

Judgment 69/2004

**Garth Young – Court of Appeal (Criminal Appeal
325) – 8 July, 2004**

Importation of Class A drugs – application for leave to appeal against sentence – contention that drug was for personal consumption – not an extenuating circumstance, except in very small quantities – leave granted – appeal dismissed.

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

GARTH YOUNG

(Applicant)

On the application of the Applicant for leave to appeal from the sentence imposed on him by the Royal Court on 27th May 2004;

THE COURT, having heard Advocate L. Le R. Strappini for the Applicant and Crown Advocate P. Robey thereon, this day GAVE JUDGMENT in the terms attached hereto and;

1. GRANTED leave to appeal;
2. DISMISSED the appeal; and
3. GRANTED legal aid.

K. H. TOUGH
Registrar of the Court of Appeal

COURT OF APPEAL

GARTH YOUNG

7th July, 2004

Judgment delivered by Vaughan JA:-

1. On Friday the 12th of March, 2004, Garth Young arrived at Guernsey Airport on a flight from Gatwick. He was stopped by a customs officer. He was asked if he had any controlled drugs in his possession and he said that he had none. The search of his baggage revealed nothing relevant. He told the officer that he had recently taken drugs in England. The officer, however, suspected that he had drugs concealed internally and asked whether he would undergo an x-ray. He initially agreed to do so but subsequently changed his mind saying that he could not be bothered.
2. He was arrested and taken to the Guernsey Customs Detention Facility. In his first interview later that day, at which he declined legal assistance, he again refused an x-ray and maintained that he had no controlled drugs concealed internally. He told the officers that he had spent the last two weeks staying with friends in England and in that period he had used crack cocaine, heroin and cannabis.
3. In the early hours of Sunday 14th March, whilst still in custody, Garth Young suddenly awoke and was seen to vomit. There was concern about his safety. He then agreed to have an x-ray and admitted that he had drugs concealed internally. He said they were for his personal use and there were about 10 grams of heroin concealed in that way. He said he had put the heroin in some plastic bags and swallowed them at Gatwick before he left on his flight to Guernsey. He was taken to hospital for x-rays, but they proved inconclusive. He was taken back to the Detention Facility.
4. Garth Young was interviewed later that afternoon, this time with his advocate present. None of the packages had been passed at this time. He declined to confirm what he had previously told

the police officers about the concealed drugs. However he did say he was a registered addict, but that when he had left Guernsey to go to England he was not a regular user and that he had only started taking it again in England.

5. Shortly after that second interview Garth Young used the toilet facility at the custody suite and passed four packages of what turned out to be heroin. He said that there might be another package which in fact was passed the next day.
6. On the Monday morning there was a third interview at which again his advocate was present. He confirmed that he had passed the packages, that they contained heroin and said that they were for his personal use. He said that he was using some 2-2½ grams a day and said that he had been taking this quantity for 7-8 years. He said that he had paid £200 for the drugs but that he had no idea of their value on the Guernsey market. He said that he had not been using drugs for some 3-4 months before his departure to England.
7. When the packages were analysed four of the packages were found to contain 7.796 grams of heroin of a strength when expressed as a salt of 41.5% which equates to a base strength of 31.11%. The fifth package was found to contain 2.731 grams of heroin of 40% strength when expressed as a salt which equates to a base strength of 34.96%. The street value of the heroin in Guernsey was some £2,600.
8. At the time of the offence Garth Young was aged 37. He had been born and raised locally. His upbringing and background is very helpfully described in the full Probation Report which is before us. He had been on a community detoxification programme in Guernsey. The probation officer accepted that this quantity of heroin was for his personal use. Although he had many convictions at an earlier age, none of them were relevant to the consideration of this offence and we treat Garth Young, as did the Royal Court, as being of good character.
9. Garth Young, having pleaded guilty, was sentenced on 24th May, 2004. The Royal Court adopted the starting point as 7½ years, seemingly 7 years for the importation with an extra element of 6 months to take into account the internal concealment. Seven years for the

importation could not possibly be described as inappropriate falling as it does at the lowest level for a Richards sentence for a quantity which fell in the middle of the 1-20 gram band. Initial concealment is always taken as an aggravating feature as made clear in Woodford (CA 9th January, 2003). Accordingly, at least in the ordinary event, the starting point of 7½ years cannot be faulted.

10. Advocate Strappini relies on the case of Woodford to suggest that a lower starting point should be taken for a “small” or “relatively small” quantity of the drug when required for the personal use of the importer. We do not agree. Firstly there is nothing in the point that the Royal Court was not dealing with this matter other than on the basis that the heroin was in fact for his personal use. The fact that the Presiding Judge in his report expressed a “considerable scepticism” about the rate of consumption alleged (2½ grams a day) does not amount to a questioning of the fact they were required for personal consumption, only a questioning of the rate of consumption, which is irrelevant for these purposes. Even if he were sceptical about personal use, we see no reason to question the judgment of the Court which stated expressly that the sentence proceeded on the basis that the heroin was for his personal use. Secondly, as the Royal Court found, a quantity which falls in the middle of the lowest band of 1 – 20 grams cannot possibly be described as “small” or “relatively small” quantity. But in any event the principle is not to be found in Woodford but in Richards, the guideline case. In Richards this Court made it very clear that the contention that the drug was required for personal consumption is not to be taken as an extenuating circumstance, save perhaps in the case of very small quantities. Woodford, which the Court of Appeal in that case described it as being a “rather difficult borderline case”, should not be treated as a definition of what is to be treated as a “small” or “relatively small” quantity. It may have been in that case that the appellant was somewhat fortunate, but we do not know the full circumstances which led the Court to reach their conclusion
11. Advocate Strappini also referred us to the case of Dodd, which was a decision of the Royal Court, to suggest a lower starting point. As this Court made it very clear in Culhane (CA, 8th January, 2003) the use of comparators subsequent to Richards to argue for a lower starting point

is not appropriate. This Court stated in Culhane that even if a case such as Dodd could not be explained on the basis of its own particular facts (for example Dodd's youth), such a case can form no basis for an argument that the Royal Court (or indeed this Court) has authorised a departure from the guideline case. Such a form of argument would inevitably amount to a weakening of the authority of the guideline case which cannot be accepted.

12. The final point made by Advocate Strappini was that there was an element of double counting in increasing the starting point because of the internal concealment and then limiting the reduction by way of mitigation on the basis that he was not entitled to the full reduction of one-third because the internal concealment made a plea of guilty inevitable. We do not, however, consider this analysis is sound. The internal concealment aggravated the guilt because of the unpleasantness caused to the customs officers in the execution of their duties. The internal concealment caused the absence of the full deduction for a guilty plea because it made such a plea inevitable. A single fact properly gave rise to 2 different consequences. In any event the Royal Court granted Garth Young a substantial reduction in his sentence taking into account all elements, even though they did not give him the full one-third reduction for his guilty plea. Taking into account the facts as advanced on his behalf, the reduction by way of mitigating factors to arrive at a final sentence of 4½ years imprisonment amounts to a reduction of 40% from the original starting point, that is to say considerably more than if he had been granted the full one-third reduction, and a reduction which we consider was eminently fair to Garth Young. In the circumstances we consider the sentence of 4½ years for this importation cannot be faulted.
13. In this case we grant leave to appeal for we consider that this application has raised significant issues (albeit it has been unsuccessful). We grant legal aid for the appropriate period.