

**Judgment 18/2005**

**Jason Lee Seale – Court of Appeal (Criminal  
Appeal 327) – 6 April, 2005**

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(i) **Importation of Class B drug – appeal against conviction – adequacy of the summing up – no obligation on judge to put every point raised by the defence – appeal against conviction dismissed.**

(ii) **Appeal against sentence – correct starting point of 9 years’ imprisonment – insufficient allowance for time saved by Appellant’s admissions – sentence reduced from 8 years 9 months to 8 years.**

**IN THE COURT OF APPEAL OF THE ISLAND OF GUERNSEY**

The 6th day of April, 2005 before Richard Charles Southwell, Esq., Q.C., Presiding, Sir de Vic Carey, Bailiff and Peter David Smith, Esq., Q. C.

LAW OFFICERS OF THE CROWN

v

JASON LEE SEALE

Appellant

In the appeal of the Appellant from the conviction and sentence imposed on him by the Royal Court on 9<sup>th</sup> September and 26<sup>th</sup> October, 2004 respectively;

THE COURT, having heard Advocates St. J. A. Robilliard for the Appellant and G. D. McKerrell for the Crown thereon, this day GAVE JUDGMENT as follows: -

- (i) The appeal against conviction was dismissed; and
- (ii) The appeal against sentence was allowed, to the extent that the sentence of eight years and nine months’ imprisonment was set aside and replaced by a sentence of eight years’ imprisonment, to reckon from 28<sup>th</sup> November, 2003.

K. H. TOUGH  
Registrar of the Court of Appeal

**WEDNESDAY 6TH APRIL 2005**

**IN THE COURT OF APPEAL**

**Before**

**Sir de Vic Carey, Bailiff; presiding**  
**Richard Charles Southwell, Esq., QC**  
**Peter David Smith, Esq., QC**

**JASON LEE SEALE**  
**(Criminal Appeal No. 327)**

**Judgment on Appeal against Conviction delivered by**  
**Smith, JA:-**

**INTRODUCTION:**

1. On 9th September 2004, after a trial lasting four days, the Appellant was convicted by the Royal Court, the Deputy Bailiff presiding, on one count of being knowingly concerned in the fraudulent evasion of the prohibition on the importation of cannabis resin, a controlled drug of Class B. He now appeals against that conviction.

**BACKGROUND:**

2. The prosecution arose out of events which occurred on Friday 28th November 2003. At approximately 12.20 p.m. on that day a yacht called "*Coquet*" sailed into St. Peter Port harbour and moored at the Victoria Marina. The yacht was skippered by one Adam James Norman and he was the only person on board. Also on board was a quantity of cannabis resin, 9.81 kilograms of, which eventually formed the subject matter of the count to which we have referred.
3. Two days before, on 26th November 2003, the Appellant had arrived by air from Jersey. There was evidence that *Coquet* had been in Jersey on that day, and, in the course of his evidence at the trial, the Appellant admitted meeting Norman there on that day.
4. The Appellant spent the nights of 26th and 27th November with his girlfriend in room 45 at the Duke of Normandie Hotel in St. Peter Port. On the morning of 28th November his girlfriend left for Herm and the Appellant indicated to Mrs. Janine Traynor, assistant manager of the hotel, that he might want to stay another night and room 45 was therefore kept available for him.
5. On that day a covert surveillance operation was being mounted by Customs Officers in St. Peter Port. The Appellant was observed moving about on foot in the town and harbour area, both before and after the arrival of *Coquet*, and, after its arrival, Norman was also observed moving about on foot although not in company with the Appellant. Subsequent investigations also revealed that there were telephone communications between Norman and the Appellant, which, amongst other things, were the subject matter of the admissions of fact under Section 2 of the Administration of Justice (Bailiwick of Guernsey) Law 1991, as amended.
6. The salient observations were of Norman returning to *Coquet* at about 2.08 p.m. and the Appellant boarding the vessel at 2.58 p.m. The Appellant was seen to leave the yacht at 3.13

