

JERSEY / JUDGMENT

The Attorney General v Paulo Duarte Pinto

COURT

Royal Court

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Inferior Number Sentencing - drugs - possession of utensil**[2019]JRC038****Royal Court****(Samedi)****8 March 2019****Before :**

Sir William Bailhache, Bailiff, and Jurats

Olsen and Austin-Vautier

The Attorney General

-v-

Paulo Duarte Pinto

Sentencing by the Inferior

Number of the Royal Court, following a guilty plea to the following charge:

1 count of:

Possession of a utensil for the purposes of
committing an offence, contrary to Article 10 of the Misuse of Drugs
(Jersey) Law 1978 (Count 3).

Age: 47.

Plea: Guilty.

Details of Offence:

Pinto was arrested as a result of a

joint Police and Customs surveillance operation. He had given an acquaintance

(Young) a

lift to South Hill, where he waited for Young to return. Young walked into an area of
undergrowththen emerged a short while later slipping items into his trouser pockets. Young was
detained for search when hereturned to Pinto's vehicle, as was Pinto. A commercial quantity of heroin was
seized from Young, £800 cash seized from Pinto's car. A small set of digital scales
were later

found in Pinto's flat. During

interview Pinto denied any knowledge of Young's activities, saying he was
just giving a friend a lift, and was adamant that his digital scales had never
been used to weigh heroin. TheStates Analyst found traces of heroin on the seized scales. Pinto and Young were
indicted. On the basis of a plea entered by Young

the Crown decided it was not in the public interest to take Pinto to trial on a

	'knowingly concerned in the supply' count.
Details of Mitigation:	Guilty plea, although not at first opportunity. Single, unemployed, no dependants, supported by siblings while seeking employment.
Previous Convictions:	Nine previous convictions, five relating to possession of controlled drugs, no drug convictions since 2005 when he was ordered to complete 90 hours of community service.
Conclusions:	
Count 3:	£800 fine. Forfeiture and destruction of the digital scales sought.
Sentence and Observations of Court:	
Count 3:	12 month Probation Order. £800 seized on arrest to be held by Viscount for the period of the Probation Order, may be returned on successful completion of the order. Forfeiture and destruction of the digital scales ordered. Defence costs application dismissed. C. M. M. Yates, Esq., Crown Advocate. Advocate M. J. Elks for the Defendant.

JUDGMENT

THE BAILIFF: 1. You are here to be sentenced on one count, which is of possession of a utensil for the purposes of committing an offence under Article 10 of the Misuse of Drugs (Jersey) Law 1978. The utensil in question is a set of digital scales, and those scales, as the expert evidence before the Court put to us, are able to weigh minute quantities very accurately. It is not a measure which is commonly associated with any domestic or household purpose, and that is not to say that the scales that you had in your possession would necessarily be used for dealing. They might have been used for dealing but they might have been used for the purposes of checking a quantity of drugs to ensure that you had not be short changed by somebody else. The Court understands that and you are not being sentenced on the basis of dealing. On the other hand we have taken into account the possibility of dealing arrangements only for the purposes of the general condition that we are going to attach to the Probation Order in a moment. 2. The record that you have shows that you had some difficulties years ago in court and since 2005 or thereabouts you have had a good record. You seem to us to be somewhere near a crossroads. You can go one of two ways and both involve drugs to this extent. If you go one way and carry on taking drugs it is going to be a bad way and if you get yourself under control you stand a chance of not going back to court again and that is what we would like to see and I am sure you would like to see that too. And that is why we are going to impose a Probation Order so that you can get some assistance from Probation. 3. You are put on Probation for 12 months and I warn you that if

you commit any other offences during that period you are liable to be brought back. If you do not fulfil the conditions of the Probation Order you are liable to be brought back and then you can be sentenced again for this offence. 4. There will be all the usual conditions attached to the Probation Order which will be explained to you, but in addition the £800 which you had in the car is to be placed under the control of the Viscount and on the successful conclusion of the Probation Order the £800 will be returned to you. That does operate as an additional incentive to you to ensure that you comply with the Probation Order conditions and it is satisfactorily signed off. 5. We order the forfeiture and destruction of the electronic scales in question. 6. The defence have applied for costs because the charge in the Magistrate's Court was solely one of being concerned in the supplying of a controlled drug, that is Count 2 on the Indictment in this Court, and the Crown having laid that charge then a week later did not proceed with it and accepted a not guilty plea, accepting in lieu of that if you like a guilty plea to Count 3 on which the defendant has just been sentenced, namely possession of a utensil for the purposes of committing an offence. So it is said that all the costs that were incurred in contemplating a defence of Count 2 were needlessly incurred and the defendant should be entitled to the costs which he has paid been out in that connection. The Crown refers to the case of AG-v-Gouveia

- [2000] JLR 324 where the Deputy Bailiff, Sir Michael Birt said that as far as the Court was concerned "The application for costs would be rejected as they were incurred as a result of the applicant's pleading not guilty to all the counts on the indictment until the last possible moment" He made three general observations: "(a) An award of costs would not normally be appropriate with respect to not guilty pleas accepted by the prosecution at an early stage after discussion with the defence;
- (b) An award would often be appropriate, however, where the prosecution, having had a reasonable opportunity to consider the pleas, decided to proceed with a particular count or counts and there was either an acquittal or the counts were dropped at a late stage after considerable extra costs had been incurred;
 - (c) Costs would not normally be awarded where there was a trial with a number of counts, resulting in convictions on some and acquittals on others. They might be awarded, however, where a defendant had pleaded guilty to a particular offence but the prosecution had insisted on proceeding on a count relating to a more serious offence and was not successful, as the defendant's costs would only have been incurred because of the prosecution's proceeding on that particular count." 7. In this case the curiosity is that if the Crown had not laid Count 2 on the Indictment there would not have been an obvious basis for a claim for costs in relation to Count 2. By laying Count 2 the Crown has, as it were, exposed itself to the possibility of an order for costs if that count were not proceeded with. One of the factors which would lead to making a costs order in this case would be to ensure that the Crown gives proper consideration at an early stage to what charges it is going to lay on indictment in this Court. It should not be taken to be any encouragement to the Crown to fail to give proper consideration to those charges at the time of the indictment. It is not appropriate that an indictment be laid with all the work and personal stress for a defendant as a result of

that, for the Crown then just to abandon charges on the indictment at a later stage. On the other hand in this case the Magistrate's Court charge had been laid, the Crown knew it was a not guilty plea, the circumstances were such where it was at least possible that the charge could be maintained and the Crown did not allow much time to pass after the indictment was laid for the not guilty plea to be accepted. It was accepted within a week. It is very marginal, but on balance I think in this particular case the Crown's acceptance of the plea comes so soon after the Indictment was laid that I am not going to make an order for costs against the Crown based on that delay of just one week. It is not intended to suggest other than the Crown has a duty to make sure that it gets the right charge at the right time which is on indictment. 8. The application for defence costs is dismissed. 9. Mr Pinto, 12 months' Probation and let us not see you again. Authorities Misuse of Drugs (Jersey) Law 1978 AG-v-Gouveia [2000] JLR 324.

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