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6th October, 1986.

Royal Court (Superior Number) exercising
Appellate jurisdiction.

Before P.L. Crill, Esq., C.B.E., Bailiff,
H. Perree, Esq.,
M.G. Lucas, Esq.,
Mrs. J.G.B. Myles,
P.G. Baker, Esq.,
J.J.M. Orchard, Esq.,
G.H. Hamon, Esq.

Appeal of Julia Ann Coutanche against
sentence of Inferior Number passed on
1st August, 1986.

Advocate G.R. Boxall for the Appellant
Her Majesty's Attorney General for the Crown

BAILIFF: There are two principles which an Appellate Court in this Island always follows in dealing with an appeal. The first is the Court does not interfere with a sentence unless it was wrong in principle or manifestly excessive and I take the first point. The question before us is whether it was wrong in principle to impose an immediate custodial sentence on the appellant who was convicted, having pleaded guilty to possession of a Class A drug - Cocaine.

The Court both below and this Court, sitting as an appeal court, has laid it down on innumberable occasions that unless there are exceptional circumstances, a person who deals in Class A drugs, either by possession or dealing in some other way, can expect a custodial sentence and the Court cannot find that there were mitigating factors of such strength below that the lower Court, in someway or other, misdirected itself and either did not apply them or in some measure did not apply the principle correctly. We can find nothing wrong with the Inferior Number's exercise of the principles of sentencing.

However, we then have to satisfy ourselves that the sentence itself, that is to say, prison, which the Court was entitled to impose and properly

imposed in accordance with the principles, was in fact, manifestly excessive and again we cannot find that it was manifestly excessive. The Court took into account all the mitigating factors. It heard the Crown ask for 12 months' and it reduced the conclusions because it thought the Crown had not taken the factors sufficiently into account - the mitigating factors of the offence - and here I should say that the mitigating factors applied, of course, not only to the offence itself but to the offender - the two are intermixed - reduced the conclusions and therefore, the Court cannot be said either to have acted wrongly in principle nor to have imposed a manifestly excessive sentence.

Now that is the position in law and if that were where it stopped we would dismiss the appeal. However, we have listened very carefully to what you have had to say Mr. Boxall - particularly as regards the effect that the prison has had on your client and we do not accept that because a person has intellectual capacity that in some way mitigates; it does not, in fact, it makes the offence almost worse. If somebody is prepared to reason with themselves and reach a conclusion that a particular course of conduct, although known to them to be criminal by the law of the land, is not, according to them, wrong, they must also be able to reason that if they persist in that course of conduct and are brought before the Court, that kind of defence will be of no avail. But because we think that your client has learnt and is indeed learning from her time in prison and because we think that that lesson need not be too prolonged and as an act of mercy, we are going to vary the prison sentence. We are going to reduce the sentence of the Inferior Number - as I have said, not because they erred in any way nor because they imposed a manifestly excessive sentence but as an act of mercy in this particular case; and it must not be taken as a precedent for other cases which must be dealt with according to their own facts. We are going to substitute a sentence of 6 months' for that of 9 months' which means that with remission, your client will be out for Christmas but as regards the appeal against the fine, we cannot find anything wrong with that and that is dismissed.