

JERSEY / JUDGMENT

The 1988 Law v Smale

Source: jerseylaw.je · Research copy typeset by Esheria. Not court-issued or certified.

[2003]JRC099A royal court (Samedi Division) 19th June 2003 Before: M.C. St. J. Birt, Esq., Deputy Bailiff, and Jurats Le Brocq and Allo. In the matter of the Drug Trafficking Offences (Jersey) Law, 1988. (The 1988 Law) And in the matter of Philip Stuart Smale (the Defendant) Representation by the Attorney General applying for an Order that the Court: (1) pursuant to Article 10B(2) of the 1988 Law, issue a certificate that the amount that might be realized in the case of the Defendant is greater than the amount taken into account in making a confiscation order against him; and (2) thereafter, pursuant to Article 10B(4) of the 1988 Law, substitute for the sum of £363.34 (the amount of the confiscation made on 11th October, 2002) the sum of £8,863.34. On 11th October 2002 the Defendant pleaded guilty to 3 counts of possession with intent to supply, 3 counts of possession, and 1 count of supplying cannabis resin, and was sentenced to 2 ½ years imprisonment and a confiscation order of £363.34. [See Jersey Unreported Judgment: [2002/194A]. M. St.J. O'Connell Esq., Crown Advocate. Advocate C.R.G Deacon for the Defendant; (who had elected not to be present but who was aware of the proceedings.)

judgment

the deputy bailiff: 1. On 11th October, 2002, Mr Philip Stuart Smale was sentenced by the Inferior Number to a total of 2½ years imprisonment for a number of offences of possession with intent to supply controlled drugs, and other offences under the Misuse of Drugs (Jersey) Law 1978. 2. At the time, the Attorney General presented a statement under Article 5(1) of the Drug Trafficking Offences (Jersey) Law 1988. Based on that, the Court assessed the proceeds of drug trafficking at £28,944.34. It also determined that the realisable property of the defendant was £363.34. In the circumstances, in accordance with Article 6 of the 1988 Law, it made a confiscation order in the sum of £363.34. 3. The Attorney General has applied to the Court today to vary that confiscation order. He accepts that the statement was in error. The statement disclosed on its face that the defendant was the owner of a speedboat, registration JY.1103 valued at £8,500.00; indeed that boat had been made the subject of a saisie judiciaire. However, because it transpired that the father of the defendant had lent the defendant the money with which to buy the speedboat, so that the boat was not itself purchased with the proceeds of drug trafficking, the statement of the Attorney General did not include the speedboat in its list of realisable assets. 4. The error in thinking appears, from paragraph 4.3, where it was said in the statement: “Information revealed by further enquiries indicate that the speedboat may not be the proceeds of drug trafficking” We understand that that was confirmed at the hearing when a letter from the father was handed up to the effect that he had indeed loaned the money to the defendant. 5. We have to say that that sentence and the Attorney General’s statement generally discloses an elementary error. The

whole regime of confiscation orders under the 1988 Law does not depend on establishing any link between specific assets and the proceeds of drug trafficking. Under that regime the Court is not concerned with whether a particular asset was bought with drug trafficking proceeds or with entirely clean money. The Court is concerned only with establishing two things: on the one hand what is the benefit which the defendant has received from drug trafficking; and on the other, what are his realisable assets. 6. The Court then makes a confiscation order in the amount of the benefit from drug trafficking, or in the amount of the realisable assets if that is less than the proceeds of drug trafficking. There is no requirement for any direct connection between the two. 7. We hope very much that the Attorney General will ensure that all his Crown Advocates are reminded of this elementary proposition and that the error which was made in this particular statement will not be repeated. For the sake of Mr O'Connell's reputation we say that he was not the Crown Advocate who presented the case on the last occasion. 8. As we say, the Attorney General now applies to vary the confiscation order. Previously that was not something which could be done, but it can now be done pursuant to Article 10B of the 1988 Law as amended. Article 10B provides as follows: "Increase in realisable property:

- (1) This Article has effect where, by virtue of paragraph 3 of Article 6, the amount which a person is ordered to pay by a confiscation order is less than the amount assessed to be the value of his proceeds of drug trafficking.
- (2) If, on an application made in accordance with paragraph 3, the Court is satisfied that the amount that might be realised, in the case of the person in question, is greater than the amount taken into account in making the confiscation order (whether it was greater than was thought when the order was made or has subsequently increased) the Court shall (emphasis added) issue a certificate to that effect giving the Court's

reasons.

