

Judgment 69/2005

**Gints Grunte – Court of Appeal (Criminal
333) – 15 December, 2005**

**Importation of Class B drugs – sentence appeal – application of guidelines in Richards
and Turner – appropriate starting point – appeal dismissed.**

IN THE COURT OF APPEAL OF THE ISLAND OF GUERNSEY

The 15th day of December, 2005 before Dame Heather Steel, DBE, presiding, Peter David Smith Esq., QC and Kenneth Stuart Rokison Esq., QC

THE LAW OFFICERS OF THE CROWN

v

GINTS GRUNTE

Appellant

In the appeal of the Appellant from the sentence imposed on him by the Royal Court on 5th September, 2005;

THE COURT, having on 12th December, 2005, heard Advocates A. M. Merrien and F. Russell for the Appellant and the Crown respectively thereon, this day DISMISSED the appeal.

K. H. TOUGH
Registrar of the Court of Appeal

OFFICIAL TRANSCRIPT

smon/Grunte 15.12.05(Final)

THURSDAY 15th DECEMBER 2005

COURT OF APPEAL

Before

Peter David Smith, Esq., QC
Kenneth Stuart Rokison, Esq., QC
Dame Heather Steel, DBE

GINTS GRUNTE
(Criminal Appeal No. 333)

Judgment delivered by Steel, JA

1. On 28th November 2005 the Appellant, Gints Grunte, who is a Latvian national aged 24, was granted leave by the single Judge to appeal a sentence of 4½ years imprisonment imposed by the Royal Court on 5th September 2005.
2. On 15th April 2005 the Appellant appeared in the Royal Court before the Bailiff alone and through an interpreter tendered an equivocal plea of guilty to a single count indictment which alleged that on 28th January 2005 he was knowingly concerned in the fraudulent evasion of the prohibition on the importation of certain goods, namely, amphetamine sulphate a controlled drug of Class B, contrary to Section 2(1)(a) of the Misuse of Drugs (Bailiwick of Guernsey) Law 1974, as amended. The matter was adjourned so that the Appellant could stand trial.
3. On 8th July 2005 he appeared before the Bailiff alone in the Royal Court, and having been given leave to amend his plea, through an interpreter, pleaded guilty to the indictment. A verdict of guilty was recorded. The plea was unequivocal and the Appellant's Advocate, Advocate Merrien, had indicated to the Court that there would be no challenge to the prosecution assertion regarding knowledge.
4. On 5th September 2005 the Appellant appeared before the Royal Court for sentence. At the outset of the hearing the Appellant, through an interpreter and his Advocate, confirmed that his plea was unequivocal, that he was fully aware of his guilty plea and the consequences and what that meant and that he understood what he was doing.
5. The Royal Court made four rulings:
 1. Under Section 11 of the Drug Trafficking (Bailiwick of Guernsey) Law 2000-
 - (a) that the Appellant had benefited from the proceeds of drug trafficking; and
 - (b) that the amount which might be realised in this matter was £2,211.

A Confiscation Order was made in the sum of £2,211.

The terms and amount of this order had been accepted by the Appellant's Advocate on his behalf.

It was further ordered that in default of payment of the order the Appellant serve a term of imprisonment of 3 months to run consecutively to the sentence to be handed down on that day, 5th September 2005.

