

**Judgment 41/2008 Yvonne Climie and Stephan William Greechan –
Court of Appeal (Criminal Appeals 389 and 390) –
17 December 2008**

Importation of Class A drug – applications for leave to appeal against sentence – abandonment of application by the second applicant – similar sentences imposed by the Royal Court on all the defendants, as willing participants in a joint enterprise – submission of objectionable parity not upheld – starting point of 11 years approved as in accordance with the Richards guidelines – legal aid granted, but limited to the actual attendance by counsel before the Court of Appeal – no guarantee that legal aid will be granted where an application for leave is dismissed by the plenary Court, after a refusal by a single judge

IN THE COURT OF APPEAL IN THE ISLAND OF GUERNSEY

Criminal 389 and 390

The 17th day of December, 2008 before Sir de Vic Carey, presiding, Geoffrey Charles Vos, Esq., QC and Miss Claire Patricia Montgomery, QC

YVONNE CLIMIE

Appellant

-v-

THE LAW OFFICERS OF THE CROWN

Respondents

On the application of the Applicant for leave to appeal from the sentence imposed on her by the Royal Court on 21 May 2008;

THE COURT, having on 15 December 2008 heard Advocate C J Green for the Applicant and Advocate G Parry for the Crown thereon, GAVE JUDGMENT this day in the attached terms and DISMISSED the application for leave to appeal;

AND THE COURT GRANTED legal aid, but limited to the attendances by Advocate Green before the Court on 15 December 2008 and 17 December 2008.

K H TOUGH
Registrar of the Court of Appeal

IN THE COURT OF APPEAL IN THE ISLAND OF GUERNSEY

Criminal

No. 389

The 17th day of December, 2008 before Sir de Vic Carey, presiding, Geoffrey Charles Vos, Esq., QC and Miss Claire Patricia Montgomery, QC

STEPHAN WILLIAM GREECHAN

Appellant

-v-

THE LAW OFFICERS OF THE CROWN

Respondents

On the application of the Applicant for leave to appeal from the sentence imposed on him by the Royal Court on 21 May 2008;

THE COURT, in default of appearance by the Applicant, and having noted that Notice of Abandonment of the Application had been received by the Registrar during the present sitting of the Court, DISMISSED the application for leave to appeal.

K H TOUGH

Registrar of the Court of Appeal

**Approved Judgment
18 December 2008**

**IN THE COURT OF APPEAL GUERNSEY
CRIMINAL DIVISION**

APPLICATION FOR LEAVE TO APPEAL AGAINST SENTENCE BY

Stephan William GREECHAN and Yvonne CLIMIE Applicants

-v-

THE LAW OFFICERS OF THE CROWN Respondents

Judgment delivered 17th December 2008

**Before: Sir de Vic Carey JA (Presiding)
 Geoffrey Charles Vos QC
 Clare Patricia Montgomery QC**

Cases: -

Richards v Law Officers, C.A. April 18th 2002, unreported
Bond v Law Officers, C.A. April 11th 2003 (Judgment 18/2003)
Parker v Law Officers, C.A. September 19th 2002, unreported)
Roper v Law Officers, C.A. July 8th 2003 (Judgment 29/2003)
Fawcett, 1983 5 Cr.App.R. (S.) 158

Carey JA

Introduction

1. This is the Judgment of the Court on renewed applications for leave to appeal by Stephan William GREECHAN and Yvonne CLIMIE from the sentences imposed on 21st May 2008 by the Royal Court, composed of the Deputy Bailiff and nine Jurats, when each of the applicants, who are husband and wife, along with a co-accused, Gary Robert Johnston, who has not sought leave to appeal, received sentences of 7½ years each following guilty pleas to one Count of importation of Cocaine, a Class A drug. The combined weight of the consignment which comprised four packages was 108.237 grams of 33% purity with an estimated street value of between £10,823 and £21,647. Leave to Appeal was initially refused by the President (with full reasons) on 27th August 2008.

Abandonment by Greechan

2. We were informed at the outset that Greechan had not come to Court to pursue his appeal. Further enquiries made by H.M. Greffier with the prison authorities confirmed that he did not wish to pursue his appeal and H.M. Greffier has since received a notice of abandonment in the prescribed form, so it falls to us to formally dismiss the application from Greechan. The remainder of this judgment is therefore confined to determining Climie's application and we will refer to her hereafter as "the Applicant".

