Judgment 45/2006 **Arthur Robert Edwards – Court of Appeal (Criminal Appeal 343) – 19th September 2006**

Importation of Class A Drugs – appeal against sentence – appropriate starting point – relevance of submission that the drugs were for personal use – Court of Appeal decisions in Richards (18.04.02) and Woodford (Judgment 6/2003) – appeal dismissed

IN THE COURT OF APPEAL IN THE ISLAND OF GUERNSEY

The 19th day of September, 2006 before the Hon Michael J. Beloff, QC, presiding, the Rt Hon Sir Charles Mantell, PC and Michael S. Jones, QC.

THE LAW OFFICERS OF THE CROWN

V

ARTHUR ROBERT EDWARDS

Appellant

In the appeal of ARTHUR ROBERT EDWARDS from the sentence imposed on him by the Royal Court on 20th March 2006;

THE COURT, having on 18th September 2006 heard Advocates P. Lockwood and G. D. McKerrell for the Appellant and the Crown respectively, this day GAVE JUDGMENT in the terms attached hereto and DISMISSED the appeal.

K.H.TOUGH
Registrar of the Court of Appeal.

Final Judgment
21.09.06

TUESDAY 19TH SEPTEMBER 2006

COURT OF APPEAL

Before

Michael John Beloff, Esq., QC; presiding
Sir Charles Mantell
Michael Scott Jones, Esq., QC

ARTHUR ROBERT EDWARDS
(Criminal Appeal No 343)

Judgment delivered by Michael Scott Jones, Esq., QC

Procedural history

1. On 19th January 2006, the Appellant appeared before a Lieutenant Bailiff to answer an Indictment containing two counts. The first count charged him with being knowingly concerned in the fraudulent evasion of the prohibition on importation of Diamorphine. The second charged him with doing an act which impedes or is calculated to impede the seizure of a thing liable to forfeiture, by concealing a quantity of Diamorphine. He pleaded guilty to both counts.

2. On 20th March 2006, the Appellant was sentenced to five years and three months imprisonment on the first count, and three months on the second, the sentences to run consecutively from 28th October 2005. By Notice, dated 3rd April 2006, the Appellant applied for leave to appeal against sentence. The offence of which he was convicted is recorded in the Notice as *"knowingly concerned in the importation of Diamorphine".* The Notice makes no express

reference to the conviction on the second count, but the sentence appealed against was stated to be five years and six months.

3. The application came before a single judge of the Court of Appeal, on 15th August 2006. He proceeded on the understanding that the Appellant wished to seek leave to appeal against sentence on both counts. He allowed an extension of time for leave to appeal in respect of the first count, and granted leave to appeal against the sentence of five years and three months, on the view that *"it may be appropriate for the members of the plenary court to consider that sentence in the light of the post Richards comments of the Court of Appeal in Woodford",* whilst not suggesting that the decision in *Woodford* is necessarily of any general application. The judge refused leave to appeal against sentence on the second count.

The circumstances of the case

4. The Appellant imported 6.05 grams of heroin. At the sentencing hearing, it was asserted on his behalf that he was an addict and that the drugs were intended for his own use. It was claimed that, although he was on a day trip to Guernsey, and the quantity of drugs which he imported would have lasted him for a number of days, it was his practice to carry his supply with him at all times, fearful that his home may be either searched by the police, or burgled by other drug using associates in his absence. The Jurats accepted that the drugs were for his own use.

The approach taken in the Court below

5. In the course of his sentencing remarks, the Deputy Bailiff explained that, in determining sentence, the Court was seeking to follow the guidance given by the Court of Appeal in *The Law Officers of the Crown v. Richards and Others* (18th April 2002). Particular reference was made to paragraph 14 in the *Richards* judgment, in which the Court of Appeal suggested how the Royal Court might deal with a claim that a drug is for personal use, in an importation case. Paragraph 14 reads as follows:-

> *"As we have identified importation is a drug trafficking offence, whatever the intention of the offender as to the use to which the importation is to be put. There is however a clear division between importations of very small quantities for personal use which are punished in the same way as offences of simple possession, and importations of more than relatively small amounts which still fall within the lower of the bands we have set out. In the case of such importations, the fact that a claim is made that a drug was for personal use will not generally result in a lighter sentence being imposed than where no such claim is possible, because any importation adds to the stock of drugs available in the island. Although these cases must be looked at with care, 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."*

6. Adopting that approach, the Court below took 7 years as the starting point on Count 1 and, making due allowance for the guilty plea, pronounced the sentence now appealed against.

The Grounds of Appeal

7. The Appellant's Grounds of Appeal are commendably concise. It is contended that the approach adopted by the Court below was "wrong in principle given the comments of the Court of Appeal in the case of *The Law Officers of the Crown v. Woodford*" (9th January 2003).

The Woodford decision

8. Mr. Woodford was sentenced to four and a half years' imprisonment after pleading guilty to an offence of fraudulently evading the prohibition on the importation of 5.233 grams of heroin. He had been a heroin addict over a period of several years up until the date of the offence. He initially claimed

that the heroin was for his own use. He said that he took about 0.3 grams each day, and on this basis the drugs he imported would have lasted him for about nine days. However, he later admitted in interview that, if asked, he would have been willing to share the drugs with his employer, who was also a heroin user.

