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**COURT OF APPEAL**

**18th April, 2002**

**Before:** Sir de Vic Carey, President
Peter David Smith, Esq., Q.C.
Sir Philip Bailhache
David Arthur John Vaughan, Esq., C.B.E., Q.C.
Michael George Tugendhat, Esq., Q.C.

In the matter of Applications to the Court for leave to appeal against sentence by

(1) MARK RICHARDS

(2) MICHAEL KEVIN SKELLY

(3) IAN CHARLES GARVEN

(4) FRANK PETER HAUTERMANN

(5) MARTYN ANDREW NOYON

(6) GARETH STEVEN CANNING

CAREY, P. This is the judgment of the Court.

Introduction

1. No fewer than six applications for leave to appeal against sentence in respect of drug trafficking offences were listed to be considered by the Court of Appeal this week. As a result, the decision was taken to increase the number of judges who were to comprise the Court from three to five. The advantage of this has been that both Bailiffs have been able to contribute to the Court's deliberations. Misuse of drugs is one of the scourges of European society at the present time and the Bailiwicks of Guernsey and Jersey have not escaped the attention of those who wish to make money out of corrupting the inhabitants of these islands into becoming addicted to drugs for which they will pay large sums of money. In view of the proximity of the Bailiwicks and the fact that the two Bailiwicks' Courts of Appeal have a common panel of judges it seems appropriate that while recognising the constitutional independence of the two Bailiwicks there should be some community of approach towards sentencing policy. We have accordingly examined the jurisprudence of both Bailiwicks in formulating these guidelines.

2. To assist the Court we invited H.M. Procureur to provide us with a factual report prepared with the assistance of the law enforcement authorities so that we could have some up to date information as to the extent of the problem in Guernsey and some assessment of the efficacy of attempts being made to prevent the spread of drug abuse. We arranged for copies of these reports to be supplied to counsel so that they could make any comments thereon that they felt appropriate when addressing us on their individual clients. As a consequence of the decision to take all these matters together no applications for leave to appeal were further considered by a single judge, other than in the case of Richards who had already been refused leave.

The response of H.M. Procureur

3. H.M. Procureur deputed Crown Advocate Robey to represent him. We are grateful to Mr. Robey for his assistance generally and producing an informative report at short notice. Annexed thereto were statistics produced by the States of Guernsey Customs and Excise Department covering the years 1995 onwards. These statistics demonstrate a dramatic increase in the size of consignments of illegal drugs intercepted and seized by customs officers. In relation to cannabis resin, only relatively small importations were detected until the end of 1999. In 2000 the total weight of cannabis resin seized was 21kgs, in 2001 91kgs, and the combined figures of those latter two years have already been exceeded in the first fourteen weeks of 2002. Seizures of Class A drugs, in particular Ecstasy (MDMA), have risen equally dramatically. It is noted that seizures of the two addictive Class A Drugs have been relatively insignificant in amount until 2000, but since that year there has been appears to have been an alarming increase in activity, although one hopes that this will prove a temporary phenomenon. More telling perhaps are the figures from the informative report of Drug Concern which records a considerable increase in the availability and use of opiates and which shows a near doubling of customers for that organisation's needle exchange programme for addicts.

A preliminary conclusion

4. The information provided on behalf of H.M. Procureur persuades us that the level of drug trafficking in Guernsey has not abated despite the commendable efforts being made by the law enforcement authorities to detect it and other bodies to contain abuse. Indeed as we have identified there are disturbing signs of recent growth in activity. There appears to us no justification for relaxing the general policy of the courts of this Bailiwick in visiting drug trafficking offenders with condign punishment.

The purpose of guidelines

5 The principal drug trafficking offences with which these guidelines are concerned are: importation, supply and possession with intent to supply. The maximum sentences for drug offences are laid down by the States. The maximum sentence for the importation of Class A drugs is life imprisonment, and that for the importation of Class B drugs is 21 years imprisonment. The maximum sentence for the supply, and possession with intent to supply, of Class A and Class B drugs is life imprisonment. It cannot be stressed too strongly that this Court is not attempting to establish for the Royal Court some sort of inflexible code, which covers all of the issues involved in sentencing for such offences, some of which must as yet be unknown and incapable of anticipation. These are general guidelines only. Sentencing is always a matter for the court's discretion. It is an art and not a science. It should from now on be unnecessary for counsel to refer the court to earlier cases in the Guernsey courts.

Royal Court guidelines

6. As long ago as the 1st October, 1990, the presiding judge and jurats of the Royal Court endeavoured to state guidelines for sentencing drug offences (see *Law Officers of the Crown v. Petit* 10.GLJ.24). The issues as to laying down of guidelines were revisited by the presiding judge and jurats of the Royal Court in 1994 in the case of *Law Officers of the Crown v. Oren* 18.GLJ.13. Those guidelines have for some time been recognised by both this Court and the Royal Court as deficient and inadequate to meet current situations. Principally they are deficient in that they state a lower starting point for both Class A and Class B drugs rather than an upper starting point from which all the normal discounts are deducted namely those of guilty plea, remorse, youth, co-operation etc. They are also deficient in that they do not address issues of quantity or attempt to establish any level of bands depending on the size of the consignment. However despite these deficiencies a sentencing policy continued to be developed using the Oren guidelines particularly in drawing distinctions between Class A and Class B drugs.

7. It so happens that the Royal Court took the opportunity very recently, namely in *Law Officers of the Crown v. Westmore* on 11th April, 2002, to restate that Court's sentencing policy. Some of this was of course anticipated in the report that the Deputy Bailiff furnished to the Court in accordance with the provisions of s.31 of the Court of Appeal (Guernsey) Law 1961. We should interpose to say that both the Royal Court's restatement and the Deputy Bailiff's report have been of great assistance to this Court. These documents and the Procureur's report were sent to counsel for the Applicants in advance of the hearing before

us. We fully understand and respect the constitutional position of the jurats in relation to sentencing. None the less it would clearly lead to confusion if there were to be two sets of guidelines applied by the Royal Court in drug trafficking cases. We have drawn heavily upon the Royal Court's judgment in *Westmore* of 11 April 2002, and indeed on the Deputy Bailiff's report, in formulating these guidelines. So that there is no misunderstanding of this Court's position, guidelines issued by the Royal Court, however clear and well observed in later cases, cannot bind that Court with the same authority as those adopted and promulgated by this Court. We consider therefore that, where appropriate, these guidelines should be taken as replacing all previous guidance and that proper regard should henceforth be paid to them by the Royal Court in imposing sentence.

