

**Judgment 8 / 2004**

**Michelle Weaver – Court of Appeal  
(Criminal Appeal 317) – 20 April, 2004**

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**Importation of Class A drug - sentence – 4100 tablets of MDMA – the Richards guidelines (2002) – starting point of 13 years – one third deduction for plea of guilty – whether disparity of sentence with co-accused – application for leave to appeal dismissed**

**IN THE COURT OF APPEAL OF GUERNSEY**

The 20th day of April, 2004 before Sir Philip Bailhache, Presiding, Sir John Nutting Bt., QC. and Jonathan Philip Chadwick Sumption Esq., QC.,

THE LAW OFFICERS OF THE CROWN

V

MICHELLE WEAVER

Applicant

On the application of the Applicant for leave to appeal from the sentence imposed on her by the Royal Court on 21<sup>st</sup> January, 2004;

THE COURT, having heard Advocates Miss S. L. Brehaut and G. D. McKerrell for the Applicant and the Crown respectively, thereon, and having, on 19<sup>th</sup> April, 2004, DISMISSED the application for leave to appeal and GRANTED Legal Aid, this day GAVE JUDGMENT in the terms attached hereto.

K.H. TOUGH  
Registrar of the Court of Appeal

**OFFICIAL TRANSCRIPT**

**TUESDAY 20TH APRIL 2004**

**COURT OF APPEAL**

**Before**

**Sir Philip Bailhache; presiding**  
**Sir John Grenfell Nutting Bt., QC**  
**Jonathan Philip Chadwick Sumption, Esq., QC**

**MICHELLE WEAVER**  
**(Criminal Appeal No. 317)**

**Judgment delivered by Nutting, JA**

1. On 21st January 2004, the Applicant appeared before the Deputy Bailiff and Jurats for sentence for an offence of being concerned in the fraudulent evasion of the prohibition on the importation of MDMA, a Class A drug, contrary to Section 77(1)(b) and 77(2) of the Customs & Excise (General Provisions)(Bailiwick of Guernsey) Law 1972, as amended.
2. The Applicant was jointly indicted with another woman, Michelle Brown. Both had appeared before the Royal Court in the early winter of 2003 and pleaded guilty to the offence.
3. Having heard details supporting the charge and having heard pleas in mitigation, the Deputy Bailiff considered with the Jurats what sentence should be imposed, and later ordered the Applicant and Michelle Brown each to serve a sentence of 7½ years imprisonment.
4. The Applicant filed notice of application for leave to appeal on 29th January 2004 on the grounds that the sentence was too severe, having regard to the fact:
  - (i) she is the mother of two young children;
  - (ii) that this is the first time she has been sentenced to a period of imprisonment;
  - (iii) she co-operated fully with the authorities after her arrest;
  - (iv) there had been threats made against her family.

On 2nd April 2003, she was refused leave to appeal by a single Judge of this Court and now renews her application to this Court. Michelle Brown has not pursued an application for leave to appeal.
5. The circumstances which gave rise to the arrest of the Applicant arose out of an attempted importation of MDMA, otherwise known as Ecstasy, on 5th July 2003 at St. Peter Port. The Applicant and Michelle Brown, both of whom are in their early 30s, and both mothers with responsibilities for young children, alighted from the Commodore Clipper from Portsmouth and were stopped by Customs Officers at the Passenger Terminal.

