
JERSEY / JUDGMENT

Bonnar and Noon v AG [2001] JCA 212 (26 October 2001)

[2001] JCA 212

COURT

COURT OF APPEAL

BEFORE

R. C. Southwell, Esq., Q. C., President;

P. D. Smith, Esq., Q. C., and

M. G. Tugendhat, Esq., Q. C.

John Henry BONNAR

-v- The Attorney General

and

Patricia Mary NOON -v- The Attorney

General

Appeal by

John Henry BONNAR

against a

total sentence of 8 years' imprisonment

, passed on 7

th

August, 2001, by the Superior Number of the Royal Court, to which the Appellant

was remanded by the Inferior Number on 30

th

March, 2001, following a

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COURT OF APPEAL

th

October 2001

Before: R. C. Southwell, Esq., Q. C., President;
P. D. Smith, Esq., Q. C., and
M. G. Tugendhat, Esq., Q. C.
John Henry BONNAR
-v- The Attorney General
and
Patricia Mary NOON -v- The Attorney
General
Appeal by
John Henry BONNAR
against a
total sentence of 8 years' imprisonment
, passed on 7
th
August, 2001, by the Superior Number of the Royal Court, to which the Appellant
was remanded by the Inferior Number on 30
th
March, 2001, following a
guilty plea to: 2 counts of:
being knowingly concerned in the
fraudulent evasion of the prohibition on the importation of a controlled
drug, contrary to Article 61(4) of the
Customs and Excise (Jersey) Law
:
count 1: cannabis resin, on which count
a sentence of
4 years' imprisonment
was passed.
Count 2: MDMA, on which count a sentence
of
8 years' imprisonment, concurrent,
was passed.
Leave to appeal was granted by the
Deputy Bailiff on 10
th
September, 2001.
.
Advocate M. L.
Preston for the Appellant;
P. Matthews, Esq., & Mrs. S. Sharpe,
Crown Advocates.
Appeal by
Patricia Mary NOON
against a
sentence of 5 years' imprisonment
, passed on 2
nd
August, 2001, by the Superior Number of the Royal Court, to which the Appellant
was remanded by the Inferior Number on 15
th

June, 2001, following a
guilty plea to:
1 count of:
being knowingly concerned in the
fraudulent evasion of the prohibition on the importation of a controlled
drug, contrary to Article 61(4) of the
Customs and Excise (Jersey) Law
:
count 1: MDMA.
Leave to appeal was granted by the
Deputy Bailiff on 10
th
September, 2001.
Advocate S. E. Fitz for the Appellant;
P. Matthews, Esq., Crown Advocate.

JUDGMENT

SOUTHWELL JA 1. These two appeals have been heard together solely because each appeal raises issues as to the guidance provided by the Court of Appeal in *Campbell, Molloy and Mackenzie v Att-Gen* 1995 JLR 135 (to which we will refer as "Campbell") as to sentencing in cases involving trafficking in Class A drugs. Further guidance in relation to the Campbell guidelines, so far as concerned heroin, cocaine and other drugs in which trafficking takes place with such drugs in powder form, was given in *Rimmer, Lusk and Bade v Att-Gen* (19 July 2001) J. U. C.of A. as yet unreported) to which we will refer as "Rimmer". In *Rimmer* this Court declined to give further guidance in relation to drugs trafficked in tablet form, such as MDMA (or "Ecstasy") and LSD, for the reasons there set out. These cases now offer a convenient opportunity for such further guidance. We emphasise that in this judgment, as in the *Rimmer* judgment, the guidance given is as to the application of the Campbell guidelines, and neither judgment is intended to supersede those guidelines. 2. The Court wishes to express its indebtedness to Crown Advocate Paul Matthews and to the Advocates appearing for the Appellants (Advocate Sarah Fitz for Noon and Advocate Michael Preston for Bonnar) for their helpful and lucid submissions. The relevant facts in the two cases can be summarised as follows: 3. Mrs. Noon. On 21 April 2001 Mrs. Patricia Noon and her son Nicholas arrived as foot passengers from the Condor ferry at St. Helier. Both were travelling under false names. Mr. Noon came ashore first, and nothing of a prohibited nature was found in his luggage. Mrs. Noon came ashore about five minutes later and initially gave her false name. When questioned in the custody room she admitted that she had tablets under her clothing, and produced two packages containing tablets. She told a story of having been visited and asked to take tablets to Jersey in return for £500 to pay part of her substantial rental arrears. She said that she thought she was carrying "purple hearts" (Viagra, she thought, though the phrase has commonly been used for Drinamyl). 4. Mr. Noon admitted that he knew that his mother was carrying about 2,200 ecstasy tablets. He owed a drugs debt of £3,000 and by being involved in the importation this would clear his debt. The tablets were handed to his mother in his presence. It had been the idea of his supplier to use his mother as the courier, as it was