The meaning of starting point

8. In conducting the sentencing exercise the court should initially determine what would be the appropriate starting point in the particular case. By this is meant the appropriate sentence for the offence after a full trial and before any mitigation is taken into account. The starting point has to be determined primarily by considering two factors, namely the quantity of the drugs and the involvement or role of the defendant in the commission of the offence. In that way the court assesses the extent of the criminal conduct. The fact that a defendant has a previous conviction for a drug trafficking offence, and any other evidence that he has been involved in drug trafficking activity on other occasions, may be relevant to this assessment. The greater the sophistication of the methods used to evade detection, the more seriously will the offence be regarded. Finally it must be borne in mind that there may be cases where the level of criminality of the offender will call for an enhancement of these starting points.

9. It is also to be emphasised that the guidelines are for cases which normally come before the courts in Guernsey. In many cases the exact role of the accused is hard to ascertain. Often the court has to proceed on the statement of the accused that he or she is not the organiser of the operation. The court may draw such inferences as can be drawn from circumstances such as the quantities involved, the means by which the drugs are to be disposed of once in the island and other such matters. These guidelines assume that the drugs are to be used or disposed of within the island. Given what was said in *Oren* about the possible application of English guidelines in cases where drugs are merely in transit through the island, this court states that should such a case arise in the future, it cannot be assumed that English guidelines will apply.

The bands

10. We have taken careful note of the conclusions of the Royal Court in *Westmore*. We have noted that although the penalties for Class A and Class B offences are the same for drug trafficking offences under the Misuse of Drugs (Bailiwick of Guernsey) Law 1973, as amended, in the Customs legislation, under which many prosecutions are brought, the penalties are, as we have explained, different. We have accordingly revised slightly downwards the bands for offences involving the Class B drug cannabis resin. We do not propose to add anything to what the Royal Court has said about amphetamines, except to point out that our concern to maintain a differential for Class B drugs will similarly apply. We also think it desirable in the interests of flexibility to have overlapping starting points in the bands. We also feel it may be helpful to expand the upper bands for Class A offences on similar lines to those adopted in Jersey. Accordingly we consider that the following bands should represent the appropriate starting points after full trial before any mitigation

**Bands of Class B – Cannabis Resin**

| | |
|---|---|
| Up to 2 kgs | 3 – 6 years |
| 2 – 5 kgs | 5 – 8 years |
| 5 – 10 kgs | 7 – 10 years |
| 10 – 30 kgs | 9 – 12 years |
| Over 30 kgs | 11 years upwards |

**Bands of Class A drugs in powder form**

| | |
|---|---|
| 1 – 20 grams | 7 – 9 years |
| 20 – 50 grams | 8 – 10 years |
| 50 – 100 grams | 9 – 12 years |
| 100 - 250 grams | 10 - 13 years |
| 250 – 400 grams | 11 – 14 years |
| Over 400 grams | 14 years upwards |

**Bands of Class A drugs in tablet form**

| | |
|---|---|
| 1 – 500 | 7 – 9 years |
| 500 – 1000 | 8 – 11 years |
| 1000 - 2500 | 9 – 12 years |
| 2500 - 4000 | 10 – 13 years |
| 4000 - 5500 | 11 – 14 years |
| 5500 and over | 14 years upwards |

Purity, price and weight

11. Where the quantity of a drug is being considered, in assessing the starting point, this should be primarily based on weight, and only to a lesser extent based on street price. Further, except in cases of very high purity, or where there is reason to believe that the drugs will be cut before being passed on, the purity of drugs will not be a factor that will be taken into account in sentencing.

Two different drugs imported at the same time

12. It is a feature of some cases that two different drugs are imported at the same time, both in significant quantities. It may be two different Class A drugs, or a Class A drug and a Class B drug. In such cases the combined quantity is a relevant factor in determining the extent of the criminal conduct, which must be greater than if only one drug was imported. In such cases the court should assess the appropriate starting point in respect of each of the drugs, and then determine a 'total' starting point, taking into account the overall quantity. Thereafter the mitigation will be applied to arrive at the actual sentences to be imposed. The court then provides for the total length of sentence by imposing a greater term of imprisonment than otherwise would have been imposed for the more serious of the two offences (if such can be identified), to run concurrently with the other sentence imposed. Consecutive sentences should not normally be imposed in such cases, since that may create a misleading impression that each offence is being sentenced more leniently than it is. The court must clearly state in any such case both what the court considers to be the appropriate 'total starting point' and how it is arrived at.

Different kinds of drugs within the same class

13. It is for the legislature to set sentencing policy in relation to different types of drugs. It is not for the courts to say that one particular type of drug within a class is worse or more harmful than another, or to lay down different sentencing policy for those drugs.

Claims that a drug is for personal use

14. As we have identified importation is a drug trafficking offence, whatever the intention of the offender as to the use to which the importation is to be put. There is however a clear division between importations of very small quantities for personal use which are punished in the same way as offences of simple possession, and importations of more than relatively small amounts which still fall within the lower of the bands we have set out. In the

case of such importations, the fact that a claim is made that a drug was for personal use will not generally result in a lighter sentence being imposed than where no such claim is possible, because any importation adds to the stock of drugs available in the island. Although these cases must be looked at with care, it cannot generally be right that an addict importer of the drug to which he is addicted can be heard to claim some credit for the likelihood that he will be consuming all or part of it.

Guilty plea

15. A guilty plea will always be an important mitigating factor, even where the accused appears to have had very little choice but to admit guilt. As a very general rule, the appropriate discount is one-third from the starting point, particularly when an early indication of such a plea is given. It is generally in the public interest that the expenditure of time and money on a full trial be avoided. When there is no sensible alternative to a guilty plea, the discount will be more limited.

Erroneous belief as to nature of drugs subject of the offence

16. An accused may state to the court that he or she believed that the type or quantity of drugs that were to be imported or were found in his or her possession was of a different class, or a smaller quantity than that which is in fact involved. For example, it may be said that it was to be Cannabis Resin, not MDMA. A sentencing court might be sceptical at hearing such statements which, are, by their nature, difficult to verify. In some cases they will be manifestly incredible. The court is fully entitled to reject, without a *Newton* hearing, a version of events as to the quantity or type of drugs involved which is beyond belief (*R. v. Ghandi* (1986) 8 Cr. App. R. (S) 391, 397). In some exceptional cases a Newton hearing may be necessary, if the court is not to proceed on the basis of the accused's stated belief.

On this there appears to be a difference of approach between the English and the Jersey cases. In *Campbell Molloy and Mackenzie v. Attorney General* [1995] JLR 136 a five judge Jersey Court of Appeal, giving guidelines for drug trafficking, stated at p.145:

> 'In our judgment, a courier who knowingly transports illegal drugs must be taken to accept the consequences of his actions. As the Attorney-General put it, the moral blameworthiness is the same, whatever the nature of the drugs transported. Furthermore, viewed from the perspective of the community, the evil consequences flowing from the dissemination of Class A drugs are not mitigated in the slightest by the erroneous belief of the courier that he was transporting a Class B drug. There may

be very exceptional circumstances in which a genuine belief that a different drug was being carried might be relevant to sentence. But in general we endorse the Royal Court's view in the case of Campbell that an erroneous belief as to the type of drug being carried is not a mitigating factor'.