9. The Court of Appeal granted Mr. Woodford's application for leave to appeal, allowed the appeal and substituted a sentence of three years' imprisonment. In doing so, the Court referred to paragraph 14 of the *Richards* judgment set out above, and said:-

> *"… … … in the Richards case, this Court was at pains to point out that the guidelines which it laid down were not intended to represent an inflexible code. The Court further acknowledged that there is a clear division to be drawn between importations of very small quantities for personal use, and importations of more than relatively small amounts which still fall within the lower of the bands set out. In the former case, this Court stated that such importations are punished in the same way as offences of simple possession: whereas in the latter case, the fact that a claim is made that a drug was for personal use will not generally result in a lighter sentence being imposed. The division may be clear, but this part of the judgment presents two potential problems:*
>
> *First, where one should draw the dividing line. What quantities are properly describable as "very small", and what are "relatively small" amounts?*
>
> *Second, the dichotomy suggested appears to have a lacuna, namely, what is the right approach if it is concluded that the amount is relatively small (not being "very small", but not "more than relatively small") where it is claimed that it was intended or primarily intended for personal use?*

10. The decision in *Woodford* does not appear to turn, however, on its analysis of paragraph 14 of the *Richards* judgment. The Court of Appeal noted that, in pronouncing the sentence of the Royal Court, the Deputy Bailiff commented, "it may well be that some of the drugs were for Mr. Woodford's own use". Of that remark, the Court of Appeal said:-

> *"... ... ... we respectfully doubt whether this conclusion is sufficiently weighted in favour of the Defendant in the light of the matters referred to above. Mr. Woodford's claim that the drugs were at least primarily for his own use is not merely supported by the fact that he was an acknowledged heroin addict (which is not, of course, a mitigating factor as such), but by the fact that his assertion that he used 2 bags of about 0.3 grams per day was confirmed by the report from the Deputy Team Leader of the Divert Project, which concluded: "It would not be unreasonable to assume that this was for his own personal use".*
>
> *"We consider this to be a rather difficult borderline case, but, giving Mr. Woodford the benefit of any reasonable doubt, to which he is entitled, we do not think it right to conclude that any of the drugs would have been likely to have found their way into the general market in Guernsey.* ***On that basis*** *we have concluded that the sentence was excessive and therefore give leave to Mr. Woodford to appeal."* (Our emphasis)

11. It can be seen, therefore, that the appeal was allowed on the ground that the sentence that was passed in the Royal Court proceeded on an erroneous factual basis.

Discussion

12. The argument that prevailed in *Woodford* is not open to this Appellant, because, in this case, the Royal Court accepted that the drugs that were imported were intended for his own use. We are invited to hold, however, that the Court below nonetheless erred, by regarding the quantity of drugs

imported by the Appellant as "more than (a) relatively small amount", and by making no allowance for the fact that the Appellant was addicted to heroin. Instead, submits the Appellant, the Royal Court ought to have deemed the drugs to be either a "very small" quantity or, alternatively, a "relatively small quantity".

13. In our opinion, having regard to the whole terms of the judgment in *Richards*, it is clear that the intention of the Court of Appeal in that case was to provide comprehensive guidance on sentencing for drug trafficking offences. In paragraph 14 of the judgment, the Court focuses on those cases in which it is claimed that imported drugs are intended for personal use. The starting point of the discussion is the recognition that importation is a drug trafficking offence "whatever the intention of the offender as to the use to which the importation is to be put." We have no doubt that, read in its context, the "clear division" identified by the Court of Appeal is between "very small quantities for personal use" on the one hand and, on the other, any larger quantity which still falls within the lower of the bands set out in paragraph 10 of the *Richards* judgment. We are, consequently, of the view that there is no lacuna in that part of the *Richards* analysis. In applying the guidelines, it is for the sentencing Court to determine whether the quantity of drugs under consideration can properly be described as "very small", having regard to the facts and circumstances of the particular case. If it cannot be so described, a "personal use" claim will not generally result in a lighter sentence, because any importation adds to the stock of drugs available in the island. The risk of such addition to the stock is that the drugs may find their way into other hands.

14. On the foregoing analysis of *Richards*, we respectfully disagree with the view, expressed by the Court of Appeal in *Woodford,* that *Richards* fails to give guidance in the event that the quantity of drugs imported is regarded as "relatively small". In our judgment, the guidance is clear that, generally, the importation of drugs will fall to be punished in the same way as offences of simple possession only where the importation is of a very small quantity for personal use. Whilst addiction is not, of course, a mitigating factor, as

indicated in both *Richards* and *Woodford*, it may lend support to a conclusion that imported drugs were intended for personal use only.

15. The views which we express in paragraphs 13 and 14 of this judgment are consistent with what the Court of Appeal said in *The Law Officers of the Crown v. Young* (7th July 2004). In that case, the Court referred to what it described as "the principle" that the contention that an illegally imported drug was required for personal consumption was not to be taken as an extenuating circumstance save, perhaps, in the case of very small quantities. That principle, continued the Court, is not to be found in *Woodford* but in *Richards*.

Result

16. Whilst accepting that the drugs imported by this Appellant were for his own use, the Royal Court clearly did not regard the quantity as "very small". We see no reason to disagree. In these circumstances, it was open to the Court below to apply the guidelines in the way that it did.

Disposal

17. It follows from what we have said above that the appeal is refused.

