

**Judgment 56/2003**

**Daniel David Henderson  
Court of Appeal  
(Criminal Appeal 308)  
18<sup>th</sup> December, 2003**

---

**Importation of Class A drug – sentence – co-accused – starting point should have reflected appellant’s lesser degree of involvement**

**IN THE COURT OF APPEAL OF GUERNSEY**

Criminal Division

The 18th day of December, 2003 before Richard Charles Southwell, Esq., QC Presiding, Peter David Smith Esq., QC and Patrick Stewart Hodge Esq., QC

THE LAW OFFICERS OF THE CROWN

V

DANIEL DAVID HENDERSON

Appellant

In the appeal of the Appellant from the sentence imposed on him by the Royal Court on 16<sup>th</sup> July, 2003;

THE COURT, having heard Advocates Miss S. L. Brehaut and G. D. McKerrell for the Appellant and the Crown respectively, thereon, ALLOWED the appeal to the extent that the sentence of three and a half years’ youth detention was set aside and replaced by a sentence of three years’ youth detention, to run from the 1<sup>st</sup> day of March, 2003.

K. H. TOUGH  
Registrar of the Court of Appeal

**THURSDAY 18<sup>TH</sup> DECEMBER, 2003**  
**IN THE COURT OF APPEAL OF GUERNSEY**

Before

**Richard Charles Southwell, Esq., QC; presiding**  
**Peter David Smith, Esq., QC**  
**Patrick Stewart Hodge, Esq., QC**

**DANIEL DAVID HENDERSON**  
**(Criminal Appeal No. 308)**

**Judgment delivered by Smith, JA.**

1. In this case the applicant, together with Christopher Liam Wilson (“C. L. Wilson”) and Sean Thomas Wilson (“S. T. Wilson”) was charged with one offence relating to the importation of diamorphine, or heroin. On 16 July 2003 all three appeared before the Royal Court, the Deputy Bailiff presiding. On that day the applicant was sentenced to three-and-a-half-years Youth Detention, S. T. Wilson was sentenced to three-and-a-half-years Youth Detention and C. L. Wilson to two years Youth Detention.

2. The basis of this application is the alleged “objectionable disparity of sentence” or, as it might better be put, the objectionable parity of the sentences of the applicant and S. T. Wilson. In short, it was argued before us by Advocate Sarah Brehaut, on behalf of the applicant, that he should not have received the same sentence as S. T. Wilson, but a lesser one. She based her arguments on the principles adumbrated by this court in *Bond* (11<sup>th</sup> April, 2003).

3. The circumstances of the offence were as follows. On the morning of 1 March, 2003, customs and police officers entered S. T. Wilson’s flat in St. Peter Port. There they found C. L. Wilson, the applicant and a third person. The three were standing in the kitchen next to or near the kitchen table. The officers identified themselves and the applicant was observed to look towards the third person and signal towards the table. On the table there was a jiffy bag addressed to “D. Anderson” and bearing the address at which the applicant resided, together with a quantity of brown powder. This brown powder was subsequently identified as heroin with the weight of 10.44 grammes and of 11% purity. It had a Guernsey street value of between £2,610 and £3,132. Also on the table was paraphernalia which, it transpired, was for use in the division of the drugs.

4. The police ascertained that the jiffy bag had been delivered by post earlier that morning to the address at which the applicant resided. Although it was addressed to “D. Anderson” the applicant’s grandfather assumed that it was for the applicant and handed it to him. The applicant then left the house.

5. C. L. Wilson initially denied any knowledge of the heroin. Subsequently, however, he said that he had arranged for the heroin to be sent to him from England. He said that he had given the applicant’s details to the dealer. At that stage the applicant had been unaware of the consignment but he was told whenever the heroin had been dispatched. C. L. Wilson said that the applicant was not too happy but agreed to bring the package round to him whenever it arrived.

6. On 27 March 2003 S. T. Wilson was interviewed at his own request. He said that he had organised the importation and sent the package to the applicant from England. He said that on the day before he went to England the applicant had given him £250 to purchase 4 grammes of heroin for the applicant in England. S. T. Wilson added £150 of his own money and bought 10 grammes for £400 there, 6 grammes being for resale. This does not appear to tally with S. T. Wilson’s plea or the basis on which he was sentenced – i.e. that the balance was for his own use. He put it in the jiffy bag which he had purchased and posted it to the applicant’s address addressed to “D. Anderson”. The

arrangement with the applicant was that once back in Guernsey S. T. Wilson would let things settle a bit and then contact would be made.

