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ROYAL COURT

170.

(Superior Number)

exercising the appellate jurisdiction conferred upon
it by Article 22 of the Court of Appeal (Jersey) Law, 1961.

18th November, 1991

Before: The Bailiff and Jurats Vint, Blampied
Myles, Orchard, Hamon and Herbert.

Application of Joseph Francis Gaughan for leave
to appeal against the sentence of six months'
imprisonment passed on him by the Royal Court
(Inferior Number) on 11th October, 1991, when
the Court discharged a probation order made on
5th April, 1991, and substituted therefor the
said sentence in respect of one count of
breaking and entering and larceny to which the
applicant had pleaded guilty. Leave to appeal
was refused on 16th October, 1991, by the
Bailiff.

Miss S. C. Nicolle, Crown Advocate.
Advocate N. F. Journeaux for the applicant.

JUDGMENT

THE BAILIFF: As I said before we retired, as I had previously refused leave to appeal, I took no part in the decision today, which is the decision of the Jurats.

The Court agreed to treat the application as the appeal proper and will give its decision on that basis, Mr. Journeaux.

The Court has had to ask itself whether it was prepared to continue with the probation order or confirm the sentence of imprisonment imposed by the Inferior Number.

The Court was clear in its mind that there had been a flagrant breach of the order of the Inferior Number and, that when the probation order was imposed, the appellant had been clearly warned that he risked a six month sentence; the word used was "probably" six months, but there was no doubt that he was aware of the risk. Furthermore, the Court felt that the appellant was less than frank in his appearance before the Inferior Number in October, when he knew that he had been picked up on a drugs offence, but did not disclose that to his Counsel.

We are satisfied that the lower Court did not err in any way in imposing the six month sentence; it was not manifestly excessive; and that has been admitted by Mr. Journeaux. Nor was it wrong in principle and accordingly the appeal has been dismissed.

Authorities

Loi (1937) sur l'Atténuation des peines et sur la Mise en Liberté Provisoire: Article 5(3)(iii).

Criminal Proceedings (Computation of Sentences) (Jersey) Rules, 1968.

A.G. v. McConnachie (28th March, 1990) Jersey Unreported.

A.G. v. Sampson (1965) JJ 495.

A.G. v. Brady (7th January, 1991) Jersey Unreported.

Thomas Current Sentencing Practice:

R. v. Crowley (19th November, 1971) (D.3.3.(b)): p.4041

R. v. McDonald (1988) 10 Cr. App. R. (S) xxx (D.3.3.(c)): p.4042.

R. V. Needham (1989) 11 Cr. App. R. (S) xxx (D.3.3.(c)): p. 4042/1.