

Judgment 47/2003

**Darryl Tawiah v
Law Officers of the Crown
Court of Appeal
(Criminal Appeal 305)
25th September, 2003**

Criminal law – sentence – appeal to Court of Appeal – importation of Class B drugs – degree of criminality more relevant than amount of drugs imported – appropriate starting point – whether objectionable disparity of sentence.

IN THE COURT OF APPEAL OF GUERNSEY

Criminal Division

The 25th day of September, 2003 before Richard Charles Southwell, Q.C., Presiding, Hon Michael Jacob Beloff, Q. C., and Peter David Smith, Q. C.

THE LAW OFFICERS OF THE CROWN

V.

DARRYL TAWIAH

Appellant

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

THE COURT, having heard Advocates M. G. A. Dunster and G. D. McKerrell for the Appellant and the Crown respectively, thereon, GRANTED leave to appeal and ALLOWED the appeal to the extent that the sentences of nine and a half years' imprisonment concurrent, on each of Counts 1 to 6 in the Indictment, were set aside and replaced by sentences of eight years' imprisonment on each of the said Counts, such sentences to be served concurrently with each other and to run from 5th April, 2002.

K. H. TOUGH

Registrar of the Court of Appeal.

OFFICIAL TRANSCRIPT

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THURSDAY 25TH SEPTEMBER 2003

COURT OF APPEAL

Before

Richard Charles Southwell, Esq., QC; presiding
Hon. Michael Jacob Beloff, Esq., MA QC
Peter David Smith, Esq., QC

DARRYL TAWIAH
(Criminal Appeal No. 305)

Judgment delivered by Peter David Smith, Esq., QC

SMITH JA: The judgment I am about to deliver is the judgment of the Court.

1. In this case the Applicant pleaded guilty to six counts alleging that he was knowingly concerned in the fraudulent evasion of the prohibition on the importation of cannabis or cannabis resin, a controlled drug of Class B. He was sentenced by the Royal Court, the Bailiff presiding, to 9½ years imprisonment on each count, to run concurrently, and a confiscation order was made in the sum of £3,375.96 with provision for a consecutive sentence of 3 months imprisonment should the confiscation order not be met by the time the Applicant had served his sentence. The Applicant does not seek to appeal against the confiscation order or the consequence of non-compliance.

2. The first three counts against the Applicant relate to importations in the year 2000. In each instance the Applicant was involved in the offence with a woman named Jayanthie Susan Vivekananda-Rajah and other persons. Both the Applicant and Vivekananda-Rajah lived in London and she was introduced to him by a friend's boyfriend. The Applicant was known to her as "Steven." At the beginning of July 2000 there were discussions about Vivekananda-Rajah's willingness to import drugs into Guernsey. Following these discussions the Applicant came to her home. He provided her with a suitcase and advised her to pack her clothes in it. Vivekananda-Rajah was aware that cannabis or cannabis resin was already in the suitcase. She was given a return air ticket and advised that the Applicant had booked her into a room at the San Marco Hotel. She was given instructions as to how to keep in contact with the Applicant.

3. On 5th July 2000 Vivekananda-Rajah travelled to Guernsey from Stansted Airport. She telephoned the Applicant from the hotel and told him her room number. That evening he came and retrieved his suitcase and gave her £250. Subsequently she returned to England.

4. Not long afterwards, on 16th July 2000, the Applicant brought Vivekananda-Rajah another suitcase. She was aware that cannabis or cannabis resin was concealed in it. The Applicant gave her £250 in cash and promised her a further £250 on her return. Again the Applicant had made arrangements for booking Vivekananda-Rajah into a hotel- this time the Mallard Hotel. He provided her with cash to pay for her air ticket and the hotel.

5. On 17th July 2000 Vivekananda-Rajah travelled to Guernsey and went to the Mallard Hotel. The Applicant came to her room, retrieved the suitcase and left. Vivekananda-Rajah returned home three days later.

6. Arrangements were made for Vivekananda-Rajah to make yet another trip to Guernsey. On 31st July 2000 the Applicant came to Vivekananda-Rajah's home. He provided her with a suitcase (in which, it seems, cannabis resin had already been placed) and £250 in cash and told her to stay at the Wayside Cheer Hotel. Vivekananda-Rajah wrote the Applicant's contact telephone number on a piece of paper next to his name. As she came through the airport on her arrival in Guernsey, Vivekananda-Rajah was arrested and cannabis resin was found in the suitcase.

7. Vivekananda-Rajah identified the Applicant at Committal proceedings in the Magistrate's Court. Other evidence incriminating the Applicant included the booking for Vivekananda-Rajah's first trip to Guernsey, having been made in his name; the contact telephone number provided in relation to the booking having been the same as the number Vivekananda-Rajah wrote on the piece of paper prior to the third trip and which was found in her possession when she was arrested; the booking for the third trip having been made, according to the travel agent, by the same person as made the booking for the first trip; and flight reservations with British Airways having been made in the Applicant's name. Furthermore, bookings had been made at the San Marco Hotel in both the names of Vivekananda-Rajah and Peter Carlton Tawiah, and documents found in the Applicant's home at the time of his arrest showed him to be the user of those names. Again the name "Tawiah" had been used in the booking of a room at the Mallard Hotel.