2. The Appellant was sentenced to 4½ years imprisonment for the offence set out in the indictment. Such sentence to reckon from 28th January 2005.
3. The Royal Court recommended the deportation of the Appellant from the Island of Guernsey, a Deportation Notice having been served on him on 11th March 2005 pursuant to Section 6(2) of the Immigration Act 1971 as extended to the Bailiwick of Guernsey by the Immigration (Guernsey) Order 1993.
4. The Royal Court ordered the forfeiture and destruction of the drugs that were subject to the charge.
6. This appeal relates only to the sentence of 4½ years imprisonment, on the ground that the sentence was manifestly excessive and out of proportion to the gravity of the offence.
7. The revised grounds of appeal refer to the sentencing guidance and guidelines set out in The Law Officers of the Crown v. Stephen Daniel Turner (Royal Court) 5th December 2002 and the Court of Appeal guidance and guidelines set out in the case of Mark Richards and Others 18th April 2002.
8. Advocate Merrien's submission on behalf of the Appellant was to the effect that the Royal Court, having noted the Turner principles and guidelines, erred in applying the sentencing band of 6 – 9 years and the selection of a starting point of 8 years for this offence, when the Court should have applied a band of 6 – 8 years and a starting point of 7 years. It is submitted by Advocate Merrien that the starting point was too high.
9. The facts as outlined in some length to the Royal Court were as follows:
10. The Appellant has no previous convictions. He provided an address in Cupar in Fife in Scotland, which is accommodation provided by a farm where he has been employed as a labourer since October 2004.
11. The case concerns the illegal importation of a Class B drug, being 2,146 amphetamine sulphate tablets in to Guernsey.
12. These tablets have an estimated local value of between £21,460 and £32,190.
13. On 28th January 2005 at about 4 p.m. Customs Officers on duty at the passenger ferry terminal at White Rock stopped the Appellant who had recently arrived from Portsmouth via the Condor Clipper ferry. He stated that he had travelled to Guernsey for three days holiday. He was unable to say where he intended to stay and had made no hotel bookings. He was asked if he was carrying any restricted or prohibited goods, including controlled drugs. He said he was not. He confirmed that the bag that he was carrying was his and that the contents belonged to him.
14. His bag was searched and a corked and sealed bottle of Latvian brandy was found. When opened it was found to contain a large quantity of white pills secured with cotton wool. The Appellant was arrested and further inspection of the bag revealed a box of Sainsbury's chocolates. When the box was opened two brown envelopes were found

on top of the first layer of the chocolates and on the second layer there were two clear plastic bags, all of which contained a quantity of small white pills. The Appellant also had £1,453 in cash, a plastic folder containing documents and a mobile phone.

15. Between 9.22 p.m. on 28th January and just before 1 a.m. on 29th January the Appellant was interviewed under caution on two occasions. Both interviews were conducted in the presence of an Advocate and a Latvian interpreter was present during each to assist the Appellant.
16. He confirmed that he lived in a caravan with two friends in Scotland and worked for a farm where they packed vegetables. He said that he had worked there since October 2004 and prior to this, following his arrival from Latvia, for a company picking apples.
17. When asked about the events leading up to his visit to Guernsey, the Appellant said that he had flown from Scotland to London with three friends on 26th January to see one of the friends off to Latvia.
18. The Appellant said that he had met an old school friend in London who asked him to come to Guernsey for him. The friend told him that he was opening a company in Guernsey and asked him to take some business paperwork to the island. For this he would be paid £100.
19. The Appellant said that his friends returned to Scotland and he stayed overnight in London at this friend's flat. There, he said, he was given some documents in a plastic folder, a bottle of Latvian brandy and a box of chocolates to take with him to Guernsey. The school friend told him that there were chocolates in the box.
20. The Appellant said that he was told when he left the ferry he would be met by somebody and he was to hand over the gifts and the documents to this person.
21. The Appellant said that he and the school friend then travelled by train to Portsmouth, the friend having paid for the tickets and at Portsmouth the friend purchased a ferry ticket for the Appellant, showed him where to catch the ferry and left him there. The Appellant said that he was warned that there was a Customs Office in Guernsey and that not everyone was allowed in. He was told to say that he was there for three days holiday. It was mentioned to him that there were other Latvians in Guernsey. The Appellant said that he had never heard of Guernsey.
22. He was told that on arrival he would be met by a Latvian called Janis and that he was to hand over the papers and gifts and return to Portsmouth on the same ferry. The Appellant said that he did not know if he was to be met by his friend in Portsmouth and that he didn't know his way back to London. He stated that he had received some text messages from the friend whilst on the boat and spoke to him prior to leaving Portsmouth to say that he was on the ferry.
23. The Appellant said that he had no travel reservations back to Scotland although he was expected back at work on Sunday 30th January. He was asked why he thought he'd been asked to come to Guernsey. The Appellant said that his friend was very busy and had asked him as a favour. He said that he had quickly looked at the documentation when he was given it and had placed it and the gifts in his bag. He said he had not been paid for the trip but he was expecting to receive £100 on his return.
24. The Appellant said he had known the person who gave him the drugs for about ten years and that they had been at school together. The friend had moved from Latvia to London in the summer of 2004 and the Appellant had spoken to him whilst he was in

Scotland and they had agreed to meet up sometime. He believed his friend worked for a company washing cars.

