

JERSEY / JUDGMENT

Driscoll v AG [2000] JCA 120 (29 June 2000)

[2000] JCA 120

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COURT OF APPEAL 29th June, 2000. Before: Sir Philip Bailhache, Bailiff, Single Judge Wayne Anthony Driscoll, -v- The Attorney General IN THE MATTER OF an appeal against a total sentence of 8 years' youth detention with 6 months' disqualification from driving, passed by the Superior Number of the Royal Court on 28 th October, 1998, to which the appellant was remanded by the Inferior Number on 2 nd October, 1998, after entering a guilty plea to: counts of being knowingly concerned in the fraudulent evasion of the prohibition on the importation of a controlled drug, contrary to Article 77(b) of the Customs and Excise (General Provisions) (Jersey) Law, 1972 : Count 1: cannabis resin, on which count a sentence of years' youth detention was passed. Count 2: herbal cannabis, on which count a sentence of 1 year's youth detention, concurrent was passed; and count of using a motor vehicle whilst uninsured against third party risks, contrary to Article 2(1) of the Motor Traffic (Third Party Insurance) (Jersey) Law, 1948 (count 3), on which count a sentence of month's youth detention, concurrent, with 6 months' disqualification from driving was passed. Applications: (1) for an extension of time within which to apply for leave to appeal; and (2) for leave to appeal. Advocate D. C. Sowden for the Appellant; A. J. Olsen, Esq., Crown Advocate.

JUDGMENT

THE BAILIFF: 1. This applicant, Wayne Anthony Driscoll, applied on 28 th March, 2000, for an extension of time within which to appeal against sentences imposed on him by the Superior Number of the Royal Court on 28 th October, 1998. On that day, he was sentenced for two counts of being knowingly concerned in the fraudulent evasion of the prohibition on the importation of a controlled drug, namely cannabis and herbal cannabis, and an infraction of the Motor Traffic (Third Party Insurance) (Jersey) Law, 1948 for which he was sentenced to Youth Detention for a period of 8 years. 2. The provisions of Article 30 of the Court of Appeal (Jersey) Law, 1961 provide that a person desiring to appeal or to obtain leave to appeal should give notice of appeal or notice of his application for leave to appeal within 10 days of the date of conviction. Paragraph (3) of that Article, however, allows the Court of Appeal to extend the period within which an application for leave to appeal may be made. 3. Although the statute, therefore, allows time to be extended, the principles to be applied by the Court of Appeal in considering applications for extension of time have been considered in a number of cases. 4. The Crown Advocate drew our attention in particular to a judgment of the Court in *La Solitude Farm Ltd -v- A. G.* (1985-1986) JLR 1 CofA, where Sir Godfray Le Quesne stated: "We desire to emphasise that the rules which govern the time within which appeals must be brought are rules which are intended, like all rules, to be

observed. This is of particular importance in criminal matters, as there is a clear public interest in criminal charges being decided and disposed of as quickly as possible, and certainly within the time which the statute has provided for the purpose and it should be clearly understood that leave to appeal out of time in criminal matters can only be given where special circumstances of an important character are disclosed." 5. Counsel for the applicant, who has put forward every argument which she could properly muster, has sought to persuade me that the reason for the long delay in filing the application for leave to appeal is the youth and naiveté of the applicant. Counsel submits that these factors led him to be unaware of the fact that there might be grounds for appeal. Counsel was permitted to develop those grounds in submitting why the applicant felt that he ought to be granted leave to appeal. There is no need for me to repeat them but I have given careful consideration to all those submissions. 6. I have reached the conclusion that the applicant did receive a severe sentence but not one which was out of line with other sentences imposed for serious drug trafficking offences. The applicant participated with two others in a carefully devised plan to import into the Island a very substantial quantity of cannabis in exchange for which he was to be rewarded with a motorcycle and £1,000. Sadly, he succumbed to that temptation. It does not, in my judgment, appear that the applicant would be likely to satisfy the Court of Appeal that the sentence which he received was manifestly excessive. 7. In summary I am not satisfied that the applicant has shown that special circumstances of an important character justify the extension of time within which an application for leave to appeal can be made. The application is accordingly refused. We do, however, make the Order requested by counsel for the applicant pursuant to the provisions of Article 35 of the Court of Appeal (Jersey) Law, 1961, so that the applicant will not be additionally penalised by reason of making this application. Authorities A. G. -v- Bain (2 nd December, 1996) Jersey Unreported. A. G. -v- Perchard and McConnachie (22 nd November, 1995) Jersey Unreported. Fossey -v- A. G. (1982) JJ 223 CofA. Archbold (2000 Ed'n): paragraph 7-182. La Solitude Farm Ltd -v- A. G. (1985-1986) JLR 1 CofA. A. G. -v- Edingborough (20 th January, 2000) Jersey Unreported. A. G. -v- Travis, Culkin, and Munro (8 th May,

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