8. Examination of the packaging containing the drugs recovered in the third importation revealed one of the Applicant's fingerprints on adhesive and another on a piece of wooden board to which the drugs were attached.

9. The documents found at the Applicant's home at the time of his arrest also showed that the Applicant used the name "Steven" as well as "Peter" and "Carlton." Other documents bore an address in London, which had been provided by the person who registered as Tawiah at both the San Marco and Mallard Hotels. Furthermore, the section of the Guernsey telephone book yellow pages listing hotels was found at the Applicant's home.

10. The three other charges to which the Applicant pleaded guilty relate to importations involving one Joanne Stott and other persons. Stott had been introduced to the Applicant by a friend who brought him to Stott's home address in Stockport in December 2000. The Applicant was known to her as "Peter" and there was discussion about carrying cannabis to Guernsey. Arrangements were made for Stott to travel to London where the Applicant would meet her and take her to a hotel there. He would make arrangements to take her to Stansted Airport and she was told she would carry a travel case with cannabis hidden in the lining. She would receive £1,000 on her return from Guernsey.

11. Stott travelled to London on 14th December 2000 and met the Applicant there. They drove to a hotel in Peckham in a green Volkswagen Polo motorcar. In a room at the hotel Stott packed the case with her clothes. Before she left, the Applicant gave her instructions to telephone him at the airport and whenever she landed, on a number he provided to her. The Applicant gave her £100 to pay for her hotel and taxi fares. She was instructed to stay at the Vazon Bay Hotel in Guernsey. Next morning she travelled to Stansted Airport and collected a ticket booked in her name. Stott completed the importation successfully. She removed six bars of cannabis resin from the bottom of the case. After her return to London the Applicant gave her £1,000 in cash.

12. The next importation was in January 2001. Stott travelled to London and was met by the Applicant. They went to the same hotel in Peckham. The Applicant produced a suitcase into which cannabis resin had already been packed. He gave Stott £175 in cash and told her to stay at the Old Government House Hotel in Guernsey. On arrival in Guernsey Stott telephoned the Applicant who told her to take a taxi to Cleo's Bar. There the drugs were handed over- once again there were six bars of cannabis resin. Once again Stott was paid £1,000 in cash.

13. Prior to her final trip Stott again met the Applicant in the same London hotel. This time, however, she travelled to Guernsey by means of car and ferry. In the early hours of the morning she met the Applicant outside the hotel and he transferred a wheel from the boot of the green Volkswagen

Polo into Stott's hire car. She was told to stay at a hotel in Guernsey, given £350 to pay for her hotel and ferry crossing and was provided with a telephone number by which to contact the Applicant.

14. On this occasion Stott was arrested on arrival in Guernsey and the drugs were seized. Investigations produced substantial evidence supporting Stott's account of the Applicant's involvement. Documents at his home showed that he used the name "Peter". The same person who had booked the tickets in the names of Tawiah and Vivekananda-Rajah also booked Stott's tickets from Guernsey to Stansted in January 2001. A sheet of paper was found at the Applicant's home listing various telephone numbers, which included Old Government House Hotel. On it appeared the digits "011". Stott had stayed in room 11. Another piece of paper found at the Applicant's home bore the telephone number of the Vazon Bay Hotel. Yet another bore the words "Cleo's, Trinity Square", Cleo's Bar is in Trinity Square. A business card from the hotel in London where Stott met the Applicant prior to each trip was found at the Applicant's home. Also, documents were found linking the Applicant to a green Volkswagen Polo motorcar matching the description given by Stott.

15. Customs Officers examined a mobile telephone seized from Stott and mobile telephones recovered at the Applicant's home. Analysis revealed calls being dialled and received between them.

16. In the course of Committal proceedings in the Magistrate's Court, Stott identified the Applicant as the person she knew as "Peter."

17. The weight of the cannabis resin seized from Vivekananda-Rajah was 2.95 kilograms. The street value in Guernsey was estimated at between £20,650 and £26,550. The weight of cannabis resin seized from Stott totalled 4,003.35 grams. The street value was estimated at between £28,023.45 and £35,030.15. As the drugs imported on the other four occasions were not recovered it has not been possible to determine their weight or street value. However, Stott alleged that she brought in 6 x 9 ounce bars on her first and second trips, or approximately 1½ kilograms on each occasion.

18. In sentencing the Applicant the Royal Court took account of the Applicant's guilty pleas, although the Bailiff pointed out that they were tendered extremely late and only after Vivekananda-Rajah and Stott were required to give evidence in Guernsey at the Committal proceedings. It also took account of the Applicant's record (which appears to have been minor offences of dishonesty in 1998; no previous drug convictions); his age (24); his family circumstances (his partner has given birth to the Applicant's daughter during his time on remand); his support from his family (his parents and sister) and the numerous and impressive character references furnished on the Applicant's behalf. However, the Royal Court concluded that the Applicant was (as the Bailiff put it): "A major player among members of the criminal community in the United Kingdom who have, for their own financial benefit, decided to make war on Guernsey by endeavouring to flood this Island with drugs."

