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IN THE COURT OF APPEAL OF NEW ZEALAND

C.A.15/81

THE QUEEN

v

GUY REX THOMSON

RECEIVED  
27 JUN 1985

CORAM: Davison C.J.  
Somers J.  
Mahon J.

Hearing: 12 June 1981  
Counsel: J R F Fardell for Crown  
J C Chamley for Applicant  
Judgment: 12 June 1981

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ORAL JUDGMENT OF THE COURT DELIVERED BY  
MAHON, J.

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The applicant, Thomson, pleaded guilty in the High Court at Auckland to a charge that he, together with Kerry Alexander Greer and Michael Cedric Richards, did import into New Zealand a Class 'A' controlled drug, namely lysergide, over a period from 1 January 1979 to 1 October 1980. The applicant was sentenced to imprisonment for a period of 8 years and he seeks leave

to appeal against sentence. The other two persons, Greer and Richards, were each also sentenced to imprisonment for a period of 8 years. Greer appealed against sentence and this Court dismissed his appeal on 6 March 1981 and, so far as we understand the matter, Richards has not appealed.

The facts lying behind this conviction and sentence were dealt with to a considerable extent by this Court when considering the case of Greer, but in respect of this applicant it is necessary to describe in brief terms the part which he played. He was, like Richards, a seaman, and travelled back and forth between New Zealand and Australia in the course of his employment on many occasions. The summary of facts disclosed that the applicant eventually took part in an organized system of importing lysergide from Australia to New Zealand. The part that he played was that he would take money across to Australia and he and his associate on the vessel would bring the drug back, hidden on the ship. Then, upon arrival in New Zealand, the applicant would make the initial distribution of the drug and, indeed, his arrest was brought about because he was observed handing over a very large quantity of lysergide after he left the ship on that particular occasion.

It is quite clear that the applicant had an involvement with what I might describe as this syndicate far beyond that of a mere courier. He not only carried over the money and brought back the drugs in the manner I have described, but he was evidently involved financially, to some unknown extent, in the operation.

He made an admission to the Police when interviewed that he expected to derive a sum of about \$30,000 from this series of drug importations which had been going on between January 1979 and October 1980. He was therefore not in the conventional position of a courier engaged in the one transaction and very often as a person knowing not much at all about the people with whom he was dealing, but who undertakes, for some reward, to make one journey for the purpose of obtaining drugs.

The real thrust of the argument of Mr Chamley for the applicant is that the applicant should be treated as a courier alone. For the reasons I have indicated, we cannot possibly accept that submission. It is worthy of note that one of the factors taken into account in the case of Greer when he was sentenced - and this factor was confirmed by this Court - was that Greer was only a planner and played no part in the actual carriage of the drugs into the country. In this case it seems to us that Mr Chamley is asking us to take the view that one factor in favour of the applicant is that he was not a planner, but only a person who brought the drugs into the country, and carried the cash in the way I have described. The anomaly lying behind the contrasting submissions as to the operations of these two people engaged in the same enterprise can thus be demonstrated.

In our view the applicant was a full syndicate member and he played, along with Richards, a vital part.

Without the use of the applicant as a courier, both of cash and of drugs, this particular lengthy system of importation could never have succeeded. We have listened carefully to the elaborate and careful analysis made by Mr Chamley of the facts, and of every significant inference from the facts, and the special circumstances of these people who were involved in these transactions. We take into account the role this man played, his age, as compared with his colleagues, and the nature of his occupation, and indeed every factor which Mr Chamley has mentioned. However, we are not able to see any real difference in the participation of Greer, Richards and the applicant so far as sentence is concerned.

The crime of importing lysergide is a very serious one, and in our view the sentence of imprisonment imposed here by the learned Judge was correct and no ground whatever has been shown to disturb it. The application for leave to appeal is dismissed.

*J. S. S. J.*

Solicitors for Applicant:

Thorne, Thorne, White & Clark-Walker, Auckland

Solicitors for Respondent:

Crown Solicitor, Wellington