the Court of Appeal. In the event the Royal Court sentenced the applicant on the basis that there were no real mitigating circumstances except his eventual plea of guilty. This was, on any view, very late in the day and the Crown submits that it was encouraged by the action of Hines in changing her plea. The co-accused, Taylor, had pleaded guilty when first arraigned on 15th November. However, it is submitted to us that whereas Taylor had been caught *in flagrante delicto* the situation of the applicant was distinguishable. We are not impressed by this argument. It is true that the drugs were recovered from Taylor's car but Connolly had been seen to put them there by observing police officers and both men were arrested immediately.

It is further submitted to us that the applicant received medication for angina and anxiety when in prison and was, he would say, in a dazed state when he saw a Probation Officer; consequently the Court did not have the benefit of a full background report. According to the Probation Officer she knew Connolly was admitting being involved in importing heroin to Jersey but he declined to speak about the actual incident to her. We are told the applicant would say that his inability to pay various financial debts coupled with his illness caused him to suffer from depression which was a contributing factor in his decision to become a drugs courier. The Crown Advocate points out that Connolly's counsel would be expected to submit any relevant matters not covered in the Probation Report and which he, Connolly, might have wished to be before the sentencing Court.

We have been referred to the case of AG -v- Le Tarouilly (2nd December, 1996) Jersey Unreported where the defendant was sentenced by the Superior Number to twelve years' imprisonment from a starting point of fourteen. In that case the accused was stopped at Jersey Airport in possession of 471 grams of heroin with a street value of over £140,000. He received a discount of two years for his plea of guilty, although the Court pointed out that it might have been difficult to do anything else in the circumstances. The same comment could realistically be made with some force here, although the two cases turn on very different facts. However, in our opinion it is impossible to say that the Court was wrong to distinguish the relative positions of the applicant and Taylor in the way that it did, or to criticise the sentence of eleven years' imprisonment in Connolly's case as being in any way excessive. Therefore, this application is dismissed.

Authorities

Fogg -v- AG (1991) JLR 31 CofA.

Campbell, Molloy and MacKenzie -v- AG (1995) JLR 136 CofA.

AG -v- Raffray (20th July, 1995) Jersey Unreported.

Raffray -v- AG (17th January, 1996) Jersey Unreported CofA.

AG -v- Cain (9th September, 1996) Jersey Unreported.

AG -v- Le Tarouilly (2nd December, 1996) Jersey Unreported.

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