

ROYAL COURT

7th October, 1988

Before: The Bailiff and
Jurats Lucas and Orchard

Her Majesty's Attorney General

- v -

Frederick William John Augustus Hervey

One count of importation of a controlled drug,
contrary to Article 23 of the Customs and
Excise (General Provisions) (Jersey) Law, 1972,
and one count of being in possession of
a controlled drug, contrary to Article 6(1)
of the Misuse of Drugs (Jersey) Law, 1978.
The accused was addicted to the drug cocaine.
Counsel for the defence urged the Court to impose
a non-custodial sentence on the grounds that
any delay in commencing "serious" treatment for the
accused's addiction would result in a
significant threat to his life.
This view was confirmed by an eminent
professor specialising in the subject
of drug addiction who was called by the defence
to give evidence.

H.M. Attorney General for the Crown
Advocate D.E. Le Cornu for Hervey.

JUDGMENT

BAILIFF: Mr. Le Cornu, the Court has given very anxious consideration to your address and I have to say at once that you have put before the Court everything that you could possibly have said on behalf of your client. However, the question which the Court has to ask itself is this: "Is there a rule of law that prevents sick or ill persons or patients who commit offences, from being punished, so long as they are fit to plead"? We have come to the conclusion that there is no such rule of law. Therefore the fact that a person, being fit to plead, commits offences knowing what he or she is doing, even though they may be in a condition which one would perhaps regard as that of a patient, is not a ground in appropriate circumstances, for not imposing some form of punishment. It is not a principle in law for which we can find any justification.

So, we come to this particular case and to whether we should depart from the very clear principle which this Court has laid down in the past, namely that persons who import or who are in possession of 'Class A' drugs must expect a term of imprisonment unless there are exceptional circumstances. We considered whether we should defer sentencing until your client had had an opportunity of attending the clinic in England and until we knew the success or otherwise of the treatment and his perseverance with the treatment. However, because there was some doubt as to whether, if he did not persevere, this Court would have lost the opportunity of sentencing him because he would be outside the jurisdiction, we think that it is a course which it would be unwise to take.

We therefore come back to the question of whether there were exceptional circumstances in this case which would entitle the Court not to adhere to the principle of a custodial sentence. As the Attorney General has rightly said, the matter of a custodial sentence hinges on the question of deterrents, both to the individual concerned and to others. Of course, there is much in what Mr. Le Cornu has said, that a sentence of imprisonment for a drug addict will not deter him if he is determined to continue his addiction. But it will act, we trust, as a warning to persons who bring drugs into this Island, whether for their own use or otherwise, that this Court is determined that the policy of sending people to prison, unless, I repeat, there are exceptional circumstances, will be adhered to.

We accept that this importation and possession was for the accused's own personal use, but there is no distinction made in the law between those who break the law and are addicts and those who are suppliers. That is merely a question of degree. An offence is clearly committed.

We have examined the circumstances in this case to see whether there were exceptional matters, both in relation to the offence itself and in relation to the offender which would entitle us to depart from the Court's normal sentencing practice. Although we have paid great attention to the evidence of Professor Edwards we have come to the conclusion that there are no exceptional circumstances which would entitle us to depart from that practice. The conclusions are therefore granted and you are sentenced on count 1, to a term of imprisonment of twelve months and on count 2, to a term of imprisonment of nine months, concurrent. And there will be an order for the destruction of the drugs.