*R. v. Bilinski* (1988) 9 Cr App R (S) 360 was cited and fully considered, but not followed. In *Bilinski* at p.363 Lord Lane CJ said that 'We are of the view that the defendant's belief in these circumstances is relevant to punishment and that the man who believes that he is importing cannabis is indeed less culpable than he who knows it to be heroin'.

Faced with this difference of approach, we consider that the approach of the Jersey courts is the one which the Guernsey courts should follow. But it will be a matter for consideration in the circumstances of each case.

Credit for assistance

17. Early and useful assistance in helping the authorities to prosecute others will almost invariably result in a substantial reduction of a sentence which would otherwise be imposed. Subject to the qualification set out below we adopt the English approach set out in *R v. Guy* [1999] 2 Cr App R (S) 24. In that case the court referred to and followed *R. v. King* (1986) 82 Cr App R 120, in which Lord Lane CJ said:

'One then has to turn to the amount by which the starting figure should reduced. That again will depend upon a number of variable features. The quality and quantity of the material disclosed by the informer is one of the things to be considered, as well as accuracy and the willingness or otherwise of the informer to confront other criminals and to give evidence against them in due course if required in court. Another aspect to consider is the degree to which he has put himself and his family at risk by reason of the information he has given: in other words the risk of reprisal. No doubt there will be other matters as well. The reasoning behind this practice is expediency….. It is to the advantage of law-abiding citizens that criminals should be encouraged to inform upon their criminal colleagues… an expectation of substantial mitigation of what would be otherwise the proper sentence is required in order to produce the desired result, namely the information. The amount of that mitigation, it seems to us, will vary … from about one-half to two thirds reduction according to the circumstances outlined above'.

But it is not just the willingness of the accused to give such information, nor the risk that he or she runs, that is relevant. Other circumstances of the case are beyond the accused's control and may be very much a matter of chance. For example, the accused may not in fact have the opportunity to give evidence. In many cases the credibility of the accused will be weak, by the nature of the crime in which he has been involved. It may be a matter of chance whether there is available corroboration which might make his evidence more credible. However none of these difficulties must be allowed to erode the principle we have expressed to the effect that in all cases where there is a genuine attempt to provide information credit should be given.

And it must be made clear that discounts for this and other varieties of mitigation cannot simply be added to one another. The court has to consider the totality of the sentence in the light of all the circumstances.

18. We now turn to the six applications before us. We are grateful to Counsel who have in the case of each applicant put their points so clearly and succinctly in their written and oral submissions. In considering them we have taken care to ensure that notwithstanding the new guidance we have given that the Applicants should not feel any sense of grievance that the sentence imposed in their particular case is higher than it would have been under the guidelines applied by the courts before this judgment.

**MARK RICHARDS**

19. Mark Richards pleaded guilty with Ivan Frederick Blondel and Katherine Meadowcroft to indictments charging them that they were concerned in the fraudulent evasion of the prohibition on importation of goods contrary to section 77(1)(b) and 77(2) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972 as amended. It was alleged that they were knowingly concerned with the importation into the Guernsey of MDMA, commonly known as Ecstasy, a Class A drug.

20. The offences alleged related to the importation from the United Kingdom into this Island of a large quantity of Ecstasy by means of a postal package. The Ecstasy was imported in powder form (205.43 grams of a purity of 71%) which was sufficient to produce just over 1,800 tablets of average strength Ecstasy with a street value in Guernsey of £45,000 to £54,000. At the time it was, by some margin, the largest single consignment of Ecstasy imported in any form into the Bailiwick. The activities of Ivan Blondel and Katharine Meadowcroft took place in this Island, those of Mark Richards in the United Kingdom.

21. The origin of the plan to import the Ecstasy appears to be that Ivan Blondel and Katharine Meadowcroft (who were common law man and wife) had discussions with two men here in Guernsey, neither of whom was before the Court. One of the two was a long-standing friend of Ivan Blondel and both men visited Ivan Blondel and Katharine Meadowcroft on several occasions. One of the two was also a long term associate of Mark

Richards. The original scheme would seem to have been that they were going to import the drugs concealed in some machinery which was to be imported into the Island.

As part of the plan for that scheme Katharine Meadowcroft gave to one of the two men a piece of paper on which she had written her parents' address in Guernsey and also the address of a local freight company.

One of the men, known as "A", flew back to England on the 18th September 2001 and in his luggage was found, as a result of a search, that piece of paper. The next day a van which had been hired by Mark Richards was seen outside the house of "A" in Cwmbran, Wales. It was seen again there the next day and a person fitting "A"'s description was seen to join Richards in the van. The man known as "A" returned to Guernsey later that day, that is on 20th September.

22. It appears that it had by then been decided that the importation in the machinery was impractical so an alternative arrangement was devised, which was that the Ecstasy powder would be inserted into a postal package and posted to Guernsey. It was arranged that this would be posted to the address of Katharine Meadowcroft's parents, which was the address she had written on the piece of paper. It was also arranged that when the package arrived, Blondel and Meadowcroft would pass on the package to the appropriate people.

On 23rd September a package arrived from South Wales in the Guernsey postal headquarters and was intercepted. It was addressed to the home address of Katharine Meadowcroft's parents. It had a return address of HRP. Bathroom Supplies, Bristol. The package contained a packaged shower curtain which had been opened and re-sealed with brown tape. It was inside this shower curtain that the MDMA powder had been inserted in a wrapped container. On interception, a dummy package was substituted for the powder.

The package was delivered to Katharine Meadowcroft's parents' address on 25th September 2001. Katharine Meadowcroft gave the package to her son and told him to take it to Bordeaux where Ivan Blondel was waiting. As her son ran through the field towards Bordeaux, Customs Officers intercepted him and the package was recovered. Blondel, in the meantime, was aware that the post was due and had left Bordeaux to check the surrounding area. He saw Customs' vehicles blocking the road leading to Katharine Meadowcroft's parents' house, realised something had gone wrong and went to his home where he was subsequently arrested.

23. Both Ivan Blondel and Katharine Meadowcroft were interviewed on many occasions. In the course of six interviews, Ivan Blondel originally denied all knowledge of the drugs, but subsequently admitted his involvement. Katharine Meadowcroft was also interviewed on many occasions. She also denied all knowledge of the package from the initial interviews, but later admitted her involvement. Like Ivan Blondel, she claimed that the importation was to be of cannabis. In both cases such admissions though made, were grudgingly made, as and when information was put to them which implicated them in the importation. By the end, their account broadly compared with the evidence which had been obtained from other sources.