The Facts as presented to the Court below

3. On Monday 28th January 2008, Greechan, the Applicant and Johnson arrived in a Volkswagen motor vehicle from Weymouth. Greechan was driving and according to the narrative, they were stopped in the vicinity of the Cambridge Berth. It is not clear whether the vehicle had been driven through the Customs control area, known as the Car Hall, or whether they had, as sometimes happens, been able to drive straight off the ferry and down the main exit road. At any rate, they were stopped and directed to the Car Hall and searches of baggage and tests carried out were positive to Cocaine on items belonging to each of the accused.
4. When asked to explain, Greechan stated that he had taken Cocaine two days previously; the Applicant stated that she had taken Cocaine on the 25th January and the other accused admitted likewise. A body search was started on Greechan, during which he refused to part his buttocks. He was asked if he had swallowed or internally concealed any controlled drugs and said that he had not. The Applicant was later escorted to the hospital for the purpose of an x-ray examination which subsequently revealed two golf ball size packages concealed in her vagina. She removed these and admitted that they were Cocaine, which she had placed there.
5. Greechan was later noticed by an Officer monitoring his cell, to have a small round object protruding from under his custody suit, resting by his left buttock. This was revealed as a golf ball size condom wrapped package, subsequently found to be Cocaine.

6. Johnston also produced a similar package from inside his body.

Greechan's Involvement

7. The first interview with Greechan was conducted before any controlled drugs had been recovered. Greechan said that he and his co-accused had driven down from Scotland, leaving at 2.00 am that morning. The vehicle was a hire car paid for by the Applicant's brother-in-law. The purpose of the trip was to collect the Applicant's son, who works in Guernsey and was intending to return to Scotland with them the following Friday.
8. Greechan admitted having visited Guernsey on two or three occasions previously and when asked if he understood what was meant by drugs, he said: "*I have been in jail for drugs before so I know what drugs are*". He again denied internal concealment. Greechan admitted smoking Cannabis regularly and being an occasional user of Cocaine. He was interviewed again after the package had been found in his custody suit and declined to comment. He was then shown the package recovered from Johnston and told about the packages produced by the Applicant. He then said that he had seen the packages before and he claimed that they were his.
9. Greechan confirmed that the total weight of the drugs recovered was about 4 ounces as each package contained roughly 28 grams. This was later confirmed by the Analyst. He admitted to purchasing the drugs and said that he still owed money for the drugs in the sum of "*four grand*". He would not say where or from whom he had obtained the drugs and was then asked how much he was expecting to gain from the sale of the drugs. He said he had not arranged to pass on the drugs locally – he was going to play it by ear when he got here. This was challenged, but he went on to say that it was his idea to bring the drugs to the Island and he had discussed it with the Applicant and Johnston as they were people he could trust. He claimed not to have forced the Applicant or Johnston to participate, but coerced them with "*gentle persuasion*". He said that the Applicant and Johnston had contributed £260 each to the cost of the ferry and the car hire. When asked if there were any arrangements to

share the proceeds of the sale of the drugs, he claimed that they had not thought that far ahead.

10. There were further questions about his drug use and the strength of the Cocaine, which he said was not brilliant and was not going to be further cut while he was in Guernsey. He would not be drawn on his method of concealing the drug package.
11. Greechan was represented by Advocate Mallett. Miss Mallett accepted that Greechan was responsible for obtaining the drugs and that the debt was his, but that he was not going to benefit from the full amount of the drugs as he was reliant upon others to distribute drugs when they had arrived.
12. More insight into the offence is to be gleaned from the Social Enquiry Report into Greechan. This paints a somewhat different picture to that portrayed in the initial interviews. The couple were indeed in financial difficulties. According to Greechan, the idea of importing drugs into Guernsey first emanated from a suggestion made by someone to the Applicant, but then Greechan says that he thought it was a good idea and that he pushed the idea and took upon himself the role in arranging the importation. The original plan had been to hide the drugs in the spare tyre, but time had run out and they decided to carry them through Customs internally. Greechan wrapped the drugs in preparation for insertion.
13. Greechan also told the Probation Officer that he believed that they had been arrested because they were met at the Harbour by a person who was well known by Customs.

Johnston's involvement

14. Johnston said nothing in interview. He is the nephew of his co accused but did not suggest through his advocate that he was other than fully responsible for his actions, albeit he claimed to be a mere courier, neither having purchased or come up with the plan to import the drugs into Guernsey. It appears that the Court accepted that his previous convictions for driving offences were not relevant to sentence.

