

JERSEY / JUDGMENT

Sullivan -v- AG 27-Jan-2006

[2006] JCA 012 (27 January 2006)

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COURT OF APPEAL 27 January 2006 Before: Sir John Nutting, Bt., Q. C., President; P. D. Smith, Esq., Q. C.; and D. A. J. Vaughan, Esq., C. B. E., Q. C. Francis Martin Sullivan -v- The Attorney General Application for leave to appeal out of time against sentence passed by the Superior Number of the Royal Court on 31 st August, 2004 on a guilty plea to: 1 count of: Possession of a controlled drug with intent to supply contrary to Article 6(2) of the Misuse of Drugs (Jersey) Law 1978 . Advocate M. L. Preston for the Applicant C. M. M. Yates, Esq., Crown Advocate

JUDGMENT

THE PRESIDENT: 1. On 31 August 2004 this Applicant was sentenced by the Superior Number of the Royal Court to serve 5 years 6 months' imprisonment for an offence of possessing a controlled drug with intent to supply. A year later on 12 September 2005 he was sentenced to serve 6 months' imprisonment consecutive for his part in an affray at HM Prison La Moye. He now seeks leave from this Court to have the former sentence reviewed. 2. A preliminary point arose because in respect of the earlier sentence his application for leave was out of time and he therefore required the leave of this Court to entertain his application. The Applicant should have filed his application by 28 September 2004. In the event it was not filed until 12 October 2005; and was therefore out of time by at least twelve months. 3. The circumstances of the late application were somewhat peculiar. On 14 January 2004 the Applicant arrived at Jersey Airport with a quantity of MDMA tablets. He was later arrested and charged with possession of the tablets with intent to supply. He was initially remanded into custody but bailed two months after his arrest for a period of three weeks so that he could return to England where his partner was critically ill and in intensive care following the birth of their child. On 8 April 2004 he returned to Jersey and was remanded back into custody at HM Prison La Moye pending his trial. 4. On 22 June 2004, during the period of his remand, a serious affray took place at the prison in which the applicant played a part. However the indictment preferred against him included two others who had allegedly played more prominent roles. One of these defendants, Steven Shewan, pleaded not guilty at a directions hearing and accordingly the trial date was fixed for 12 September 2005. In fact on that date all the defendants, including Shewan, pleaded guilty to the affray and were sentenced by the Superior Number of the Royal Court to various terms of imprisonment. 5. In the meanwhile the Applicant was indicted before the Superior Number of the Royal Court on 16 th July, 2004 in