p.m. and walk towards the town, passing between the Town Church and the Albion public house in the direction of High Street. He was not carrying anything. At 3.20 p.m. Norman was seen to leave the boat. He was carrying a small black and green rucksack, and he made his way to the Duke of Normandie Hotel. At 3.25 p.m. Norman was seen leaving the hotel premises without the rucksack. At that point he was arrested. A minute or so later the Appellant, who was in the bar of the hotel, was also arrested. Customs Officers went to room 45 accompanied by Mrs. Traynor, the assistant manager, and to whom I have already referred. On the bed they found the rucksack that Norman had been carrying with the room key under it. At the trial Mrs. Traynor gave evidence, which was not disputed, that at sometime on the day in question between the normal check out time of 12 noon and the arrest of the Appellant and Norman, the Appellant had paid for the room for the additional night of Friday 28th November. The rucksack was found to contain 9.81 kilograms of cannabis resin.

7. The Appellant and Norman were jointly indicted but at a relatively early stage Norman pleaded guilty to the relevant count on the indictment, stating, when he did so, that he was not concerned with the Appellant in the commission of the offence. The Appellant gave evidence at the trial. He admitted that he was expecting the arrival of Coquet and that he had been looking out for it. He said that this was because he had a bet on with Norman as to the length of time it would take him to sail from Jersey to Guernsey and that he was therefore interested in establishing the yacht's time of arrival. The Appellant's subsequent going to the boat had nothing to do with the importation of the cannabis resin found in the rucksack. He admitted that he had seen a piece of cannabis resin on the boat from which Norman had rolled a joint and had given him a small quantity, which was subsequently found in his wallet. This formed the subject matter of another count on the indictment charging possession and to which the Appellant pleaded guilty. He maintained, however, that he knew nothing of the large quantity of the drug which was found in the rucksack in room 45.
8. As to the deposit of the rucksack in room 45, the Appellant said that he had given Norman the key to enable him to have a shower and change in the room prior to the two of them going out together later in the afternoon.

### **The Grounds of Appeal:**

9. The Appellant's notice of appeal against conviction raised two issues but before us Advocate Robilliard, who appeared for the Appellant, both in this Court and in the Royal Court, focused on the second, which, after amendment, reads as follows-

*“The learned Deputy Bailiff fails(sic) adequately or at all to identify in his summing up those matters which confirmed and those matters which rebutted the case against the Appellant, and, therefore, the verdict should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence.”*

10. Mr. Robilliard canvassed two matters in particular, which, he argued, whether taken separately or together required us to quash the Appellant's conviction. These related to the question of whether the door to room 45 was unlocked when the Customs Officers went to it accompanied by Mrs. Traynor and the reason why the Appellant had gone to the Duke of Normandie Hotel after he left Coquet.
11. As to the question of whether the door to room 45 was unlocked, Mr. Robilliard argued that this was of great significance to the defence case. On the footing that the intended recipient of the drugs was someone other than the Appellant, the deposit of the rucksack and key in room 45, and the lock being on the latch, were consistent with Norman becoming concerned that he was under surveillance and deciding to deposit the rucksack in the room as a temporary measure. Once he was reassured that he was not being observed he could then retrieve it. But if he permitted the door to lock behind him he would need the key in order to re-enter the room, and if he was apprehended in the interim and found to be carrying the key, this would link him with the drugs. The solution would have been to leave the key in the room and the

door on the latch. The Appellant said in evidence that he saw that the lock was on the latch (or the “the catch” as he put it) when he was in the room after his arrest.