24. For his role in the importation, Ivan Blondel was sentenced to five years imprisonment and Katharine Meadowcroft was sentenced to three years imprisonment. In his sentencing remarks on behalf of the Royal Court the Deputy Bailiff stated that Ivan Blondel was fully involved in the discussions and planning which took place in Guernsey and that he was clearly going to play a significant role in the handling of the drugs once they arrived. The Court found that Ivan Blondel's role was more significant than that of Katharine Meadowcroft.

25. Ivan Blondel, but not Katharine Meadowcroft, sought leave to appeal against his sentence and this appeal was rejected by a judgment of the Court of Appeal dated 9th January, 2002. Mark Richards had also sought leave to appeal, but had given notice that he wished his appeal to be postponed, so his involvement was not considered in any detail in that judgment. In broad terms the Court of Appeal stated that an appropriate starting point for this importation was 10 years, but reduced this substantially by taking into account the main matters advanced in mitigation, in particular the plea of guilty and the offer of assistance, if necessary, giving evidence, and found the sentence of 5 years not to be manifestly excessive. With regard to the alleged disparity between the sentence on him and the sentence of three years on Katharine Meadowcroft, the Court of Appeal did not find any disparity for they considered Ivan Blondel's involvement more important, they took into account Katherine Meadowcroft's good character, and they took into account the fact that there were children of the family and it was appropriate to take into account family conditions in sentencing Katharine Meadowcroft. With regard to the disparity between Ivan Blondel and Mark Richards, they found no disparity, but left it to this Court to determine whether the sentence upon Mark Richards was appropriate.

It is therefore necessary to consider in some detail the involvement of Mark Richards.

26. The presence of Mark Richards in Cwmbran together with "A" has already been described. At the same time as Blondel and Meadowcroft were arrested here in Guernsey, the police took action in Wales. A search warrant was executed at Richard's home address in Cwmbran. In the same van that Richards had been seen in some time before the search, was found a blue plastic box with roll of brown tape. In the van was also found a oil funnel and a piece of red and yellow card on which were traces of powder. Richards denied all knowledge of that piece of card. Also found was a paper fold with powder in it, which Richards admitted was his and which he said was amphetamine. In his house were found records of telephone numbers which included five entries under the initials HRP, one of which referred to HRP of Bristol, which has been referred to before. Subsequently other forensic evidence was found connecting Mark Richards conclusively to the package which had been posted to Guernsey.

Enquiries showed that Richards had gone to the B & Q store in Cwmbran the day before the package had arrived in Guernsey and had purchased a shower curtain. That was of the same type as was found in the package. The piece of card found in Richards' van was found to be identical to that contained in shower curtains such as sold by B & Q. The tape on the package when inspected in Guernsey was also shown to be tape from the same roll of tape as that found in Richards' van.

27. The powder which was found in the paper fold was found to be MDMA and not amphetamine and the powder on the card also found in the van was also shown to be MDMA. One of Richards' fingerprints was also found on the shower curtain in the package when it was forensically examined in Guernsey.

On his initial interview, before the full results of the forensic investigations were complete, Richards admitted that the powder in the paper fold was ecstasy powder which he said was the product of him crushing five ecstasy tablets. This was an explanation considered to be highly incredible. On the subsequent interview he admitted that he knew Ivan Blondel and that he had met him on about four occasions. He was not prepared to accept that he had purchased the shower curtain. He did not identify any of the other persons with whom he had co-operated. However when the matter came on for trial he pleaded guilty.

28. When the matter came on for sentence, Mark Richards gave evidence and explained his role in the sending of the package. In broad terms his evidence was designed to minimise his role in the sending of the package and to suggest that his role was minimal and peripheral and that, although he purchased the shower curtain, he did not package it, he did not post it, and he had done nothing to conceal the ecstasy powder in the shower curtain. He said that he did all this on the prospect of earning £500. It is not necessary to set out the details of his explanation for the sentencing Court found his explanation of his involvement with the package as being peripheral as being totally implausible. The Court found that his involvement was that he acted in the preparation of the package to be posted and that he knew it contained a Class A drug and that he had a general idea of the quantity. The Court accepted that he was not the main orchestrator of the enterprise but that his role was crucial and that he would be sentenced on that basis. The Court also found that Blondel's involvement was "slightly less" than that of Richards, and accordingly he was to be sentenced on the basis that his involvement was "slightly more". In the Court's sentencing remarks, it was stated that he had a bad record, although with the exception of a previous conviction for possession of ecstasy in Guernsey in 1999, none of the convictions was drug related and the last one occurred over ten years ago, but he could certainly not be regarded as a person of good character. Moreover it was stated that he had provided no significant co-operation or assistance to the investigating officers. However the Court accepted that he had pleaded guilty for which he had to be given credit, although in view of the compelling evidence against him, he really had no sensible alternative. The Court accordingly sentenced him to 7½ years' imprisonment to run from the 29th November, 2000.

29. As the Court of Appeal in the appeal by Ivan Blondel stated, the appropriate starting point was 10 years imprisonment for Blondel, and we see no possible reason why the same should not be appropriate for Mark Richards. His involvement was certainly no less than that of Ivan Blondel, and indeed "slightly more". As we have already stated his involvement was crucial and not peripheral. Given that he had no real alternative to pleading guilty, we consider that a reduction of one quarter should be given for his guilty plea, which would produce the sentence of 7½ years to which he was sentenced.

This would also seem to be the same initial reduction as that allowed for Blondel.

30. The main other matter put forward on behalf of Mark Richards is the disparity between his sentence and that of Ivan Blondel. It is clear that the main reason why Ivan Blondel's sentence was further reduced, and indeed further reduced by a further quarter, was the assistance he gave and was prepared to give to the authorities. That assistance consisted of an eventual presentation of an account of what had transpired which broadly corresponded to the evidence that had been gathered by the Customs officers from other sources, but, much more importantly, consisted of a declaration that he would be prepared to give evidence against others involved in this enterprise and indeed producing a witness statement confirming that account. The fact that he was not required to substantiate those statements should not be taken as in any way reducing the conclusion that his assistance was substantial. It would also appear that he was prepared to do this notwithstanding threats which had been made against him by others who were not before this Court. This on any basis was a matter for which Ivan Blondel was entitled to a substantial further reduction, and which would seem to amount to another one quarter. We cannot see how that further reduction could be criticized.

Mark Richards did none of those things. The indications he gave as to his involvement were not full or complete although he had abundant opportunity to provide assistance in the same way as did Ivan Blondel, he clearly decided not to do so. Accordingly Mark Richards has no possible basis for contending that he should be treated on a similar basis to Ivan Blondel.