realised that he himself might have been too likely to be stopped by HM Customs in view of his hair style. It was his idea for them both to travel under false names. The only reason, he said, why his mother had agreed was due to fear for the safety of the two of them from the drug dealers in Liverpool. 5. The packages carried by Mrs. Noon contained as tablets or fragments of tablets 2,258, with a street value of between £27,096 and £33,870 (or a wholesale value of between £13,500 and £22,500). 6. Mrs. Noon has lived in Liverpool all her life and is 52 years old. Before her arrest she worked as a cleaner in the University of Liverpool for only 19 hours a week at a wage of only £4.22 an hour, or just over £80 a week. She has no previous convictions, whereas her son, who was aged 22 and was at the time unemployed, had previous convictions including one for possession of heroin. Mrs. Noon pleaded guilty when charged by the Centenier. Her son pleaded guilty at the Magistrate's Court. 7. At the sentencing hearing the prosecution expressed the view that Mr. Noon had persuaded his mother to act as a courier, and his reward of release from a £3,000 drug debt was substantially greater than the promise of a cash payment of £500 to Mrs. Noon. Mr. Noon was in the prosecution's view the prime mover, and Mrs. Noon was merely a courier. 8. Both of them pleaded guilty to being knowingly concerned in the fraudulent evasions of the prohibition on the importation of the Ecstasy tablets. 9. The prosecution moved for the following starting points and sentences for Mr. Noon and his mother: (i) Mr. Noon

- starting point 12 years, sentence 8 years, imprisonment. (ii) Mrs. Noon
- starting point 9 years, sentence 6 years, imprisonment. 10. The Royal Court, with the Bailiff presiding, took these starting points and imposed these sentences on 2 August 2001: (i) Mr. Noon
- starting point 11 years, sentence 7 years, imprisonment. (ii) Mrs. Noon
- starting point 9 years, sentence 5 years, imprisonment. 11. Mrs. Noon was granted leave to appeal by the Deputy Bailiff on 10 September 2001. 12. Mr. Bonnar . On 12 January 2001 Mr. Bonnar arrived in his car on the ferry from Portsmouth at St. Helier, with his girlfriend who has not been charged with any offence. He told the Customs Officers that he had nothing to declare, that there were no drugs in his car, and that he had owned the car for three days. As a result of the use of a "sniffer" dog, controlled drugs were found in the tyre of the spare wheel. (i) 24 bars of cannabis resin weighing 5.94 kilos, with a local street value of £34,560; (ii) 3,761 Ecstasy tablets plus fragments equivalent to 130 more tablets - a total of 3,891 Ecstasy tablets, with a street value of at least £46,690. He eventually admitted knowingly importing the drugs when interviewed under caution. He had bought the car for £2,500 and this amount was to be "paid" by him carrying the drugs into Jersey. He pleaded guilty at the Magistrates Court. 13. Mr. Bonnar is 30 years old. He has two children and three step-children. In addition his girlfriend has given birth to a baby of which he is the father since the Royal Court hearing, so he now has three children of his own. He has four previous convictions, involving serious offences, of which three concern the possession of controlled drugs, apparently in each case cannabis. He had served four years in the British Army between the ages of 17 and 21. He served in Belize and the Gulf War. He was at the age of 21 sentenced by court-martial to nine months detention for possession of cannabis and being

