

JERSEY / JUDGMENT

The Attorney General v Anita Rose Sweeney

COURT
ROYAL COURT

BEFORE
Sir Philip Bailhache, Bailiff, and Jurats
Rumfitt, Potter, Quérée, Georgelin, Allo and
Clapham.
The Attorney General
-v-
Anita Rose SWEENEY.
Sentencing by the
Superior Number of the Royal Court,
to which the defendant was remanded by the
Inferior Number, on 20th June, 2003,

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[2003]JRC122
ROYAL COURT
(Samedi Division)
14th July 2003

Before: Sir Philip Bailhache, Bailiff, and Jurats
Rumfitt, Potter, Quérée, Georgelin, Allo and Clapham.
The Attorney General
-v-
Anita Rose SWEENEY.
Sentencing by the
Superior Number of the Royal Court,
to which the defendant was remanded by the Inferior Number, on 20th June, 2003,

on 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(2) of the Customs and Excise (Jersey)
Law, 1999.
Count 1: heroin.
Count 2: cocaine.
Age: 19.
Plea: Guilty

Details of Offence:

Sweeney was stopped and questioned when she arrived at Jersey Airport. She had no luggage with her and initially lied about her reasons for being in Jersey. When confronted with her lies, and realising that a search of her person would be undertaken, she admitted that she was carrying controlled drugs in her clothing and also internally. She subsequently produced a total of 121.6 grams of heroin and 134 grams of 'crack' cocaine. The total street value of both drugs was £68,770 and the wholesale value was £38,415. Sweeney was not a drug addict and advised in interview that she knew that she was importing drugs and that she had been offered £1,000 to undertake the importation. A starting point of 10½ years on each count had been taken, increased in accordance with the directions of the Court in AG –v- Valler to 12 ½ years. A Confiscation Order in the sum of £193.65 was also sought.

Details of Mitigation:

In the Crown's opinion, Sweeney was entitled to credit for her guilty plea and whilst she initially lied she was thereafter fully co-operative, revealing the presence of the drugs and their location on her person. She had also provided information to the Customs Officers in relation to the importation and how it was meant to be completed. Given her age, she was also entitled to credit for that factor, although the Crown concluded that, for the purposes of Article 4 of the Criminal Justice (Young Offenders) (Jersey) Law, 1994, the seriousness of the offending meant that no other means of disposal could be considered other than custodial. She had two minor Court appearances for dishonesty and was a first drugs offender. The Social Enquiry and Psychological Reports provided detailed information on her background, revealing that she had suffered a deprived upbringing over many years. The Crown had had regard to all of the information contained within the papers in reaching its conclusions. The Defence contended that the starting point was too high and described the case as "exceptional". The Defence contended that AG –v- Valler was not appropriate and that the appropriate band for starting points was calculated by reference to the total quantity of the drugs imported. Both drugs were in powder form. The early guilty plea was emphasised and the contents of the Reports was also emphasised. The past history was relevant as she was scared of the man who had requested the drugs run as he was known for violence and against her background it was difficult for her to refuse. There had been a marked improvement whilst in custody and letters of remorse and references were handed up to the Court (not seen by the Crown).

Previous Convictions: One offence for breach of the
Bail Act, 1976 and one offence for 3 counts of shoplifting.

Conclusions:

Count 1: 6½ years' Youth Detention.

Count 2: 6½ years' Youth Detention,
concurrent.
Starting point: 12½
years' imprisonment.
Confiscation Order for
£193.65

Sentence and Observations of Court:

Count 1: 3½ years' Youth Detention.

Count 2: 3½ years' Youth Detention,
concurrent.
A Confiscation Order
in the sum of £193.65 was granted.
Forfeiture and
destruction of the drugs.
The Court reviewed the
comments made previously in the cases of Campbell and Rimmer
concerning the fixing of a starting point and relevance of the involvement of
the accused. The Court considered
the Crown's approach in this case to be wrong and that too high a
starting point had been taken. The
Court indicated that in its view a starting point for persons categorised as
"mules" was to be at the bottom of the sentencing bands. In Sweeney's case the
Court
therefore fixed 10 years' Youth Detention as the starting point. Sweeney was
described in some respects
as naïve but she did the importation for financial gain. She had no previous
convictions for
drugs and in mitigation she was co-operative, had the benefit of a guilty plea
and the personal circumstances of a deprived upbringing over many years. The
Court decided that Sweeney clearly
needed help and was prepared to be more generous in making allowance for the
mitigating factors than the Crown.
The Court expressed the hope that, by imposing the sentence that it was
going to, Sweeney would be given an opportunity which she had not previously
had and that she would take advantage of the help available so that upon her
release she could make something of her life.
J.C .Gollop. Esq., Crown Advocate.
Advocate C.R.G. Deacon for the Defendant.