31. Three further matters were advanced by way of additional mitigation. The first matter was the effect of detention in Guernsey on a non-Guernsey resident, and the effect on his family (although in fact we were informed that he has now separated from his common law wife). We do not consider that that can possibly be a matter for further mitigation, at least in this case. Secondly it was said that a sentence of over five years could prejudice his position on parole. Even if that were correct, there cannot be a reason for reducing a sentence which would otherwise be correct. The third matter is that if he elected to be transferred to the United Kingdom he would automatically be transferred to a Category A prison. But if that is the rule, then that is a consequence of what he has done and what he has failed to do by way of assistance to the authorities

32. Taking all these matters into consideration we consider that there is no basis for a contention that the sentence of 7½ years' imprisonment imposed on Mark Richards was wrong in principle or manifestly excessive or unfairly disparate and accordingly we refuse leave to appeal.

**MICHAEL KEVIN SKELLY**

33. On 25th October 2001 Michael Kevin Skelly pleaded guilty to an indictment containing three counts of being concerned with the fraudulent evasion of the prohibition of the importation of goods contrary to Section 77(1)(b) and 77(2) of the Customs and Excise (General Provisions)(Bailiwick of Guernsey) Law, 1972 as amended. All three counts related to the period between 20th July and 28th July 2001. The first count related to the importation of MDMA, commonly known as Ecstasy, a Class A drug. The second and third counts related to the importation of cannabis resin, a Class B drug.

The first count concerned a package containing a total of 1,287 Ecstasy tablets with some part tablets and powers making up the equivalent of a further 20 tablets. They contained 21% MDMA. The current street value of Ecstasy is some £25 - £30 per tablet, which would give a total street value of the tablets of some £32,675 - £39,210.

The second count concerned twenty-two 9oz bars of cannabis resin, giving a total weight of 5,385.5 grams, that is to say a little over 5kg, which is enough cannabis to produce 37,310 cannabis cigarettes. With a street value for cannabis of some £7 to £9 per gram this would give a street value of £37,698 - £48,469 for the cannabis concerned with the second count.

The third count also concerned cannabis which was found separate from the rest and which amounted to 5.214 grams. It was accepted that this quantity of cannabis was imported for Michael Skelly's personal use.

It follows that the total average street value of the imported drugs was some £77,000.

34. The importation came about in the following way. Michael Skelly, aged 39, lived in Portsmouth. He had been unemployed since February 1998 and since May 1999 he had been receiving sickness benefit. At some stage prior to July 2001 he had been approached by someone whom he is not prepared to name to become involved in the importation of a consignment of drugs into Guernsey. He was given £400 for the costs of his travel and accommodation, £200 spending money and was to receive £900 on his return to the United Kingdom. He says that he knew the plan was to import 5 kg of cannabis, but denies all knowledge that the consignment was going to include Ecstasy. He said that if he had known that he would have refused to become involved because of his previous conviction of an

offence of supplying Heroin a Class A drug, for which he had been sentenced to 4 years imprisonment.

Michael Skelly duly bought his ticket and travelled to Guernsey on the 21st July and, as planned, booked into the Captain Cook Hotel in Hauteville. He was due to stay there for a week. On 24th July two packages arrived at the hotel addressed to Michael Skelly. The packages had come from the East Midlands Airport, via Heathrow, Gatwick and thence to Guernsey, via the United Parcel Service. These two packages were a trial run to ensure that the system worked. They did not contain any drugs. Presumably Michael Skelly contacted those who had originally approached him to tell them that all had worked satisfactorily.

35. The actual delivery of the packages containing the drugs, which are the subject of the first and second counts, occurred on 26th July. They had originated in Manchester, and had come by the same route as the previous packages. They were also delivered to the Captain Cook Hotel at about 2 – 3 p.m. on 26th July when Michael Skelly was out. He was not seen again that day and the packages remained at the reception in the Hotel. Mr. Karim, the owner of the hotel noticed that the packages were said to contain sports wear. The next morning they still had not been collected by Michael Skelly from the Reception, but were presumably collected some time later in the morning. That evening Michael Skelly was seen to leave the hotel with a rucksack, which appeared to be full.

The next evening Mr. Karim and his family discussed between themselves the strange behaviour of Michael Skelly. He had made the point that he did not want his room cleaned during his stay and he did not leave his room during the day. Mr. Karim, when Michael Skelly had left his room, looked into the room but found nothing, but his suspicions were not allayed. He decided to contact the police and inform the CID about his suspicions. The police went to the Hotel that evening.

In the course of looking around the room, the police officers discovered a black plastic bin liner. There was a strong herbal smell and on inspection the plastic bag was found to contain cannabis resin. The police officers replaced the bag and awaited Michael Skelly's return.

36. Michael Skelly came back at about 7 p.m. that evening and went straight to his room. The officers followed, knocked on his door and Michael Skelly let them in. He was asked about the two packages which had been delivered to him. He said they contained clothing. The officers asked if they could search his room and he initially declined. He was asked about drugs. He said he had a small amount of cannabis in the wardrobe but that this was for his personal use. This was the cannabis, the subject of the third count. Michael Skelly was arrested. The police searched his room and looked in the black bin liner. There they found the cannabis (the subject of the third count), and the tablets which they later found to be Ecstasy (the first count). He was asked whether they were his. He said they were and that it was cannabis and Ecstasy. He was arrested. Obviously by this time he knew that the package had contained Ecstasy.

37. In the course of four subsequent interviews Michael Skelly immediately admitted his involvement but refused to identify anyone involved in the importation. He said that he had come to Guernsey to receive the package. He said he was going to pass on the drugs to a Guernsey contact, whom he did not know but who was going to contact him. No significant drug trafficking benefits to Michael Skelly had been identified. Michael Skelly had on him a Guernsey telephone number, but he said that this was not the correct number because he had jumbled up some of the numbers.

38. Michael Skelly appeared before the Royal Court on 25th October. In his sentencing remarks on behalf of the Court, the Deputy Bailiff described this as being a well thought out

arrangement. He described Skelly's part as being willing and for reward and that he was performing a vital part in this endeavour. Giving him full discount for his plea of guilty and his immediate admission of his involvement, the Court sentenced Skelly to 9 years imprisonment on the first count, six years on the second and one month on the third to run concurrently from 28th July 2001. It seems clear that the Court took 12 years imprisonment as its starting point for the importation, from which it has allowed a reduction of one-quarter to allow for the plea of guilty. It is from this sentence that Michael Skelly seeks leave to appeal.