absent without leave. We will return to consider his personal circumstances later in this judgment. 14. The prosecution moved for the following starting points and sentences on the two counts relating to the cannabis and the Ecstasy: (i) the cannabis: starting point 5 years, sentence 4 years, imprisonment; (ii) the Ecstasy: starting point 12 years, sentence 9 years, imprisonment. 15. The Royal Court, presided over by the Bailiff, decided as follows and imposed the following sentences on 7 August 2001: (i) the cannabis: the Royal Court failed to indicate any starting point on this count, though it referred to the prosecution's starting point, and sentenced to 4 years imprisonment. (ii) the Ecstasy: starting point 12 years, sentence 8 years, imprisonment. 16. Mr. Bonnar was granted leave to appeal by the Deputy Bailiff on 10 September 2001. The Guidelines 17. We adopt without repetition (i) what was said in this Court in Rimmer in paragraphs 13 and 14 as to the general principles relating to guideline and other previous cases; (ii) the citations from Campbell in paragraphs 15-19 of the Rimmer judgment, in particular in relation to the earlier case of *Fogg v Att-Gen* 1991 JLR 31 ("Fogg") which concerned the importation and sale of 1,000 tablets of LSD within a substantial quantity of cannabis; (iii) what was said in Rimmer in relation to the Campbell guidelines in paragraphs 20-35. In paragraph 34 of the Rimmer judgment this Court laid down bands for sentencing in relation to Class A drugs carried or sold in powder form. Any guidelines for sentencing in relation to Class A drugs carried or sold in tablet or pill form must be consistent with Campbell and Rimmer, and must avoid any divergence in approach depending on the form in which Class A drugs are carried or sold. 18. It was strongly argued by Miss Fitz that because Ecstasy is less harmful than, for example, heroin or cocaine, the guidelines should provide for lower levels of sentencing for equivalent quantities of Ecstasy. The respects in which Ecstasy is said to be less harmful to society include: (i) that it is not addictive in the same way, though it may assume undue importance in some users' lives; (ii) that the users of Ecstasy which is cheaper have less need to engage in other criminal conduct to pay for their supply of the drug; (iii) that, though some deaths occur through use of Ecstasy, the number of deaths is relatively small having regard to the large number of Ecstasy users. 19. We accept that these are points which could be made in favour of lower sentences for trafficking in Ecstasy. But the States has chosen to make Ecstasy and LSD and other drugs sold in tablet or unit form Class A drugs just as heroin, cocaine and other such drugs sold in powder form. This is not surprising. Though Ecstasy related deaths are relatively uncommon; (i) there is a high risk of complications for people with heart conditions, high blood pressure, epilepsy or diabetes; (ii) regular or heavy use of Ecstasy can lead to mental health problems which may be potentially serious; (iii) it may be that long-term use of Ecstasy causes brain damage. 20. We are indebted for the assessment of Ecstasy and LSD as illicit drugs used by many people to Mr. Michael Gafoor, Director of the Alcohol and Drug Service of Jersey. 21. LSD is usually used either impregnated on small squares of blotting paper or in the form of tablets or capsules. The hallucinogenic properties of LSD are greater than those of Ecstasy, heroin or cocaine. Deaths are not known to occur from the direct effects of overdose from LSD, but accidental fatalities and injuries can occur when people are under the influence of LSD. LSD can cause relatively serious mental problems, and LSD users may be threatening or violent, usually because of paranoid delusions about

their surroundings. 22. In our judgment, whatever may be the relative risks involved in illicit use of the different Class A drugs, the States have decided that all such drugs are to be categorised as Class A. It is not for the courts of Jersey to distinguish between the different Class A drugs in sentencing for trafficking. If any change in the law is to be made, it is for the States to decide, not the courts. We therefore accept the Attorney-General's submission in this regard. 23. The guidelines which we give in this judgment are intended to apply to Ecstasy, LSD and other Class A drugs sold in tablet, capsule or other unit form (e.g. LSD sold on squares of blotting paper), as opposed to Class A drugs sold in powder form. The guidelines may need to be applied somewhat differently according to the drug trafficked in, in so far as dealers in illicit Class A drugs alter the make up of the tablets, capsules or other unit form in which they are sold. 24. As we emphasised in *Rimmer* : (i) the primary factors in sentencing are the amount or quantity of the Class A drugs carried or sold, and the role of the defendant; (ii) we do not consider that the English approach in *R v Aranguren et al*

(1994) 99 Cr. App. R.347, of converting the drugs to an equivalent 100% purity weight should be adopted; (iii) a similar approach has been adopted in England and Wales in relation to Ecstasy in the guideline case of *R v Warren and Beeley*

(1996) 1 Cr. App. R.(S)233, and with some adjustment in relation to LSD in the guideline case of *R v Hartley*

