Judgment 34/2007 **Simon Alan Gormer and Sebastian Martin Priaulx – Court of Appeal (Criminal Appeals 368 and 369) – 25 September 2007**

Importation of Class B drug – possession of Class B drug – appeal against sentence – appropriate discount where accused had little viable alternative but to admit guilt – roles of both appellants, and of a co-accused, were equally significant – as regards concurrency, the count relating to possession was an unrelated offence – both applications for leave to appeal refused.

IN THE COURT OF APPEAL OF THE ISLAND OF GUERNSEY

Criminal No. 368 and 369

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 -

SIMON ALAN GORMER

(The First Applicant)

and

SEBASTIAN MARTIN PRIAULX

(The Second Applicant)

On the application of the above Applicants for leave to appeal from the sentences imposed upon them by the Royal Court on the 21st day of February, 2007;

THE COURT, having on the 24th day of September, 2007 heard Advocates Miss J.A.S. White and Miss C.M. Fooks for the respective Applicants, and Crown Advocate G.D. McKerrell, thereon, this day GAVE JUDGMENT and:-

1. GRANTED Legal Aid to both Applicants;

2. DISMISSED the applications for leave to appeal by both Applicants; and

3. DIRECTED, for the purposes of the Proviso to Section 37(3) of the Court of Appeal (Guernsey) Law, 1961 that no part of the time during which the Applicants, when in custody, were specially treated as such, shall be disregarded in computing the sentences to which the Applicants are subject.

K H TOUGH
Registrar of the Court of Appeal.

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 against sentence by

Between: **SIMON ALAN GORMER**
and
SEBASTIAN MARTIN PRIAULX
v
THE LAW OFFICERS OF THE CROWN

Applicants

Respondents

Advocate J A S White for Gormer
Advocate C M Fooks for Priaulx
Crown Advocate G D McKerrell for the Crown

McNEILL JA:

1. This is the judgment of the Court.

INTRODUCTION

2. These applications for leave to appeal against sentence arise out of the prosecution and conviction of each of the Applicants in the Royal Court. Each had pleaded guilty and was convicted on a Count of being knowingly concerned together with others in the fraudulent evasion on the importation of goods contrary to section 77(1)(b) and 77(2) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972 as amended. The goods were cannabis resin, a controlled drug of Class B under the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974, as amended. Priaulx was also convicted on

a second Count, namely, the possession of 49.433 grams of cannabis resin. He had pled guilty to that charge.

3. In respect of the Count dealing with fraudulent evasion, each Applicant was sentenced to 7 years, the maximum sentence for importation being 21 years imprisonment. Priaulx was sentenced to 3 months' imprisonment consecutive in respect of the second Count on which he was convicted.

4. The admitted facts were that the Applicants and one other person were concerned in the importation of 13 kgs of cannabis resin (a Class B drug) having an average street value of approximately £150,000. The drugs were concealed in a Renault Laguna car, owned by Gormer, as he arrived in Guernsey from the United Kingdom on 29 July 2006. Gormer was accompanied in the car by his female partner, who was driving, and by their three year old child and had booked a three day stay at the Wayside Cheer Hotel. Gormer was to admit that he had visited Guernsey two months before and stayed at the same hotel.

5. On arrival, Guernsey Customs and Excise officers had noted damage to upholstery and detected concealed drugs in the car but allowed it to be driven away so that others concerned in the importation might be detected and arrested.

6. Gormer drove the car from the harbour to the Wayside Cheer Hotel. At 5.22 pm that day another co-defendant was seen to leave the hotel, make his way to the car park and unlock the door of Gormer's car. As he drove it away, officers carrying out surveillance noted that it was being followed by a pick up truck being driven by Priaulx. The vehicle stopped at Priaulx's house, Priaulx approached the open rear car door of the Renault Laguna and spoke to the other

co- defendant. Shortly thereafter Priaulx was arrested. The other co-defendant was subsequently apprehended and arrested as was Gormer.

7. The sentences passed were:

Gormer – starting point – 10 years; after mitigation – 7 years.

Priaulx – starting point – 10 years; after mitigation – 7 years.

INDIVIDUAL SUBMISSIONS ON BEHALF OF THE PRESENT APPLICANTS

GORMER

Starting Point

8. The Court fixed the starting point at 10 years. No issue is taken with that starting point on behalf of Gormer.

9. The starting point identified in the guideline case of *Richards* [take in proper citation] for 10 – 30 kgs of cannabis resin is 9 – 12 years.

Mitigation

10. Gormer's ground of appeal is that the sentence was "wrong in principle and unjust that the Royal Court did not apply a reduction of at least 33% to the starting point it had fixed." In a letter dated 16 August 2007 from Advocate White to HM Greffier it was emphasised that the principal point with which issue was taken on the Royal Court decision was the finding that Gormer's guilty plea was inevitable. Such a conclusion, it was said, was not justified where there was another person present, both in the car, and at the hotel and the only evidence to link Gormer to the offence was his presence in the car and his presence in the hotel visited by the co-defendants.