39. In arriving at an appropriate starting point we consider the following to be relevant:-

(1) Michael Skelly was not simply a pure courier, but, even though not the orchestrator, was intimately involved in the whole scheme, particularly in the trial run and in the eventual consignment, keeping in contact with those who originated the shipment over the course of the period of time that all these events took place, and was also going to be involved in the eventual delivery of the drugs to the distributor here in Guernsey. It was clear that he was in a position of considerable trust and responsibility in the organisation;

(2) the quantity of Ecstasy was very considerable (1307 tablets) with a very high street value, in addition, there was the importation of over 5 kg of Cannabis with an even higher street value. Even without the Cannabis a starting sentence of 10 years imprisonment for the Ecstasy alone would not be inappropriate;

(3) use was made of the postal service, which has always been regarded as an aggravating factor.

We consider that the degree of involvement of Michael Skelly in this very substantial importation of considerable quantities of both Ecstasy and of Cannabis via the postal service justifies a starting point of 12 years, from which we consider a reduction of one-quarter for his plea of guilty to be wholly appropriate. There was little alternative for Michael Skelly but to plead guilty. In addition, given his previous conviction for offences in relation to Heroin (for which he received a sentence of 4 years) and his failure to provide any assistance to the authorities, there can be no basis for contending that a reduction below 9 years would be appropriate.

40. The other matter which was raised by way of mitigation was that Michael Skelly claims that he thought that he was only going to be involved in the importation of Class B drugs, and that, given his previous conviction in relation to Heroin, he had made it clear that there was to be no question of any Class A drugs being involved. However, as we have made clear above, at least in the ordinary event, mistaken belief as to the nature of drugs involved cannot amount to mitigation, and if it does so it will only be minimal. However, we have to consider whether this is an exceptional case. We do not consider that that could be so, not least because it was clear that Michael Skelly, having discovered that there were Class A drugs in the bin liner in the morning, by the evening he had done nothing to remedy the situation. At most he says he tried to telephone the mobile number which he had been given for the originator, and did not get an answer. He certainly did nothing by way of throwing away the Ecstasy, or otherwise disassociating himself from the Ecstasy. Indeed, when he was asked about the contents of the bin liner, he informed the officers that it contained Cannabis and Ecstasy, without any protestation about the Ecstasy. It was only later that he said that he would not have been prepared to agree to import Ecstasy. We therefore consider that there is no possible basis for contending that this is an exceptional

case in which any reduction can be made for the alleged mistaken belief as to the contents of the package and the nature of the drugs contained therein.

It therefore follows that we do not accept the contention that the sentence of 9 years imprisonment was manifestly excessive and accordingly we refuse leave to appeal.

## IAN CHARLES GARVEN

41. Ian Charles Garven appeared before the Royal Court on 11th December 2001. He appeared together with David Michael Barbé and Aaron Help. David Michael Barbé originally sought leave to appeal against his sentence, but this has now been withdrawn. Aaron Help did not seek leave to appeal.

Ian Charles Garven had pleaded guilty to an offence of supplying a controlled drug to another, contrary to section 3(3)(a) of the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974 in that on 23rd March 2001 he unlawfully supplied to another a quantity of MDMA, commonly known as Ecstasy, a Class A drug.

42. The background to the offence is important. In order to gain information with regard to those who control drugs in Guernsey, a small team of United Kingdom police officers were brought to Guernsey as part of a police operation known as "Operation Gulfstream". The local police are well known to those who operate this trade, and so outside officers were required in order to be effective. These officers were authorised to make test purchases from persons who were prepared to supply them. The main phase of the operation took place in a five week period from the end of February until the beginning of April 2001. These police officers were sworn in as Special Constables.

Ian Garven was aged 34 at the time and at that time was living at the licensed premises known as the Helmsman, Cornet Street, with his partner, who was licensee of those premises. He was at the time employed as a labourer and although he had some previous offences, none was drug related.

43. At about 9.50 p.m. on 23rd March 2001 two of the police officers involved in "Operation Gulfstream" went to the Helmsman. It was a regular haunt of those officers. In the course of the evening one of the officers spoke to someone about the possible supply of drugs. Last orders rang out at about 11 30 p.m. Ian Garven called over another officer (known for this purpose as Ted) and they met at the bar. He asked Ted if he wanted a smoke, opening his hand and showing him a joint, apparently containing cannabis. Ted said no. Ted said that smoking cannabis made his sick, but he said that "did pills". Garven asked him if he meant Ecstasy and did he want one. Ted asked him if he had any and Garven said that he had two. Garven said that they would be £20 each, which he said was the normal price. Ted asked if he could have the two, one for himself and one for his friend. £40 was handed over in exchange for the tablets. Ted thanked Ian Garven to which Ian Garven apparently replied "I've sold 300 quids worth today". The tablets were found to contain 23% MDMA.

44. On 26th April, after the conclusion of "Operation Gulfstream", police and customs officers with search warrants went to the Helmsman. Ian Garven was arrested and taken to the police station and then to the Customs Custody Area. He was interviewed. He was asked if he was dependent on drugs. He said that all his involvement with drugs was that if somebody passed him a joint he would have a smoke, but no more. He said he did not carry

drugs or have anything to do with drugs. It was put to him that he had supplied someone called Ted with two Ecstasy tablets and Ian Garven denied that.

45. Ian Garven was sentenced to 12 months imprisonment. In his sentencing remarks Deputy Bailiff emphasised the drug dealing requires tough measures to fight it and that the supply of Class A drugs, however small the quantity, will almost always result in the imposition of an immediate custodial sentence and that the exceptions would be very rare indeed. Credit was given for Ian Garven's guilty plea and account was taken of the helpful reports and references which he produced. However, the Deputy Bailiff stressed the aggravating factor with regard to Ian Garven that it was he who approached the officers and that this was done in a pub where his partner was the licensee, which he also regarded as another aggravating factor. It is against this sentence that Ian Garven seeks leave to appeal. It is contended that such a sentence in all the circumstances was out of all proportion to the gravity of the offence and was manifestly excessive. In addition to the matters peculiar to his offence and to himself, he relies on the contention of disparity between that imposed on him and that imposed on the other two defendants, David Barbé and Aaron Help.

46. It is contended on behalf of Ian Garven that a sentence of 12 months imprisonment, given the small quantity of the drug concerned, the circumstances of the supply, in that it was done on the spur of the moment and under the influence of drink and given his plea of guilty and the absence of any previous drug related convictions, was manifestly excessive.

We entirely accept that we have to deal with Ian Garven only on the matters upon which he has pleaded guilty, that is to say the supply of the two ecstasy tablets, not for anything based upon his claim that he had sold £300 worth of ecstasy that day. However we wish to reiterate, as did the Deputy Bailiff in his sentencing remarks, that the supply of Class A drugs of however small the quantity, will almost always result in the imposition of immediate custodial sentences and the exceptions will be rare indeed.

