

Judgment 32/2007

**Michael David Naylor and Adam John Pagett – Court
of Appeal (Criminal Appeals 344 and 345) –
25 September 2007**

**Importation of Class A drug – possession of Class B drug – appeal against
sentence – Richards guidelines – proper approach to sentencing where two
different drugs are involved – sentence on first appellant reduced**

IN THE COURT OF APPEAL OF THE ISLAND OF GUERNSEY

No. 344 and 345

The 25th day of September, 2007 before Jonathan Philip Chadwick
Sumption, Esquire, O.B.E, Q.C., presiding, Dame Heather Steel, D.B.E., and
James Walker McNeill, Esquire, Q.C.

THE LAW OFFICERS OF THE CROWN

- v -

MICHAEL DAVID NAYLOR

(The First Appellant)

and

ADAM JOHN PAGETT

(The Second Appellant)

On the application of the above Appellants for
leave to appeal from the sentences imposed on them by the Royal Court on the 15th
day of May, 2006;

THE COURT, having on the 24th day of
September, 2007 heard Advocates A.M. Merrien and A.J. Ayres for the respective
Appellants, and Crown Advocate Fiona Russell, thereon, this day GAVE
JUDGMENT and:-

1. As respects the First Appellant, GRANTED LEAVE to appeal and ALLOWED the appeal to the extent that the sentence in respect of the First Count was reduced from fourteen years' to twelve years' imprisonment, effective from the 30th day of July, 2005; and
2. As respects the Second Appellant, GRANTED LEAVE to appeal and DISMISSED the appeal.

K H TOUGH
Registrar of the Court of Appeal.

**Approved Final Text
29 October 2007**

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

CRIMINAL DIVISION

Tuesday 25 September 2007

**Before: Jonathan Philip Sumption., Esq., OBE, QC,
Dame Anne Heather Steel DBE,
James Walker McNeill., Esq., QC**

**In the matter of Applications to the Court for leave to
appeal sentence by**

**Between: MICHAEL DAVID NAYLOR Applicants
and
ADAM JOHN PAGETT
-v-
LAW OFFICERS OF THE CROWN Respondents**

**Advocate A M Merrien for Naylor
Advocate A J Ayres for Pagett
Advocate F Russell for the Crown**

STEEL, JA:

This is the Judgment of the Court.

1. The Applicants each apply for leave to appeal the sentence imposed on him by the Royal Court on 15th May 2006. On 24th June 2007 these applications were remitted to the Court of Appeal by the single judge, who ordered that the applications be heard at the same time.
2. The Applicant Naylor, is a 46 year old Guernsey resident. The Applicant, Pagett, is a 36 year old Guernsey resident.
3. The two Applicants were charged on an Indictment which contained two counts. Count 1 charged both with being concerned in the fraudulent evasion of the prohibition on importation of a Class A drug,

namely Cocaine (440 grams). Count 2 charged Naylor alone with possession of a Class B drug, namely Cannabis resin (6,149.6 grams) with intent to supply it to another.

4. On 3rd November 2005, in the Royal Court, the Applicant Naylor pleaded guilty to both counts, and sentence was adjourned. On 3rd November 2005 Applicant Pagett pleaded guilty to Count 1 and the matter was adjourned for the preparation of a Psychiatric Report.
5. On 15th May 2006 in the Royal Court, Michael David Naylor was sentenced as follows:

Count 1: 14 years imprisonment from the date of his arrest, 30th July 2005.

Count 2: 4 years imprisonment concurrent.

Adam John Pagett was sentenced to 10 years imprisonment from the date of his arrest 31st July 2005.

The Court ordered forfeiture and destruction of the drugs and a drug trafficking determination was adjourned to a date to be fixed. On 8th December 2006 a drug trafficking confiscation order was made in the sum of £3,388.16 against the Applicant Pagett, which he did not oppose.