6. A search was made of the Applicant's bag, which consisted among other items of a Cow & Gate biscuit box wrapped in cellophane; inside the box was a quantity of tablets. A search was also made of Michelle Brown's bag: inside was a "Blues Clues" puzzle box, also wrapped in cellophane, containing more tablets. Both women were arrested and interviewed.
7. The Applicant alleged that she had come to Guernsey to see a friend, and that Michelle Brown had agreed to accompany her. She related how they had been driven from their homes in the North of England by Miss Brown's boyfriend to Portsmouth, and that she had been given the biscuit box and the puzzle box at the port by a man she did not know to give to someone in Guernsey. She said that she had put the biscuit box into her bag and that Miss Brown had taken the puzzle box because there was insufficient room for both boxes in one bag. She denied being offered money for the trip.
8. Miss Brown, in an attempt to exculpate herself, blamed the Applicant for the presence of the drugs and claimed that both packages were the responsibility of the Applicant. She acknowledged appreciating that there was "something dodgy" about the trip.
9. On analysis there were found to be 1,070 tablets in the bag which the Applicant was carrying and 3,030 tablets (and 158 grams of crushed tablets) in the bag being carried by Michelle Brown. A sample of the tablets were analysed and proved to be MDMA. The total street value of such an amount is estimated to be between £75,000 and £125,000.
10. The Applicant has appeared in Court on previous occasions for offences of minor theft and was cautioned in 1993 for the possession of cannabis resin. Her co-Defendant had no previous convictions.
11. In sentencing these offenders the Deputy Bailiff noted that this was the second largest importation of Ecstasy into this jurisdiction. He emphasised the effects that Ecstasy can have on those who consume it; convulsions, collapse, hyperpyrexia, intro vascular coagulation, acute renal failure and in some situations, death.
12. He underlined that in the experience of the Courts of this island the level of drug trafficking has not abated, despite heavy sentences imposed by the Royal Court on those attempting to import drugs. Indeed, he pointed out that the level of importation of Ecstasy had increased in recent years.
13. The Applicant accepted through her Advocate that it was she who had recruited her co-Defendant. Notwithstanding that aggravating feature, the Royal Court decided to treat both the Applicant and Michelle Brown as having a shared responsibility for importing this significant quantity of drugs.
14. The Royal Court stated clearly that the basis of that shared responsibility lay in the fact that:
  - (i) this was plainly a joint importation of the total quantity found on both the Applicant and Miss Brown;
  - (ii) that both offenders were of similar age, personal circumstance, and background;
  - (iii) that the decision to commit this serious crime was not the product of a spur of the moment decision with no time for reflection; and
  - (iv) both offenders clearly had motives of financial gain.

15. The Court concluded however that there were no aggravating features of the case which would cause the Court to consider a sentence outside of the guidelines. These guidelines have been recently established in Richards (Royal Court) 17th April 2002. For an importation of between 4,000 and 5,500 tablets of a Class A drug, Richards suggests a sentencing bracket of between 11 and 14 years. The Royal Court took 13 years as its starting point in this case, having regard to all of the circumstances outlined above.
16. Although Miss Brehaut submitted to us in her written submissions that we should substitute a starting point of 12 years, she conceded in argument with the realism which we would have expected of her, that the starting point chosen was well within the discretion of the Royal Court and that an interference of the kind suggested would constitute tinkering with the sentence, which this Court must be astute to avoid.
17. The Royal Court defined a deduction of one-third in respect of the plea of guilty in each case, reducing the sentence to 8 years and 9 months, and a further period of 15 months to reflect other mitigation, producing a total sentence for each offender of 7½ years.
18. Miss Brehaut submitted that the personal circumstances of the Applicant were so different from that of her co-Defendant that the Royal Court should have felt compelled to give a more significant deduction from the starting point for the Applicant than for Miss Brown.
19. It is clear that the Royal Court acknowledged the significance of the particular mitigation urged on behalf of the Applicant, namely, that shortly before this offence she had been forced to move home in the most distressing circumstances and in great haste, a move that had caused her to become separated from her roots in Liverpool, and had resulted in an accumulation of debt which she attempted to reduce by the offer of money to import drugs to this island.
20. Miss Brehaut also emphasised that the Applicant notified her plea of guilty one month earlier than her co-Defendant, another circumstance, suggested Miss Brehaut, which added to the justification for a distinction to be made between them in sentence.
21. The question for this Court, therefore, is whether the Royal Court should have given more effect to these considerations and deliberately created a disparity in sentence between these two offenders to take account of mitigation so exceptional in the case of the Applicant to warrant a disparity.
22. The test in such circumstances is that laid down by Lawton, LJ, in Fawcett & Others (1983) 5 Cr. App. R. (S.) page 158:

*“In our judgment, the approach is ... would right thinking members of the public, with full knowledge of all the relevant facts and circumstances, learning of this sentence consider that something had gone wrong with the administration of justice.”*

That principle has been applied regularly in this jurisdiction, and most recently in the case of Charles John Bond (No. 294 – 11th April 2003).

23. We have considered with care all the circumstances of this case, the mitigation available for these offenders and the reasoning set out at length by the Deputy Bailiff, which caused the Royal Court to sentence these offenders each to the same period of imprisonment. In the light of that review and having regard to all the many aspects of this case, some of which are referred to above, we have concluded that no difference in sentence was warranted in this case and that the test is not satisfied. In our view we would not be justified in altering the sentence imposed on this offender. Accordingly this application must be dismissed.

THE PRESIDENT: There is no further application from you, Miss Brehaut, in relation to this appeal?

ADVOCATE BREHAUT: No sir, that was dealt with yesterday, thank you.

THE PRESIDENT: Well the Court will now retire for a few moments and return for the next appeal as soon as maybe.

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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  
Friday 14th May 2004