

Judgment 45/2004

**Jamie Wai Con Pang – Royal Court –
15 October, 2004**

Criminal appeal from the Magistrates Court – sentence – supply of cannabis resin to another – whether disparity in sentence – co-offender had benefited from prosecution error misstating the weight of resin as 2.88 grams instead of 2.88 ounces – disparity arising from such an error would not give rise to an objectionable and justifiable grievance – appeal dismissed.

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 15th day of October, 2004 before Geoffrey Robert Rowland, Esquire, Deputy Bailiff, sitting alone.

In the action of THE LAW OFFICERS OF THE CROWN against JAMIE WAI CON PANG (“the Appellant”) to pursue the Appeal of which the said Pang gave notice against the sentence imposed upon him by the Magistrate’s Court on the 26th day August, 2004;

WHEREAS on 12th day of October 2004 THE COURT, consisting of the Deputy Bailiff and ten Jurats, HEARD Advocate M. Baudains for the Appellant and Advocate G.D. McKerrell for the Crown DISMISSED the Appeal and ADJOURNED the matter for written reasons to be handed down at a date and time to be fixed by the Court;

THE COURT this day handed down written reasons in the terms attached hereto.

S. M. SIMMONDS
Her Majesty’s Deputy Greffier

Approved Text

**Appeal against Sentence
Mr Pang
12th October 2004**

Appeal

1. Jamie Wai Con Pang on 12th October 2004 appealed against the sentence imposed upon him by the Magistrate. His grounds of appeal were that the sentence was manifestly excessive and in addition or in the alternative the custodial sentence should have been suspended.
2. The Court considered the submissions made on behalf of Mr Pang by Mr Baudains, who also appeared for Mr Pang in the Magistrate's Court. The appeal was rejected. The Court advised that it would hand down its reasons. The Court's reasons are set out below.

The Offence

3. Mr Pang, on 26th August 2004 pleaded guilty to the charge of being concerned in the supplying of Cannabis Resin to another. That is a drug trafficking offence. He was sentenced to six months imprisonment.

Facts

4. The facts on which Mr Pang was sentenced were that he was the front seat passenger in a car driven by a friend. The car was stopped by Police Officers who subsequently detained both the driver and Mr Pang for the purpose of carrying out a drugs search. The driver admitted to Police Officers carrying out a drugs search that there were 3 ounces of Cannabis Resin in the back of the car. The drugs were found under seat covers and comprised 3 pieces in cling film wrap weighing 79.4 grams which is approximately 3 ounces.
5. Mr Pang when interviewed volunteered that he had received a telephone call from a drug dealer. Regrettably he had not been prepared to name the dealer. The drug dealer was soliciting business. He wanted to know if there was anyone whom Mr Pang knew who wanted to purchase Cannabis Resin. Mr Pang proved willing to act as an intermediary in setting up a deal because he already knew that his friend, who was the driver of the car, needed 3 ounces of Cannabis Resin. He notified his friend about the dealer's offer to sell 3 ounces and thereby he facilitated the sale of Class B drugs. He also voluntarily agreed after some pestering to be a passenger in the car when the deal would take place. The driver of the car purchased 3 ounces of Cannabis Resin for £600. It was a substantial drugs deal.
6. Mr Pang claims to have remained in the car whilst the deal was done but did acknowledge that he had touched the cling film wrapped pieces. It was he who had placed them in the back of the car.

Serious Offending

7. What is clear is that Mr Pang was willing to be a link in the drug trafficking chain. Drug trafficking is a very serious offence. A person who actively facilitates drug dealing in the way that Mr Pang did so is committing a crime far more serious than a case of simple possession.

Without Mr Pang's involvement the friend would not have purchased those drugs and hence would not have been found in possession of them.

It is perhaps fortunate for Mr Pang that he was not committed to the Royal Court for his drug trafficking offence. There he may have received a heavier sentence. The Royal Court has indicated that it will treat as serious involvement in drug trafficking defendants who have assisted drug dealers as minders of illicit drugs and the Court also views with seriousness those who are willing to act as intermediaries.

Unjustifiable Disparity

8. Mr Baudains indicated that there was a disparity in the sentence imposed on Mr Pang when compared with the sentence imposed upon the driver who, as a purchaser and not a drug trafficker, was charged and sentenced for simple possession.

Different offences

9. The Court has concluded that there was always likely to be a significant disparity of sentence because Mr Pang's offence was the much more serious offence. The issue is whether the disparity was objectionable.

Is the disparity objectionable? Should the 6 month sentence be upheld?

10. The Court has noted that Mr Pang's friend, unfortunately for the criminal justice system, benefited from immense good fortune in that the prosecution committed a very unfortunate error in the Magistrate's Court. The prosecution mis-stated the weight of Cannabis Resin in the possession of the friend. It was stated to be 2.88 grams rather than 2.88 ounces (79.4 grams), a most considerable difference. That error was not corrected by anybody. If such a gross error had been corrected before sentence was pronounced then Mr Pang's friend would, for simple possession, have received a far more substantial sentence, probably an immediate custodial sentence in the region of 3 months imprisonment.

11. As the driver benefited from good fortune this Court does not accept that Mr Pang can harbour a justifiable grievance about the disparity between the sentence imposed on his friend and the sentence imposed on Mr Pang. The Prosecution error which resulted in a lower sentence for Mr Pang's friend, on a totally different charge, should not be compounded by this Court regarding the difference as objectionable and consequently reducing the sentence imposed on Mr Pang. The Court is not aware that this Court or the Guernsey Court of Appeal has ever deemed it proper that such peculiar and unfortunate circumstances can give rise to an objectionable and justifiable grievance. The Court is of the view that right thinking members of the public with full knowledge of all relevant facts would not say that Mr Pang should benefit from the good fortune resulting from a gross error in another case, even in circumstances where there is a nexus between the two cases.

12. This Court also noted that Mr Pang had made full disclosure of his involvement to the Police. That is to his credit because there can be no certainty that he would have been convicted if he had not made full disclosure.

13. More frequently than not it will be the case that a deterrent sentence will be necessary for the protection of the public in drug trafficking cases.

14. Having taken all these factors into account the Court considers that the custodial sentence of 6 months imposed by the Magistrate was appropriate for the reasons stated by the Magistrate in his sentencing remarks.

Should the sentence of 6 months be suspended

15. Having concluded that a sentence of 6 months was not a manifestly excessive immediate custodial sentence the Court then considered whether that sentence should be suspended.

16. The principle followed by this Court is that a sentence should be suspended only if there are some exceptional circumstances. Each case is dealt with on its merits. There is no definition of exceptional circumstances in Guernsey law or indeed in English law. The Court is mindful of the many statutory changes made in England but notwithstanding that this Court has always derived broad benefit from a consideration of English cases on the subject of exceptional circumstances. The strict view which emerges in English cases is that good character, youth and an early plea of guilty could not constitute exceptional circumstances because they are common features in many criminal cases.

17. The Court has considered the points submitted by Mr Baudains as constituting exceptional circumstances. The Court's attention during the sentencing process was drawn to the points listed by Mr Baudains in a skeleton argument which he had submitted. The Court carefully considered each point.

18. The Court concluded that it would be a very rare case indeed when it would suspend a custodial sentence imposed on a person convicted of a drug trafficking offence. The points made in this case did not merit a suspension of sentence.