Judgment 9 / 2004 **Stephen Pateman – Court of Appeal (Criminal Appeal 310) – 20 April, 2004**

Importation of Class A drug – sentence – 5099 tablets of MDMA – the Richards guidelines (2002) – one quarter reduction for plea of guilty – drugs found in circumstances which left no real alternative than to plead guilty – no additional credit for facts revealed in social enquiry report – 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

STEPHEN PATEMAN

Appellant

In the appeal of the Appellant from the sentence imposed on him by the Royal Court on 6th October, 2003;

THE COURT, having heard Advocates M. A. Torode and G. D. McKerrell for the Appellant and the Crown respectively, thereon, and having, on the 19th April, 2004, DISMISSED the appeal, 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

STEPHEN PATEMAN
(Criminal Appeal No. 310)

Judgment delivered by Nutting, JA

1. On 6th October 2003 this Appellant appeared before the Deputy Bailiff and Jurats having pleaded guilty at an earlier hearing to a single count of being concerned in the fraudulent evasion of the prohibition on the importation of a substantial quantity of MDMA, otherwise known as Ecstasy, a Class A drug within the classification defined by the Misuse of Drugs (Bailiwick of Guernsey) Law 1974.

2. The facts in mitigation having been placed before the Court, the Appellant was sentenced to serve 9 years and 9 months imprisonment.

3. On 10th October 2003 he served notice of application for leave to appeal to this Court on the grounds that the sentence was manifestly excessive in all the circumstances of the case.

4. On 30th March 2003 a single Judge of this Court granted leave to appeal.

5. The facts were as follows: On 9th June 2003 the Appellant, a 30 year old single man from Liverpool, arrived at the States Airport on a flight from Southampton. He was stopped by Customs Officers and asked to remove his jacket. The Officers noticed a bulge under jumper he was wearing. The Appellant, on request, lifted his jumper to reveal a package taped to his body. He admitted the package contained Ecstasy.

6. In interview, he claimed to have been given the drugs in a public house in Liverpool by a man whom he only knew as "Joel" in return for a sum of money, which he later admitted to the Probation Officer he expected to be about £3,000. He explained the presence of the £130 he was carrying on the basis that the funds belonged to him, being all that remained from the withdrawal of £300 which he had made the day before to cover the expenses of the trip to Guernsey and for which, he insisted, he had paid himself.

7. When analysed the drug was confirmed to be MDMA and to consist of a total of 5,099 tablets, weighing nearly 1,000 grams. The value of such a consignment on the streets of Guernsey is estimated to be between £76,000 and £127,000.

8. The Appellant has criminal convictions consisting of two convictions for the possession of cannabis, a Class B drug, in 1995 and 1998, and minor convictions for fraud, theft (three convictions) and disorderly behaviour, in 1995, 1998, 1999 and 2001/2002. The lack of any real gravity in any of these offences may be appreciated from the fact that the Appellant has not, prior to the sentence now under appeal, served a sentence of imprisonment.

9. The Appellant suffers from epilepsy through which, unfortunately, he lost his last employment two years ago. Since that event, up to the time of his arrest, he had been drawing Invalidity Benefit of approximately £100 a week. He is unmarried and has no dependents, although he comes from a strongly supportive and closely-knit family.

10. He revealed to the Probation Officer that he has been a recreational drug user of cannabis, Ecstasy and cocaine, during the past 10 years. However, his drug abuse escalated to heroin in the past 2/3 years, which induced him, to his credit, to undertake two detoxification courses. He told the Probation Officer that he had not taken heroin in the 10 months prior to his arrest.

11. In his sentencing remarks the Deputy Bailiff noted that this was the largest attempted importation of Ecstasy into this jurisdiction and identified 13 years as the starting point for sentence, the bracket of 11 to 14 years for this quantity of drugs as suggested by Richards (Royal Court) 17th April 2002.

12. The Royal Court noted the fact that the Appellant pleaded guilty at the earliest opportunity and reflected that fact with a one-quarter reduction for the plea. In fixing this reduction the Court pointed out to the Appellant that *"The circumstances in which the drugs were found in your possession left you with no real alternative than to plead guilty… and the discount must reflect that fact."*

13. In his application to this Court, Advocate Torode complains that the reduction of 3 years and 3 months from the starting point mathematically reflected the credit for the plea but nothing else. He claims that the Deputy Bailiff specifically referred to the fact that *"the Court has taken account of the report produced by the Probation Service, including your personal circumstances"* and that *"account has also been taken of all that was said in the realistic plea in mitigation made by your Advocate."* But, Advocate Torode asserts, plainly no additional credit was given to reflect that report and that mitigation.

14. We have considered carefully what the Deputy Bailiff said. We do not believe that his words can be taken to mean any more than that the Royal Court had taken the contents of the report and what Advocate Brehaut, who appeared below, had said in mitigation "into account" in fixing the figures of 13 years as the starting point, the one-quarter deduction to reflect the plea and the final sentence.

15. We have read the Probation Report with care. There are aspects of the report which might be said to be helpful in relation to the starting point and the reduction to reflect the plea of guilty. One would expect, for example, that the fact of remorse emphasised by the Probation Officer, would have been a matter which would have helped the Court to fix the figure of the deduction to reflect the guilty plea. Remorse and guilt are but two sides of the same coin. On the other hand there were matters revealed in the report, which, if they did not aggravate the offence, were hardly to the Appellant's advantage.

    As a habitual user of drugs he was in a good position to know their potential for harm. It was to his credit that he had stayed free of drugs himself for several months prior to

his arrest. But his willingness to spread the culture of drugs to the present and future addicts who would buy the consignment he attempted to import, was a matter which was not helpful to the Appellant in mitigation.

16. In relation to Miss Brehaut's mitigation to the Royal Court, which we have also read, we echo the realistic and indeed persuasive way in which she put the matter, but the Appellant should not imagine that because the Court praised his Advocate, the Court necessarily accepted the validity of all the points which she had made. It is clear, for example, that the Royal Court was not prepared to accept the 12 year starting point figure urged by Miss Brehaut.

17. Having fixed a starting point and allowed a discount for plea, it was within the discretion of the Royal Court whether to make any further allowance for any relevant mitigation. We find no fault with the way the Royal Court undertook the sentencing process in this case.

18. The appeal is 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
Friday 14th May 2004