respect of the drugs offence. He pleaded guilty and was sentenced on 31 st August, 2004. 6. Had the Applicant been tried alone for the affray, the Royal Court no doubt would have taken steps to list both the drug offence and the affray on the same day and certainly much earlier than 12 September 2005. However the effect of the joint charge and the not guilty plea by a co-defendant caused a delay which resulted in separate sentence hearings for the two offences. We are told that in the aftermath of the hearing on 31 August 2004 the Applicant was advised to await the outcome of the sentence for the affray before considering whether to apply for leave to appeal. The responsibility for the failure to file a timely application was therefore that of the Applicant's lawyers. 7. We have not heard argument on the point and do not therefore propose to express a concluded view whether that advice was correct or otherwise. Indeed in the light of our conclusion that the Applicant should have leave to appeal out of time, a determination on the question is irrelevant. However lest by our silence we should be thought to condone the advice given and lest such inactivity in submitting a timely application might be thought to set a precedent, we emphasise that we would require to be convinced that there was a good reason why any application for leave to appeal in such circumstances should not be filed appropriately. In our view it is for the Assistant Judicial Greffier, in consultation with this Court and having heard any relevant submissions, to consider whether an application for leave to appeal, filed appropriately, should be heard forthwith or whether it should be adjourned to await the outcome of some other hearing in the Royal Court. 8. But it is clear from the narrative above that the fault, if fault there be, cannot be laid at the door of the Applicant. He had no reason to second guess the advice of his lawyers and, against that advice, to submit an application for leave by the appropriate date. Accordingly we did not penalise him and, lest he should feel a sense of injustice that his application for leave was not heard through no fault of his, we granted leave to appeal out of time. 9. As a result Advocate Preston advanced grounds in support of his substantive argument for leave to appeal the sentences of 5½ years imposed by a Court presided over by the Bailiff on 31 August 2004. 10. In more detail, the facts of the drug offence were as follows. On 14 January 2004 the Applicant, a 38 year old Irishman, arrived in Jersey on a flight from Gatwick carrying a small holdall. He shared a taxi to St Helier with another man and checked into the Mayfair Hotel. Later he left the hotel without his holdall. In the absence of the Applicant two Police Officers then searched his room and the holdall, which was found to contain drugs. On subsequent analysis these drugs were proved to consist of 2,011 Ecstasy tablets having a street value in excess of £20,000 and a wholesale value of between £12,000 and £16,000. The Applicant was arrested and interviewed. He made no response to questioning and was charged with possession of Ecstasy with intent to supply contrary to Article 6(2) of the Misuse of Drugs (Jersey) Law 1978. 11. In the meanwhile on 22 June 2004 a serious incident took place at HM Prison La Moye. During the afternoon of that day the Applicant and a number of other inmates had been drinking vodka which had been smuggled into the prison. One of these men became agitated because he had not received some T shirts which had been sent to him as a birthday present. Shortly afterwards the T shirts were given to this inmate but by that time he and others, including the Applicant, had moved to a dormitory and it was clear to the observing prison officers that they were intent on trouble. They soon erected a barricade. Prison officers requested entry to the dormitory and the barricade was partially removed. The Applicant was in the forefront once the barricade had been

removed and was the first to talk to the prison officers, but the conversation resulted in the Applicant pushing the officer away. 12. There followed a stand off for some time. The inmates re-erected the barricade and the officers re-locked the iron gate leading to the dormitory. Later, inmates, including the Applicant, started shouting abuse and issuing threats from behind the barricade and the Applicant was seen to break a dormitory window with a stick. He also telephoned the Force Control Room at Police Headquarters from his mobile telephone alleging that he and a number of inmates were being held hostage by prison officers in the dormitory. 13. At this point the incident escalated considerably. Another inmate was heard to shout " We're going to have a fire ". The Applicant was heard to discourage such activity. Others however continued to threaten the officers, while Inmate who had suggested lighting a fire was seen trying to set light to some flammable objects. The inmates then began to throw debris including a cistern lid, pieces of wood and flaming blankets from the dormitory windows into the prison yard below. 14. As the incident escalated the Applicant engaged in conversation with the prison officers through a broken window. He offered to act as a negotiator and pointed out that the dormitory was barricaded at both ends. 15. By 7.10 pm that evening the preparations which the prison authorities had deemed necessary to undertake were in place. Six units totalling 28 men comprising specially trained control and restraint teams, wearing personal protection equipment, forcibly entered the dormitory. Inmates attacked them with poles and sticks. The officers eventually managed to remove the barricade. Smoke was seen billowing from fires inside the dormitory later identified as six separate seats of fire. Several inmates and some of the officers were injured in the ensuing melee and several became affected by smoke inhalation. The fires were eventually extinguished and those responsible arrested. The final cost of repair to the prison was in excess of £35,000. 16. In presenting the case against the Applicant on 12 September 2005 for this offence, the Crown Advocate conceded that the Applicant had played a lesser role than the others. Advocate Preston, in his admirably succinct and measured submissions to us, has asserted that the Applicant was significantly disadvantaged by having his responsibility for these two different offences assessed on different dates by different tribunals. He points out that, notwithstanding that the Bailiff knew in August 2004 that the Applicant would be sentenced later for the affray, the only course open to the Court on that day was to sentence the Applicant for the offence before it and that the Court would have been bound to disregard the affray charge about which in any event it knew nothing. 17. Mr Preston says that a tribunal sentencing the Applicant for both offences at once would, on the contrary, have had the totality principle in mind for each offence and would have taken account of that principle in the sentence to be imposed for each offence. 18. We accept that Mr Preston's argument has force, but in the final analysis the question for this Court is whether the individual sentences or their consecutive nature render them manifestly excessive, there being no issue that a prison sentence was right in principle. Mr Preston submitted that, in respect of his co-defendants in the affray and in respect of Steven Shewan in particular, the Applicant has a justified sense of grievance because there was insufficient disparity between the 7½ year total sentence imposed on Shewan and the 6 year total sentence imposed on the Applicant. Shewan was the ring leader in the affray and also fell to be sentenced for what was described as a deliberate and premeditated assault on a former friend against whom he bore a grudge. On the basis of the totality principle, Shewan was sentenced for

