

**Judgment 49/2007**

**(i) Dominique Poullard; and  
(ii) Michelle Toni Beck  
Court of Appeal (Criminal Appeals 375 and 377)  
– 12 December 2007**

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**Possession of Class A Drug with intent to supply – application of Richards guidelines to dealers as opposed to importers – level of activity has to be taken into account – appropriate starting point 7 years rather than 8½ years and sentences reduced accordingly**

**IN THE COURT OF APPEAL OF THE ISLAND OF GUERNSEY**

Criminal 375/377

The 12th day of December, 2007 before the Hon Michael Jacob Beloff, QC, presiding, Peter David Smith, QC and Sir de Vic Carey

THE LAW OFFICERS OF THE CROWN

- v -

DOMINIQUE POULLARD

(First Appellant)

and

MICHELLE TONI BECK

(Second Appellant)

On the application of each of the above Appellants for leave to appeal from the sentences imposed upon them by the Royal Court on the 5th day of September, 2007;

THE COURT, having on the 10<sup>th</sup> day of December, 2007 heard Advocates D. Domaille and S. Mallett for the First and Second Appellants, and Crown Advocate G.D. McKerrell, thereon, this day GAVE JUDGMENT in the attached terms and:-

1. GRANTED leave to appeal and legal aid as respects both Appellants

2. As respects the First Appellant, ALLOWED the appeal to the extent that the sentence on the First Count was reduced from five years and eight months' to four years and six months' imprisonment, effective from 6<sup>th</sup> March 2007
3. As respects the Second Appellant, ALLOWED the appeal to the extent that the sentence on the First Count was reduced from five years and two months' to four years' imprisonment, effective from 6<sup>th</sup> March 2007.

C A RODGER

Deputy Registrar of the Court of Appeal.

**IN THE COURT OF APPEAL GUERNSEY**

**CRIMINAL DIVISION**

**In the Matter of Applications for leave to Appeal  
Against Sentence by**

**Between**

**Dominique POULLARD  
and  
Michelle Toni BECK**

**Applicants**

**-v-**

**THE LAW OFFICERS OF THE CROWN**

**Respondent**

**Before: Mr Michael Beloff QC  
Mr Peter Smith QC  
Sir de Vic Carey**

**Judgment delivered Wednesday 12th December  
2007**

**CAREY J A**

**The circumstances of the offences**

1. This is the Judgment of the Court. The Applicants appeared before Lieutenant-Bailiff Finch and ten Jurats on 5<sup>th</sup> September last, having pleaded guilty to all the Counts in the Indictment which was presented to the Court. An application to the Bailiff for leave to appeal to this Court was refused.
2. The First Count alleged that on the 6<sup>th</sup> March 2007 both applicants had in their possession with intent to supply a quantity of Diamorphine (a Class A drug).
3. The Second Count involved Poullard and alleged that on dates unknown between the 31<sup>st</sup> December 2006 and the day of her apprehension for the offence on the First Count, she had unlawfully supplied Diamorphine.
4. The Third and Fourth Counts involved Beck alone and were simple possession charges relating to Diamorphine and Cannabis resin, which was found in her premises, when they were searched.
5. On the 6<sup>th</sup> March 2007 Officers of Police and Customs executed a Search Warrant on 17 Courtil Bris, a States house tenanted by Poullard. Prior to the time of their arrival, it appears that both applicants were in the downstairs area of the property. Poullard's four children were upstairs in their bedrooms.
6. As the Officers approached, the front door was opened by Beck who was on her way out. Poullard was in the lounge, sitting on a cushion by the fireside. Poullard got up and walked towards the Officers and after being informed of

the existence of the Search Warrant and that she would need to wake her children she replied “*Why, what you want is over there*”. She pointed to the fireplace hearth where there was a small plastic bag, several foil wraps and drug paraphernalia. Both applicants were arrested.