47. The imposition of a sentence of 12 months imprisonment, given Ian Garven's plea of guilty, would suggest that the sentencing court took a sentence of some 18 months as a starting point, and reduced that by one-third by reason of the plea of guilty. However, the Court stated that it regarded as aggravating factors, the fact that it was Ian Garven who approached the police officers and not the other way round, and at the time his partner was the licensee of the public house in question. It can be deduced from that that if it had not been for those aggravating factors the starting point would have been somewhat lower.

48. When imposing sentences for the supply of small quantities of Class A drugs, it must be borne in mind that the detection of such offences will be very difficult, particularly when they occur in places such as public houses. Indeed it will normally only be when an undercover officer is involved that it would be possible to obtain the necessary evidence, and the use of undercover officers in a community such as Guernsey will normally be extremely difficult. It is for this reason that when such an offence is committed and when it can be detected, the Court will in the normal case wish to impose a significant sentence. Moreover we agree with the Deputy Bailiff that the aggravating factors that were there identified are indeed aggravating factors which justify an increase in the starting point.

In addition, in the case of the supply of small quantities of Class A drugs, it may be possible to have different views of the correct starting point and the correct final sentence, but we do not consider that the mere fact that it would be possible for differing sentencing judges to impose differing sentences is a reason for us to interfere. We will do so only if we consider the sentence to be manifestly excessive or wrong in principle. Sentence is also particularly difficult in the case of sentences for small quantities of Class A drugs, which rarely come before the Royal Court. However we do not consider that a starting point of 18 months or an

actual sentence of 12 months for this offence by Ian Garven to be manifestly excessive or wrong in principle.

49. The further contention raised by way of appeal is that there was an unjustifiable disparity between the sentence imposed on Ian Garven and that imposed on the other two defendants who were dealt with at the same time. David Barbé and Aaron Help were both persons of good character. David Barbé was charged on two counts and the most serious of which was the supply of 8 ecstasy tablets. However the Court accepted that it was not a commercial enterprise and that he was acting as a go-between in order to provide drugs for persons whom he considered he was developing as friends, inspired by the possibility that he might obtain a job as an extra in a film. For this he was sentenced to 9 months imprisonment which, given his plea of guilty and his good character, would suggest a starting point of at some 12 months. Aaron Help faced two counts, supplying 2 ecstasy tablets on each occasion. He was sentenced to a term of imprisonment of 8 months, taking into account his age (he was 18 at the time), his previous good character and his plea of guilty. This would again suggest a starting point of about 12 months for the offences with a reduction for those matters.

We do not consider that Ian Garven can correctly compare himself with David Barbé or with Aaron Help. He could not claim that his supply was non-commercial as could David Barbé nor could he claim the benefit of youth as could Aaron Help. Moreover he could not claim the benefit of previous good character as could both of them. Moreover Ian Garven has the aggravating factors identified above which apply to neither of the other two. Accordingly we do not consider that Ian Garven can claim there is any unjustifiable disparity between the sentence imposed on him and that imposed on the other two who were before the Court on the same occasion.

50. Finally we would like to make it clear that where various defendants appear before Court for sentence at the same time, it will only be in the most exceptional circumstances that this Court will interfere with the sentencing court's own evaluation of the relative degree of culpability of the differing defendants or the sentencing court's evaluation of the ranking of the sentences to be imposed in those cases. This is in particular because the sentencing court will be in a much better position to evaluate the degree of culpability and the mitigation advanced in respect of the others whom may not be before this Court.

Accordingly we refuse leave to appeal.

**FRANK PETER HAUTERMANN**

51. In this case the Applicant pleaded guilty before the Royal Court to three counts –

(i) Being knowingly concerned in the fraudulent evasion of the prohibition on importation of cannabis;

(ii) Being knowingly concerned in the fraudulent evasion of the prohibition on importation of cocaine; and

(iii) Being in possession of Amphetamine.

The Court sentenced Hautermann to seven years imprisonment on the first count; nine years imprisonment on the second; and one month's imprisonment on the third, the sentences to run concurrently from 31st August, 2001. Hautermann sought leave to appeal against all

three sentences. However, in the skeleton argument in support of his case it is made clear that the application is limited to the total sentence imposed on the importation counts.

52. Hautermann was arrested at St. Peter Port harbour on 31st August, 2001. He was driving a white BMW vehicle which had no other occupants and which had arrived on the ferry from Jersey and St. Malo. He told the customs officer that he had come to Guernsey to fish. He was carrying fishing rods in the car. A search of the car revealed 14.8 kilograms of cannabis resin and 100 grams of cocaine estimated to have a street value in Guernsey of £103,600-£133,200 and £8,000-£10,000 respectively. The search of Hautermann's possessions disclosed a quantity of Amphetamine contained in a cigarette packet. This formed the basis of the third count on the indictment.

When interviewed by the police, Hautermann, a German national, alleged that he had been approached by a man in Maastricht, Holland, who persuaded him to carry the drugs from Aachen in Germany to Guernsey in return for 20,000 DM plus expenses. Hautermann borrowed the BMW car from a friend. He said that he agreed to transport the drugs because he was heavily in debt. He did not specifically identify anyone with whom he had contact.

The Royal Court considered that the starting point on the importation of cannabis count should be some 9 years and on the importation of cocaine count would have been between 10 and 12 years. However, in the light of the combined importation the Royal Court concluded that the overall starting point would be 12 years.

53. Advocate Sarah Brehaut, who appeared for the Applicant, argued that although the importation of a combination of Class A and Class B drugs dictated the selection of higher starting points, those actually indicated were, in the light of allegedly comparable cases, too high. Specifically, on the cannabis count Miss Brehaut referred this court to *Oren*, 18.GLJ.13 (arguing that that case indicated a starting point of about 6 years) and *Barron* (Court of Appeal 9th January, 2002 – in which a sentence of 8 years was imposed for importation of 35.35 kg). On the cocaine count she referred to *Canning* (Royal Court 14th December, 2001 – 28.129g of heroin: 5 years youth detention); *Skelly* (Royal Court 25th October, 2001: 1307 ecstasy tablets; 9 years imprisonment) (applications in respect of these latter two cases also being considered at this hearing) and *Harward* (Court of Appeal 5th April, 2000 – in which importation of 33.4g of heroin resulted in a 6 year sentence).

54. We have carefully considered the authorities to which we have been referred and the available evidence. As the Deputy Bailiff pointed out in the Court's sentencing remarks Hautermann, albeit that it was accepted that he was a courier, played a vital role in the importation of the drugs, deliberately agreed to play that role and did so for reward and was involved in the preparations. Bearing in mind that a combination of Class A and Class B drugs was imported we do not consider that the overall starting point chosen was too high.