- (3) An application under paragraph 2 may be made by the Attorney General or by the Viscount in relation to the realisable property of the person in question.
- (4) Where a certificate has been issued under paragraph 2 the Attorney General may apply to the Court for an increase in the amount to be recovered under the confiscation order, and on that application the Court may: (a) substitute for that amount such amount not exceeding the amount assessed as the value referred to in paragraph (1) as appears to the Court to be appropriate having regard to the amount now shown to be realisable; and (b) increase the term of imprisonment fixed in respect of the confiscation order under paragraph (1) of Article 7. 9. It can be seen therefore that there are two quite separate stages to the process under Article 10B. First the Court must consider whether the requirements of paragraph (2) are met; in other words, is the Court satisfied that the realisable property is greater than the amount which was taken into account in making the confiscation order, whether the realisable property was in truth always greater than the amount taken into account, or whether it has subsequently increased. If the Court is satisfied of that it shall issue a certificate. In other words it has no discretion in the matter.

10. Miss Deacon did not contend that the requirements of this paragraph were not met in this case. It is clear that the realisable property did include the speed boat with the result that the value of the realisable property was greater than was taken into account by the Court in making the confiscation order. We therefore issue a certificate to that effect, and we state that the reason for agreeing the conditions are met was an erroneous belief on behalf of the Crown Advocate instructed by the Attorney General to present the case, that the speed boat did not represent realisable property because it had been purchased with moneys loaned to the defendant by his father.
11. The second stage arises under paragraph (4), to which we have referred. This is an entirely discretionary stage. Having issued a certificate and ascertained that there was more realisable property than was at first thought, the Court may, in its discretion increase the amount of the confiscation order up to the increased value of the realisable property.
12. Miss Deacon submits that we should not exercise our discretion as requested by the Crown. She says that this was a mistake by the Crown. There is no question of the defendant having hidden assets, or of assets being unknown to the Crown even though not hidden by the defendant. This asset was known of by the Crown at the time; the Crown simply made a mistake. The defendant believed, following sentence, that he was entitled to keep the boat and would be able to use it in order to repay the loan to his father.
13. Crown Advocate O'Connell on the other hand says that there is a strong public interest in confiscating the proceeds of drug trafficking. Drug dealers should not benefit by being able to keep assets simply because of a straightforward error by the Prosecution.
14. The Court has considered the matter carefully and, we have concluded that the balance on this occasion comes down in favour of the Prosecution. Miss Deacon accepted that, if an application had been made on the day in the light of the correct realisable property, she could not have opposed it and the Court would have made a confiscation order in the increased amount which took account of the speed boat, so that the boat would have been confiscated.
15. Should drug dealers be allowed to benefit at the expense of the public from simple errors, and keep assets which would have been confiscated had the procedure been correctly followed? Each case will of course turn on its facts, but we think that the public interest is a strong one and there is nothing in the circumstances of this case which leads us to believe that the public interest should not prevail. We do not think it would be unfair or unreasonable in all the circumstances for this boat to be taken now, given the circumstances we have described.
16. Accordingly we increase the confiscation order under Article 10(4) to the new sum of £8,863.34, and we also make an order that the Viscount be authorised to realise the speed boat in satisfaction of the confiscation order. No Authorities.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.jerseylaw.je/judgments/unreported/Pages/%5B2003%5DJRC099A.aspx>

CASE PAGE <https://chat.esheria.ai/case-law/jersey/the-1988-law-v-smale-2003>

Prepared on 26 October 2026 · Esheria