7. The applicant had been interviewed on three occasions but gave “no comment” answers to the questions put to him. However, when interviewed by a Probation Officer at the end of June 2003 he disclosed that he had been a heroin user for about six months. He said that he had been asked by one of his co-defendants if a package of heroin could be sent to his home address and he had agreed. He knew that S. T. Wilson was going to the United Kingdom and of his intention to send a package of heroin to the applicant’s address. In return, the applicant was to receive 4 grammes of the heroin. He maintained that no money was handed over.

8. At the hearing before the Royal Court, Advocate C. J. Green, who appeared for the applicant at that stage, reiterated the applicant’s version of the arrangement. However, in the course of the plea in mitigation additional information was disclosed as to the applicant’s role. He had known and agreed that the package would be posted to him about a week before it was posted. The applicant was present when the contents were in the process of being divided up and, to that extent, he was not a mere postman in Guernsey. He had opened the bag because, it was urged on the Royal Court, the applicant was desperate for heroin. It was asserted that there was no question of the applicant having made available any money.

9. In his sentencing remarks the Deputy Bailiff recorded the part the applicant acknowledged he had played in the importation. It was stated that the method of importation involved a degree of sophistication. The applicant had intended to be involved in the division and allocation of the heroin and had participated in that process. The Royal Court considered that the applicant’s degree of involvement in the importation to have been substantial and equal to that of S. T. Wilson. The various points made in mitigation were recorded.

10. The Royal Court adopted the same starting point – seven-and-a-half-years- for both the applicant and S. T. Wilson. Before us, Advocate Brehaut challenged this conclusion. She argued that the degree of culpability of the applicant and S. T. Wilson was not the same and listed, by way of contrast, what she described as the Deputy Bailiff’s “important comments” on each of the defendants. In relation to S. T. Wilson she listed the following:

- he travelled to England and bought the drugs
- he purchased a jiffy bag and sent the drugs to the local address
- he wore gloves to prevent identification
- at home he had paraphernalia with which to divide up the drugs
- his level of culpability was high

and in relation to the applicant, the following:

- he provided an address to which the drugs could be sent
- he took the drugs to C. L. Wilson’s home
- he was to receive 4 grammes of heroin in return
- he was involved in the allocation of the heroin.

11. The fifth item on the list for S. T. Wilson should, we think, properly be added to the list for the applicant and, therefore, we disregard it. Having said this, however, we feel driven to the conclusion that the role of S. T. Wilson was indeed both qualitatively and quantitatively greater than

that of the applicant. S. T. Wilson organised the importation. He effected the importation by purchasing the drugs and the jiffy bag and posting them. He took steps to evade detection. He provided the equipment by which the drugs were to be divided up. In comparison, the applicant's involvement, although vital to the success of the enterprise, was both less extensive and less sophisticated. In our judgment a lower starting point ought to have been chosen in respect of the applicant.

12. Turning to aggravating and mitigating factors, the Royal Court obviously considered that those applicable to the applicant's case were roughly equivalent to those applicable to the case of S. T. Wilson. In this context Advocate Brehaut pointed to the contrast between the criminal record of the applicant and S. T. Wilson – a factor expressly recognised by the Royal Court. The applicant has seven previous convictions for criminal damage, one for handling stolen goods and one for disorderly behaviour. However, they were all dealt with at the Juvenile Court on the same day (27 November 2000) and concurrent sentences of 24 hours at the Attendance Centre were imposed in addition to compensation orders. On the other hand S. T. Wilson has many and varied previous convictions, some involving sentences of imprisonment. Although he has three convictions for drug offences, strictly speaking they were not previous to the material conviction and must therefore be disregarded.

13. However, on the other hand, S. T. Wilson spontaneously made contact with the authorities and confessed his part in the importation. It is true that he did not name his supplier, but nevertheless his behaviour was in stark contrast to that of the applicant who did not assist the authorities in any way. While the applicant cannot be penalised for exercising his right of silence when interviewed, S. T. Wilson was certainly entitled to credit for what he did.

14. The Royal Court had the task of weighing the aggravating and mitigating factors in each case. In our judgment it was entitled to conclude, as it did, that as between the applicant and S. T. Wilson the scales came down fairly evenly. Accordingly, we reject the arguments advanced on the applicant's behalf on this issue.

15. In the light of our conclusion as to the applicant's role in the importation we grant the application for leave and allow the appeal. In the circumstances we consider 7 years to have been the appropriate starting point. Making the same deductions as were made by the Royal Court makes this 3 years and 2 months. We round this down to 3 years' Youth Detention, which we substitute for the sentence of 3½ years imposed by the Royal Court.