6. The Applicant Naylor seeks leave to appeal his sentence on the ground that it was manifestly excessive. It is submitted that the total starting point of 21 years for the two admitted offences is too high, although Advocate Merrien does not take issue with the two separate starting points of 15 years for the Cocaine offence and 8 years for the Cannabis offence. He refers the Court to Para 12 of the guideline case of *Richards and Others v Law Officers of the Crown CA 17th April 2002*. This concerns the approach to sentencing for the importation of drugs from two different classes. He submits that the importation of twice the quantity imported in the present case would not result in a starting point of 21 years. He further submits that a reduction of two years is inadequate in this case.
7. The applicant Pagett seeks leave to appeal his 10 year sentence on the ground that it was manifestly excessive. Advocate Ayres submits that a starting point of no more than 13 years would have been appropriate,

and that 15 years was too high. He refers to credit having been given to Pagett in the “*region of one third*”. The Court therefore he submits, made no further reduction to reflect the mitigation available to Pagett.

The Facts

8. Count 1 concerned the seizure of 440 grams of crack cocaine. This represents by far the largest ever seizure of this drug in Guernsey. The largest previous seizure, in 2002 weighed only 26 grams. Crack cocaine is known to be highly addictive. Crack is much less common in Guernsey than ordinary cocaine and it is unlikely that an importation of 440 grams was to supply an existing market, but could therefore have the effect of creating a new market. The value of the seizure would be in the region of £132,000 and £176,000 on the basis that the street price is between £300 and £400 a gram. Crack is normally sold in ‘rocks’ of 0.2 grams.
9. Count 2 which concerned Naylor alone relates to 6,149.6 grams of cannabis resin. This would have produced approximately 42,700 cannabis cigarettes. The local resale value in Guernsey would be between £43,000 and £55,350. When found in his possession it was mainly 9 oz bars, although some had been cut into 1 oz deals ready for supply.
10. During the early hours of Tuesday 26th July 2005, Naylor was observed in an R & R Removals vehicle, registration 2270, boarding a ferry bound for Portsmouth. Later the same morning, Pagett flew from Guernsey to Manchester where he hired a Vauxhall Astra motor car, registration number KA54GWE. He drove to the Premier Travel Inn on the A629 at Halifax, where he obtained a room. The following evening, 27th July, Pagett drove the Astra away from the hotel and was later seen in the vehicle with another male in Halifax. The vehicle was driven to the M62 motorway and at approximately 9.22 pm was seen to drive into the Hartshead Moor Services. There, Pagett was seen to purchase a number of items from the shop including an electric jug type kettle in an illustrated box. He returned to the vehicle and the Astra drove from the service area onto the slip road where it stopped

for a few minutes before driving off. The Astra was then driven towards London, stopping twice on the journey.

11. At approximately 01.48 am on Thursday 28th July, Naylor was seen leaning against a traffic light in South East London, at the junction of Torridon Road on the A205. A few minutes later the Astra was seen to have stopped on Engleheart Road, Catford, at the junction with the A205. At 02.00 am the Astra was seen to turn into Torridon Road and stop. The engine was running. Further along the road were two R & R Removals trucks, one of which was 2270. A person got out of the Astra and disappeared from view on Torridon Road. The Astra drove away. A few minutes later it was seen to enter a filling station on the junction of the A2 and A205 in South London. It then contained two occupants.
12. At 06.50 am that morning, Pagett was seen with an unknown male in the car park of the Premier Travel Inn in Halifax. It would seem therefore that Pagett had made the journey from Halifax to London and back to arrange the delivery of the crack to Naylor. Pagett's room at the hotel was searched and inter alia a card was found which bore a telephone number which on analysis showed contact between Naylor's phone and that number on six occasions between 01.24 am and 01.54 am on the morning of 28th July 2005.
13. At approximately 15:42, Pagett was seen to alight from an aircraft at Guernsey airport and on the afternoon of 29th July he again left Guernsey by air.
14. The R & R Removals truck was stopped at St Peter Port Harbour at 03.10 on the morning of 30th July, following its arrival by ferry from Portsmouth. Naylor was the driver. He stated that he had been to the UK for removals collections including one in Oxford and one in Torridon Road, London. He produced the relevant documentation and stated that he had sole charge of the vehicle and loaded it himself. The vehicle was searched and the box was found which contained a kettle, inside which was a plastic bag containing 16 cling-film wrapped packages of crack cocaine with a total weight of 440 grams. Naylor denied all knowledge of the contents of the box. He indicated that it

was part of a removal he had collected from Oxford. He was arrested and cautioned.