19. In choosing the starting point the Royal Court viewed the degree of the Applicant's criminality as more relevant than amount (which it estimated as totalling about 15 kilograms). It considered that although the guidelines laid down by this Court in Richards et al (17th April 2002, Royal Court) were not applicable because the offences pre-dated that decision, the applicable band for the amount and weight involved in accordance with previous cases prior to Richards was 9 to 12 years. However, as the Bailiff pointed out, the starting point is not determined on the basis of quantity alone, the involvement or role of the offender also falls to be taken into account. In the instant case the appropriate starting point was considered to be 14 years. A discount of one quarter was allowed for the Applicant's guilty plea and a further year was deducted for other mitigating factors.

20. Before us Advocate Dunster, who appeared for the Applicant, submitted, first, that the starting point was manifestly excessive and, secondly, that the sentence imposed was disproportionately high compared with those imposed on Vivekananda-Rajah and Stott. He contended that a sentence of 7 years should be substituted.

21. Mr. Dunster suggested that there was not a high level of sophistication in any of the importations and pointed to the use of suitcases. He urged us to take the view that the level of the Applicant's criminality had been over-estimated. He was not "Mr. Big" but merely an intermediary utilised by a bigger fish.

22. We reject these arguments. Whether or not the importations were sophisticated the Applicant was instrumental in the detailed organisation of a series of drug runs into Guernsey. He was not just a link in the chain but played a crucial organising and controlling role from beginning to end. In each case he engaged the courier, briefed the courier, made the arrangements for the run, supplied the drugs and received or would have received the drugs when they arrived in Guernsey. If there was a "Mr. Big" who was not the Applicant, it is unclear what part that person played in each instance, if it was greater than that played by the Applicant.

23. The Royal Court took the view that the starting point dictated by the quantity of the drugs imported (around 15 kilograms) was 9 to 12 years. It recognised that as the offences were committed before the decision of this Court in Richards et al (17th April 2002, Royal Court) the guidelines set out in that case were not applicable. However, it decided that previous cases indicated the range for quantity to which we have referred.

24. The relevant guidelines applicable at the time of the commission of the offences in this case are those set out by the Royal Court in Oren (1994) 18 GLJ 13. As we point out in the judgment delivered also on this day in the case of Zvirawa the starting point band for this type of drug referable to weight or amount only and derived from Oren is approximately 3¼ to 7½ years.

25. We cannot reconcile the sentencing band referable to quantity of 9 to 12 years chosen by the Royal Court with the band derived from Oren. Therefore, although in Oren the Royal Court made it clear that the role played by the offender may require the imposition of a sentence higher than that indicated by consideration of quantity alone, and does so require in the instant case, it follows that when an appropriate uplift is applied in this case it must result in a starting point lower than that chosen by the Royal Court.

26. In our judgment the uplift chosen must be substantial in order to reflect the Applicant's high degree of criminality. We consider that the appropriate starting point is 12 years. Allowing a discount of one quarter for the Applicant's guilty plea and a further year for other mitigation (i.e. the same allowances as were made by the Royal Court) would result in a reduction of the Applicant's sentence to one of 8 years imprisonment.

27. Turning to the question of disparity of sentence we respectfully adopt the test adumbrated by this Court in Bond (11th April 2003) Cr. App. 294, which was derived from Fawcett et al (1983) 5 Cr. App. R. (S) 158 C. of A. (Crim. Div.) in which Lawton, LJ said:-

"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."

Specifically, Mr. Dunster relied on one of the examples of objectionable disparity referred to by this Court in Bond and which is described in the following terms:-

"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."

28. Vivekananda-Rajah received a sentence of 4½ years and Stott one of 4 years. But there are marked differences between their cases and that of the Applicant. Each of them was prepared to and did identify the Applicant. Each was involved in fewer drug runs than the Applicant. To say, as Mr. Dunster did, that the Applicant is "one step higher up the drug chain" than Vivekananda-Rajah and

Stott as if he was simply just another link is unrealistic. The Applicant's role was manifestly different in character from that of the couriers. In our opinion it is right and proper that the greater degree of his criminal involvement should be marked by a much more severe sentence.

29. For the reasons stated we grant leave to appeal. We have been requested on the Applicant's behalf that in that eventuality we should treat the application for leave as the substantive appeal. This we do and substitute sentences of 8 years imprisonment on each count to run concurrently.

30. In closing we wish to emphasise that this outcome stems solely from the application of the now superseded Oren guidelines. The decision in this case is not a precedent for the cases of offenders subject to the current guidelines laid down in Richards et al. Such offenders may well find themselves the recipients of longer sentences as the result of the due application of the Richards guidelines to their cases.

SOUTHWELL, JA: Mr. Dunster, there are no further applications that you will be making?

ADVOCATE DUNSTER: No sir.

SOUTHWELL, JA: Thank you very much. The Court will rise.

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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
Thursday 9th October 2003