

COURT OF APPEAL

79.

25th April, 1994.

Before: Sir Godfray Le Quesne, Q.C., (President),
Sir Charles Frossard, K.B.E., and
R.C. Southwell, Esq., Q.C.

Alan James Smitton;
Steven William Johnson;
Leonard William Watkins; and
Rodney Julian Bevis

-v-

Her Majesty's Attorney General

Application of **Alan James Smitton** for leave to appeal and for an extension of time within which to apply for leave to appeal against a total sentence of 2 years and 5 months' imprisonment imposed on 29th July, 1993, by the Royal Court (Superior Number), to which the Appellant was remanded to receive sentence following a guilty plea, on 9th July, 1993, before the Inferior Number, to:

1 count of grave and criminal assault, on which count the Applicant was sentenced to 2 years' imprisonment;

And following admitted breaches of:

a Probation Order imposed in the Magistrate's Court on 15th February, 1993, after a guilty plea to: 1 count of breaking and entering and larceny, for which breach the Court discharged the Probation Order and sentenced the Applicant to 4 months' imprisonment, consecutive;

a Probation Order imposed in the Magistrate's Court on 6th April, 1993, after a guilty plea to: 1 count of allowing himself to be carried in a motor vehicle, which he knew to have been taken and driven away without the owner's consent, contrary to Article 28(1) of the Road Traffic (Jersey) Law, 1956, for which breach the Court discharged the Probation Order and sentenced the Applicant to 3 weeks' imprisonment, consecutive; and

a Binding Over Order imposed in the Magistrate's Court on 6th April, 1993, after a guilty plea to: 1 count of malicious damage, for which breach, the Court discharged the Binding Over Order and sentenced the Applicant to 1 week's imprisonment, consecutive.

Application of **Steven William Johnson** for leave to appeal, for an extension of time within which to appeal, and for leave to withdraw a notice of abandonment of appeal against two concurrent sentences of 4 years imprisonment each passed on him by the Royal Court (Superior Number) on 26th October, 1992, in respect of 2 counts of possession of a controlled drug with intent to supply it to another, contrary to Article 6(2) of the Misuse of drugs (Jersey) Law, 1968, following his conviction before the Inferior Number, *en police correctionnelle*, on 22nd September, 1992.

Leave to appeal was refused by G.M. Doray, Esq., on 4th December, 1992.

Application of **Leonard William Watkins** for leave to appeal and for an extension of time within which to apply for leave to appeal against a total sentence of 2 years' imprisonment imposed on 19th October, 1993, by the Royal Court (Superior Number), to which the Appellant was remanded to receive sentence following guilty pleas, on 10th September, 1993, before the Inferior Number, to:

- 1 count of supplying a controlled drug (cannabis resin), contrary to Article 5 of the Misuse of Drugs (Jersey) Law, 1978, (count 1 of the indictment), on which the Applicant was sentenced to 2 years imprisonment;
- 1 count of possession of a controlled drug (cannabis resin) with intent to supply it to another, contrary to Article 6(2) of the said Law (count 2), on which the Applicant was sentenced to 2 years' imprisonment (concurrent); and
- 1 count of possession of a controlled drug (cannabis resin), contrary to Article 6(1) of the said Law (count 3), on which the Applicant was sentenced to 3 months' imprisonment (concurrent).

Applications of **Rodney Julian Bevis** for leave to appeal, for an extension of time within which to apply for leave to appeal, and for leave to withdraw a notice of abandonment of appeal against a total sentence of 4 years' imprisonment, imposed on 17th May, 1993, by the Royal Court (Superior Number), to which the applicant was remanded to receive sentence following guilty pleas, on 2nd April, 1993, before the Inferior Number to:

- 1 count of supplying a controlled drug (L.S.D.) contrary to Article 5(b) of the Misuse of Drugs (Jersey) Law, 1978 (count 1 of the indictment) on which he was sentenced to 4 years' imprisonment;
- 1 count of possession of a controlled drug (L.S.D.) contrary to Article 6(1) of the said Law (count 2) on which he was sentenced to 18 months' imprisonment, concurrent; and
- 3 counts of possession of a controlled drug contrary to Article 6(1) of the said Law (count 3 [amphetamine sulphate], count 4 [cannabis], and count 5 [cannabis resin]) on each of which he was sentenced to 1 month's imprisonment, concurrent with each other and with the sentences imposed in respect of counts 1 and 2.

Advocate A.D. Hoy for Smitton and Watkins;
Advocate D.M.C. Sowden for Johnson;
Advocate P.C. Harris for Bevis;
C.E. Whelan, Esq., Crown Advocate.

JUDGMENT.

THE PRESIDENT: We have before us four applications for leave to appeal against sentence. All the applications are for leave to appeal out of time. We deal first with the three cases of Smitton, Watkins and Johnson, leaving for the moment the case of Bevis which raises other considerations.

The cases of Smitton, Watkins and Johnson are, as I have said, cases of applications for leave to appeal out of time against sentence.

It has been emphasised more than once, both in the Royal Court and in this Court, that the rules governing the time for appealing, whether against conviction or against sentence, are

rules which are intended to be kept. We desire to emphasise that point again and to add that it is a serious thing to ask the Court to extend time in which notice of appeal may be given. The power of the Court to give such leave is undoubted, but, as I have said, it is a serious matter and it is for that reason that it has been laid down that leave can be given only if special circumstances of an important nature justifying such an indulgence are shown.

In the cases which have come before us this afternoon, counsel have done their best with the material at their disposal.

In our judgment they were not able to put forward any material which could constitute a special circumstance of the kind needed to justify leave to appeal out of time. That is the situation in all three cases. What counsel did do in these cases was to put forward certain criticisms of the sentences which were passed when their clients were convicted. As to this we wish to make it clear that such criticisms as were addressed to us this afternoon could not possibly constitute special circumstances of the kind which, as I have now mentioned more than once, have to be established before the leave, which counsel are seeking in these cases, can be granted. That is sufficient to dispose of the cases of Smitton, Watkins and Johnson.

The case of Bevis, as I have said, raises other considerations for this reason: having given notice of an appeal against sentence this applicant abandoned that appeal by notice dated 14th September, 1993. He, therefore, has to make the additional application today for leave to withdraw the abandonment of that appeal.

Mr. Harris, who has urged everything on behalf of this applicant which could be urged, has put the case like this: he says that at the time when the applicant was considering his appeal in September, 1993, he was advised that it was within the power of this Court to increase his sentence. That was entirely proper advice. Then, says Mr. Harris, from things which he read in the papers and from discussions which he heard going on in the Prison, the applicant understood that the policy or inclination of the Royal Court at that time was to increase the level of sentence passed for drug related offences. And on these grounds, Mr. Harris urges, we should in some way regard the decision of his client to abandon the notice of appeal which he had then given as a decision from which he should now be allowed to depart.

The proper test by which an applicant who has abandoned his notice of appeal should be permitted to withdraw the abandonment has been stated in a number of different ways at different times in the Courts here and in England. It is sufficient for us to say that on none of the tests which have been put forward could

the matters which Mr. Harris has urged possibly, in our judgment, constitute good reason for permitting withdrawal of the abandonment.

For these reasons we dismiss all four applications.

No Authorities.