

JERSEY / JUDGMENT

AG v Goncalves and Gouveia

COURT

ROYAL COURT

BEFORE

Sir Philip Bailhache, Bailiff, and Jurats Bullen,
Le Breton, Allo, Clapham, Morgan and Newcombe.
The Attorney General

-v-

Rui José Barros Gonçalves; and
John Luis Gouveia
Sentencing by the
Superior Number of the Royal Court,
to which the Defendants were remanded by the
Inferior Number on 3rd December, 2004,

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[2005]JRC007

ROYAL COURT

(Samedi Division)

20th January 2005

Before:

Sir Philip Bailhache, Bailiff, and Jurats Bullen,
Le Breton, Allo, Clapham, Morgan and Newcombe.
The Attorney General

-v-

Rui José Barros Gonçalves; and
John Luis Gouveia
Sentencing by the
Superior Number of the Royal Court,
to which the Defendants were remanded by the Inferior Number on 3rd December,
2004,

following guilty pleas,
entered on 3rd
September, 2004 as
follows:

Rui José
Barros Gonçalves
1 count of:
Being knowingly concerned in supplying a
controlled drug contrary to Article 5 (c) of the Misuse of Drugs (Jersey) Law 1978.
Count 1: diamorphine.
Age: 21 (20
at date of conviction).

Details of Offence:	Rui Gonçalves agreed to recover a large commercial amount of heron (242.46 grams) from one location and deliver it to another location upon which he would receive further instructions. In return for his involvement, he was told that his drugs debt of £2,000 would be cleared. He was seen to collect the package of drugs (which had been substituted with a dummy package) and run from the area. On noticing drugs squad officers in the area he discarded the package and was arrested near by. In interview he said that he had previously been addicted to heroin and had amassed a drugs debt of approximately £2,000. On the day in question he was asked by an unnamed person to carryout “a job”. He said that certain threats were made to him. He was then told to contact John Gouveia. Gouveia then gave him instructions as to where the package was located.
Details of Mitigation:	Guilty plea (entered on indictment), co-operation with police enquires and youth.
Previous Convictions:	A number of previous convictions, including possession of cannabis, supply of cannabis a number of dishonesty offences and a grave and criminal assault.
Conclusions:	
Count 1:	3½ years’ youth detention.
Sentence and Observations of Court:	The sentencing Court followed the approach of the Royal Court in A.G. –v- Antunes & Ors [2003]JRC074 and did not fix a starting point for sentencing. The Court had regard to the provisions of the Criminal Justice (Young Offenders) (Jersey) Law 1994 but determined that the offence was so serious that a custodial sentence could not be avoided. The Court decided to give slightly greater weight to the mitigation than was given by the Crown and passed a sentence of 3 years’ youth detention. Confiscation Order made in a nominal amount. Order made for the forfeiture and destruction of the drugs. John Luis Gouveia 1 count of: Being knowingly concerned in supplying a controlled drug contrary to Article 5 (c) of the Misuse of Drugs (Jersey) Law 1978. Count 3: diamorphine. Age: 22.

Details of Offence:	In return for a reward of £200 Gouveia was to ensure that Rui Gonçalves recovered a package containing a large commercial amount of heroin (242.46 grams) from a stash and delivered it to another location for collection by some other person. He was present in the area and gave instructions to Rui Gonçalves as to the location of the package. Gouveia (and his girlfriend) were subsequently arrested by drugs squad officers in the area. In interview he admitted to being a heroin addict, using up to two £50 bags of heroin a day. He has accumulated debts as a result of hid drug use. He insisted that his rôle in the supply of the drugs was simply to “shepherd” Rui Gonçalves from the area of the stash to the collection point. The Crown submitted that Gouveia was higher up in the chain of drug dealing than Rui Gonçalves and that his involvement was, therefore, more serious.
Details of Mitigation:	Guilty plea (entered on indictment), co-operation with police enquiries and youth.
Previous Convictions:	A number of previous convictions, including drugs offences (possession of ecstasy with intent to supply and, simple possession of cannabis).
Conclusions:	
Count 1:	4 years’ imprisonment.
Sentence and Observations of Court:	Conclusions granted. The sentencing Court followed the approach of the Royal Court in A.G. –v- Antunes & Ors [2003]JRC074 and did not fix a starting point for the purposes of sentencing. The Court determined that Gouveia was higher up in the chain of drug dealing than Rui Gonçalves. Further, that the difference in culpability between Gouveia and Rui Gonçalves was greater than the difference identified by the Crown. Confiscation order made in nominal amount. Order for forfeiture and destruction of the drugs. [Count 2 of the indictment relates to a co-defendant, who was found not guilty by the Inferior Number ‘en police correctionnelle’, on 1st December, 2004]. M. St J. O’Connell, Esq., Crown Advocate. Advocate J.C. Gollop for R.J.B. Gonçalves. Advocate Mrs. S.A. Pearmain for J.L. Gouveia.

JUDGMENT

THE BAILIFF: 1. These defendants are to be sentenced for an offence of being concerned in the supply of a quantity of heroin. The quantity involved was 242 grams with an estimated street value of between £72,000 and £109,000. It was a large commercial amount capable of providing up to 2,000 street deals approximately of heroin. 2. We are going to follow the approach of the Court in A.G. –v- Antunes & Ors [2003]JRC072 and we will not fix a starting point. 3. It is clear that Gouveia was higher up the chain of supply than Gonçalves. That is accepted by his counsel. It was Gouveia who asked Gonçalves to move the heroin from its hiding place and who instructed him using a mobile telephone. 4. We think that the difference in culpability is rather greater than that assessed by the Crown. Dealing first, however, with Gonçalves, he is, or was, a heroin addict who claims to have undertaken this job in order to have a drugs debt of £2,000 forgiven. He is 21 years old although he was aged 20 at the time of the offence. He has previous convictions including a conviction for supplying cannabis. The background report shows a deprived background and limited intellectual capabilities, rendering him easily led by more mature and sophisticated offenders. His age brings him within the provisions of the Criminal Justice (Young Offenders) (Jersey) Law, 1994 Article 4 of which provides: “That the court shall not pass a sentence of detention unless it appears that to the Court that no other method of dealing with him is appropriate”. 5. We have given careful consideration to the submissions of his counsel, but have reached the conclusion that this offence is so serious that a custodial sentence cannot be avoided. 6. Gonçalves, we are going to give slightly greater weight to the mitigating factors than was given by the Crown Advocate and the sentence of the Court is that you will go to prison for 3 years. 7. Turning to Gouveia, he is aged 23. He has previous convictions as well and was convicted of trafficking in ecstasy only two months before the offence in question here. In relation to that offence he was given a financial penalty. 8. We have given very careful consideration to all the submissions made on your behalf by your advocate, but we think that the mitigating factors have been given full weight by the Crown and the conclusions are accordingly granted and you are sentenced to 4 years’ imprisonment. We order the forfeiture and destruction of the drugs.

Authorities McDonough –v- A.G. (28th September 1994) Jersey Unreported: [1994/193]. A.G. –v- Antunes & Ors [2003]JRC072. A.G. –v- Antunes & Ors [2003]JRC074. A.G. –v- Clarke (24th July, 2001) Jersey Unreported; [2001/155]. Criminal Justice (Young Offenders) (Jersey) Law, 1994: Article 4.

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