Judgment 27/2003

Danny Joseph Culhane
V Law Officers of the Crown
Court of Appeal
(Criminal Appeal 300)
8th July, 2003

Importation and possession of Class A drugs – sentence – whether starting point appropriate

IN THE COURT OF APPEAL OF GUERNSEY

Criminal Division

The 8th day of July, 2003 before Christopher Simon Courtenay Stephenson Clarke, Q.C., Presiding, David Arthur John Vaughan, C.B.E., Q. C., and Patrick Stewart Hodge, Q. C.

THE LAW OFFICERS OF THE CROWN

V.

DANNY JOSEPH CULHANE

Appellant

On the application of the Appellant for leave to appeal from the sentences imposed on him by the Royal Court on 10th March, 2003;

THE COURT, having heard Advocates Miss S. L. Brehaut and P. Robey for the Appellant and the Crown respectively, thereon, GAVE JUDGMENT in the terms attached hereto and DISMISSED the application for leave to appeal and GRANTED Legal Aid.

K. H. TOUGH
Registrar of the Court of Appeal.

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MONDAY 8TH JULY 2003

IN THE COURT OF APPEAL OF GUERNSEY

Before

Christopher Simon Courtenay Stephenson Clarke, Esq., QC Presiding
David Arthur John Vaughan, Esq., CBE, QC
Patrick Hodge, Esq., QC

DANNY JOSPEH CULHANE
(Criminal Appeal No. 300)

Judgment delivered by David Arthur John Vaughan, Esq., CBE, QC

1. On 10th March 2003 Danny Joseph Culhane appeared before the Royal Court and pleaded guilty to two counts relating to Diamorphine, commonly known as heroin. The first count related to the importation of 10.682 grams of heroin with a street value of some £2,400. The second related to the possession of 0.181 grams of heroin worth £40. On the first of those two counts he was sentenced by the Royal Court to a term of 4 years imprisonment and on the second a term of imprisonment of 2 months to run concurrently with the first term. Mr. Culhane has renewed his application for leave to appeal before this Court, it having initially been refused by a single judge.

2. On 28th November 2002 a customs officer was on duty at the States Postal Sorting Office. He noticed a brown jiffy bag which had been sent from the United Kingdom. It was addressed to a P. Lyons, care of a construction company who were carrying out works at the Beau Sejour Centre. The package was opened and was found to contain a substance which was subsequently identified as heroin with a strength of 39%, which is in line with all seizures in the United Kingdom. The heroin was removed, the package re-packed and reintroduced into the postal system for delivery.

3. Later that morning at the Beau Sejour Centre Mr. Culhane went to the reception office to see if the post had been delivered. He was told that it had not, and he was seen to drive off in a white van.

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About half an hour later he returned in the van and was told that the manager would be collecting the post. He went to sit in his van in which there was another person. The manager then appeared with the post. He was accompanied by another person, who was in fact a customs officer. Mr. Culhane shouted from the van to see if there was a package addressed to P. Lyons. The package was handed to him and he was then arrested. The other man was also arrested but there was not sufficient evidence to associate him with the importations. When Mr. Culhane was arrested and searched there was found in his wallet a package with a small quantity of heroin in it, which is the subject of the second count.

4. Mr. Culhane was interviewed on three separate occasions. He said that he thought that the substance which was to be sent was cannabis and that he had gone to collect it for a friend. He said that he was a social user of heroin but that he did not use it on a regular basis. He said he did not know of the existence of the heroin in his wallet. He was aware of the strict law in this jurisdiction and said that if he had known it was heroin he would not have become involved.

5. Mr. Culhane is aged 37. He is a qualified air conditioning engineer and indeed it was to perform such work that he has come to this Island. Although he had some convictions as a teenager, for which he was either fined or given a conditional discharge, he did not have any relevant convictions for drug offences. He is the father of two children, one of whom, a daughter, is aged 8 and of whom he has custody and who has lived with him for virtually her whole life. Since his arrest she has been living with Mr. Culhane's partner and spending some time with her mother.

6. Mr. Culhane was sentenced by the Royal Court on the basis that the relevant starting point, in line with the Richards guidelines, was 6½ years, and that there should be a reduction of one-third to allow for his plea of guilty.

7. The main point taken on his behalf by Advocate Brehaut was that the starting point of 6½ years was too high. In fact on the basis of the Richards guidelines, the starting point of 6½ years appears to us to have been too low and it is difficult to see how a starting point of less than 7 years could have been taken. However, the main point of Advocate Brehaut's submissions is that in cases subsequent to Richards, both before and after this case, the Royal Court has adopted lower starting points for

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equivalent importations of heroin. In the case of John Robert Down (3rd March 2003), who appeared in the Royal Court only one week before Mr. Culhane, in which there was a not dissimilar quantity of heroin (7.34 grams by postal importation, and an internal importation of 2.534 grams) the starting point was taken as 4½ years. Equally in the case of Matthew Dodd (18th June 2003), for a much greater quantity of heroin (18.154grams) internally concealed, a starting point was taken of 7 years which would again seem to be too low on the basis of the Richards guidelines. In that latter case some consideration may have been given to his youth, he being only 21years of age. We find it very difficult to reconcile Down and Dodd with the Richards guidelines, but we have no way of knowing why the Royal Court in that case departed to such an extent from the clear guidelines. We asked the Advocates for the Applicant and for the Crown why there was this disparity, but they were unable to help us to any real extent. However, whatever the reason may be, we do not consider that the fact that the Royal Court has departed from the Guideline Cases in one or two particular cases is a reason to apply what may have been an unduly low starting point to other cases. Accordingly, although we consider the starting point should have been at least 7 years, we adopt the same starting point as did the Royal Court.

8. With regard to mitigation, in addition to the full credit of one-third given for his plea of guilty, it is alleged that the Royal Court should have granted greater mitigation for other factors than it did. The factors, which it is suggested should have justified an additional period over and above that which the Royal Court gave, were the assistance offered to the customs officers in identifying the person who had organised the importation (which came to nothing), the fact that he had offered to give evidence and the fact of his parental responsibility in particular with regard to his daughter. However, we do not consider that the additional period which Royal Court has allowed could possibly be criticised as being too little.

9. Accordingly, as we consider the period of 4 years imprisonment could not be described as manifestly excessive, we dismiss the application for leave to appeal.

Legal Aid granted.

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