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ROYAL COURT

2nd May, 1996

84.

Before: The Bailiff, and Jurats Blampied,
Myles, Orchard, Gruchy, Le Ruez and Herbert:

The Attorney General

- v -

Giacomo Marella,
Maria Christina Couto Viana Lago,
Manuel Antonio da Silva Se,
Natalina Caldeira Benedito,
Carlos Alberto Rodrigues.

Sentencing by the Superior Number of the Royal Court, to which the accused were remanded by the Inferior Number on 1st March, 1996, following guilty pleas to the following counts:

Giacomo Marella.

Age: 32.

- 1 count of being knowingly concerned in the fraudulent evasion of the prohibition on importation of a controlled drug (diamorphine), contrary to Article 77(b) of the Customs and Excise (General Provisions) (Jersey) Law, 1972 (count 1).
- 1 count of possession of a controlled drug (diamorphine) with intent to supply, contrary to Article 6(2) of the Misuse of Drugs (Jersey) Law, 1978 (count 3).
- 2 counts of possession of controlled drugs, contrary to Article 6(1) of the said Law:
count 4 : diamorphine.
count 6 : cannabis resin.
- 1 count of possession of utensils for the purposes of committing an offence, contrary to Article 8 of the said Law (count 7).

Details of Mitigation:

Pleas of guilty to the counts proceeded with; co-operation with police.

Conclusions:

count 1 : 8 years, 3 months' imprisonment.
count 3 : 8 years, 3 months' imprisonment, concurrent.
count 4 : 3 years' imprisonment, concurrent.
count 6 : 1 month's imprisonment, concurrent.
count 7 : 1 month's imprisonment, concurrent.
TOTAL : 8 years, 3 months' imprisonment.

Sentence and Observations of the Court:

count 1 : 8 years, 6 months' imprisonment.
count 3 : 8 years, 6 months' imprisonment, concurrent.
count 4 : 3 years' imprisonment, concurrent.
count 6 : 1 month's imprisonment, concurrent.
count 7 : 1 month's imprisonment, concurrent.
TOTAL : 8½ years' imprisonment.

[The accused pleaded not guilty before the Inferior Number on 1st March, 1996, to count 2 (being knowingly concerned in the fraudulent evasion on importation of a controlled drug, contrary to Article 77(b) of the Customs and Excise (General Provisions) (Jersey) Law, 1972: diamorphine) and to count 5 (possession of a controlled drug (cocaine hydrochloride), contrary to Article 6(1) of the Misuse of Drugs (Jersey) Law, 1978), which pleas the Crown accepted].

Maria Christina Couto Viana Lago.

Age: 33.

- 2 counts 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 8 : diamorphine.
count 9 : cocaine hydrochloride.
- 1 count of possession of a controlled drug (diamorphine) with intent to supply, contrary to article 6(2) of the Misuse of Drugs (Jersey) Law, 1972 (count 10).
- 1 count of possession of a controlled drug (cocaine hydrochloride), contrary to article 6(1) of the said Law (count 11).
- 1 count of possession of utensils for the purposes of committing an offence, contrary to Article 8 of the said Law (count 12).

Details of Mitigation:

Alleged debt to supplier and own addiction. Guilty plea and co-operation with police. Recently diagnosed as suffering from Hepatitis 'C' with consequent possible problems for long term health and quality of life. Previous good character. Remorse.

Conclusions:

count 8 : 8 years' imprisonment.
count 9 : 8 years' imprisonment, concurrent.
count 10 : 8 years' imprisonment, concurrent.
count 11 : 6 months' imprisonment, concurrent.
count 12 : 1 month's imprisonment, concurrent.
TOTAL : 8 years' imprisonment.

Sentence and Observations of the Court:

count 8 : 8½ years' imprisonment.
count 9 : 8½ years' imprisonment, concurrent.
count 10 : 8½ years' imprisonment, concurrent.
count 11 : 6 months' imprisonment, concurrent.
count 12 : 1 month's imprisonment, concurrent.
TOTAL: 8½ years' imprisonment.

Re the Hepatitis point: Court had before it expert medical evidence not available in Ingham on the cause and treatment of Hepatitis C and possible long term sequelae. This evidence suggested that a prison sentence need by no means be compromised by the condition. The Court could find no ground for distinguishing the average sufferer of Hepatitis C from any other offender.

Manuel Antonio da Silva Se.

Age: 28.