[1998] 1 Cr. App. R.(S)299; but in our judgment sentencing should be based on the number of tablets, capsules or other units, irrespective of the purity of the drugs in the particular units, except where the degree of purity is very high, or where for example there are dangerous impurities in the drugs which of themselves would be likely to endanger the lives or health of users; (iv) it follows that there should not be a reduction in the starting point where the degree of purity is below the average; (v) the street and wholesale values should continue to be given in evidence so that they can be taken into account where they are truly relevant, but they should be regarded as factors of less significance than the role of the defendant and the amount of drugs sold or carried. 25. In arriving at suitable guidelines for sentencing in the case of these drugs, it is necessary to achieve a reasonable degree of comparability with the guideline sentences in *Rimmer* . It is also necessary to ensure that the guidelines are reasonably in accord with the general run of sentences for trafficking in Ecstasy, LSD and other Class A drugs sold in tablet, capsule or unit form since the decision in *Campbell* and in attempted conformity with the guidelines laid down in *Campbell* . 26. Mr. Matthews on the Attorney General's behalf provided the Court with a series of tables offering a wide range of differing guidelines. The choice between his various tables was not easy. The choice was made more difficult because in *Campbell* this Court referred to the starting point of nine years' imprisonment imposed in *AG v Fogg*

- (1991) JLR 31 on a man who had brought 1,000 units of LSD into the Island (within blocks of cannabis) and had started straightaway to sell the LSD; and the Court of Appeal in Campbell said that the sentence for such trafficking should involve a starting point of twelve years' imprisonment. Such a twelve year starting point in relation to 1,000 units of LSD has in fact not been reflected in subsequent sentencing: see for example AG v Chadwick (30 October
- 1995) Jersey Unreported; AG v Bray (27 January 2000), Jersey Unreported CofA.; AG v Jones (6 June 1996) Jersey Unreported. If the twelve year starting point for trafficking in 1,000 units of LSD were to be directly incorporated in our proposed guidelines, that would result in a marked increase in the level of sentencing from that adopted by the Royal Court and the Court of Appeal since Campbell . As already indicated, that would not in our view be appropriate. Instead we have tried to have regard to what was said in Campbell indirectly in setting appropriate bands of starting points and in recognising (as in Rimmer) that the bands are only guidelines: see paragraph 35 of the judgment in Rimmer . 27. We consider that the appropriate course is to give the following bands of starting points by reference to the number of tablets, capsules or other units of Ecstasy, LSD and other Class A drugs carried or sold in this form, adjustment being made within such bands to take account of the role and involvement of the defendant, and of other less significant factors including values: No. of Units Starting point in Years of Imprisonment 1 - 500 500 - 1,000 1,000 - 2,500 2,500 - 4,000 4,000 - 5,500 5,500 and over 7 - 9 8 - 10 9 - 11 10 - 13 11 - 14 14 upwards 28. In setting out these bands we accept the arguments of the Attorney General, and do not accept those of Miss Fitz and Mr. Preston who argued a materially lower level of sentencing, based in part on the level of sentencing in England and Wales. Having regard to the different circumstances in this Island, and the guidelines laid down in Rimmer , it is our judgment that the sentencing bands should not be lower than those we have set out above. 29. The Court turns next to the appeals of Mrs. Noon and Mr. Bonnar in the light of these guidelines. Mrs. Noon 30. She was an unusual courier, in that she was not involved in drugs at all, did not have a debt to pay off, and only agreed to carry the 2,258 Ecstasy tablets as a result of threats to her son (and to herself) and of strong persuasion by her son. The Royal Court accepted that her son was clearly the prime mover, while she was an unwilling pawn. The Royal Court took a starting point of nine years for Mrs. Noon, and eleven years for her son. If regard is had simply to the relevant band set out above, Mrs. Noon's starting point is at the bottom of the third band, and her son is at the top of the same band. In the absence of any exceptional factors those starting points would be in line with recent cases (as well as our guidelines) and difficult to challenge. Mitigation factors cannot be taken into account in assessing the starting point. We consider that Mrs. Noon's role in the trafficking of these Ecstasy tablets could just, and only just, be described as exceptional, justifying a movement below the band to an eight year starting point. But we emphasise that this is solely because of the features of her particular role, and we do not lengthen this judgment further by setting out those features fully. We also consider that an eight year starting point is more appropriate by comparison with the eleven year starting point for her son. 31.

