

**Judgment 18/2003**

**Charles John Bond v  
Law Officers of the Crown  
Court of Appeal  
(Criminal Appeal 294)  
11<sup>th</sup> April, 2003**

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**Importation of Class B Drugs – co-accused – disparity of sentence – tests to be applied – skeleton argument must be precise as to claimed disparity and how it arose.**

**IN THE COURT OF APPEAL OF GUERNSEY**

Criminal Division

The 11th day of April, 2003 before Richard Charles Southwell, QC., Presiding, Sir John Nutting Bt., QC., and David Arthur John Vaughan, CBE, QC.

THE LAW OFFICERS OF THE CROWN

V.

CHARLES JOHN BOND

Appellant

In the appeal by the Appellant from the sentence imposed on him by the Royal Court on 19th December, 2002;

THE COURT, having heard Advocates M. Baudains and G. D. McKerrell for the Appellant and the Crown respectively, thereon, GAVE JUDGMENT in the terms attached hereto and ALLOWED the appeal to the extent that the sentence of nine years' imprisonment was set aside and replaced by a sentence of six years' imprisonment, to run from 28th May, 2002.

K. H. TOUGH  
Registrar of the Court of Appeal

FRIDAY 11TH APRIL, 2003

**THE COURT OF APPEAL OF GUERNSEY**

**Before**

**Richard Charles Southwell Esq., Q.C.**

**Sir John Nutting Bt. Q.C.**

**David Arthur John Vaughan Esq., C.B.E., Q.C.**

**CHARLES JOHN BOND**

**(Criminal Appeal No. 294)**

**Judgment delivered by Southwell JA**

1. This is the judgment of the Court. In May 2002 Mr. Charles John Bond was working for a taxi company in London, and for his work as a taxi driver had the use of a Peugeot car which he hired from the company. He agreed with a friend to bring the car to Guernsey, having made the car available to the friend so that illicit goods, which he clearly suspected would be drugs, though what drugs apparently he did not inquire, could be installed in the car before he brought it to Guernsey. Another friend Miss Sarah June Kirton agreed to go with him. Both Bond and Kirton were drug users, and were addicted to cocaine.
2. On 28<sup>th</sup> May, 2002, Bond and Kirton travelled by train from Waterloo to Poole, where they were met, and Bond's car was handed over to him by two men apparently unknown to him. Packets of cannabis weighing 59.9 kilograms had been concealed behind the rear seat of the Peugeot, with a street value in Guernsey of between £419,300 and £539,100. Bond and Kirton placed their bags on the back seat, taking no steps to find out what had happened while the Peugeot had been in the possession of the other men, drove to the ferry and crossed to Guernsey. The Peugeot was searched on arrival in Guernsey, the cannabis was found, and Bond and Kirton were arrested.
3. It became apparent that Bond and Kirton had made a similar visit to Jersey some two months earlier.
4. Bond and Kirton were both charged on the first count of being knowingly concerned in the fraudulent evasion of the prohibition on importation of the 59.9 kgs of cannabis. Kirton alone was charged on the second count of being in possession of a small quantity of cocaine.
5. On 15<sup>th</sup> October, 2002, Bond pleaded guilty to the first count, while Kirton pleaded guilty to the second count, but not guilty to the first count. Kirton was tried before the Royal Court in December 2002 and found guilty on 4<sup>th</sup> December, 2002, on the first count by the Jurats by a majority of five to four. Kirton at her trial had not directly challenged the prosecution evidence, but had challenged the inferences sought to be drawn from this evidence that she was knowingly involved in the importation of the cannabis.
6. Bond and Kirton were sentenced on 19<sup>th</sup> December, 2002, the sentence on Bond being nine years imprisonment, and the sentences on Kirton being 18 months imprisonment on the first count and concurrent one months imprisonment on the second count. Bond appeals with leave of a single Judge of the Court of Appeal against his sentence. Kirton has not appealed.
7. Advocate Baudains appearing for Bond accepted that nine years imprisonment is a sentence in accordance with the Richards guidelines. He placed primary reliance on the disparity between this sentence and Kirton's sentence of 18 months imprisonment.

8. In the English courts disparity of sentence is not accepted as a valid ground for a reduction in sentence unless the test stated in Pitson (1972) 56 Cr.App.R.391 C. of A. (Crim. Divn.) and Fawcett et al (1983) 5 Cr.App.R.(S.) 158 C. of A. (Crim. Divn.) is met. This test was stated by Lawton LJ in Fawcett as follows:-

*"In our judgment, the approach is that which is set out in the decision of this court in Pitson ....., namely, 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."*

In the current Sentencing Referencer the test is stated in this way:-

*"Where there is an unjustified disparity in the sentences passed on two offenders, the Court of Appeal may reduce the more severe sentence if the disparity is so substantial as to create the appearance of injustice."*

This was the test adopted by the Guernsey Court of Appeal in Shane Harvey (6<sup>th</sup> July, 2001) unreported, in a judgment delivered by Vaughan J A.

Though Mr. Baudains placed much weight on Bond's subjective "burning sense of injustice", the test must, in the judgment of this Court, always be an objective test as stated in Fawcett and Shane Harvey.

