



Jennifer Guilbert v Law Officers of the Crown
Court of Appeal
29th September, 2015

JUDGMENT
50/2015

Application for leave to appeal against the sentence imposed by the Royal Court on 21 August 2014 on three counts of possession of Class B controlled drugs.

Approved Text
29.09.2015

IN THE COURT OF APPEAL OF GUERNSEY
(Criminal Division)

Criminal Appeal No 461

29 September 2015

Before:

Clare Montgomery QC, Presiding
Robert Logan Martin QC
Deemster David Doyle

JENNIFER GUILBERT

Appellant

V

THE LAW OFFICERS OF THE CROWN

Respondent

Advocate for Appellant: Advocate Samuel Steel
Advocate for Respondent: Crown Advocate Fiona Russell

Doyle, J.A. delivering the judgment of the court on 29 September 2015

Introduction

1. This is an application for leave to appeal against the sentence of 4 years' imprisonment imposed upon the Appellant by the Royal Court (Judge John Russell Finch and 7 Jurats) on 21 August 2014 on three counts:
 - on Count 2 (possession on 12 April 2013 of 223.19 grams of cannabis resin, a controlled drug of Class B, with intent to supply contrary to section 4(3) of the Misuse of Drugs (Bailiwick of Guernsey) Law 1974 as amended (the "1974 Law")) the Appellant was sentenced to 4 years' imprisonment;
 - on Count 3 (possession on 12 April 2013 of 10.02 grams of methylthylcathinone, commonly known as 4-Mec, a controlled drug of Class B, contrary to section 4(2) of

the 1974 Law) she was sentenced to 2 years' imprisonment to be served concurrently with the sentence on Count 2;

- on Count 4 (possession on 6 September 2013 of 2.5 grams of cannabis resin contrary to section 4(2) of the 1974 Law) she was sentenced to 1 month's imprisonment, again to be served concurrently.

The total custodial sentence was one of 4 years.

The Bailiff's judgment

2. In a judgment delivered on 2 December 2014 Sir Richard John Collas Bailiff, President of the Court of Appeal, refused the Appellant leave to appeal. He stated:

“34. The most serious charge faced by Mrs Guilbert was Count 2 – possession of a quantity, namely 223.19 grams, of cannabis resin with intent to supply. She also pleaded guilty to two other offences of possession of a Class B drug (with no allegation of intent to supply) involving 10.02 grams of 4-Mec and 2.50 grams of cannabis resin respectively.

35. There are two grounds of appeal: that having regard to the quantity of cannabis resin involved in Count 2, a starting point of 6 years was manifestly excessive and/or wrong in principle; and that having regard to her guilty pleas and personal mitigation, a sentence of four years was manifestly excessive. As I have said, a period of imprisonment was clearly not wrong in principle and the only issue is whether the sentence is manifestly excessive.

36. In his mitigation plea, Advocate Roffey emphasised the fact that 223.19 grams of cannabis resin is at the lower end of the range and hence should attract a starting point of no more than three years. That might have been so if this was Mrs Guilbert's first offence but the Court could not ignore her previous record. In November 2009 she was sentenced in the Royal Court to 3 ½ years, imprisonment for importing heroin. Advocate Roffey submitted that whilst in custody she availed herself of all the assistance available to help fight her drug addiction. The reality of her situation was that after being released she remained on licence including conditions to engage with the Criminal Justice Drug Worker and only seven months after the supervision ended, she was arrested for the first of the current offences. This Court stated in Richards that a previous conviction for a drug trafficking offence is a relevant consideration when determining the starting point. Consequently, it would have been wholly inappropriate for the Court, on this occasion, to adopt a sentence of three years as the starting point for Count 2.

37. The starting point had to reflect the totality of the offending, including the two possession offences, the more serious of which, on its own, would have merited a sentence at the lower end of the range 3 to 6 years.

38. In those circumstances, a total starting point of six years was not manifestly excessive.

39. There was little mitigation available to Mrs Guilbert apart from her guilty plea. She was given a discount of one-third off the starting point in arriving at the sentence of four years. It follows that the sentence was not, in my view, manifestly excessive and therefore I refuse Mrs Guilbert leave to appeal.”

Subsequent events

3. At page 1 of the Appellant's undated Grounds of Appeal (filed by Advocate Samuel Steel under cover of letter dated 5 August 2015) there is reference to the learned Bailiff's refusal to

grant leave to appeal by way of decision made as long ago as 2 December 2014. The following is then stated:

“The Appellant’s erstwhile Advocate filed a Form 13 application for the appeal to be heard by the Plenary Court. The matter was listed to be heard by the Plenary Court on 11 May 2015 but was treated as abandoned on 12 May 2015 due to the non-attendance of the Appellant or her advocate. The Appellant has instructed a new advocate and applies, on new grounds, for (1) leave to appeal against sentence, and (2) legal aid.”