JUDGMENT

THE BAILIFF: 1. This defendant has pleaded guilty to the importation of 121 grams of heroin and 134 grams of crack cocaine. She was detained by Customs Officers at the Airport and found to have the drugs secreted both internally and in her clothing. The street value of the heroin was of the order of £45,000 and of the cocaine £21,000. She had been given the drugs in Liverpool and told that she would be given £1,000 when she delivered the drugs in Jersey to someone called “Steve”. 2. She knew she was carrying drugs. She might be described in the vernacular as a classic mule. Heroin and crack cocaine have caused and continue to cause immense damage to this community and misery and degradation to the unfortunate users who are addicted to them. The importation of these Class A drugs for commercial purposes is a very serious criminal offence. 3. The Criminal Justice (Young Offenders) (Jersey) Law, 1994 provides at Article 4 that: “A court shall not pass a sentence of youth detention on a person under the age of 21 unless it considers that no other method of dealing with her is appropriate...” for a number of reasons. One of those reasons is that the offence is so serious that a non-custodial sentence cannot be justified. 4. We have reached the conclusion that these offences are, indeed, so serious that a sentence of youth detention cannot be avoided. There are two guideline cases that are relevant. The first is *Campbell & Others –v- Attorney General* [1995] JLR 136. The Court of Appeal stated in that case that the duty of the sentencing court was first to assess the extent to which the defendant was involved in drug trafficking. The court stated that much will depend upon the amount and value of the drugs involved, the nature and scale of the activity and of course any other factors showing the degree to which the defendant was concerned in drug trafficking. 5. The amount of the drugs is the most significant factor but the court should not regard it as the only factor. The ranking on the ladder of criminal involvement is also of importance. In *Rimmer & Ors –v- A.G.*

[2001] JLR 373 the Court of Appeal stated: “21. Next the Attorney General submitted that the rôle of the defendant and the relevant drug trafficking was either not a factor at all or a factor of small relevance in deciding on the starting point, because every person at every level in the drugs chain, from the ultimate organizer through the different levels of dealer to the couriers who regularly carry drugs and finally to the once-off courier (sometimes described as a “mule”) whose sole involvement is a once-off carriage of a parcel which they may not even know contains drugs, is, he submitted, responsible for the introduction of the drugs into Jersey. Without each link in the chain the drugs would not enter Jersey”

22. This proposition is not consistent with the judgment in *Campbell* and is not accepted by this Court.” In the judgment of this Court there is a clear distinction to be drawn between the different levels of involvement in the drugs trade. To sentence the “mule” and the ultimate drugs baron identically would be both inappropriate, having regard to the degrees of harm which those at each level inflict on society, and therefore, the different levels of culpability, and plainly unfair to defendants on the lower levels of involvement. We, therefore, reject this submission. 6. In the same *Rimmer* guideline judgment the Court of Appeal suggested bands for the appropriate starting point in terms of imprisonment related to the weight of

the Class A drug. This case involving 255 grams of Class A drugs in powder form falls, upon one view, at the bottom of the 5th band, namely between 11 and 14 years' imprisonment. The Court of Appeal stated, however, in that case: We emphasise that these bands represent only guidelines and are not to be treated as if embodied in a statute. The position of a particular defendant on a particular count within one of the bands is to be determined by reference to the weight of drugs and their rôle and involvement as principal factors, together with other lesser but relevant factors. The margins of these bands are not to be treated as set in stone. There may be exceptional cases in which on a particular count the starting point may be above or below the band otherwise appropriate." 7. The Crown has suggested that the appropriate starting point here is one of 12½ years' imprisonment. The basis of that submission is that applying principles set out in AG -v- Valler (28th February 2002) Jersey Unreported; [2002/48] the starting point on each count should be taken as 10 or 11 years but increased to 12½ years' to take account of the 2 drugs involved. 8. We think that in the context of this case that approach is wrong and that the starting point is too high. There is no doubt that this defendant is, as we have stated, a "mule". We think that the appropriate starting point for a "mule" in the circumstances of this kind of case ought seldom to be above the bottom of the Rimmer bands and may sometimes be below. This defendant is in some respect a naïve and foolish young woman, who has been exploited by evil men far higher up the ladder of responsibility for their own ends. She is not without responsibility; she knew what she was doing, and she did it for financial reward. We think the appropriate starting point is one of 10 years' youth detention. 9. In mitigation, she is aged 19 and has no previous convictions involving drugs. She has minor convictions for dishonesty. She has pleaded guilty to the indictment and admitted her involvement from the earliest stage. She has been co-operative with the investigating officers. More significantly she has had an appalling deprived upbringing, involving abuse of different kinds extending over many years. She has been left in a confused and untrusting state and is clearly in need of help in a number of areas of her life. We think that we can give a slightly more generous allowance for the mitigating factors available to her than was given by the Crown Advocate.

10. Sweeny, you have committed a very serious crime but the sentence we are about to impose may, we hope, give you opportunities of which you have been deprived so far. We hope that during your time in the Young Offenders Centre, you will complete the course on motor mechanics and take advantage of the help which has, I know, already been given to you by the prison officers, and will continue to be given to you. We hope that having served your sentence you will emerge qualified to make something of your life in the future.
11. We are going to impose a sentence of youth detention upon you, as we must, but giving due allowance for all the mitigating factors we are going to sentence you on count 1 to 3½ years' youth detention; on count 2 to 3½ years' youth detention, concurrent; making a total of 3½ years' youth detention. We order the destruction and forfeiture of the drugs. Authorities A.G. -v- Valler (28th February, 2002) Jersey Unreported; [2002/48]. Rimmer -v- A.G. [2001] JLR 373. Criminal Justice (Young Offenders) (Jersey) Law, 1994: Article 4.

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Prepared on 26 October 2026 · Esheria