

Judgment 28/2003

**Philip Joseph Hartzenberg
Court of Appeal
(Criminal Appeal 301)
8th July, 2003**

Importation of Class A and possession of Class B 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.

PHILIP JOSEPH HARTZENBERG

Appellant

In the appeal of the Appellant from the sentence imposed on him by the Royal Court on 10th March, 2003;

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 on the First Count was reduced from 9 years' imprisonment to 8 years' and 3 months' imprisonment, to run from 7th December, 2002, the sentences on the remaining Second and Third Counts being unchanged.

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

MONDAY 7TH JULY 2003

COURT OF APPEAL

Before

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

PHILIP JOSPEH HARTZENBERG
(Criminal Appeal No. 301)

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

1. On the 10th March, 2003, Philip Joseph Hartzenberg appeared before the Royal Court and pleaded guilty to three counts in relation to controlled drugs. The first related to the importation of MDMA (commonly known as Ecstasy) a Class A drug, and two counts related to simple possession of cannabis. The quantity of Ecstasy imported was 3,816 tablets with a street value of £57,000 to £95,000 on the basis of a street value of £15 to £25 per tablet. This importation was by a substantial amount the largest detected importation of Ecstasy into this Island. The quantities of cannabis involved in the second and third counts were very small with a value of some £10. With regard to the importation of the Ecstasy the Royal Court sentenced Mr. Hartzenberg to a term of imprisonment of 9 years and for the cannabis counts to a period of one month for each to run concurrently. Mr. Hartzenberg was granted leave to appeal by a single judge.

2. Mr. Hartzenberg and a companion had arrived on this Island on the 7th December, 2002 at the Passenger Terminal at St. Peter Port. He was stopped by customs officers. He was travelling on an open return ticket under the name of "Hartzel", although he identified himself correctly when asked to produce his passport. In reply to questions he said that he had no controlled drugs in his possession and his companion said they had come to see a friend and to play golf and spend some time fishing. Neither of them had any equipment for any such activities.

3. Mr. Hartzenberg was asked to empty his pockets and some tablets were seen. He said they were Ecstasy. He was arrested and cautioned. When asked if he had any more he produced a package from a pocket in his jeans. This turned out to be cannabis which he said was for his personal use. He was asked if he had any more drugs and he indicated a green shoulder bag in which he said there were more Ecstasy tablets. He was asked how much there was and he replied "thousands". When the bag was inspected it was discovered that the total of Ecstasy tablets found amounted to some 3,816 tablets. He declined to say for whom they were for and he declined to provide any co-operation to help further enquiries. In the course of an interview in the presence of his Advocate he provided personal details but again refused to answer any further questions.

4. The Royal Court in passing sentence for the offence in relation to the importation of the Ecstasy adopted a starting point of twelve years in accordance the Richards guidelines and allowed a reduction of 25% to allow for his plea of guilty in circumstances where he had no real alternative since he had been caught red handed. That reduction of one quarter is not challenged on this appeal. The only issue raised by Advocate Baudains was whether the starting point of 12 years was correct and it was contended that in the circumstances of this case a starting point of 10 – 11 years would have been more appropriate.

5. According to Richards for tablets of Ecstasy for quantities between 2,500 and 4,000 the guideline starting point would be 10 – 13 years, but between 4,000 and 5,500 tablets the starting point would be some 11 – 14 years. The point was made by Advocate Baudains that had the quantity of Ecstasy been 4,000 tablets, in view of the circumstances of the importation, where Mr. Hartzenberg was treated as a courier, made no attempt to conceal such drugs either by a sophisticated system or by internal concealment, was open and truthful about his involvement, the starting point would have been 11 years, that is to say at the bottom of that range. It was therefore contended it was unfair that by importing a lesser quantity his starting point should be set at the higher part of the range between 10 and 13 years.

6. We agree with that submission and therefore we consider that the starting point should have been 11 years from which the appropriate reduction of one quarter for his plea of guilty in the circumstances set out above should be made. Accordingly in place of the sentence of nine years for the Ecstasy importation count, we substitute a sentence of 8 years and 3 months. The sentence for the cannabis counts will remain unchanged. Accordingly to that extent we allow the appeal.