4½ years for the assault and 3 years' imprisonment consecutive for the affray. 19. In sentencing the Applicant for the affray, the Deputy Bailiff explained the way in which the Court approached its task and the matters which the Court had taken into account. Having sentenced Shewan, he addressed the Applicant thus: "Sullivan, the Crown accepts and the Court accepts that you were the least involved. You attempted to act as a negotiator in this matter. In mitigation you too have entered a guilty plea, in your case, at the earliest opportunity and you were forthcoming and co-operative from the start. That stands you in good stead. You too have shown remorse and you too have shown a real motivation to try and conquer your drug use. In particular we are impressed with the progress you made whilst in prison in the United Kingdom on the matters to which Miss Fitz, (who at that stage represented the Applicant), has referred us. We also take into account all the other mitigation which appears in the papers before us. There is one factor which has particularly influenced us, and it is the matter put forward by Miss Fitz in relation to totality. You were on remand at the time of this offence. You admitted your part immediately and one might therefore have expected in the normal course of events that your part in the affray would have been dealt with at the same time as your drug offences in August. Had that been the case, the totality principle would undoubtedly been applied. Miss Fitz pointed out that on the Crown's own conclusions, Shewan is being given a total of 2 years less, because of totality, than he might have expected if the individual conclusions of the Crown for each offence had been accepted. It follows that, if we give nothing off for totality in your case, you will receive a total of 7 years for the drug offences and this affray, being the 5½ year sentence that you are already serving, and 18 months' imprisonment for this, as moved for by the Crown, whereas Shewan would only be receiving 7½ years' imprisonment for an assault which the Crown accepts is more serious than your drug offences, and for the affray in which he played a more serious part and pleaded guilty much later. The two figures would therefore be inconsistent and unfair. In the circumstances, we think that Miss Fitz has put the case quite correctly and, because of the unusual circumstances of the fact that you were not dealt with at the same time as the drug offence, we must take account of it; and of all the other positive mitigation which she has put forward we are going to grant the request that she has made. In your case the sentence for the affray is one of 6 months' imprisonment, to be consecutive to your existing sentence." 20. We have carefully considered what the Deputy Bailiff said. We must emphasise that we have also taken into account all the points which Mr Preston put forward including the documents with which he furnished the Court and his cogent written submission. 21. We have concluded that the Deputy Bailiff fairly and appropriately distinguished between the responsibility of Shewan and the Applicant for the affray. In the light of what he said and of the requirement for the Royal Court to have primary regard to the total sentences to be served by both men, we do not consider that it is sensible to contrast the facts of the grave and criminal assault committed by Shewan with those of the drugs offence committed by the applicant. Moreover, to contrast the 4½ year sentence imposed on Shewan for the assault and the 5½ year sentence imposed on the applicant for the drugs offence is neither a meaningful nor a fruitful exercise. 22. We do not accept that the Applicant has any justified sense of grievance at the disparity between himself and Shewan. As we have observed the question in the last analysis is one of totality to which it is clear the Royal Court gave proper consideration. We do not accept that the sentence of 5½ years was manifestly excessive for the

drugs offence, nor indeed that the total sentence of 6 years which the Royal Court decided the Applicant should serve was manifestly excessive. 23. Accordingly we decline to give leave to the Applicant to appeal. No Authorities Page Last Updated: 22 Sep 2015 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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