The Applicant's Interviews

15. The first interview commenced with her providing personal details and details of her employment as a Support Care Worker. When asked about her finances she said she had no savings because she was a spender. She did however say that she was not in debt. She then outlined her travel from Scotland which corroborated the version given by Greechan. When asked what her reasons for travelling to Guernsey were, she said that they were going to spend a few days living it up before taking her son, who was living in Guernsey, home for a month. When asked what she intended to do with the drugs, she said *"I was going to take them; I know it seems a lot, but I was here for five days. I was gonna have a little blow out before my son comes home, party a little while"*. She confirmed that she had purchased the drugs but would not say where exactly as it was more than her life's worth to tell. She had bought two ounces for £1,600. She had some free money now that she was living with her mother. She claimed that Greechan and Johnston did not know about the importation as it was not discussed.

16. She was further challenged on her claim that she was going to use all the drugs found on her for her own purposes. During two further interviews she made no comment of consequence. In her fourth interview she told a somewhat different story from that in the original interview. She said she came to Guernsey to collect her son but that Greechan had had other ideas and mentioned that there were no drugs or suppliers on the Island. She then claimed that she had first said no, but Greechan wore her down and convinced her that it could happen. The Applicant accepted that she had visited Guernsey before, but had never brought drugs into Guernsey on any previous occasion.

17. The Officer informed her that Greechan had intimated that it was his idea to import the drugs. However, the Applicant stated that she would have to take some of the blame as she went along with it. She further claimed that Greechan had originally intended to hide the drugs in the car, but as he was running out of time to do anything with the car, she had agreed to take the drugs. She said it was hard to say no when getting worn down by someone. She said that she did not know how the drugs were obtained or how they were going to be distributed. She had helped Greechan pack

the drugs, which had been in rock form and which she had then crushed and packed on the day before they left Scotland. She had internally concealed the drugs at a Service Station near Weymouth.

18. When asked whether she would make any financial benefit from the importation, she said Greechan would have and as she was married to him, she also would have benefited. She said she was carrying two ounces and admitted that for anatomical reasons it was easier for her to hide a larger quantity. Originally she was not going to carry any drugs on her person but then stupidly had been talked into it. The Applicant then stated that Greechan had made the ferry booking with the original plan being that if Greechan was caught with the car, she would still be able to return home with her son as she did not want anything to do with it.
19. After a fifth interview concerning her mobile phone and communications she may have made, she is recorded as saying *“Just what I’ve said already, it wasn’t my intention to bring any drugs into this Island and I was kind of talked into doing it”*. She further stated *“It wasn’t as if I thought I could do it or get away with it, I did genuinely know that we would all get caught, deep down inside”*. At the close of the Prosecution case, there was an exchange between the Deputy Bailiff and Crown Advocate McKerrell, confirming that the Prosecution was suggesting that in sentencing the Court should treat this as a joint enterprise in which all three accused played an equal part.

The Mitigation on behalf of the Applicant

20. The Applicant was represented at the trial, as she is today, by Advocate Christopher Green. Again, the Social Enquiry Report provides more information as to the background of the offending than is revealed by the interviews with the Customs. The Applicant admits that she was approached by a friend of her son in Guernsey, asking for the import of a kilo of Cocaine. She says that she refused to assist initially, but that eventually she and her husband agreed to import Cocaine, but in the amount of four ounces as they could not get hold of a kilo. She confirmed that her husband was responsible for obtaining the Cocaine and that

the payment for it remained outstanding, although she did not know what the cost was.

21. She said that the original plan was to hide the drugs in the spare tyre, but that they ran out of time and then the husband started to coerce her and her nephew into internally concealing the Cocaine, as he also intended to do. It is in this regard that the Applicant said that she was talked into it, but allowed herself to be used in this way when she could have said no. The Applicant gave the reason for committing the offence as purely financial, having run up quite a lot of debts, whilst at the same time, using her surplus income to buy drugs.
22. This was expanded on by Mr Green. In particular he concedes that whilst not involved in acquiring the drugs, she had crushed and packed them of her own volition. She does however distance herself from the decision to conceal the drugs internally and says that she was talked into this at the last minute. Again, the claim was made that she was a minor player in the importation and that her role in the importation was essentially one of a courier.
23. The Deputy Bailiff rightly took up with Mr Green the issue as to whether this should be treated as a joint enterprise. Mr Green accepted that it was and then was asked if he would clarify the figure as to what the Applicant thought she would get out of the importation. The initial talk of paying £1,600 for the drugs in the first place was said to be a lie, but it was acknowledged by Mr Green that she told the Probation Service that each of the three of them were likely to receive £2,000 once the drugs had been sold.

The Sentencing Remarks of the Royal Court

24. The Royal Court recorded that it was treating the offending as a joint venture between all three accused in which they all willingly participated and they therefore treated them as being equally guilty of the offence. The Court went on to say that the role played by each of them in the importation was greater than the roles of a straightforward courier or mule, with which the Court is so often concerned, namely the person who is persuaded to import drugs belonging to another in return for a

payment of an agreed sum of money. The Court then went on to record its conclusions following *Richards*, namely that a starting point of 11 years was appropriate having regard to the sentencing band of 10 – 13 years for importations of between 100 – 250 grams of a Class A drug. The Court then considered the mitigation available to the Applicants.

