

Judgment 43/2005

**Jamie Russell Ingram – Court of
Appeal (Criminal Appeal 329) –
20 July, 2005**

Importation of heroin – appeal against sentence – relevance of previous convictions to the starting point – disparity will not run as between unrelated cases where the court is not fully apprised of all relevant matters in the case with which comparison is made – appeal dismissed.

IN THE COURT OF APPEAL OF THE ISLAND OF GUERNSEY

The 20th day of July, 2005 before The Honourable Michael Jacob Beloff Q.C., presiding, Dame Heather Steel, D.B.E. and The Right Honourable Sir Charles Mantell

THE LAW OFFICERS OF THE CROWN

V

JAMIE RUSSELL INGRAM

(Appellant)

In the appeal of the above Appellant from the sentence imposed on him by the Royal Court on the 17th November, 2004;

THE COURT, having on the 18th July, 2005 heard Advocate Miss J. A. S. White for the Appellant and Crown Advocate P. Robey thereon, and having DISMISSED the appeal on the said 18th July, 2005, this day GAVE REASONS in the terms attached hereto.

K. H. TOUGH
Registrar of the Court of Appeal

OFFICIAL TRANSCRIPT

APPROVED TEXT
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WEDNESDAY 20TH JULY 2005
IN THE COURT OF APPEAL

Before

The Hon Michael Beloff, QC; presiding
Dame Heather Steel, DBE QC
The Rt. Hon Sir Charles Mantell PC

JAMIE RUSSELL INGRAM
(Criminal Appeal No. 329)

Judgment delivered by Mantell, JA

Introduction:

1. On Monday of this week the Court dismissed the appeal of Jamie Russell Ingram against a sentence of 6 years imprisonment imposed by the Royal Court on 3rd September 2004 for the fraudulent evasion of the prohibition on importation of heroin. We said then that we would give our reasons later. They now follow:

The Facts:

2. In April 2004 the Appellant was living at Flat 2, Block 1, Millmount, La Charroterie, St. Peter Port. At that time he was 25 years of age. He had a number of criminal convictions. His last two, in 2001, had been for supplying cannabis and possessing cannabis with intent to supply. For those offences he had received a total sentence of 4 years imprisonment.
3. On Thursday 29th April 2004, Customs Officers intercepted a postal package which was on its way from South Wales to a near neighbour of the Appellants. It was found to contain 13.1 grams of heroin, or, rather, a powder consisting of one part heroin and two parts cutting agent. The Customs Officers replaced the contents with an innocuous but similar looking powder and sent the package on its way. Having previously arranged for the delivery and recognising the package by its distinctive markings the Appellant collected the package from his neighbour's post box and took it into his own flat where he was surprised a little later by Customs Officers armed with a search warrant. His attempts to flush the package down the lavatory were only partially successful. The Appellant's companion in crime, a young man called Nathan, was arrested as was the Appellant. Scales and a significant amount of cash were found and also evidence of payments into a South Wales bank account.
4. In the interview the Appellant made no secret of having arranged the importation but was at pains to minimise the role of Nathan.

Proceedings in the Royal Court:

5. Both the Appellant and Nathan pleaded guilty to the importation of heroin at the first opportunity. The Royal Court said that they would each receive full credit for their pleas. Having set the starting point for the Appellant at 9 years, and for Nathan at 7 years, the Court proceeded to sentence the Appellant to 6 years imprisonment and Nathan to 4.

The Appeal:

6. The appeal is brought with leave of Richard Southwell, QC, Judge of the Court of Appeal. The Appellant has been represented as he was before by Advocate White. The grounds of appeal have been formulated by her and argued with that rare combination of charm and tenacity. They are (i) the starting point of 9 years was manifestly too high, and (ii) too little discount was accorded to the personal mitigation.
7. As to the first, Advocate White has rightly referred us to the guideline decision of this Court in Richards and Others (18th April 2002). Although of high authority, being that of a five Judge Court, presided over by the President, as the Court itself explained, it was not attempting to lay down some sort of inflexible code and that sentencing remained ultimately a matter for the Court's discretion. Having said that, the case offers valuable assistance to sentencers who will seldom need to look beyond Richards in arriving at the correct tariff for drugs offences.
8. The first principle to be extracted is that the starting point should be based primarily on weight regardless of the degree of adulteration. In that respect the approach differs from the approach adopted in England. Thus in the present appeal and adopting the bands proposed by the Court in Richards the starting point should have been in the range of 7 – 9 years. The Royal Court settled on 9. It took into account as aggravating features the involvement of the postal services and the previous convictions for drugs offences.
9. It has been argued that the previous convictions bear only upon the personal mitigation and should not influence the selection of the starting point. We do not agree; they serve to aggravate the seriousness of the offence and unless reflected in the starting point could never be more than a neutral factor. Looked at in isolation, therefore, and to borrow an expression from another jurisdiction, we cannot say that a starting point of 9 years was either wrong in principle or manifestly excessive. Indeed, we are entirely satisfied that 9 years was the correct point at which to begin.
10. It is here that Advocate White throws her curved ball. She says, look what happened only the day before in the same Court for the same offence and three times the amount of heroin when the starting point was set at 9 years also. Can that be fair, she asks rhetorically in advancing what is, in reality, a disparity argument which involves contrasting two quite discrete cases however proximate they may have been in point of time. The problem with that approach was well explained in the English case of Large (1981) 3 C. App. R. (S) 80 C.A. at page 82, we quote:

“This Court declines to entertain such a submission. By reason of the appeals which constantly come before it the Court is aware of the general level of sentencing throughout the country. If, when individual sentences are being considered, it was permissible for Counsel to analyse sentences passed by other judges or other occasions for other offences the work of this Court would come to a standstill. It would occupy the time of the Court to an inordinate extent and would do no more than draw its attention to the sentencing practice of a particular judge on a particular occasion in circumstances quite different from those with which the Court is immediately concerned. We will consider the matter of disparity when it arises in respect of participants in the same offence who have received different sentences for the parts that they played in the offence. Where it appears that for similar involvement in the offence the offenders have received very different sentences it is a warning sign that something may possibly have gone wrong with one or more of the sentences.”
11. To that there may be an exception where the Court is seized of consolidated appeals and is fully apprised of all relevant matters (see Clarkin v. H.M. Attorney General and Packitt v. H.M. Attorney General (1991) JLR 213) and also Bond Guernsey Court of Appeal (Criminal Appeal 294 (11th April 2003). Otherwise we are firmly of the view that in the accepted sense disparity will not run as an argument as between unrelated cases where, as here, this Court is not fully

apprised of all relevant matters concerning the case with which comparison is sought to be made.

12. We turn to the second ground of appeal which relates to the personal mitigation available to the Appellant which, it is asserted, was given no weight at all by the sentencing Court.
13. We note that the Appellant was accorded the full third discount for his plea, which might be regarded as generous considering he had been caught red-handed. Even so, it is said, the Court having acknowledged that the Appellant was entitled to some credit on account of his age, an even more generous concession was appropriate. Given that he was 25 and had involved a younger and less experienced confederate, we cannot agree.
14. It is fair to say that this matter initially concerned the Court. However, it is not for this Court to mark the steps by which the sentencing Court arrived at its sentence save insofar that it may give rise to a warranted sense of injustice, if in the end the sentence arrived at is a proper one as it was here.
15. Accordingly, the appeal must be dismissed as we indicated on the earlier occasion.

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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
Wednesday 10th August 2005