

Judgment 46/2006

**Mark John Tacon – Court of Appeal (Criminal Appeal
338) – 19th September 2006**

Importation of Class B drugs – application for leave to appeal against sentence – whether applicant’s level of involvement lower than co-defendant’s - his role was less visible but not less crucial – application dismissed – proviso under S.37(3) of the Court of Appeal (Guernsey) Law, 1961, applied

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.

MARK JOHN TACON

Applicant

On the Application of MARK JOHN TACON for leave to appeal from the sentence imposed on him by the Royal Court on 7th November 2005;

THE COURT, having on 18th September 2006 heard Advocates A. M. Merrien and F. Russell for the Applicant and the Crown respectively, this day GAVE JUDGMENT and REFUSED the application for leave;

AND THE COURT 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.

Finalised 4.12.06

TUESDAY 19TH SEPTEMBER 2006

COURT OF APPEAL

Before

**Michael J. Beloff, Esq., QC; presiding
Sir Charles Mantell
M. S. Jones, Esq., QC**

**MARK JOHN TACON
(Criminal Appeal No.338)**

Judgment delivered by Sir Charles Mantell

1. This is a renewed application for leave to appeal against sentence following refusal by the single Judge. The applicant is Mark John Tacon who, having earlier pleaded guilty before the Royal Court to two counts of being concerned in the importation of Class B drugs, namely, cannabis resin and amphetamine, on 7th November last year was sentenced to a total of 9 years imprisonment.
2. Two co-accused, similarly indicted, suffered similar sentences. The applicant's complaint is not that his sentence was too long in itself or inconsistent with guidelines issued by this Court, rather that some distinction ought to have been made between him and the others on account of his lesser role in the enterprise.

The Facts:

3. Since, at this stage, this is an application only, the facts may be reviewed relatively briefly.
4. It seems that in November 2004 Customs and the Police had become aware of a plan to transport a very substantial quantity of drugs from the United Kingdom to Guernsey. They set up an elaborate surveillance operation the subject of which being the three men who

Judgment delivered by Mantell, JA

eventually appeared before the Royal Court, that is, the applicant, Simon Bishop-White and Philip Cox. On 2nd November, Bishop-White and Cox were overheard discussing drugs and arrangements for staying or meeting at a Travel Lodge or Inn.

5. Next day a Mitsubishi Pinia motorcar at one time owned by the applicant was driven by Bishop-White to the ferry check-in at St. Peter Port. Bishop-White alighted and was driven away in a BMW motorcar by the applicant. On 5th November, Bishop-White and Cox met up at the Travel Inn close by Southampton airport. By this time the Mitsubishi had arrived in Southampton where it was collected by Bishop-White on 6th November, who was seen to remove a quantity of cash from behind a rear interior panel. He and Cox then met up again at the Travel Inn before going their separate ways and returning to Guernsey.
6. On 18th November, Cox flew to Gatwick from where his movements were closely observed. Suffice it to say that he was seen to collect a large quantity of drugs which he caused to be concealed in two table tops which he then arranged to be delivered to Guernsey by commercial carriers. It was at this stage that Customs Officers first intervened. Once in Guernsey the drugs were removed and the table tops reassembled for collection by Bishop-White, calling himself Martin. Bishop-White was seen to meet up with the applicant who was driving a van bearing the name of his firm.
7. The table tops were transferred to the van which was then driven off by the applicant with Bishop-White in the passenger seat. Unbeknown to either there was a listening device in one of the reassembled packages. The quality of the recording is poor but the applicant can be heard referring to the drugs and the likely return on a resale and the manner in which they should be disposed of "*We'll just knock it out slowly, you know.*"
8. The van was stopped and the occupants arrested as was Cox when he flew in from Gatwick later the same day.

Judgment delivered by Mantell, JA

9. In interview the applicant described what he claimed to be a limited involvement which did not include participating in any profits.
10. The drugs recovered by Customs consisted of 75 kilograms of cannabis resin and 118 grams of amphetamine. The cannabis haul was the largest ever made in Guernsey.

Sentence:

11. The Royal Court saw no reason for differentiating between the three defendants whilst acknowledging that each had had a different role to play. In sentencing the applicant the Deputy Bailiff observed:-

“Having considered all the facts including, in particular, the transcript of your recorded conversation while driving with Mr. Bishop-White in your van, the Court draws the inference that you played a bigger part than you have admitted.”

The Application:

12. As we have mentioned Advocate Merrien accepts that a total sentence of 9 years would have been within the guidelines laid down by this Court in Law Officers of the Crown v. Richards, Guernsey Court of Appeal 18th April 2002, where a starting point of 11 years and upwards was considered appropriate in cases of importation of cannabis resin in quantities above 30 kilograms with a concurrent importation of a different drug an aggravating factor.
13. The concession made is entirely realistic. However, Advocate Merrien relies on Richards for the further proposition that the role and the involvement of a defendant is not unimportant and with that we also agree. Where we part company from Advocate Merrien is when he suggests that the facts disclose a significantly lower level of involvement on the part of the applicant when compared with that of his co-defendants. True, his role was less visible than either of the others but that is not to say it was less crucial. It was certainly open to the Royal Court on the basis of what was overheard in the van to conclude that this applicant was to play an important part in distributing the drugs for reward. In addition, to storing them as had been accepted on his behalf.

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14. Without his contribution the efforts of Bishop-White and Cox would have been in vain. That being so there would have been no justification for distinguishing between them and accordingly the application for leave is refused.

 15. Before parting from this application we would wish to make it plain that we have received from the applicant directly a written submission in which he invites the Court to hear further from him orally either in giving evidence or making submissions with regard to his role. He refers to the fact that his Advocate has perhaps not said everything that might have been said. We would like to make it plain that in our view he has been very properly and ably represented by Advocate Merrien and it is not the practice of the Court to listen to applications made by the applicant himself when he has been adequately represented by Counsel.
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