15. His home address was searched at 06.45 and officers found a set of electronic scales, £4,700 in notes and 6,149.6 grams of cannabis resin in the front bedroom. In mitigation it was submitted that he was “*minding the cannabis for another*” as a result of pressure from that other. There was no evidence which showed when or how this cannabis was imported.
16. At 07.30 Pagett’s home was searched. Mobile phones were seized and a very small amount of cannabis resin was found. Pagett was to admit that it was his.
17. He was arrested on Sunday 31st July at the airport when he arrived on a flight from Manchester. A black Nokia mobile telephone was seized from one of his pockets.
18. Naylor was interviewed five times. In the third interview he stated that he had been approached by someone to bring back a parcel which he knew to be illegal. During the fourth and fifth interviews he confirmed that the item was the box which had been handed to him in London on the previous Thursday. He had confirmed the address by text message on the Wednesday evening prior to them arriving with the box. He denied that he had seen the contents of the box.
19. Pagett was interviewed on two occasions during which he gave “*no comment*” answers to questions. Billing analysis showed that during July 2005 there was contact on thirteen occasions between telephones registered to Naylor and Pagett. This also showed contact between a mobile telephone registered to Naylor and the number in Pagett’s room at the hotel.
20. The Royal Court in sentencing treated both Applicants as being effectively of good character. Before Naylor was sentenced the Court considered a Social Enquiry Report from Kerry Le Cheminant dated 24th December 2005, a letter from Naylor’s partner, Lynda Murphy, also letters from Malcolm Davies her friend, Mr M Druce and Roger Hughes. For Pagett the Court considered a Social Enquiry Report from Kerry Le Cheminant dated 15th December 2005, a Psychiatric Report

from Dr Anna Cosslett dated 2nd December 2005 and letters from Rev Fr Kevin Northover, Prison Chaplain and Rev Jan Le Billion, Assistant Prison Chaplain. The Applicant had also written to the Court on 17th January 2006 on his own behalf. This Court has a letter from Kerry Le Cheminant regarding a recent personal tragedy suffered by the Applicant Pagett, which we take into account, and for which we have considerable sympathy. At the Royal Court it was submitted on behalf of each that he had only become involved in Count 1 as a result of financial and personal pressures.

21. Having considered all the circumstances and mitigation, the court passed the sentences of 14 and 10 years, the subject of these Applications. This Court has to consider whether either was manifestly excessive or outside the parameters laid down by the guidelines case of *Richards*. The quantity of the crack cocaine in Count 1 was uniquely large in Guernsey and the part each played in the importation of the drug was vital to the criminal enterprise. These factors were properly taken into account in reaching the starting point of 15 years in accordance with the Richards tables. Para 5 of the Richards judgment states *“it cannot be stressed too strongly that this court is not attempting to establish for the Royal Court some sort of inflexible code, which covers all of the issues involved in the sentencing for such offences, some of which must yet be unknown and incapable of anticipation”*. In the present case, the Court was considering the importation of a very substantial amount of a dangerous drug relatively unknown in Guernsey and in our view was entitled to take that factor into account in deciding the appropriate starting point. Count 2 involved a considerable quantity of cannabis resin, and accepting that his role was as minder, Courts have repeatedly stressed that *“a minder can and perhaps usually does play a fundamental part in ensuring the dangerous drugs reach their intended market, namely the streets”*. The role of minder necessarily involves a relationship of trust.
22. Advocate Merrien for Naylor and Advocate Russell for the Crown each accept that the Royal Court were correct in their approach to

sentencing Naylor in relation to the two Counts he admitted, and in following the guidance set out in Para 12 of *Richards* regarding sentencing where two different drugs are imported.

23. The court is therefore concerned to consider the total starting point, taking into account the overall quantity. Advocate Merrien accepted that the two separate starting points of fifteen and eight years are appropriate and restrict his submissions to the twenty-one year starting point for the two offences which he submits demonstrated an inadequate reduction of only two years from the twenty-three year total.
24. We accept that twenty-one years was too high. We therefore grant Naylor's application for leave to appeal his sentence. We allow his appeal to the extent that we reduce the starting point for the two offences taken together to eighteen years. To that a discount of one third will apply to reflect his pleas and mitigation so that his sentence will be reduced to twelve years imprisonment in respect of Count 1 with four years to be served concurrently in respect of Count 2.
25. Pagett's application is granted but his appeal dismissed. He played a very significant part in an extremely serious importation of crack cocaine. All his mitigation was taken into account and the inevitable fifteen year starting point was appropriately discounted to the ten year sentence imposed.