12. Mrs. Janine Traynor, the assistant manager of the hotel, gave evidence as to the opening of the room door on the afternoon in question in order to let the Customs Officers in. She confirmed that the door of the room had a Yale type lock and a silvery handle. When locked the door was opened by turning the key in the Yale type lock and depressing the handle. Mrs. Traynor stated that at the material time the door was locked and she opened it in the manner described. In cross-examination Mr. Robilliard drew her attention to the agreed facts that in order to open the door when locked it was necessary to turn the key about 40° to the right, and that if the door was left on the latch the key would turn to the same degree. Mrs. Traynor conceded that she had not been aware of those facts. She agreed that he had not checked whether the door was on the latch, either before or after she had opened it. She said she was 100% positive that she had unlocked the door because of the feel of the key turning in the lock, notwithstanding that she did not recollect turning the key in such a lock when it was on the latch on any other occasion.
13. Mr. Robilliard criticised the Deputy Bailiff’s handling of this issue in his summing up. He pointed out that although Mrs. Traynor purported to have a clear recollection on this point, there were other points on which she conceded that her memory was far from clear. She could not remember whether she went to room 45 with more than one Customs Officer; whether the door remained open or was closed in the period immediately after her entry; what she did after she was escorted from the room; as to how the room was locked after the Customs Officers left- yet the Deputy Bailiff made no mention of these memory difficulties when dealing with Mrs. Traynor’s evidence in the course of the summing up.
14. We accept that it is incumbent on the judge in a criminal trial adequately to put the defence case to the Jurats and that failure to do so may result in the conviction being quashed on the ground of miscarriage of justice. However, this does not oblige the judge to put every point made on behalf of the defence. In the instant case the Deputy Bailiff put the challenge to Mrs. Traynor’s evidence that the door was locked in a very fair way. For our part, we do not think that, in the context, the admitted gaps in Mrs. Traynor’s recollection were of any great significance and, had the Jurats thought otherwise, we believe that these would have flavoured the impression the witness made on them at the time she gave her evidence, and that this impression would surely have remained when they retired to consider their verdict two days later. Accordingly, we have not been persuaded by Mr. Robilliard’s arguments on this matter that a miscarriage of justice has, in fact, occurred.
15. As to the reason why the Appellant went to the Duke of Normandie Hotel when he left Coquet, the defence case at the trial was that this had nothing whatsoever to do with Norman bringing the drugs from the boat to the hotel not long afterwards. The Appellant stated in his evidence that on the day in question he had been trying to recover a debt of £500 on behalf of a friend in Manchester. On 28th November he had telephoned the debtor’s parents, which was the only contact number he had. When he was on Coquet with Norman he received a call from the debtor on his mobile telephone, apparently from Moore’s Hotel, in the course of which he arranged to meet him at the Duke of Normandie Hotel and collect the money. The Appellant said that this was why he was in the hotel when Norman arrived there with the cannabis, but his presence there was in no way connected with Norman bringing the cannabis to the hotel and depositing it in his room.
16. Mr. Robilliard contended that the Appellant’s explanation was supported by the record of a telephone call to the Appellant’s mobile from Moore’s Hotel. This record was not actually put in evidence but it was mentioned by the Appellant in the course of cross-examination. Mr. Robilliard argued that the Deputy Bailiff should have explained to the Jurats that the relevant record did exist, that it tended to support the Appellant’s explanation as to what he intended to do when he left the boat, and it was, therefore, inconsistent with the Appellant committing the crime. Mr. Robilliard added that the Crown had not challenged the Appellant’s evidence

about the telephone call, and pointed out that when searched after his arrest the Appellant was found to have £500 in his hat, which the prosecution did not contend was connected with the offence.

17. While it is true that the Deputy Bailiff did not deal with this aspect of the case in precisely the way Mr. Robilliard contended that he should have done, we are satisfied that the Deputy Bailiff's references to it in the course of his summing up were more than adequate. Not only did the Deputy Bailiff set out the Appellant's evidence in very clear terms, he later returned to the defence case and set it out to the Jurats in a very clear and detailed way. It is true that he did not make specific mention of the telephone record or the fact that the prosecution did not challenge the Appellant's assertion, but we do not consider that it was necessary for him to have done so as it was clear that those matters were not in dispute.

Finally, we would observe that, in our opinion, the Appellant's explanation was not inconsistent with the Crown case. The fact that the Appellant went to the hotel to collect £500 did not mean that he may not also have been there in connection with the importation of the cannabis. Viewed this way the matter loses much of its significance.

