

JERSEY / JUDGMENT

Viveiros v AG [2003] JCA 126 (18 July 2003)

[2003] JCA 126COURT
COURT OF APPEAL

BEFORE

R. C. Southwell, Esq., Q. C., President;
The Hon. M. J. Beloff, Q. C.; and
D. A. J. Vaughan, Esq., C. B. E., Q. C.
Carlos Jordano Gouveia VIVEIROS

-v-

The Attorney General

Application for leave to appeal against a
sentence of 7 years' imprisonment passed on 30
th

April, 2003, by the Superior

Number of the Royal Court,

to which the Appellant was remanded by the Inferior Number on 24th January, 2003, on a

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COURT OF APPEAL

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July, 2003.

Before:

R. C. Southwell, Esq., Q. C., President;
The Hon. M. J. Beloff, Q. C.; and
D. A. J. Vaughan, Esq., C. B. E., Q. C.
Carlos Jordano Gouveia VIVEIROS

-v-

The Attorney General

Application for leave to appeal against a
sentence of 7 years' imprisonment passed on 30
th

April, 2003, by the Superior

Number of the Royal Court,

to which the Appellant was remanded by the Inferior Number on 24th January, 2003,
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:

count 6: diamorphine
The remaining counts on the indictment
relate to co-defendants who have not appealed.
The application for leave to appeal
placed directly before the plenary Court, without first being submitted to a
Single Judge for consideration and determination.
Advocate M. L. Preston for the Appellant;
N. M. Santos
Costa, Esq., Crown Advocate.

JUDGMENT

VAUGHAN ja: 1. This is the judgment of the Court in the case of Carlos Jordano Gouveia Viveiros . 2. Carlos Jordano Gouveia Viveiros applies for leave to appeal against the sentence of seven years' imprisonment imposed on him on 30 th April 2003 by the Superior Number of the Royal Court, to which he had been remanded by the Inferior Number on 24 th January 2003. Mr Viveiros had pleaded guilty to a count that he, on 8 th October 2002, at Noirmont Common in the parish of St Brelade had in his possession, with intent to supply, a quantity of diamorphine, commonly known as heroin. The facts which gave rise to the plea of guilty are as follows. On Tuesday 8 th October 2002 officers from the Drug Squad executed a search warrant at the home address of Mr Viveiros and Miss Saraiva. Only Miss Saraiva was present at the time. At the flat there were found to be small quantities of heroin and cannabis. Miss Saraiva admitted the drugs belonged to her. The quantities were such that they were regarded as for her personal consumption. About half an hour later a car was seen stationary at traffic lights. A police officer suspected that this had come from Mr Viveiros' flat. It was followed. It was next seen parked on Noirmont Common. There were two people in the car, Mr. Antunes in the driver's seat and Miss Saraiva in the back seat. There was nobody in the passenger seat. The police suspected that the person who had been in the passenger seat was somewhere in the vicinity. They found Mr Viveiros about 100 yards from the car on a track on the common. He was arrested and searched. They found no drugs on him but £822 in cash. Mr Viveiros indicated that he had something hidden in his trousers. This turned out to be a package containing 142.76 grams of heroin with a street value of between £42,828 and £64,242. In the car there were found scales, a roll of bags and a piece of glass. 3. In a subsequent interview Mr Viveiros admitted that he was a heroin addict. He disclosed to the police that the heroin did not belong to him. The main relevant factor was that he told the police that a few days before, he had been visited by an Indian man who told him to go and pick something up for him. When he refused, he was beaten with a piece of plastic. He told the police that he was frightened that he might be stabbed by the Indian man. After his arrest he was taken to hospital as the police doctor thought that a bone might be broken. It transpired that it had not. He did not name the Indian person involved. 4. Mr Viveiros is aged 22. He was born in Madeira. He came to Jersey some six years ago, and has been mainly employed in the hotel and catering trade. He became addicted to heroin some three years ago having moved on from cannabis. In February 2001 he was sentenced to 2 ½ years' Youth Detention for possessing heroin also with intent to supply. 5. In

passing sentence the Royal Court stated that it accepted that Mr Viveiros was fetching the heroin to deliver it to the Indians who had previously shown him where it was hidden and that he had been physically coerced to do so. The Royal Court, applying the Rimmer guidelines, took as a starting point the lowest of the relevant periods, that is to say ten years. In so doing the Royal Court accepted his account of what transpired, in particular the physical coercion. Adopting ten years was a reduction from the eleven years contended for by the Crown. In mitigation the Royal Court took into account the fact that he had pleaded guilty, his age and the matters set out in the reports. It allowed a total period of three years by way of mitigation. The Court also ordered his deportation. 6. In seeking leave to appeal, it was contended by Advocate Preston on behalf of Mr Viveiros that: (i) This was an exceptional case which justified taking a lower starting point than that allowed for under the Rimmer guidelines. It was suggested that 9 years was the appropriate starting point. (ii) Insufficient weight was given to his plea of guilty. It was suggested that because he could have pleaded not guilty and raised a defence of duress, he should have received a full one third reduction, although it is accepted he was caught red-handed. (iii) Insufficient weight was given to the other factors of mitigation in particular his personal circumstances. 7. We do not consider that there is any basis for contending that a lower starting point than that taken by the Royal Court should have been taken. The Royal Court took the lowest starting point of the Rimmer guidelines because of the factors relating to the physical coercion and matters relating to the offence advanced on behalf of the Applicant, which were accepted by the Court without qualification. If it had not been for these matters a starting point of eleven years or even twelve years could have been appropriate. 8. With regard to the weight to be allowed for his plea of guilty, we do not consider that the Royal Court's allowance of one quarter can be criticised. We were referred to the decision of the Court of Appeal in *Welsh -v- AG* (4 th April 2002) Jersey Unreported; [2002/72], where it was stressed that the appropriate reduction for a plea of guilty will depend upon the facts of each case and that it is immaterial that the chances of a plea of not guilty succeeding are slim. It is the fact of saving time and money and sparing witnesses the ordeal of a contested trial which matters most. It is also highly relevant that the accused accepts responsibility for his crime. However all that presupposes that there is some chance of success and, notwithstanding the physical coercion some days before, we do not consider that the Royal Court could proceed other than on the basis that he had been caught red-handed and that there was no realistic defence of duress available to him. 9. Finally, turning to his personal circumstances, we do not consider that the Royal Court has undervalued the mitigation in relation to these matters. We have read all the reports which have been put before us. Although we accept the harshness of his upbringing and the unfortunate situation in which he finds himself, when the entire picture is taken into account, in particular his previous conviction for the same offence of being in possession of heroin with intent to supply for which he had been sentenced to Youth Detention for 2 ½ years and had only recently been released, we cannot fault the allowance given by the Royal Court for these factors. 10. Accordingly we dismiss the application for leave to appeal. We make the appropriate direction under Article 35 (4)(b). Authorities. *Welsh -v- AG* (4th April 2002) Jersey Unreported; [2002/72]. *Rimmer & Ors -v- AG*

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Prepared on 25 October 2026 · Esheria