As far as mitigation is concerned it is clear that the Royal Court took into account all the matters canvassed on the Applicant's behalf and in relation to each count made appropriate deductions. In our judgment the sentences were neither contrary to principle nor manifestly excessive and accordingly we reject Hautermann's application for leave to appeal.

## MARTYN ANDREW NOYON

55. In this case the Applicant pleaded guilty before the Royal Court to two counts of being concerned in the fraudulent evasion of the prohibition on importation of goods, namely Diamorphine Hydrochloride (commonly called heroin) and one count of possession of a controlled Class A drug namely Methylene-Dioxymethylamphetamine (or ecstasy). On the two counts relating to heroin he was sentenced to 4 years imprisonment and 4½ years imprisonment respectively, the sentences to run concurrently. Noyon does not seek to appeal against his sentence on the count relating to ecstasy.

56. On 31st August, 2001, a customs officer in the postal sorting office at St. Peter Port noticed a large brown envelope which had arrived from the United Kingdom. It was opened and was found to contain a package of heroin in the sleeve of a compact disc which was taped to the front of a magazine. The heroin weighed 10.067g and had a potential street value in Guernsey of between £2,416.75.

The police reconstituted the contents of the brown envelope replacing the heroin with a substance which did not comprise a controlled drug and the resealed envelope was delivered to the address it bore. Shortly after delivery Noyon called at the premises and collected the envelope which was addressed not to him but to a Mr. F. Grimes.

Noyon was arrested. His home (which was not the place to which the envelope had been addressed or delivered) was searched and in a shed there another brown envelope was found. The label had been removed. The envelope bore a Leeds postmark and this was dated 3 August 2001. The envelope contained a magazine which had been hollowed out so that it could have contained a package of similar dimensions to that removed from the compact disc sleeve.

When interviewed Noyon, after some initial prevarication, told the police that the heroin found in the sorting office had been purchased by him in London and that he had sent it to Guernsey for his own use. He had become addicted to heroin and wished to use the supply he had obtained to gradually wean himself off the drug.

He had fabricated the name of the addressee and had addressed the envelope to a place where he had dumped furniture on a previous occasion. He further confessed to buying heroin in England and sending it to the same address in the envelope found in the shed. He alleged that the shipment involved only .3g of the drug. Although accepting that he had debts of about £7,000 Noyon asserted that he would never have been tempted to sell the drugs he posted from England to Guernsey.

57. Noyon is twenty-nine years of age. He left school at fifteen and about a year later joined the army as a junior soldier. He was medically discharged after approximately one year's service having sustained a severe leg injury. He was unemployed at the time of his arrest although he appears to have worked diligently in the past. He has an appalling criminal record and has served sentences of imprisonment. However, he has no previous convictions for specific drug offences. He is married and has three children by a previous relationship.

Advocate Sarah Brehaut who appeared before us for Noyon submitted that the starting point of six years chosen by the Royal Court was too high.

58. Bearing in mind that Noyon confessed to the importations of heroin we reject that submission. However, given the very small amount involved in the first count (.3g) and the fact that that count was substantially derived from information volunteered by Noyon we consider that the sentence of 4 years imprisonment on that count was too high. Furthermore, we consider that the Royal Court may have been influenced in determining the sentence of 4½ years on the second count by the scale of the sentence it imposed on the first count.

59. In the light of these conclusions and the other significant mitigating factors which we need not set out in detail we have decided to grant this application for leave to appeal and to vary the sentences imposed as follows:-

| | |
|---|---|
| Count 1 | 2 years imprisonment |
| Count 2 | 3½ years imprisonment |
| | Concurrently. |

Thus, Noyon's overall sentence is reduced from 4½ years to 3½ years.

**GARETH STEVEN CANNING**

60. This Applicant was indicted before the Royal Court on one count of being concerned in the fraudulent evasion of the prohibition on importation of goods, namely diamorphine – commonly known as heroin. The amount involved was 28.129 g. The applicant was sentenced to 5 years youth detention to run from 15 September 2001. Canning had arrived in Guernsey on a ferry from Weymouth on the morning of 15 September 2001. He was arrested by customs officers and was found to have two packages containing the Heroin internally concealed. The total amount had an estimated street value in Guernsey of between £6,750.90 and £7,032.25.

When interviewed by police Canning made a number of implausible statements, including alleging that the Heroin was for his own use. This was considered highly unlikely as Canning had no clothes with him other than those he was wearing. He had no money. Nevertheless he maintained that he had brought the Heroin to the island in case he managed to find work in Guernsey and, therefore, ended up staying here for an extended period of time. In our judgment the Royal Court was correct in rejecting these statements which were clearly spurious.

61. In this case the Royal Court chose a starting point of 8 years. Advocate Sarah Brehaut criticised both the starting point and the allowance for mitigation and referred to *Oren* 18.GLJ.13 (which, she said, pointed to a starting point of 4 years); *Harward* (see above – Miss Brehaut argued that because the quantity of Heroin was higher than that in the present case and the mitigating factors fewer and weaker, the disparity in sentence should be greater than one year) Bishop (Royal Court 22 February 2002) and Flackes (Royal Court 18th February 2002).

We do not accept Miss Brehaut's argument as to the application of the *Oren* decision to the facts of the present case and indeed this conclusion is consistent with, for example, *Harward* in which a much higher starting point was chosen by the Court of Appeal than that alleged by Miss Brehaut to be capable of extrapolation from *Oren*. As far as the cases of Bishop and Flackes are concerned, we do not consider them to be comparable. Irrespective of the

outcome of those cases we are satisfied that the Royal Court did not err either in its determination of the starting point or its choice of sentence.

62. We note that in *Harward* the Court of Appeal considered that the starting point "was not less than seven years". Given that quantity, albeit a very important factor, is not the only one we are not prepared to say that a starting point of eight years is too high in the instant case. Furthermore, in the instant case the Royal Court did make a very much greater allowance for the mitigating factors than was made in *Harward*'s case.

63. Turning to those mitigating factors we observe that they are detailed in the Deputy Bailiff's sentencing remarks. Miss Brehaut argued that a caution for possession of .1g of Heroin administered to Canning in June 2000 and a number of pending summonses in Barnsley (which, it seems, have now been dropped) should not have been considered by the Royal Court. Whilst certainly as far as the summonses are concerned this point is well taken, there is no reason to believe that the information complained of had any significant bearing on the Royal Court's assessment of the proper sentence to be imposed. The Deputy Bailiff's remark that "the Court does not treat you as a person of unblemished character" is unexceptionable in the light of Canning's convictions which have not been disputed by him or on his behalf.

For the reasons stated we reject Canning's application for leave to appeal against the sentence imposed on him