

Judgment 20/2003

**Christopher Richard Hunt
v Law Officers of the Crown
Court of Appeal
(Criminal Appeal 297)
10th April, 2003**

Importation of Class B drugs – Sentence - Application of Richards guidelines – Whether "something more than a basic mule" – Limited value of the plea of guilty

IN THE COURT OF APPEAL OF GUERNSEY

Criminal Division

The 10th day of April, 2003 before Richard Charles Southwell, Q.C., Presiding, Sir John Nutting Bt., QC., and David Arthur John Vaughan, CBE, QC.

THE LAW OFFICERS OF THE CROWN

V.

CHRISTOPHER RICHARD HUNT

Appellant

On the application of the Appellant for leave to appeal from the sentence imposed on him by the Royal Court on 23rd January, 2003;

THE COURT, having heard Advocates A. M. Merrien and P. Robey for the Appellant and the Crown respectively, thereon, GAVE JUDGMENT in the terms attached hereto, DISMISSED the application for leave to appeal and GRANTED legal aid.

K. H. TOUGH
Registrar of the Court of Appeal

OFFICIAL TRANSCRIPT

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THURSDAY 10TH APRIL 2003

THE COURT OF APPEAL OF GUERNSEY

Before

Richard Charles Southwell, Esq., QC
Sir John Nutting, Bt., QC
David Arthur John Vaughan, Esq., CBE QC

CHRISTOPHER RICHARD HUNT
(Criminal Appeal No. 297)

Judgment delivered by Sir John Nutting, Bt., QC

1. On 23rd January 2003, this Applicant appeared before Lieutenant Bailiff Day and Jurats, charged in an Indictment containing one Count. The Count alleged that on 28th September 2002 the Applicant was knowingly concerned in the fraudulent evasion of the prohibition on the importation of cannabis resin, contrary to Section 2(1)(a) of the Misuse of Drugs (Bailiwick of Guernsey) Law 1974, as amended. He pleaded guilty and was sentenced to undergo imprisonment for a period of 2 years 9 months effective from 28th September 2002, being the date of his arrest.
2. On 3rd February 2003 he served notice of his intention to apply for leave to appeal on the ground that the sentence was “too long for the amount imported”.
3. On 31st March 2003, the Bailiff refused leave to appeal but granted legal aid up to the stage of the application made to the single Judge. The Applicant now seeks leave from the Full Court to appeal his sentence. We grant him legal aid for the purposes of that application.
4. The Applicant is 49 years-of-age, being a native of Newport, Gwent. After leaving school he worked for William Hill Bookmakers for approximately 4 years. After leaving that employment he became self-employed as a professional gambler and made a substantial amount of money which enabled him to set up various businesses over a period of time, including betting shops, newsagents, and public houses in the local area. About 15 years ago he became an alcoholic and a regular user of cannabis. His success in business therefore declined.
5. In 1974 he married and has a son and a daughter aged 17 and 18 years respectively, but is now divorced from his wife.
6. Two weeks prior to the commission of this offence, the Labour Social Club, which he was managing and at which he was living, was shut down by the Police following claims of illegal gambling on the premises. The Applicant became homeless. He was apparently approached by a third person and offered a free holiday and money in exchange for importing cannabis into Guernsey.
7. At approximately 10 o'clock on the morning of Saturday 28th September 2002, the Applicant disembarked from Weymouth on a Condor Ferry. A Customs Officer stopped him. He produced a ticket in a false name, and when asked about the purpose of his visit, replied that he had come over to see his son who was working for a firm in Guernsey. This explanation was also subsequently established to be a fabrication.

8. He was requested to remove his leather jacket and a search of the jacket revealed a piece of brown resinous substance in the inside pocket. The Applicant admitted that the substance was cannabis and asserted that it was for his personal use. He was asked whether he had any more cannabis in his possession and denied it. He was then informed that a search of his person would be conducted. At this point the Applicant admitted to the Officer that he had a large amount of cannabis strapped to his body.
9. He was asked about the intended recipient of the drugs, but would not divulge any information as he claimed to do so would endanger his life. He explained that he expected to be paid £500 for bringing the cannabis into Guernsey and that he would have used the money to pay for a deposit on a flat.
10. A torn piece of paper removed from his trouser pocket had various words and numbers written on it. The Applicant later confirmed in interview that this document contained the personal details of an acquaintance, which he had obtained with the object of furnishing himself with an alias, and that he had gathered information over a period of time so as not to raise the man's suspicions.
11. He declined to comment when asked where and by whom he would be paid, but admitted that he was aware of the gulf in prices for cannabis between Guernsey and the United Kingdom from newspaper reports.
12. The three bars strapped to the Applicant's body were found to weigh 744.5 grams. The estimated street value of such an amount in Guernsey varies between approximately £5,200 and £6,700. Such a weight of cannabis could have produced nearly 5000 cannabis cigarettes.
13. The Applicant was detained in custody following his arrest and remained there until trial.
14. In justification of the sentence passed, the Lieutenant Bailiff said:

“This is a typical case of a vulnerable person used to carry out an importation, always a vital role. For that you expected to be rewarded, however naively. Your role was somewhat more than a basic mule, in that on your own admission, you had done a certain amount of research to provide an alias, travelling as you did under a false name.