25. In the case of Greechan, it noted that he had received 4 years imprisonment for supplying Cannabis in 1999. The Court accepted concealment between his buttocks was less unpleasant for Customs than internal concealment, but that it still made a guilty plea inevitable, but it seems that the Court acknowledged that he may have had an additional discount for having the drug between his buttocks, rather than in his rectum, but that was offset by not being of good character.

26. It was acknowledged that the Applicant was of previous good character, but that her drug habit had resulted in her husband and her losing their home. Note was also taken of the constructive use she made of the resources available to her in Prison, as recorded in reports handed out.

The Submissions to this Court

27. Mr Green, on behalf of the Applicant, has developed a number of points in support of his submission that there was objectionable parity between the sentence received by his client and that sentence received by Greechan. He submits that each offender in a joint venture must be seen to take responsibility for the others actions and he takes issue with the apparent credit given to Greechan because he did not personally conceal drugs on his person when there is an admission by him that he wrapped the drugs up for his co-accused to carry internally. He takes issue with the same starting point being applied to all three accused, notwithstanding the existence of relevant and significant differences in their personal circumstances. He then emphasises the difference in the records of Greechan and the Applicant and suggests this should have been recognised either by adjusting the starting points for the two of them, or increasing the discount for the Applicant.

28. Mr Greene relied on the general comments on the subject of parity by Southwell JA in Bond, a case of perceived disparity.

Conclusions of this Court

29. We do not disagree with the approach of the Court in selecting a starting point of 11 years. Indeed when challenged Mr Green did not press the point save to suggest the starting point for Greechan should perhaps have been higher. True, the importation was only just above the lower limit of the band laid down in Richards, but the Royal Court was entitled to treat all three offenders as being more than mere couriers.

30. Greechan clearly took responsibility for acquiring the drugs and entering into a commitment to pay for them when recompensed by his purchaser in Guernsey and the Applicant expected to share in the profits that were to be made from the transaction as a principal in the enterprise. Internal concealments are unpleasant as the Court has recorded, but we do not consider that Greechan can claim credit for the fact that he did not get as far as hiding the drugs inside him when he admits having prepared the packages for his co accused so to secrete.

31. Greechan has one serious conviction for supplying cannabis for which he received a sentence of four years imprisonment in 1999. Since then he has not come to notice in the courts. From before that time he and the Applicant appear to have been together and no strangers to illicit substances. Indeed the Applicant's social enquiry report details drug abuse by her for a period of over twenty years – LSD, Ecstasy and Amphetamines with in recent times increasing use of cocaine. As was pointed out in Court with such admissions she can hardly claim to be of good character. Further as has been said on more than one occasion in the Courts here and in the United Kingdom previous good character is often of less relevance in the case of offenders detected transporting drugs across international frontiers.

32. In addition to Bond to which we have referred we have looked at the decisions of this Court in Parker (Criminal Appeal 287) and Roper (Criminal Appeal 303). Both are fact specific, but they assist in identifying the proper approach. We remind ourselves of the words of Lawton LJ in Fawcett 1983 5 Cr. App. R. (S.) 158:

“Would right thinking members of the public, with full knowledge of all the relevant facts and circumstances, learning of this sentence consider that something has gone wrong with the administration of justice?”

We are not so persuaded. This case proceeded on the basis that this was a joint enterprise from which all were to profit equally when the drugs were sold. On that basis the Royal Court was fully entitled to sentence in the way it did and that resulted for this applicant in a sentence that was in no way excessive. Her application accordingly fails.

(H.M. Greffier addresses the President)

H.M. GREFFIER: I think Advocate Green has an application for legal aid, sir.

ADVOCATE GREEN: Yes, sir, Members of the Court there would be an application for legal aid.

THE PRESIDENT: Right, well, we have considered that possibility, Mr. Green. The Court acknowledges the practice which is that the Single Judge gives legal aid up to the point of refusal, and in this case the Court is prepared to allow legal aid for your attendance today and on Monday. It does not feel that the extra preparation, if any, that took place should be rewarded, that is something which you do speculatively. We would like to put Counsel on notice generally that where there has been a refusal by a Single Judge and there is a renewed application which fails, there is no guarantee that this Court will be sympathetic to applications for further legal aid. Frankly, the Court does not feel this is an application that should have been renewed after the very full consideration given by the President sitting as a Single Judge. Thank you.

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 18th December 2008