

**Judgment 29/2003**

**Paul Roper v  
Law Officers of the Crown  
Court of Appeal  
(Criminal Appeal 303)  
8th July, 2003**

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**Importation of Class A and Class B drugs – sentence – co-accused – whether disparity of sentence**

**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.

PAUL ROPER

Appellant

On the application of the Appellant for leave to appeal from the sentence imposed on him by the Royal Court on 16th April, 2003;

THE COURT, having heard Advocates Miss S. L. Brehaut and G. D. McKerrell 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

**IN THE COURT OF APPEAL OF GUERNSEY**

**Paul Roper**

**(Criminal Appeal No.303)**

**Judgment delivered by Patrick S. Hodge QC**

1. On 4 April 2003 Paul Roper (“the Applicant”), pleaded guilty to one count of importation of 331 tablets of MDMA which he had concealed internally on his person. He had imported the drugs into Guernsey on 7 February 2003 having travelled from Weymouth on the Condor ferry in the company of his nephew, Darren Anthony Hardie (“Mr Hardie”), who also imported an identical quantity of MDMA concealed in the same way together with a small quantity of cannabis resin.
2. On 16 April 2003 the Royal Court sentenced the Applicant to six years’ imprisonment. The Royal Court also sentenced Mr Hardie to six years’ imprisonment in relation to the importation of the MDMA and to a concurrent two months for importation of the cannabis resin. In each case the Court took a starting point of eight years and treated the Applicant and Mr Hardie as couriers rather than organisers of the importation.
3. The Applicant seeks leave to appeal against his sentence. The sole ground of appeal is that there was an objectionable disparity in the sentencing of the Applicant and Mr Hardie. The Applicant alleges that it was inappropriate for them to receive the same sentence for the importation of the MDMA when there were material differences in their personal circumstances. We were referred in this regard to the decision of this court in *Shane Harvey* (6 July 2001) and to the judgment of the English Court of Appeal in *Pitson* (1972) 56 Cr. App. R. 391 C.of A. (Crim. Divn.)
4. The Applicant relied in particular on the decision of this court in *Charles John Bond* (11 April 2003) in which the test for objectionable disparity in sentencing was stated as follows:  
*“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 in the administration of justice.”*  
In its judgment this court gave examples of situations in which disparity of sentence may, or may not, be regarded as objectionable. In our opinion the example which is relevant to this application is the eighth example, namely that *“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”*.
5. In support of the application for leave, Advocate Brehaut emphasised that the Crown and the Royal Court had not treated the importations by her client and Mr Hardie as a joint enterprise. They had both received the same sentence for the importation of the same quantities of MDMA although their personal circumstances differed markedly.
6. The Applicant was aged 42. He had a criminal record but had no convictions for drug offences and no convictions of any kind since 1993. By contrast, Mr Hardie had an extensive recent criminal record including a conviction in May 1999 for the possession of cocaine and for the possession of heroin with

intent to supply. This she submitted pointed towards a more severe sentence on Mr Hardie. We agree that this is a factor which, other things being equal, would point towards a longer sentence being imposed on Mr Hardie than that imposed on the Applicant.

7. She also submitted that Mr Hardie had not co-operated when interviewed by Customs officers while the Applicant had promptly admitted his involvement. However we note that the Applicant's co-operation occurred only after he had been given a laxative and had passed drugs contained in balloon type objects in his cell and in the Customs' special toilet facility. We attach little weight to his admissions in such circumstances and note that Mr Hardie himself made admissions when he passed similar packages in the special facility.
8. Advocate Brehaut submitted that there were no sufficient counter-balancing circumstances to justify the imposition of the same sentences. She recognised that Mr Hardie was the Applicant's nephew and was 29 years old but submitted that he was a grown man who had chosen to involve himself in the importation of drugs when the Applicant had invited him to accompany him on a trip to Guernsey. He was not, she submitted, a young man led astray. There was not a joint enterprise and the Applicant's invitation to his nephew should not have been regarded as an aggravating factor in sentencing the Applicant. In any event it did not counter balance the disparity in criminal record.
9. She also submitted that the Royal Court should not have given Mr Hardie credit for the fact that he was a heroin addict who was undergoing detoxification. This could not justify the imposition of the same sentence on the Applicant and Mr Hardie.
10. We are, however, satisfied that there was no objectionable disparity in sentencing. It was not disputed before the Royal Court that the Applicant initially agreed to act as a courier of drugs into Guernsey for a woman called "Julie" who also planned to travel to the island. When she backed out, the Applicant invited his nephew, Mr Hardie to come with him. The Applicant must have known of Mr Hardie's drug addiction and his involvement in drug offences. Further, the Applicant did not dispute the Crown's account to the Royal Court that he had involved Mr Hardie in looking for Julie before travelling to Guernsey and that Mr Hardie was present when Julie handed the Applicant the drugs which the Applicant then imported into Guernsey. On any view, the Applicant involved his nephew, a younger man with a heroin addiction and a criminal record for the supply of drugs, in a trip which involved the illegal importation of drugs onto this island. While we note that the Crown did not treat the activities of the Applicant and Mr Hardie as a joint enterprise, it is striking that both men concealed on their persons precisely the same number of tablets using the same or similar methods of concealment. At the very least the Applicant exposed his nephew to the opportunity and temptation to involve himself in the illegal importation. His so acting was in our view a significant counter balance to the disparity in the two men's criminal records and fully justified the Royal Court's sentencing.
11. In the circumstances we refuse leave to appeal.