The Court notes that once the local Customs Officers were showing a serious interest in you, you immediately accepted the situation. However, you had little choice. Thereafter your co-operation was not great, you certainly provided no assistance with regard to the importation. Bearing in mind the quantity of cannabis resin involved and your role in the offence together with the guidelines issued by the Court of Appeal in the case of Richards (April 2002) the Court concludes that the appropriate starting point in your case, that is before any mitigation is taken into account, is one of 4 years' imprisonment. You are obviously entitled to a discount because of your guilty plea, though that must be set at ¼ as you had no sensible alternative.

The Court treats you as a person of previous good character, though it notes that you are a mature, experienced person, who was still prepared to be involved in this importation. The Court has also taken into account your personal circumstances, all that has been said on your behalf, and the contents of the Probation Report.”

15. In seeking leave to appeal on behalf of the Applicant, Advocate Merrien has submitted to us, firstly, that the sentence was manifestly excessive and out of proportion to the gravity of the offence; secondly, that the Court erred in concluding that the careful compilation of a false alias by the Applicant and its use when he was stopped by Customs, justified the contention that the Applicant's role was, as described by the Lieutenant Bailiff:

“Somewhat more than a basic mule.”

16. Lastly, Advocate Merrien criticises other aspects of the sentencing remarks pointing to the fact that the Lieutenant Bailiff emphasised that the co-operation of the Applicant was “*not great*” and that he “... *certainly provided no assistance with regard to the importation.*” Mr. Merrien argues that the Applicant, once challenged by the Customs Officer, co-operated fully regarding his own involvement, and he points out that the provision of assistance regarding other parties required active steps on the Applicant’s part to identify them, and thereafter to act as a witness against them. Co-operation and the provision of assistance, says Mr. Merrien, are two different matters.

We reject these contentions.

17. We are not persuaded that the sentence was either manifestly excessive or out of proportion to the gravity of the offence. The Royal Court took into account the guidelines provided by the recent five Judge case of Richards (17th April 2002, Court of Appeal), having regard to the quantity of drugs imported in this case, and the circumstances of the importation. We do not conclude that the Royal Court erred in deciding that the appropriate starting point was 4 years. Moreover, it is clear from the sentencing remarks quoted above that the Court gave generous credit, in the circumstances of this particular case, for the plea of guilty and the factors of personal mitigation which had been urged on behalf of the Applicant and which the Lieutenant Bailiff carefully itemised. The ¼ discount cannot be faulted.
18. We have also considered the matters on which Advocate Merrien relied in his efforts to show that the Lieutenant Bailiff took into account matters which were not germane to a fair and proper analysis of the circumstances of the case. We have examined in detail his claim that the compilation of a false alias did not warrant the conclusion reached by the Royal Court, that the Applicant was “*Somewhat more than a basic mule.*”
19. Initially, we did not have available to us documents recording the interview with the Customs in which the Applicant deals with the circumstances in which he obtained information about the alias he used, and during which he was asked questions about the receipt of the drugs by him in England, and the delivery of the drugs here in Guernsey.
20. During the adjournment we have had an opportunity of reading that interview. It is clear that the Applicant took time to collate the information for the alias, including the full name, address, post code, telephone number and date of birth of a casual drinking acquaintance called Cooke. He told the interviewing Officer:

“I got the information slowly but surely.”

And later:

“I made sure I had a thorough knowledge in case I was questioned.”

21. Some of this information was detailed on the piece of paper recovered from the Applicant’s trouser pocket, the remainder he admitted retaining in his memory.
22. But the interview also contains an admission by the Applicant that he was sufficiently trusted by those who gave him the drugs and those to whom he would have supplied the drugs in Guernsey to take safe receipt of the cash paid by the latter for the benefit of the former in exchange for the drugs.
23. For these reasons, in our judgment, the Royal Court was quite justified in concluding that this Applicant was “*Somewhat more than a basic mule.*”

24. We turn to Advocate Merrien’s last point, that the Royal Court failed adequately to distinguish between co-operation about personal guilt and failure to reveal details about others involved in the importation and supply. It is clear to us that a careful reading of the sentencing remarks quoted above reveals that it is doubtful that the Lieutenant Bailiff was making the distinction for which Mr. Merrien contends. We believe that the Lieutenant Bailiff was reflecting the contents of the interview with regard to the questions which the Customs Officer asked regarding the circumstances surrounding the Applicant’s receipt of the drugs in England and what he intended to do with them in Guernsey. The Lieutenant Bailiff does not suggest that the Court was minded to hold against the Applicant

any lack of co-operation and to reflect that alleged criticism in the sentence passed by the Court.

25. In the relevant passage the Lieutenant Bailiff recorded the factors which influenced the sentence and the weight which it was appropriate for the Court to attach to them. He pointed out that the plea of guilty was of less value than it might have been because of the overwhelming nature of the evidence and, by the same token, the less than wholehearted co-operation of the Applicant during interview. The Court concluded that these factors inhibited the Court from applying a greater discount.

26. Moreover, an analysis of the interview reveals that these comments were justified. The Applicant refused to reveal to the interviewing Officer any detail about the following matters; the telephone number on the piece of paper found in his possession, where, how, and from whom, he had obtained the cannabis, whether he knew anyone in Guernsey, the details of any prior visit he may have made to the Bailiwick, the circumstances of the payment to him of the anticipated reward of £500, where, to whom, and when he intended to transfer the drugs, and where he would have stayed during the time he remained on the Island.

27. In our judgment none of the points urged on behalf of the Applicant have any substance. The application for leave to appeal is refused.

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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
Monday 19th May 2003