7. Further examination revealed what was described as a small production line of drugs where brown powdered substances were being weighed out and packaged into small tin foil wraps. The total weight of the Heroin found on the premises came to 9.341 grams. Purity is not an issue from the point of view of sentence. A packet of ten ‘Royals’ cigarettes with three silver foil wraps secreted into the outer wrappings was found down the side of the sofa. £310 in cash was found on the premises (Poullard later stating that her only income was £296 per week in Supplementary Benefit). Following further search of premises there were found other paraphernalia including syringes.
8. The search then moved to Beck’s premises where again drug paraphernalia were found and the two small quantities of Class A and Class B drugs which were the subject of the Third and Fourth Counts. There is no dispute that the quantities of these particular consignments fell within the “*personal use*” criteria from the point of view of the Prosecution. Cash amounting to £548 was found in Beck’s wallet. There was no suggestion that she had benefited from drug trafficking and it also appears that she had been in work.
9. Both applicants were interviewed. Poullard admitted that she had received the drugs two days previously from a man called ‘Mark’ and that she was going to sell the Heroin to users with whom she associated. She volunteered the price at which she was selling the 0.2 gram bags or silver foil wraps and expected to make between £500 and £1,000 personal profit from the sale of the heroin. She did not suggest other than that it was “*all down to me*”. Poullard also admitted that she had sold a gram of heroin to somebody else who later turned out to have been Beck. This was the day before the arrest and Beck paid £250.
10. Poullard was interviewed on four occasions and Beck on seven. Beck originally declined to make comment as to what she was doing at Poullard’s house except to admit that she was there when the Police arrived. But subsequently she admitted that she had been there to help Poullard with preparing the wraps for sale, saying that Poullard did not have a clue about how to prepare the wraps. She also admitted the scales in Poullard’s house were hers. She explained that both she and Poullard had injected heroin the evening of their arrest. Beck also admitted that the cigarette packet was hers, although she was unsure as to how the three wraps came to be there inside the packet.
11. Both applicants accepted that they had been heroin users. Both claimed to be benefiting from treatment with a drug designed to help heroin users to come off their habit called Subutex, but the Court was entitled to infer that their efforts had not been a total success and it was clear from their admissions that they had been consuming heroin in the recent past. On the other hand, it appears from the facts that the activity in which the appellants were engaged was at the bottom end of the retail chain, preparing small quantities for direct sale to addicts.

12. The Second Count relating to Poullard was based on her own admissions of the sale to Beck and also two wraps to a person whom she would not name and who had not paid her, so the basis on which that count is put is not pointing to further consignments having been handled by Poullard or Beck.

### **The decision of the Royal Court**

13. The approach that the Court took to sentencing is clearly revealed in the sentencing remarks of the Lieutenant-Bailiff. The extent of the offending was carefully reviewed and the starting-point on the first count identified based on the *Richards* guidelines. The band of sentences for 1 – 20 grams of Class A drugs in powder form is 7 – 9 years and a starting-point for both Applicants was to be set at 8½ years imprisonment. No reason is given as to why the upper half of the band was selected. The amount involved was as we have said, 9.341 grams.
14. There is also reference to an on-going drug dealing activity, but as indicated there is no evidence that there had been previous activity save that there were some scales in the possession of Beck although she does not seem to have been the prime mover with this particular consignment.
15. Reference was made to both offenders having drug abuse problems and acknowledgement was given for the helpful Probation Reports. Note was taken that Poullard's children will be affected by her incarceration.
16. The Court then goes on properly to acknowledge that Poullard has a more significant record than Beck. The Court then expresses the view that there were very little sensible alternative to 'guilty' pleas and therefore the reduction for these would be limited to one quarter. The Court continues to say that taking into account the personal mitigation, perhaps rather generously, it would allow a total discount of one third for both the accused.
17. The sentences imposed were on the First Count, Poullard 5 years and 8 months imprisonment and for Beck, 5 years and 2 months imprisonment. On Count 2 which concerned Poullard only, the sentence was claimed to be reduced on the totality principle and to reflect the admissions and it was fixed at 2 years concurrent (not to be a precedent for stand alone offences). Beck received on Counts 3 and 4, which the Court accepted were for personal use - 6 weeks and 7 days imprisonment respectively concurrent.
18. Poullard, after a full investigation by Customs was found to have benefited in the sum of £370 and a Confiscation Order in that amount was made with the alternative period of imprisonment consecutive. The realisable amount was £319.98 (the money in the jar, plus £8.00 odd in her bank account).
19. The Court imposed a heavier sentence on Poullard than Beck as Poullard had a significant record for which she had on occasions served custodial sentences, whereas Beck had not, although she had one conviction some ten years ago for possession of a small amount of cannabis resin for which she was fined.

## Grounds of Appeal

20. The Single Judge had the benefit of written submissions from Miss Mallett on behalf of Poullard. Miss Mallett had represented Poullard at trial, but she raised new issues in her submission, into which the Single Judge considered he could not go. The first point was that Poullard was trying to blame Beck for a greater level of involvement than was presented at trial, both by the Prosecution and by Miss Mallett in mitigation for Poullard. The second point was the introduction of recent sentencing decisions of the Royal Court, which this Court has said on more than one previous occasion can be of little assistance. Miss Mallett has wisely not renewed these points in submissions to this Court. She does however raise the issue of whether the appropriate starting-point was 8½ years and she also reiterates the personal mitigation. She further makes the point about the discount for the 'guilty' plea being too low.
21. Mr Domaille in his succinct points on behalf of Michelle Beck also takes the size of the discount and the starting point as grounds for saying that the sentence is too high. He also points out the higher value of the guilty plea in Beck's case in the light of the fact that it was not her house – she was leaving when the Officers arrived and that without her admissions there might have been real difficulty in connecting her with the supply operation that was clearly in train.