25. He confirmed that he knew it was illegal to possess, import, or supply controlled drugs.
26. In the second interview the Appellant confirmed that the plastic folder and papers was the paperwork that he was asked by the school friend to bring to Guernsey, and said that he was not suspicious by the request. He told the officers that he had looked at the papers but he read very little English and did not read the documents. He said the money he was carrying was from his own account and he had withdrawn it from his bank account to send it home as it was cheaper to withdraw cash and pay it through the Bank of Scotland to send it to Latvia. He denied that the money in his possession had been given to him to bring the drugs to Guernsey. He said the bottle felt in no way strange to him and that he was given the chocolates as a present for the person he passed the documents to. He insisted that this raised no suspicions.
27. On examination the bottle was found to contain 1,565 tablets and the remainder totalling 2,146 were in the chocolate box. A sample was analysed and found to contain amphetamine sulphate the average amount being 5% by weight or in terms of amphetamine base equal to 3.7%.
28. Customs research shows that the seizure of amphetamine sulphate in tablet form is very rare both locally and in the United Kingdom. This is the first such seizure since 2002.
29. The street price in Guernsey at about the time of this seizure, based on prices available in 2002 would be £10 to £15 a tablet so that the tablets could have had the value in Guernsey of between £21,460 and £32,190.
30. The mobile telephone found in the Appellant's possession was interrogated by an expert who discovered numerous text messages both sent and received in Russian. Four messages sent by the Appellant have been translated as-
 1. *"I am on the ferry."*
 2. *"You have an envelope in the folder."*
 3. *"Everything is fine"* and
 4. *"Everything is fine."*

The messages were not necessarily in that order.

31. The plastic folder was found to contain a copy of the Camden Register of Electors 2005 and a shared tenancy agreement each photocopied several times. None of the documents had any obvious relevance to the setting up of a business.
32. The Appellant has remained in custody since 28th January 2005.
33. Before sentence the Royal Court considered a Probation Report dated 21st July 2005 and an addendum to that report dated 26th August 2005, from Miss Le Cheminant and submissions were made by Advocate Merrien in mitigation.
34. The Royal Court was told that the Appellant was naïve, unable to read English on the documents so had no idea what they were or that they would not stand up to scrutiny. Further, that the Appellant had no understanding of the role of Customs other than in relation to fraud relative to Value Added Tax and tax issues. The Royal Court was asked to take into account the Appellant's good character and his attempts to co-operate and assist the authorities by providing photographs and information.