11. While other matters were dealt with in the grounds of appeal lodged on behalf of Gormer in May 2007, this was the only matter pressed at the hearing before this Court.

Discussion

12. In the opinion of this Court, the Court below was entitled to take the view that there was sufficient strength of evidence to present Gormer with little viable alternative than to plead guilty. His partner and her child were present both in the car and the hotel. But the likelihood of the child being a potential suspect can be excluded. That leaves Gormer and his partner. Between them they were the people who had brought the car to Guernsey and between them they must have arranged for a key to the car to be available to the co-accused who left the hotel after they had arrived, made his way to the car park and unlocked the door of Gormer's car. It seems to this Court that the Court below was entitled to identify a significant strength of evidence against Gormer in respect of two matters. In the first place, the co-accused knew where to go to find the car and to obtain the keys. In the second place, the two adults being partners, it might be thought that the evidence potentially implicated both equally unless one came forward with a confession exculpating the other. That is what happened. It could hardly have been a "viable alternative" for Gormer to say nothing and leave both himself and his partner implicated.

13. In *Richards*, cited above, the Court said (at paragraph 15) "A guilty plea will always be an important mitigating factor, even where the accused appears to have had very little choice but to admit guilt. As a very general rule the appropriate discount is one third from the starting point, particularly when an

early indication of such a plea is given. … When there is no sensible alternative to a guilty plea, the discount will be more limited."

14. In the present case, the total reduction was 30%.

15. Whilst personal mitigation was mentioned by the sentencing Court, there was little of significance attaching to Gormer apart from his claim to suffer from ill health and a statement which might be taken to be remorse.

Conclusion

16. In the whole circumstances it cannot be said that the sentence was either wrong in principle or manifestly excessive. The application for leave to appeal is refused.

PRIAULX

17. In his grounds of appeal, it is contended that the sentences imposed on Priaulx were manifestly excessive for the following reasons:-

    1. The starting point for the importation offence was too high;
    2. The sentence for the possession offence should have been ordered to be concurrent with the other sentence;
    3. The Court gave insufficient discount for his guilty pleas; and
    4. The Court gave insufficient discount for the mitigating factors of age, previous good character and limited role.

    These reasons were expanded upon in written submissions handed to the Court.

Starting point

18. As indicated above, the starting point in *Richards* for the importation of his 10 – 30 kgs of cannabis resin is 9 – 12 years. The starting point fixed was 10 years.

19. The Court below assessed the starting point for each of the three defendants at 10 years and stated: -

> "*Looking at your roles we note Gormer imported the drugs for reward with a woman and small child as company. Galvin drove the car to Priaulx's house where you were both wearing surgical gloves and had bags for the cannabis on hand. We regard the roles of the three of you as equally significant.*"

20. This statement is a succinct précis of the outline given by the prosecution and accepted on behalf of Priaulx. In written submissions two particular points were emphasised. The first was a lack of sophistication in the importation. We do not agree. All importations have some element of sophistication. Here it was the hiding of the packages in the car which was then driven to Priaulx's residence for removal. The second was said to be no evidence that Priaulx was involved in the planning or to be involved in the distribution. Again we disagree. Clearly it had been planned that the car would be driven from the hotel to Priaulx's house. Indeed, Priaulx followed the car in his pick-up. Not only that, the drugs were being removed at Priaulx's house and both Priaulx and the other accused were proceeding to do so with surgical gloves. In the whole circumstances there is no basis upon which we could disturb the view that the roles of each of the three could be regarded as equally significant.

21. As regards concurrency, this Court notes that the Count relating to possession is an unrelated offence and does not apparently arise from the importation. The various pieces of cannabis resin and powder were found in the pick up truck used by Priaulx and, more significantly, in his bedroom. They could not have

come from the packages in the detained vehicle which had only just been apprehended.

Mitigation

22. As with the other defendants, the total discount allowed for mitigation was 30%. Priaulx was the youngest of the three defendants, was treated as a man of previously good character and was in full employment when arrested. Whilst not pleading guilty at the earliest point, he did so at the directions hearing. Against that, Priaulx had a chronic dependency on cannabis and the Court below was entitled to indicate that he, as with the others, "would manifestly have contributed to the drug problem in this Island."

23. Whilst Priaulx was the youngest of the three defendants, he was an intelligent young man and his involvement in the importation appears to have been premeditated. Due weight had to be given to the character references provided on his behalf, there was no finding of trafficking and there appears to be a low likelihood of re-offending. But it was open to the sentencing Court to take into account the involvement of an intelligent young man in a premeditated importation. Given that Priaulx manifestly was not the sort of younger person likely to be readily influenced by a co-defendant, were it not for his habits and dependency, the total discount of 30% cannot be said, in the whole circumstances, to be outside a reasonable band of tolerance in the Court below.

Conclusion

24. Leave to appeal is accordingly refused.

