

**Judgment 68/2004**

**Marcio Manuel Moniz Martins – Court of  
Appeal (Criminal Appeal 320) – 8 July, 2004**

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**Possession of Class A drug with intent to supply – application for leave to appeal against sentence – whether simply a custodian rather than a courier – leave refused.**

**IN THE COURT OF APPEAL OF GUERNSEY**

The 8th day of July, 2004 before The Honourable Michael Jacob Beloff Q.C., presiding, David Arthur John Vaughan Esq., Q.C. and Patrick Stewart Hodge Esq., Q.C.

THE LAW OFFICERS OF THE CROWN

V

MARCIO MANUEL MONIZ MARTINS

(Applicant)

On the application of the Applicant for leave to appeal from the sentence imposed on him by the Royal Court on 1<sup>st</sup> April 2004;

THE COURT, having heard Advocate M. Baudains for the Applicant and Crown Advocate P. Robey, thereon, this day GAVE JUDGMENT in the terms attached hereto, REFUSED leave to appeal, and REFUSED legal aid.

K. H. TOUGH  
Registrar of the Court of Appeal

**Approved Text**

**Marcio Manuel Moniz Martins**

**against**

**The Law Officers of the Crown**

**(Case No 320)**

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**Judgment delivered by Hodge JA:-**

1. On 1<sup>st</sup> April 2004 Marcio Martins (“the Applicant”) pleaded guilty to the offence of having in his possession on 31 December 2003 the Class A controlled drug, MDMA, otherwise known as Ecstasy, with the intention to supply it to another, in contravention of section 3(1)(b) of the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974, as amended. The Royal Court sentenced him to imprisonment for four years and three months.
2. The Applicant is aged 25 and is a native of Madeira. He has lived in Guernsey for five years. He has a number of convictions for road traffic offences including for driving without insurance but no convictions for drugs. He was however a drug user. His offence relates to 32 tablets, which have a street value in Guernsey of between £320 and £480, which the police discovered on his person and in the car in which he was a passenger when they searched him on New Year’s Eve. The Applicant explained to the police and his advocate informed the Royal Court that an undisclosed person had asked him to carry the pills into the Golden Monkey Nightclub for the use of others in return for which he was given five pills for his personal use. His advocate also explained to the Court that the people who would have used the drugs in the Nightclub were already existing users.
3. In sentencing the Applicant, the Royal Court observed that it was likely that the drugs which the Applicant was carrying would have been supplied to persons frequenting the Nightclub and that the Applicant, by acting as a custodian and delivery-man, was acting as a key link in the drug trafficking chain. This was consistent with Mr Martin’s explanation to the police (which was narrated in the prosecution outline) that a person had given him the bag with the thirty tablets at 7pm and that his task was to enter the nightclub and hand the bag to that person at about 10.30 – 11pm. The Royal Court took as the starting point seven years and, taking account of the Applicant’s guilty plea and the other points of mitigation, sentenced him to imprisonment of four years and three months.
4. The Applicant seeks leave to appeal his sentence on the ground that the Royal Court erred in fixing his starting point at seven years and that as a result the final sentence is manifestly excessive. His advocate, Advocate Baudains, submitted that the starting point should have been lower in a case in which the Applicant was simply a custodian or minder holding the drugs for another, which involved a relatively small amount of the drug and where the Applicant made no personal financial gain from his acts. He asserted, correctly, that the sentencing guidelines in *Law Officers of the Crown v Richards* (Court of Appeal, 17 April 2002) did not set out an inflexible code which covered all the issues involved in sentencing but that the Court should look at the circumstances of each case.

5. Advocate Baudains referred us to *Law Officers of the Crown v Woodford* (CA) 9 January 2003 as an example of the Court taking a starting point which was lower than that set out in the *Richards* guidelines. He also referred us to the English case of *Regina v Arif (Mustafa)* (1994) 15 Cr App R (S) 895 for the proposition that a person who provides a safe haven for drugs is less culpable than a courier. He advanced the following arguments in support of his submission that the appropriate sentence should have been closer to three years. He stated that the Applicant had co-operated with the police from an early stage; that he was merely the custodian or deliveryman of the drugs; that he had no similar previous convictions; that he had pleaded guilty at the earliest opportunity; that he would have made no personal gain from his actions; and that he would have personally supplied friends who were existing users of the drug.
6. The Crown Advocate referred us to *R v Harris* [1998] 1 Cr. App. R. (S.) 38 in which the English Court of Appeal stated that the remarks in *Arif*, that a minder fell somewhat lower down the scale of criminality than a courier, should be treated with caution. The Court of Appeal in that case suggested that it was necessary to look at the whole circumstances to assess the part which a defendant played in the overall supply of drugs. We were also referred to *Attorney-General's References Nos 64 and 65 of 1997* [1999] 1 Cr. App. R. (S.) 237 in which the Court confirmed the approach which it had taken in *Harris*. Finally, and after the hearing of the appeal had taken place, Advocate Baudains very properly brought to our attention the Jersey case of *Welsh v Attorney-General* 2002 JLR Note 16 in which the Jersey Court of Appeal followed *Harris* and recognised that a minder of a substantial quantity of drugs could have a high level of involvement in the supply of drugs.
7. We are satisfied that the sentence was not manifestly excessive. We see no merit in the principal argument that Mr Martins was simply a custodian providing a safe haven for the drugs and that he was less culpable than a courier. In our judgment Mr Martins was not a sedentary custodian or minder. He had undertaken to perform the active role of getting the tablets into the nightclub where they would be consumed, thereby relieving the dealer of the risk of being apprehended by the police or any security staff when entering the club. He was in fact a courier albeit at a retail rather than a wholesale level. Thus, even if there had been a valid and generally applicable distinction between the criminality of a minder and a courier, Mr Martin's activities on New Year's Eve were those of a courier.
8. We have considered the case of *Law Officers of the Crown v Woodford*, to which we were referred. It is indeed an example of the Guernsey Court of Appeal departing from a starting point in the *Richards* guidelines. But we do not see how that case, in which the Court may have treated the defendant somewhat generously in what it described as "a difficult borderline case", can support a departure from those guidelines in the circumstances of this case which are clearly distinguishable.
9. We have had regard to the mitigating circumstances to which Advocate Baudains has drawn our attention, including Mr Martin's prompt co-operation with the police and his guilty plea. However, we consider that the starting point of seven years was appropriate and that the Royal Court made adequate allowance for such mitigating circumstances in fixing the sentence.
10. We therefore refuse leave to appeal.