35. The Royal Court was referred to the case of Richards and Advocate Merrien accepted that the Turner guidelines for the importation of amphetamine sulphate tablets gave a band of 7 to 10 years for 1,000 to 2,500 tablets of the Class B drug. The Appeal Court is asked to consider the appropriateness of the 7 to 10 year band in this case and in the light of the sentencing guidance given in Turner.
36. In sentencing the Appellant the facts were set out and reference was made to the Appellant's abandonment of his earlier story and his full admission of the offence.
37. The Royal Court considered the Richards guidelines and sentencing bands for Class A drugs. Following the guidance given in Turner the Royal Court adopted a band of 6 to 9 years imprisonment as being two-thirds of the band for a similar amount of Class A tablets. Having concluded that 6 to 9 years would be the appropriate band for this illegal importation of Class B drugs a starting point of 8 years was selected.
38. This was discounted by a third for the guilty plea for which full credit was given, and was further discounted to take into account the available mitigation, being the Appellant's good character, naivety and limited assistance. The sentence accordingly was 4½ years imprisonment.
39. We are grateful to Advocate Merrien for his concise and helpful submissions and to Advocate Russell for her attendance to assist the Court if necessary.
40. The principal ground of appeal is that the 4½ year sentence was manifestly excessive and out of all proportion to the gravity of the offence.
41. We are not persuaded that the sentence was anything other than entirely appropriate for the offence admitted by the Appellant. The only comparable case which concerned the importation into Guernsey of amphetamine sulphate in tablet form is Turner in 2002. The importation in the present case concerned a significant commercial quantity of the Class B drug, 2,146 tablets being a quantity, and having a street value of almost ten times the value of that imported in Turner.
42. On 19th November 2002, Turner had pleaded guilty to the illegal importation of 292 tablets of amphetamine sulphate with a street value of between £2,929 and £4,380. He was later sentenced to 3 years imprisonment from a sentencing starting point of 4 years. The present case was properly described by the Royal Court as a substantial importation of deliberately concealed tablets and is much higher in the scale of seriousness than Turner. We endorse the words of the Royal Court that those who knowingly assist in such importations must expect realistic and firm sentences.
43. We accept the submissions made by Advocate Merrien in relation to the application of the guidelines in Richards and in Turner. The guidance and guidelines set out in Richards by a five man Court of Appeal remain the definitive authority in relation to the approach to sentencing generally in drug trafficking offences and in cases concerning Class A drugs and Class B cannabis offences. The same general principles as to approach apply to Class B amphetamine as set out in Turner.
44. In Turner the Royal Court on 5th December 2002 considered the appropriate sentences for offences concerning amphetamine in powder and tablet form and laid down some guidelines which it was stated may be more readily open to review if more cases of amphetamine importation and possession occur in the future. The Royal Court in Turner made reference to the fact that a person who imports amphetamine may, on occasion, think he is dealing with a Class A drug and "*enjoys a lighter disposal than he was perhaps anticipating.*" The Court went on to state "*That does not justify departing from the principle that the legislature have classified drugs with different maximum*

penalties so the Courts should impose for offences of Class B drugs sentences in the range of two-thirds of those for similar amounts of Class A drugs.”

45. The Royal Court in Turner then set out bands for sentencing Class B offences in powder or tablet form (meaning amphetamine). For 1,000 – 2,500 tablets the band is set at 7 to 10 years.
46. We endorse the principle that two-thirds of the Class A bands should generally apply to the importation of Class B drugs of a similar type being either in powder or tablet form.
47. Advocate Merrien compared the 6 to 9 year band with the 9. to 12 year band for 1,000 – 2,500 tablets of Class A drugs in Richards and properly calculated that two-thirds of that should have been 6 to 8 years imprisonment for Class B importations. This we accept and we conclude that the Royal Court was in error in setting a 6 to 9 year band in the present case.
48. We have to consider whether, accepting the arithmetic leading to the band of 6 to 8 years, a starting point of 8 years was too high.
49. We honour the finding of the Royal Court that a mid-range starting point was appropriate and accordingly conclude that the starting point of 7 years should have applied in this case.
50. The current guidance and guidelines are of invaluable assistance, but this does not exclude or obviate the need for flexibility depending on the circumstances of an individual case. Each case must be decided upon its own facts and in the present case we follow the principle in Turner rather than the guideline band for Class B tablets in that case.
51. The Appellant in this case was given a full discount of one-third for his guilty plea. That was perhaps generous having regard to the late plea and the history of the case with the Appellant maintaining a false story in two long interviews. However, we support the approach of the Royal Court and apply to the 7 year starting point a full one-third discount of 2 years 4 months.
52. The mitigation in this case over and above the guilty plea is extremely limited and is therefore properly reflected in a small further reduction.
53. We have to consider the totality of the sentence to consider the sentence in the round, and take into account the circumstances of the offence, the offender, and his role.
54. Even accepting that 7 years was the appropriate starting point the sentence of 4½ years for this offence is not manifestly excessive. This appeal is, therefore, dismissed.

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I, Suzanne Margaret O'Neill, hereby certify the foregoing to be a correct and complete extract, prepared to the best of my skill and ability from the tape-recording of the proceedings in this case.

..... Suzanne M. O'Neill
Tuesday 14th February 2006