

JERSEY / JUDGMENT

Munks v AG [2003] JCA 044 (06 March 2003)

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JUDGMENT

THE BAILIFF: 1. Oliver Munks applies for leave to appeal against a sentence imposed by the Inferior Number on 30 th October, 2002. Munks was sentenced for four offences on two indictments. On the first indictment he had pleaded guilty to aiding and abetting a break-in at a chemist's shop. He was the lookout and drove the getaway car while an accomplice put an axe through the door of the pharmacy and stole drugs. Subsequently, the applicant took part in the division of the stolen drugs at the home of another young man, McDonagh, who was sentenced at the same time as this applicant. 2. For this offence Munks was sentenced to 15 months' imprisonment. He was also sentenced to 9 months' imprisonment, concurrent, for receiving the drugs stolen from this pharmacy. He was sentenced to a further 3 months', consecutive, on the first indictment for an offence of carrying an offensive weapon, namely a stick knife in his car. That made eighteen months' imprisonment on the first indictment. 3. On the second indictment, for an offence of receiving a stolen safe and part of its contents, namely £20 in cash, which was an offence committed whilst on bail for the earlier offences, the applicant was sentenced to a further twelve months' imprisonment, consecutive, making total of thirty months' imprisonment. 4. The applicant is a heroin addict and has a bad record of previous convictions. Counsel for Munks has submitted that the sentence of thirty months' imprisonment was manifestly excessive on several grounds. First, he submits that the sentence of three months' imprisonment for possession of an offensive weapon should have been concurrent and not consecutive. We find no substance in this submission. This was an entirely separate offence, completely unrelated to the offences of dishonesty and not in any way forming part of the same transaction. A consecutive sentence was, in principle, entirely correct, as indeed was acknowledged by counsel for the applicant in the lower Court. 5. Secondly, it is said that there is unfair disparity between the twelve month sentence passed on Munks for the offence of receiving the safe and the twelve months passed on Mohammed for the same offence on the ground that Mohammed received £300 from the safe, whereas Munks received only £20. We agree with the written submissions of the Crown Advocate that the evidence showed Munks to be much closer to the original offence than Mohammed. We find no force in this submission. 6. Thirdly, it is said that there was further unfair disparity between the nine month sentence imposed on Munks for aiding and abetting the break-in at the pharmacy, whereas McDonagh received only six months'. We have already described Munks' part in this offence; McDonagh's part was to allow his home to be used for the distribution of the stolen drugs. His was a lesser involvement and in our judgment there was no

further disparity. 7. Fourthly, counsel submits that the totality of 30 months' imprisonment represented a crushing blow, having regard to the eighteen months' imprisonment for the more serious offences in October, 1999. To that, counsel for the applicant adds that the lower Court did not give sufficient weight to the guilty plea. 8. The Crown Advocate has conceded that the totality of the offending was more serious in 1999 than the offences for which he was sentenced in October, 2002. On the other hand, in 1999 the applicant had the benefit of youth in that he was then only twenty one. Furthermore, there is, by definition, less mitigation available to him in 2003, or even 2002, because his record is worse. Furthermore, his offending on this occasion involved the commission of an offence whilst on bail which the Court has always regarded as an aggravating factor. 9. Viewing the matter in the round, the Court is not persuaded that the thirty months' imprisonment imposed by the Inferior Number for the totality of this offending is in any way excessive. Indeed, we think that it was absolutely right. The Inferior Number took all material factors into consideration and gave proper weight to the mitigating circumstances. It is a matter of some sadness that a young man of Munks' ability and talents should have allowed his life to be corrupted by drugs in this way. We hope that he will find the strength of character to stand by his expressed intention to live a drug free life in the future. In the meantime, he must pay the penalty for the offences that he has admitted. The application is accordingly refused. Authorities Mandel -v- AG (4 th July 1989) Jersey Unreported CofA. McLaughlin -v- AG (4 th July 1991) Jersey Unreported CofA. Wood -v- AG (15 th February 1994) Jersey Unreported CofA. Bevan -v- AG

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