- 2 counts 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 13 : diamorphine.
count 14 : cocaine hydrochloride.
- 1 count of supplying a controlled drug (diamorphine), contrary to Article 5(b) of the Misuse of Drugs (Jersey) Law, 1978 (count 15).
- 1 count of possession of a controlled drug (diamorphine), contrary to Article 6(1) of the said Law (count 16).
- 1 count of possession of utensils for the purposes of committing an offence, contrary to Article 8 of the said Law (count 17).
- 1 count of breaking and entering and larceny (count 18).

Details of Mitigation:

An addict who dealt and acted as courier not for commercial gain, but to feed his own habit. Involvement in supply limited. Exceptionally frank and co-operative in his admissions to the police in interview. Wrote his own indictment. Gave valuable and detailed information to the police, as result of which the charges against Rodrigues were brought; permitted that fact to be disclosed in open Court. (Most of his sentence thus to be spent in segregation; fear of reprisals following release). Previous good character.

Conclusions:

count 13 : 6 years' imprisonment.
count 14 : 6 years' imprisonment, concurrent.
count 15 : 6 years' imprisonment, concurrent.
count 16 : 1 year's imprisonment, concurrent.
count 17 : 7 months' imprisonment, concurrent.
count 18 : 9 months' imprisonment, concurrent.
TOTAL : 6 years' imprisonment.

Sentence and Observations of the Court:

count 13 : 4 years' imprisonment.
count 14 : 4 years' imprisonment, concurrent.
count 15 : 4 years' imprisonment, concurrent.
count 16 : 1 year's imprisonment, concurrent.
count 17 : 7 months' imprisonment, concurrent.
count 18 : 9 months' imprisonment, concurrent.
TOTAL : 4 years' imprisonment.

Court reduced the conclusions in order to deliver as clear a message as possible that information given to the police concerning suppliers of drugs, acknowledged publicly in open Court, will be rewarded with a substantial discount of sentence - in the instant case, rather more than half the "benchmark" sentence.

Natalina Caldeira Benedito.

Age: 21.

2 counts 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 19 : diamorphine.
count 20 : cocaine hydrochloride.

1 count of possession of a controlled drug (cocaine hydrochloride), contrary to Article 6(1) of the Misuse of Drugs (Jersey) Law, 1978 (count 22).

1 count of possession of utensils for the purposes of committing an offence, contrary to Article 8 of the said Law (count 23).

Details of Mitigation:

The youngest at 21. No previous convictions. Guilty plea. Daughter aged 3.

Conclusions:

count 19 : 7½ years' imprisonment.
count 20 : 7½ years' imprisonment, concurrent.
count 22 : 6 months' imprisonment, concurrent.
count 23 : 3 months' imprisonment, concurrent.
TOTAL : 7½ years' imprisonment.

Sentence and Observations of the Court:

Conclusions granted.

Court accepted Crown's contention that this Defendant was entitled to additional discount on account of her youth.

[the accused pleaded not guilty before the Inferior Number on 1st March, 1996, to count 21 (possession of a controlled drug (diamorphine), contrary to Article 6(2) of the Misuse of Drugs (Jersey) Law, 1978), which plea the Crown accepted].

Carlos Alberto Rodrigues.

Age: 26.

- 2 counts 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 24 : diamorphine.
count 25 : cocaine hydrochloride.
- 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, 1978:
count 26 : diamorphine.
count 27 : cocaine hydrochloride.
- 3 counts of possession of a controlled drug, contrary to Article 6(1) of the said Law:
count 28 : diamorphine.
count 29 : cocaine hydrochloride.
count 30 : temazepam.
- 2 counts of possession of utensils for the purposes of committing an offence, contrary to Article 8 of the said Law (counts 31 & 32).

Details of Mitigation:

Co-operation with police - wrote his own indictment. Guilty pleas.

Conclusions:

count 24 : 8½ years' imprisonment.
count 25 : 8½ years' imprisonment, concurrent.
count 26 : 8½ years' imprisonment, concurrent.
count 27 : 8½ years' imprisonment, concurrent.
count 28 : 1½ years' imprisonment, concurrent.
count 29 : 1½ years' imprisonment, concurrent.
count 30 : 1 month's imprisonment, concurrent.
count 31 : 3 months' imprisonment, concurrent.
count 32 : 1 month's imprisonment, concurrent.
TOTAL : 8½ years' imprisonment.

Sentence and Observations of the Court:

Conclusions granted.

