PORRO v. R.

SUPREME COURT (Knneller, C.J.): February 20th, 1995

Criminal Law—drugs—sentencing principles—sentencing by reference to weight—in case of small quantity of Class A drug, sentence not guided by weight of pure drug—no order for chemical analysis of purity if less than 10g.

The defendant was charged in the magistrates' court with importing 1.1g. of cocaine.

He pleaded guilty and was sentenced to 90 days' imprisonment, against which he appealed. Pending his appeal, he made the present application to the Supreme Court for an order that the drug seized from him be chemically analysed to establish the precise percentage of pure cocaine it contained.

He submitted that since sentencing for offences involving Class A drugs was now guided by the weight of the drug at 100% purity, the Stipendiary Magistrate should have sentenced him on that basis and an analysis should now be carried out for the purpose of his appeal.

The court considered the evidence of the Public Analyst on the practice of drug analysis in Gibraltar and in the United Kingdom.

Held, dismissing the application:

(1) Since small samples of cocaine seized by the police were generally impure and showed a very narrow margin of difference between one sample and another, sentencing guidelines had not been laid down for offences involving small quantities and it was not the usual practice to submit to chemical analysis an amount of less than 10g. unless it was necessary to establish a link between a drug dealer and consumer in the context of a supplying offence (page 11, lines 25–38).

(2) The time and expense required to conduct an analysis of the cocaine in the Gibraltar laboratory could not be justified in this case. The appellant would not in any event be able to compare his sentence with those passed on other defendants on the basis of the weight of pure cocaine seized, as similar quantities had not been analysed in other cases (page 11, line 39 – page 12, line 10).

Cases cited:

(1) *R.* v. *Aranguren* (1994), 99 Cr. App. R. 347; [1994] Crim. L.R. 695, considered.

(2) *R.* v. *Bilinski* (1988), 86 Cr. App. R. 146; [1987] Crim L.R. 782.

M.X. Ellul for the appellant;
P. Dean, Acting Attorney-General, for the Crown.

KNELLER, C.J.: Adrian Christopher Porro, the appellant, pleaded guilty to unlawfully importing into Gibraltar 1.1g. of a cocaine preparation and the learned Stipendiary Magistrate sentenced him to 90 days' imprisonment. The appellant by his counsel submits the sentence is manifestly excessive and his appeal is to be heard on February 27th. Mr. Ellul, by a summons in chambers of February 9th which was heard this morning, asks for an order that the preparation of cocaine which the appellant unlawfully imported be chemically analysed by an expert to establish the precise percentage of pure cocaine present in the amount of cocaine which the appellant unlawfully imported. The Attorney-General opposed the making of such an order.

On June 20th, 1994 the English Court of Appeal in *R.* v. *Aranguren* (1) held that the weight of Class A drugs at 100% purity rather than street value was the new yardstick for measuring the relative significance of any seizure of Class A drugs and laid down revised sentencing guidelines for offences involving Class A prohibited drugs. Ten years' imprisonment and upwards for 500g. or more of the drug at 100% purity and 14 years' imprisonment or more for 5 kg. at 100% purity were appropriate. These guidelines were substituted for those in *R.* v. *Bilinski* (2). Mr. Ellul submits that the appellant should have been sentenced by the Stipendiary Magistrate on the weight of the cocaine he unlawfully imported at 100% purity.

Gibraltar's Public Analyst, Mr. Bruzon, in his affidavit of February 17th declares that in the local Laboratory of Clinical Pathology and Public Health the policy for analysing dangerous drugs follows that of the Metropolitan Police Forensic Science Laboratory in London and the Forensic Science Laboratory at Aldermaston, which is not to analyse amounts weighing less than 10g. unless it is sought to establish a link between suppliers or a link between supplier and consumer, when the quantification would be carried out for comparative purposes, but these analyses are very rarely required. Furthermore, Mr. Bruzon swore, the analysis of the small amount of cocaine involved in this appeal is not justified for "operational" reasons. Small amounts of cocaine are generally impure. They are cut with sugar or some other powder. Sentencing guidelines for small amounts have not been set because the margin of difference between one amount and another is relatively small.

In the laboratories in Gibraltar and England, quantitative analyses of cocaine involve the use of gas chromatography and the equipment has to be set to precise conditions before the analyses begin. It is in continuous daily operation in England but in Gibraltar it has to be started and standardized on each occasion when such an analysis is required and the process takes half a day, which for each small amount of cocaine would put a considerable strain on the very busy laboratory in Gibraltar.

The amount unlawfully imported by the appellant was 1.1g. which is a very small amount. Its quantification is not required for comparative purposes to establish a link between suppliers or between supplier and consumer. It would not be analysed in England. If it were analysed in Gibraltar it would not in itself help the appellant's counsel in his comparison of the sentence of 90 days' imprisonment imposed on the appellant for this 1.1g. and the fines and default sentences imposed on defendants convicted of offences relating to similar or greater amounts of cocaine or other Class A drugs, because quantitative analyses were not carried out on them.

I find that the appellant's counsel has failed to persuade the court that a quantitative analysis should be carried out on the 1.1g. of cocaine which the appellant unlawfully imported and the application must be dismissed.

Application dismissed.