Turning to mitigation, the Royal Court allowed a four years' discount for each of Mrs. Noon and her son, resulting in sentences of five years and seven years respectively. Miss Fitz made a number of points on behalf of Mrs. Noon, including the following: (i) the immediate plea of guilty; (ii) the comparison of the length of discount for mitigation for her and her son, which, Miss Fitz submitted, showed that there was an inadequate distinction made between them; (iii) her age of 52; (iv) her remorse; (v) her complete incompetence as a courier, allied to her age and improbability as a courier (though in our judgment this has to be balanced against the risk that other middle-aged and apparently respectable people might be targeted by the dealers as useful couriers because less to be suspected by HM Customs); (vi) her previous unblemished character, and certain positive aspects of her good character, together with some strong testimonials; (vii) her motivation to help and protect her son; (viii) the serious threats to which she and her son had been subjected; (ix) the extent to which her son as the prime mover had subjected her to what amounted to "emotional blackmail". 32. Miss Fitz also sought to rely on Mrs. Noon's mistaken belief that the tablets were Viagra tablets. As has been said in this Court on many occasions, an erroneous belief would only be a mitigating factor (and anyway a small one) in the most exceptional circumstances, of which there are none in this case. Mrs. Noon knew that she was carrying drugs unlawfully into the Island. 33. In the light of the mitigating factors set out above, we consider that in this somewhat unusual case Mrs. Noon can be given a discount of four years (or 50%) from the starting point of eight years, resulting in a sentence of four years' imprisonment. There is an element of mercy in this decision. Accordingly we allow her appeal and substitute a sentence of four years' imprisonment. Mr. Bonnar 34. Mr. Bonnar imported, as already stated, hidden in the spare wheel of his car 5.94 kilos of cannabis resin and Ecstasy tablets or fragments equivalent to 3,891 tablets. He had allowed the drugs to be packed into the spare wheel without being present. He did not know what drugs in what quantity had been placed there, and was reckless as to what the spare wheel might contain. His role was one of courier, but a courier of a kind most valuable to the dealers, in that he did not concern himself with what he was importing. 35. Though he appealed against sentence generally, no argument has been addressed to the four years' imprisonment imposed in relation to the cannabis, no doubt because it would be most unlikely to alter in any way the total sentence. We therefore make no further reference to the sentence on the cannabis count, except to say that in future the Royal Court should always state what is the starting point they are adopting before considering what discount there should be for mitigation. 36. In relation to the Ecstasy tablets the Royal Court adopted the Attorney General's starting point of twelve years, but made a greater allowance for mitigation, allowing four years instead of the Attorney General's three years, resulting in a sentence of eight years' imprisonment. We will refer to the mitigating factors, but say straightaway that a discount of one third was in our judgment as much as could have been given. 37. Taking first the starting point, and looking at the appropriate band in our guidelines, this was from 10 - 13 years. Within this band we consider that 11 or 12 years were appropriate, bearing in mind that Bonnar was only a courier, but a special courier as we have described. We have weighed carefully

whether the starting point can be reduced to eleven years, and, on balance, have concluded that it is just possible to do this (though we should add that the Royal Court is not to be criticised for choosing twelve years: the difference between our and the Royal Court's assessments is marginal). 38. The main elements of mitigation which Advocate Preston appearing for Bonnar placed before us were these: (i) his plea of guilty; (ii) his time in the Army in the Gulf War from which the scenes of carnage and poverty left still some residue of mental problems; (iii) his discovery on his return from the Gulf War that his wife had left him for another man while he was away at the war; (iv) his three children and three step-children; (v) his efforts to improve himself which had enabled him to become a computer draughtsman/technician; (vi) his remorse; (vii) some threats from the person from whom he had borrowed £3,000 to buy the car; (viii) two strong testimonials. 39. For this mitigation a one third discount was made by the Royal Court. In our judgment that was an appropriate discount. Making roughly that discount from our starting point of eleven years gives a sentence of seven years. Accordingly we allow his appeal and substitute a sentence of seven years, making a total sentence of seven years. Authorities AG-v-Fogg

(1990) JLR 206 . Bruton-v-AG (14 th July

2000) Jersey Unreported. Rimmer & Others-v-AG (19 th July 2001) Jersey Unreported CofA [2001/148] AG-v-Bonnar (7 th August

2001) Jersey Unreported. R.-v-Warren & Beeley [1996] 1 Cr. App. 120. Campbell, McKenzie & Molloy-v-AG

(1995) JLR 136 CofA. R.-v-Hartley [1998] 1 Cr. App. R. (s) 299. Bray-v-AG (27 th January 2000) Jersey Unreported CofA; [2000/16]. AG-v-Jones & Rayner (6 th June 1996) Jersey Unreported. Campbell & Ors.-v-AG

(1995) JLR 136 CofA. AG-v-Chadwick (30 th October 1995) Jersey Unreported. Aranguren (1994) 16 Cr. App. R. 347. Martinez (1984) Cr. App. R (S) 364. Hurley

(1998) 1 Cr App R (S) 299 . Wijs (1999) 1 Cr. App. R (S) 181. Page Last Updated: 17 Jun 2016 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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