Details of Offences: (All accused)

Police interest in the Defendants was triggered off by the theft by Se of some holidaymakers' souvenirs and belongings from their hotel room; the theft had been carried out in order to finance Se's heroin addiction. Apprehension of the Defendants marked the destruction of an established and active drug-dealing ring. A number of importations of Class A drugs and trafficking therein in substantial quantities over a period of some months. Defendants close to source of supply in Rotterdam and at the top of the supply chain in Jersey. The homes of both Rodrigues/Benedito and Marella/Lago had been run effectively as drug shops. Importation and trafficking offences involved a total of between 172 and 192 grams or 1,720 - 5,760 doses of heroin with a total street value of between £51,000 and £57,600. The exact quantities of the cocaine imported and/or dealt in was not known but thought to be between 14 to 20 grams; this would have a street value of between £1,400 and £2,000.

Conclusions: (All Accused)

Appropriate starting point 13 years' imprisonment. Taking into account co-operation with police, guilty pleas and thereby avoidance of lengthy and difficult trial, "benchmark" sentence of 8 years appropriate, subject to appropriate adjustment for particular Defendants.

Observations of the Court: (All Accused)

Court acceded to Crown submission that all Defendants to be treated as part of a drug-trafficking ring; therefore each equally culpable. The appropriate starting point was 12 years. Crown had been "too generous" in regard to the general mitigating factors and thus a benchmark sentence of 8½ years' imprisonment was appropriate.

A.J. Olsen, Esq., Crown Advocate.
Advocate J.D. Melia for Marella.
Advocate R.G. Morris for Lago.
Advocate A. Messervy for Se.
Advocate D.C. Sowden for Benedito.
Advocate J Martin for Rodrigues.

JUDGMENT

THE BAILIFF: I should make it clear firstly that Jurat Blampied is unable to be in Court for the delivery of this Judgment, but he participated fully in the discussion and is in agreement with the Judgment which I am about to deliver.

5

The Court has given very careful consideration, obviously, to all the submissions which have been made both by the Crown Advocate and by counsel for the defendants.

10

The Court was impressed by a letter written by one of the defendants, Christina Lago, to the Court, and I would like to quote one paragraph of that letter:

15

"If I could send a message to the young people, I would tell them that heroin is by no means glamorous. It ruins your health, lowers your self-esteem, changes your personality and clouds your judgment. Heroin destroys your whole life".

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The Court endorses those sentiments and expresses regret that it has taken these proceedings to make at least one defendant realise what the position is.

25

The Crown Advocate put the case for the prosecution to the Court on the basis that this was a joint enterprise and that all the defendants were involved in the distribution of highly

5 dangerous Class A drugs and that, in principle, all bore an equal responsibility for the offences which had been committed. We accept that submission. We can see no ground for distinguishing between the involvement of these defendants in the drug trafficking activities which took place.

10 The Court has nonetheless to begin the sentencing exercise by placing the drug trafficking activities at the proper level on the scale of seriousness. It was put to us that a proper starting point was one of thirteen years' imprisonment and the Court heard submissions from defence counsel arguing for various starting points at a lower level.

15 Having regard to the degree to which we consider that these defendants were engaged in trafficking activities and to all the relevant circumstances of the case the Court considers that the proper starting point here is one of twelve years' imprisonment.

20 I deal now with each of the individual defendants. First of all, Marella, will you stand up, please. You have a previous and recent conviction for possession of cannabis and indeed, having been given a non-custodial sentence, were engaged in a drug awareness course at the very time when these drug trafficking activities were taking place. On the other hand the Court accepts that you were co-operative with the police. We think, however - and this is a general comment which applies not only to Marella but to all the defendants - that the Crown has been generous in the discounts which it has allowed for the guilty pleas which have been entered to the indictment and to the other mitigating circumstances. We propose therefore to increase slightly the conclusions. On count 1, you will be sentenced to 8½ years' imprisonment; on count 3, to 8½ years' imprisonment, concurrent; on count 4, to 3 years' imprisonment, concurrent; on count 6, to 1 month's imprisonment, concurrent; on count 7, to 1 month's imprisonment, concurrent, making a total of 8½ years' imprisonment.

40 Rodrigues, will you stand up, please. The Court can see no ground for distinguishing your case from that of Marella. You were equally involved in the distribution network. You were co-operative with the police and the Court takes into account the fact that you had the decency to try to exculpate your girlfriend. Nonetheless, having taken all those factors into account, we think that the Crown has made proper allowance for the mitigating factors and the conclusions are granted. You are therefore sentenced as follows: on count 24, you are sentenced to 8½ years' imprisonment; on count 25, to 8½ years' imprisonment, concurrent; on count 26, to 8½ years' imprisonment, concurrent; on count 27, to 8½ years' imprisonment, concurrent; on count 28, to 1½ years' imprisonment, concurrent; on count 29, to 1½ years' imprisonment, concurrent; on count 30, to 1 month's imprisonment, concurrent; on count 31, to 3 months' imprisonment,

concurrent; on count 32, to 1 month's imprisonment, concurrent, making a total of 8½ years' imprisonment.