9. There is often disparity of sentence which is justified, and it is important for this to be recognised by those who seek to criticise sentencing practice in the Royal Court. It may be helpful to give some examples of situations in which disparity of sentence may, or may not, be regarded as objectionable:-

- (i) there is no objectionable disparity where one offender receives a sentence of imprisonment which properly reflects his culpability, and a co-defendant, as a result of circumstances special to that offender, is dealt with by means of a non-custodial sentence;
- (ii) where two co-defendants are sentenced to imprisonment for different terms, there is no objectionable disparity if the difference in the sentences properly reflects a greater measure of culpability on the part of one defender;
- (iii) there is no objectionable disparity if the difference in the sentences properly reflects a significant difference in their ages;
- (iv) there is no objectionable disparity if the difference in the sentences reflects a relevant and significant difference in their records of previous convictions;
- (v) there is no objectionable disparity if the difference in the sentences reflects the existence of a mitigating factor peculiar to the defendant with the less severe sentence;
- (vi) a difference in sex is not in itself a justification for disparity of sentence between offenders;
- (vii) there may be objectionable disparity of sentence where the difference in sentences is not justified by any relevant and significant difference in the culpability or personal circumstances of the offenders;
- (viii) there may be objectionable disparity of sentence where co-defendants receive the same sentence despite the existence of a relevant and significant difference in their culpability or personal circumstances;
- (ix) there may be objectionable disparity of sentence where two offenders, whose culpability or personal circumstances are different, receive different sentences, but the difference between the sentences exaggerates the difference in their culpability or personal circumstances;
- (x) there may be objectionable disparity of sentence where two offenders, whose culpability or personal circumstances are different, receive different sentences, but the difference in their sentences is insufficient to mark the differences in their culpability or personal circumstances;
- (xi) there is no objectionable disparity in sentence where two offenders, whose culpability and personal circumstances are different, receive the same sentence, if a factor enhancing the culpability of one offender is balanced by a different factor enhancing the culpability of the

- other offender, or if a factor enhancing the culpability of one offender is balanced by a mitigating factor peculiar to that offender;
- (xii) that one of two offenders receives an immediate sentence of imprisonment and the other a suspended sentence of the same length does not amount to objectionable disparity, if there are proper grounds for suspending the sentence in one case but not in the other;
  - (xiii) there is objectionable disparity where an offender has received a sentence which is not excessive for his offences, but a co-defendant whose culpability is not significantly different has received a less severe sentence which is unduly lenient.

10. In the present case the starting points and sentences adopted by the Royal Court were:

Bond – 13 years as starting point – 9 years sentence.

Kirton – 5 years as starting point – 18 months sentence.

The disparity of starting points, and even more of sentence, is obvious and remarkable.

11. In the judgment of the Royal Court delivered by the Bailiff, the culpability of Bond was assessed as that of a courier, and from the Island's point of view a major player in the importation, but not the principal one and not the overall organiser or beneficiary of the importation. The culpability of Kirton was assessed as playing a role in providing supporting cover to Bond for the disguise of a couple coming to Guernsey on holiday. This was a correct assessment of Bond's culpability, but the Royal Court seems somewhat to have down-played Kirton's role, which was a significant one, though less culpable than Bond, as Advocate Baudains rightly accepted.

12. As regards the personal circumstances of each offender,

- (i) in the case of Bond, the matters to be taken into account included his plea of guilty (though this was almost inevitable following the discovery of the cannabis in his car), but little other substantial mitigation, in view of his short but unhappy record of previous convictions;
- (ii) in the case of Kirton, there was no plea of guilty since she had fought the case against her, but the Royal Court took into account the limited extent to which she had fought it, the psychiatric assessment of her serious depressive illness which she had had since her teens, her good character, her age of 25 years, and her "personal circumstances, including the clear support of her family".

13. In the case of Bond the Royal Court reduced from the starting point of 13 years by 4 years, i.e. less than 1/3, to a sentence of 9 years.

14. In the case of Kirton the Royal Court stated that "in other circumstances a sentence of 3 years imprisonment would be justified", but decided as "an exceptional course, which must not be regarded as in any way setting a precedent for any other case that may come before it concerning somebody in your circumstances", that the sentence could be further reduced to 18 months so that Kirton could be "released at a relatively early date to get treatment for [her] depression, find worthwhile employment and make a new life for [herself]".

15. This Court has no doubt that the sentence imposed on Kirton was much too low. The Royal Court seems, without justification, to have thought that Bond and Kirton could be sentenced separately, "on a stand-alone basis", without regard to the other's sentence. This was misconceived, since they were correctly charged on the same count. Kirton's sentence appears also to have reflected, to an inappropriate extent, the fact that she was a woman not a man, that she had the longstanding medical condition of depression, a condition which could readily be treated in prison, the fact that her family was supportive, and the disparity of age between her at 25 years and Bond who was 38. It appears also that the sentence imposed on her reflected in part the division of opinion amongst the Jurats on her guilt. Though some disparity of starting point and sentence between Bond and Kirton was appropriate, in the judgment of this Court the starting point for Kirton should have been at least 6 years and the sentence in the region of 4 years.

16. In the case of Bond it is plain that the test in Forrest and Shane Harvey is met. Right-thinking members of the public, with full knowledge of all the relevant facts and circumstances, would consider that something had gone wrong with the administration of justice. There is an objectionable and unjustifiable disparity between the two sentences.

17. In these circumstances the Court of Appeal has to follow the practice established by the Court of Appeal in Shane Harvey in reducing to a reasonable extent Bond's sentence, even though his sentence was in accordance with the Richards guidelines. This Court, therefore, substitutes a sentence of 6 years imprisonment for Bond.

18. Disparity of sentence is a ground frequently relied on in sentence appeals. This Court wishes to draw to the attention of the legal profession that, where an appellant or applicant wishes to rely on disparity of sentence, the advocate's skeleton argument must make clear with some precision and detail what is the claimed disparity and how it is said to have arisen. The advocate must also ensure that the Court of Appeal has before it all the material which was before the sentencing Court, so that the Court of Appeal can consider the arguments on disparity with the benefit of being able to examine the same material as the sentencing Court examined.