Judgment 35/2007 **Billy John Wright – Court of Appeal (Civil Appeal 370) – 25 September 2007**

Importation of Class A drug – impeding seizure of Class A drug – whether sufficient discount given for personal mitigation and claim that drugs were for personal use – guilty plea was inevitable – discount for various varieties of mitigation are not simply to be added to one another – leave to appeal refused

IN THE COURT OF APPEAL OF THE ISLAND OF GUERNSEY

Criminal No. 370

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 -

BILLY JOHN WRIGHT

(The Applicant)

On the application of the above Applicant for leave to appeal from the sentences imposed on him by the Royal Court on the 12th day of March, 2007;

THE COURT, having on the 24th day of September, 2007 heard the Applicant in person, and Crown Advocate G.D. McKerrell, thereon, this day GAVE JUDGMENT and:-

1. REFUSED the application for leave to appeal; and

2. 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 Applicant, when in custody, was specially treated as such, shall be disregarded in computing the sentence to which the Applicant is 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 an Application to the Court for leave to appeal against sentence by

Between: **BILLY JOHN WRIGHT** — **Applicant**

v

THE LAW OFFICERS OF THE CROWN — **Respondent**

The Applicant representing himself
Advocate G D McKerrell for the Crown

McNEILL JA:

1. This is the judgment of the Court.

Introduction

2. On 12 March 2007 the Applicant pleaded guilty in the Royal Court to an indictment containing 2 Counts. The first was the fraudulent evasion of the prohibition on importation of a controlled drug of Class A imposed by section 2(1)(a) of the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974, as amended. The second count related to the concealment of a package containing a quantity of Diamorphine, which impeded or was calculated to impede the seizure of that drug, being a thing liable to forfeiture contrary to section 5(b) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972, as amended.

3. The quantity of drugs imported and concealed was 8.12 grams of Diamorphine (or heroin). The maximum sentence which the Court could impose for the first offence was life imprisonment. The maximum penalty which the Court could

impose for the second offence was two years' imprisonment. The Applicant was sentenced to 5 years 6 months on the first count and 3 months, concurrently, on the second.

4. Before the Royal Court, the Applicant's advocate indicated that the Applicant had never expected anything other than custody for his offences but sought leniency in respect that the drugs were for the Applicant's personal use, in respect that the Applicant had cooperated with the authorities and that he had entered his guilty plea as soon as he could do so. The Applicant is a man with a disability and admitted that he was addicted to Diamorphine (heroin).

Grounds of Appeal against Sentence

5. The Applicant seeks leave to appeal upon the basis that the sentence of 5 years and 6 months was manifestly excessive and out of all proportion to the gravity of the offence. In particular, his grounds of appeal contend that the total discount "in the region of one quarter" granted by the Royal Court was too low in respect that credit of one quarter would have been justified on the basis of the early guilty plea alone and further credit should have been given for personal mitigation and the fact that the drugs were of low quality for personal use.

The Sentence

6. In approaching sentencing, the Royal Court took a starting point of 7 ½ years. The Court identified that starting point under reference to the guideline decision of this Court in *Richards*, 18th April 2002.

7. In *Richards* this Court had indicated, at paragraph 10, that in respect of a quantity of 1 – 20 grams of Class A drugs in powder form the appropriate starting point, after full trial and before any mitigation, would be 7 – 9 years. Applying that guideline, and after indicating that the claim that the drugs were for personal use availed the Applicant little, the Royal Court adopted a starting point of 7 ½ years in the whole circumstances.

8. As to mitigation, the sentencing Court considered that there was little mitigation which could be afforded in that a plea of guilty was inevitable. At page 12E/F the Court indicated "Taking everything into account, perhaps generously, we do give a total discount in the region of one quarter."

Discussion

9. Upon the basis of the guidelines set out in *Richards*, it cannot be said that the starting point was inappropriate, and no such contention was placed before this Court. The first argument was that the discount was too low. In the first place it is to be noted that the discount given was 24 months which marginally exceeds 25% of 7 ½ years. As accepted in the grounds of appeal, that percentage therefore deals with the early guilty plea.

10. The principal contention was that further credit should have been given for personal mitigation and personal use. As was made clear in *Richards*, at paragraph 14, any importation (whatever the intention of the offender as to use) adds to the stock of drugs available in the Island and it cannot generally be right that an addict importer of the drug to which he is addicted can be heard to claim some credit for the likelihood that he will be consuming all or part of it. Here, the quantity imported reached almost half way up the level of the first band and had a Guernsey street value of between £2,030 and £2,842. It is therefore clear that the Royal Court were entitled to attach little importance to this point.

11. In approaching mitigation the Court below appears to have taken into account the Applicant's then domination by hard drugs misuse. As is again made clear in *Richards*, at paragraph 17, discounts for various varieties of mitigation are not simply to be added to one another, the Court has to consider the totality of the sentence in the light of all the circumstances.

12. It should be added that the Applicant, who presented his appeal in person, indicated to the Court that, since being detained in Guernsey, he had been clear

of drugs for the first time that he could remember. It was clear that this was a matter in which he took some pleasure. Further, there is a commendable report from the Prison Substance Misuse Worker who indicates that the Applicant presents as motivated to remain drug-free on his release.

Conclusion

13. In these circumstances it cannot be said that there is a clear basis for a contention that the sentence was manifestly excessive or out of all proportion to the gravity of the offence. Leave to appeal is refused.