5 Stand up, please, Lago. We have some sympathy for your predicament but as we think you well understand you were responsible for an enterprise with your co-accused which had the capacity to spread and no doubt did spread the use of these dangerous drugs. We have given careful consideration to the fact that you are suffering from hepatitis C and we have also considered the Judgment of the Inferior Number in Ingham. We have had the benefit of expert medical advice which was not available to the Court in A.G.-v-Ingham (9th February, 1996) Jersey Unreported, and it is also clear that there were medical complications which made that case as the Deputy Bailiff said in delivering judgment "wholly exceptional". It is not authority for the proposition that a person suffering from hepatitis C should in general escape a custodial sentence. It is obviously a matter to be taken into consideration in the context of each case. We have taken that matter into consideration, together with the other mitigating circumstances in your case, but we can find no ground for distinguishing you from Marella and Rodrigues. The conclusions therefore will be varied slightly and you will be sentenced as follows: on count 8, you are sentenced to 8½ years' imprisonment; on count 9, to 8½ years' imprisonment, concurrent; on count 10, to 8½ years' imprisonment, concurrent; on count 11, to 6 months' imprisonment, concurrent; on count 12, to 1 month's imprisonment, concurrent, making a total of 8½ years' imprisonment.

10 Benedito, stand up, please. Your counsel urged us to view your participation as being on the outer edge of this drugs ring. The Court is not prepared to accept that submission. We consider that you were equally involved with your co-accused; you were not particularly co-operative with the police; on the other hand, in your favour is the fact that you were only 20 at the time when these offences were committed. That is a mitigating factor which is not available to your co-accused and we propose therefore to grant the conclusions of the Crown Advocate. You will be sentenced on count 19, to 7½ years' imprisonment; on count 20, to 7½ years' imprisonment, concurrent; on count 22, to 6 months' imprisonment, concurrent; on count 23, to 3 months' imprisonment, concurrent, making a total of 7½ years' imprisonment.

45 Finally, we come to Se. Will you stand up, please. The Crown Advocate very properly gave credit, in moving conclusions, for the co-operation which you gave to the police. The Court wishes to deliver a clear message that to give information to the police about a supplier and to acknowledge that co-operation in open Court is a very important mitigating factor which the Court will reward with a significant discount on the sentence which would otherwise be imposed. The Crown Advocate has made an allowance but the Court considers that the allowance ought to be

greater because we wish to reward the co-operation which you have given and to acknowledge the difficulties which will be faced in prison as a result of that co-operation. On count 13, you are sentenced to 4 years' imprisonment; on count 14, to 4 years' imprisonment, concurrent; on count 15, to 4 years' imprisonment, concurrent; on count 16, to 1 year's imprisonment, concurrent; on count 17, to 7 months' imprisonment, concurrent; on count 18, to 9 months' imprisonment, concurrent, making a total of 4 years' imprisonment. The Court also orders the forfeiture and destruction of the drugs.

Authorities

- A.G. -v- Perchard, McConnachie (22nd November, 1995) Jersey Unreported.
- Raffray -v- A.G. (17th January, 1996) Jersey Unreported CofA.
- A.G. -v- Russell-Biggie & Phelan (31st August, 1995) Jersey Unreported.
- A.G. -v- de la Haye, Kearney (15th December, 1995) Jersey Unreported.
- Campbell, Molloy, MacKenzie -v- A.G. (4th April, 1995) Jersey Unreported. CofA.
- A.G. -v- Burke (24th January, 1996) Jersey Unreported.
- A.G. -v- Chadwick (30th October, 1995) Jersey Unreported.
- A.G. -v- Melville (20th September, 1995) Jersey Unreported.
- A.G. -v- Ferri (25th June, 1993) Jersey Unreported.
- A.G. -v- Mawdsley (20th March, 1996) Jersey Unreported.
- Whelan: Aspects of Sentencing in the Superior Courts of Jersey:
Noter up, May, 1994-1995: pp.21-24.
- Current Sentencing Practice:
- R. -v- Lowe (1977) 66 Cr.App.R. 122: C6-2D01.
 - R. -v- Sinfield (1981) 3 Cr.App.R.(S) 258: C6-2D04.
 - R. -v- Sivan & Ors. (1988) 10 Cr.App.R.(S) 282: C6-2D08.
 - R. -v- Debbag & Izzet (1991) 12 Cr.App.R.(S) 733: C6-2D09.
- A.G.-v-Ingham (9th February, 1996) Jersey Unreported.