4. The “new grounds” specified in the Grounds of Appeal are simply that the sentence was manifestly excessive because:
 - (1) “The Royal Court sentenced Count 3 on the basis of the Richards guidelines as opposed to treating it as a simple possession offence” (paragraph 1.1 of the Grounds of Appeal);
 - (2) “The Richards guidelines are manifestly excessive for the offence of simple possession” (paragraph 1.2 of the Grounds of Appeal);
 - (3) “The sentence for Count 2 comprises a combined starting point which includes the manifestly excessive sentence for Count 3” (paragraph 1.3 of the Grounds of Appeal).
5. These “new grounds” were filed on 5 August 2015, nearly a year after the sentences were imposed on 21 August 2014.
6. The Respondent’s submissions dated 9 September 2015 were filed by Crown Advocate Russell and helpfully provide at paragraph 2 further important background:

“2. The Appellant was sentenced on 21st August 2014 to a total of 4 years imprisonment on three counts relating to the possession of drugs. Written notice of appeal against sentence was given on 29th August 2014 and leave refused by the single judge on 2nd December 2014. The Appellant gave notice of a renewed application for leave to appeal against sentence, which was due to be heard by the Plenary Court on 11th May 2105 (sic). By 30th April 2015 no written submissions had been lodged with the court; the Court of Appeal directed by e-mail to the Advocate representing the Appellant that if no submissions were received by close of business on 5th May, the appeal would be deemed abandoned. There was no response to that e-mail, and on 6th May a further e-mail was sent inviting the Appellant’s legal representative to complete and return a formal notice of abandonment. There was no response and neither the Appellant nor any legal representative attended the Plenary court hearing on 11th May. Accordingly, in the absence of further explanation, on 12th May the Court of Appeal proceeded on the basis that the Appellant had abandoned her appeal against sentence, and made a judgement accordingly.”

Determination

7. We will, in the Appellant’s favour, assume that there was no decision by the Appellant herself to abandon the appeal and that her instructions were to “proceed with the appeal, no matter what” (paragraph 2 of the letter from Advocate Ayres to Advocate Russell dated 24 October 2014). We do however express concern that it would appear that there was no response to the Senior Deputy Greffier’s email of 1 May 2015 to Advocate Andrew Ayres the Appellant’s then advocate. In that email it was made plain that if no submissions had been received by close of business on 5 May 2015 the appeal “will be deemed abandoned”. No submissions were received. This court expects advocates to respond on a timely basis to communications from court administration. Moreover we are concerned that Advocate Ayres failed to appear in court on 11 May 2015. We did not see fit to delay this appeal further by adjourning the hearing to

give Advocate Ayres a further opportunity to explain his position as we felt it was in the interests of justice in this particular case to consider the appeal forthwith on its merits.

8. We are satisfied however that the appeal lacks merit and there are no justifiable reasons which would permit us to reduce the overall sentence of 4 years' imprisonment. On the facts of this case, taking into account all the aggravating and mitigating circumstances, including the discount for the guilty pleas, we do not regard the total custodial sentence of 4 years as manifestly excessive.
9. Even if we had been persuaded to interfere with the sentence imposed in respect of Count 3 (the simple possession count) the sentence of 4 years imposed in respect of Count 2 (the possession with intent to supply count) would remain as no persuasive attack was launched in respect of that sentence.
10. Count 2 concerned 223.19 grams of cannabis resin. The guidelines in *Richards* refer to a starting point of 3-6 years of imprisonment in the band of 0-2 kilograms. The starting point of 6 years was within the reasonable ambit of starting points open to the Royal Court.
11. The attack on the sentence imposed on Count 3 was, in the circumstances of this case, of no real practical significance whatsoever. Even if the attack in respect of the sentence imposed on Count 3 had been successful, the total custodial sentence of 4 years would have remained. We say this for the following reasons.
12. The Appellant was born in 1981. The report from the Guernsey Probation Service dated 19 August 2014 placed her in the high likelihood of re-offending category. The serious aggravating factor was the Appellant's previous conviction for being knowingly concerned in the importation, through the postal system, of a controlled drug (3.29 grams of Diamorphine, commonly known as heroin) in 2009. The Royal Court imposed a custodial sentence of 3 years and 6 months on that occasion.
13. We have given careful consideration to the submissions made by Advocate Steel on behalf of the Appellant. We are not persuaded that the Royal Court adopted a starting point that was not open to it. The sentences imposed were concurrent as opposed to consecutive sentences. The Royal Court was permitted to arrive at a starting point which reflected the totality of the offending behaviour.
14. Taking into account the well-established sentencing guidelines contained in *Richards* 2000-02 GLR 247 the Royal Court cannot, in relation to these latest string of offences contrary to section 4(2) of the 1974 Law, be justifiably criticised for arriving at a starting point of 6 years in respect of the totality of the offending behaviour (with the Count 2 offence being the most serious offence). The Appellant was less than frank with the police but nevertheless was generously given the benefit of a full discount (one third) for her guilty plea, which the Royal Court rightly recognised erred "on the side of leniency". The total custodial sentence of 4 years cannot be faulted. We see nothing wrong with the total sentence. We do not think that a different sentence should have been passed. We refuse leave to appeal against it.
15. As an act of mercy there will be no deduction under section 37(3) of the Court of Appeal (Guernsey) Law 1961. We are however not persuaded to grant legal aid in respect of this appeal which plainly lacked merit.