That disposes of the Appellant's appeal against conviction. However, before concluding, we would like to commend the practice adopted by the Deputy Bailiff in this case of discussing in detail his proposed directions with Counsel before commencing his summing up to the Jurats.

CAREY, JA: So the appeal against conviction is dismissed. Mr. Robilliard would you care to address us on the appeal against sentence?

(Advocate St. J.R. Robilliard addresses Court)  
(Advocate G.D. McKerrell addresses the Court)

**(10.47 a.m. Court adjourns)**  
**(11.35 a.m. Court reconvenes)**

**Judgment on Appeal against Sentence delivered by**  
**Smith, JA:-**

1. Much of the background to this appeal against sentence is contained in the judgment delivered earlier today on the Appellant's appeal against conviction.
2. The Appellant was sentenced to 8 years and 9 months imprisonment on a count on which he was convicted and which related to the importation of 9.81 kilograms of cannabis resin. Referring to the guidelines decision of this Court in Richards and Others 18th April 2002, the Royal Court concluded that the appropriate starting point was 9 years and allowed 3 months for the mitigating factor that the Appellant saved the Court a lengthier trial by admitting a range of facts.
3. The Royal Court took the view that the Appellant's role in the importation was greater than that of his co-accused, Adam James Norman, in respect of which it adopted a starting point of 8 years. Advocate Robilliard who

Judgment delivered by Smith, JA

appeared for the Appellant, both before us and in the Royal Court, contended that there was no basis for adopting a different starting point in respect of the Appellant and that a greater deduction ought to have been allowed for mitigation.

4. We accept that where there is unjustified disparity in the starting points adopted in respect of two or more offenders, it may be incumbent on this Court to intervene. However, we do not believe the disparity to be unjustified in the present case.

5. The Royal Court described the Appellant as “*A principal, knowingly concerned in the importation.*” We do not find the word “*principal*” of much descriptive value. It is in the nature of the illegal importation of controlled drugs that a number of people may be involved whose levels of culpability may differ and who may, therefore, be described as forming a criminal hierarchy. Where more than one person involved in the importation is before the sentencing court its task is to try and place each offender in that hierarchy as accurately as possible.
  
6. In our judgment, the evidence available to the Royal Court fully justified the conclusion that the Appellant was somewhat higher in that hierarchy than Norman. A couple of days before 28th November 2003 the Appellant had been in Jersey from where Norman had sailed on that day. The Appellant had booked a room in the Duke of Normandie Hotel. The Appellant had been looking out for the arrival of Norman’s boat on the day in question and had kept in touch with him by mobile telephone. The Appellant had gone to Norman’s boat and had made available to him the key to his hotel room. He was waiting in the hotel whenever Norman deposited the drugs in his room. All this adds up to a picture of significantly greater involvement than that of a mere courier or “*warehouseman*”. Accordingly, we endorse the adoption of a starting point of 9 years.
  
7. Turning to the mitigation, however, we have been persuaded by Mr. Robilliard that the Royal Court made insufficient allowance for this. The Prosecution acknowledged at the trial that the Appellant’s admissions had been “*helpful*” and made reference to the saving of “*an extraordinary amount of time.*” We think that it is important to state that where an accused person facilitates the efficient and expeditious conduct of the trial and does not seek to obstruct it by requiring everything right down to the most trivial detail to be formally proved, it is in the public interest that this be acknowledged by way of mitigation when the time comes to sentence. Obviously, such conduct cannot be equated with a guilty plea and its significance will vary from case to case but in the present case we do not consider it to have been a minor factor and we propose to reflect it in a deduction of one year, so that we reduce the sentence of 8 years and 9 months imposed by the Royal Court to one of 8 years.

CAREY, JA: Right, to that extent the appeal is allowed.

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I, Suzanne Margaret O'Neill, hereby certify the foregoing to be a correct and complete extract, prepared to the best of my skill and ability from the tape-recording of the proceedings in this case.

..... Suzanne M. O’Neill  
Thursday 21st April 2005