## The conclusions of this Court

22. There is always a problem when applying the *Richards* guidelines, which are centred on quantity of the drug detected, to dealers as opposed to importers. As has been said before, the Prosecution are often in difficulty in showing the exact extent of the dealer's activities and whether or not the stock which is detected is the dealer's only stock, or whether it represents a fresh consignment or whether it is the remains of a larger one, the bulk of which has already been disposed of. Whilst the Royal Court rightly tries to apply the bands in *Richards* in sentencing cases like this, it is important at all times that the Court should try to make an assessment of the level of activity, because when it comes to supply, the heavier sentences should be reserved for cases where the level of dealing activity, is the highest. Likely indicators of this will be the amount of money that is in the possession of the accused and the size of the stock or the consignments being purveyed.
23. In the view of this Court, when it comes to weighing the level of activity these two applicants cannot be regarded as other than at the bottom of the scale. The first point to consider is what the starting-point should have been in this case. As we have said, the band laid down in *Richards* is between 7 and 9 years. The Royal Court chose 8½ years without explaining why it was putting this particular offending in the higher part of the band. In the view of this Court, this was retailing at its lowest level, by a couple of vulnerable heroin addicts. In describing them as heroin addicts, we are not minimising their efforts to get free of that most addictive of drugs, but there is no doubt that they had been relapsing on a spasmodic basis since they had first tried to get help for their addiction. It is very tempting for those further up the chain of supply to use people like the applicants for organising the final stage of the distribution of the drug when the end user has nothing to lose by informing on his or her

supplier and perhaps on occasion being rewarded for so doing. There is no suggestion that these applicants were in any way involved in bringing the drug into the island or that the situation was in any way different from that outlined by Poullard, to the effect that a man called Mark offered her the drugs, for her to divide up and sell on in the way described. There is a line of argument that the Royal Court should have differentiated on the starting point on the basis that Poullard, despite her apparent inability to execute the plan for supply, was the most involved, but on balance we propose to follow the Royal Court and deal with both applicants in the same way when it comes to starting point

24. Poullard's previous offending was relevant, but in our view did not justify increasing the starting-point to the extent that it was increased and certainly Beck's previous conviction, some 10 years ago, was of very little significance.
25. This Court therefore takes the view that the appropriate starting-point would have been 7 years. It has been, as we understand it, the practice of the Royal Court generally to afford discounts in the region of one third for pleas of guilty save that such generosity has not been afforded has been in those limited cases where persons choose to conceal drugs internally upon their person in circumstances where it is virtually impossible to see how the accused can distance himself from the importation.
26. The present situation is that the Jurats of the Royal Court have to sit *en Corps* on every criminal case and that if more offenders choose to plead 'not guilty', simply because the discount for the guilty plea is not sufficiently attractive to encourage them to face up their guilt, the workload of the Jurats may increase. This is not a matter which is of direct concern to this Court, but we are concerned that there should be consistency between offenders in the degree of discount given. We do not see this particular case as having inevitably been a straightforward case on trial. Had the accused chosen not to say anything to the investigating officers and even worse, if they had decided to involve themselves in a fruitless exercise of throwing the blame on each other, the Jurats might have been tied up for several days. We see no grounds for departing from the principle of the one third discount in this particular case.
27. Poullard, despite her addiction and her poor record, is the mother of four children and the Court accepts all that has been said in previous cases about the inevitability of damage being done to families of offenders when they are incarcerated. That is not however to say that one should ignore the fact that one is sentencing to imprisonment a parent with care of children. The approach in such cases should be to decide the minimum sentence that will meet the needs of retribution and deterrent having regard to the circumstances of the offending. It would be unfair not to give some credit to Beck for her lesser involvement in the offending add also her better record and as was said in *Richards*, this Court should not interfere with the way in which the Court below has exercised its discretion in cases where it is appropriate to maintain some disparity as between offenders.
28. Modifying the approach of the Royal Court in the way we have suggested one reaches a sentence of two thirds of 7 years, namely 4 years and 8 months, and taking into account personal mitigation, the appropriate sentence for Poullard would be 4 years and 6 months. Taking into account the way the Royal Court dealt with the matter we feel that Beck should receive a lesser sentence and

that the differential between her and her co-appellant should be maintained, so accordingly Beck's sentence will be reduced to one of 4 years. Leave to appeal is granted and the sentences will be reduced as we have indicated. In view of the grant of leave both counsel, for whose assistance we are grateful, will have legal aid to cover this hearing