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ROYAL COURT 190

11th December, 1990

Before: The Deputy Bailiff, and
the Superior Number of the Court

The Attorney General

- v -

Peter Thomas Fogg

Sentencing on two counts of possession of a controlled drug with intent to supply to another (being cannabis resin and Lysergide), contrary to Article 6(2) of the Misuse of Drugs (Jersey) law, 1978, and one count of supplying a controlled drug, contrary to Article 5 of the Misuse of Drugs (Jersey) Law, 1978. Included in the sentencing was an application by H.M. Attorney General for a Confiscation Order in accordance with the provisions of the Drug Trafficking (Jersey) Law, 1988.

Sentencing.

C.E. Whelan, Esq., Crown Advocate.
Advocate G.R. Boxall for the accused.

JUDGMENT

DEPUTY BAILIFF: As Crown Advocate Whelan has said, in this jurisdiction the Court has constantly applied the strictest régime with regard to drugs. The Court remains of that opinion and, indeed, determination.

Firstly, with regard to Counts 2 and 3 of the indictment, Advocate Boxall argued that the sentences to be imposed should not exceed the twenty-one months' imprisonment imposed on the co-accused, Hillis.

However, there is one important difference. Hillis, although having a long record of previous convictions, as has Fogg, had no previous conviction for a drug related offence. Fogg has a very serious previous conviction for an offence involving drugs, albeit over eight years ago. That alone justifies the difference of three months.

Accordingly, on each of Counts 2 and 3, Fogg, you are sentenced to two years' imprisonment concurrent with each other.

With regard to the all-important Count, Count 4 dealing with LSD with intent to supply, the Court refers first to the case of Singh (1988) 10 Cr. App. R. (S) p.402 - a case involving heroin with which LSD as another Class "A" drug is to be equated - as is made absolutely clear by Roskill LJ in R. -v- Bott and others (1979) 1 Cr. App R. (S) p.218. And in Singh the Court said and here I cite:

"The starting point for this type of offence should in general now be five years at least, both for supply and for possession with intent to supply".

In R. -v- Virgin (1983) 5 Cr. App. R. (S) 148, Sheldon J said that (and again I quote): "... the extreme dangers of LSD are, or should be, common knowledge and need no emphasis. They are such that, bearing in mind the relative ease with which the drug can be distributed by any who might wish to do so, those who are convicted of supplying it must anticipate a substantial sentence. In this regard the Court does not think that there is any significant difference between LSD and other Class "A" drugs"

Thus we are dealing in the present case with a drug that is equivalent to heroin, cocaine and opium.

The Jersey case of A.G. -v- Brown (26th April, 1985) Jersey Unreported, and (1st July, 1985) Jersey Unreported has been referred to us. In that case a 23 year old Jersey resident imported 300 units of LSD with a view to gain. He was sentenced to 18 months' imprisonment upheld on appeal. He had one previous conviction for importation of cannabis resin in small quantity - he had been fined £80 for importation and £40 for possession. He had no other convictions of any kind whatsoever. At that time there was an absence of precedent. Thomas' "Principles of Sentencing", (2nd Edition) said at p.190 that the small number of cases suggested that the range of sentences applicable in cases involving LSD were comparable to those seen in relation to cannabis. In the intervening five years the attitude to LSD has changed completely. It is a Class "A" drug which cannabis is not. The maximum sentence has been increased from 14 years to life imprisonment.

The change is exemplified by R. -v- Bowman-Powell (1985) 7 Cr. App. R. (S) 85. That case involved 92 doses of LSD. Lawton LJ said: "A great deal has happened in the last few years with regard to drug cases. Their supply is becoming more and more common and the public are becoming more and more concerned about it. The time has come when it must be made clear to those who supply drugs, and particularly those who supply Class "A" drugs like LSD that they can expect to lose their liberty for a long time". Now that case was not available to the Royal Court when it dealt with Brown.

Mr. Whelan told us that at the time of Fogg's offence the 1,000 units constituted the biggest single seizure of LSD in the British Isles. There have been larger seizures since, but 1,000 units in a single haul continues to be regarded as a major seizure. Certainly, it was the largest single amount by far ever to have been seized in Jersey and the Court must match the gravity of the offence with the length of the sentence, in order to have maximum deterrent effect.

The Court's only criticism of the conclusions is that in the opinion of the Court, the sentence for which Mr. Whelan moved is still too low. Mr. Boxall said, of the Brown case, that 300 young people were going to suffer. Whilst that is not necessarily so, because of repeat sales, the number of young people liable to suffer in the instant case was more than three times that number. The Court is determined to protect the young and the sentence must reflect our determination to prevent, so far as is possible, the importation into and supply of Class "A" drugs in this Island.

The Court considers that a sentence of ten years' imprisonment would be justified on Count 4, but having regard to the plea of guilty and other mitigating factors and here the Court acknowledges that in many ways the victims in this case will be Fogg's common-law wife and two year old child, we discount that sentence to one of seven and a half years.

Fogg, on Count 4 you are sentenced to seven and a half years' imprisonment concurrent; making a total of seven and a half years' imprisonment.

Finally, the Court orders the forfeiture and destruction of all the drugs involved.

AUTHORITIES.

- A.G.-v-Hillis (12th October, 1990) Jersey Unreported
- A.G.-v-Clohessy & Roberts (25th January, 1989) Jersey Unreported
- A.G.-v-Brown (26th April, 1985) Jersey Unreported
- A.G.-v-Brown (1st July, 1985) Jersey Unreported; (1985/86)JLR N.21
- Thomas' "Principles of Sentencing" (2nd Ed'n): Offences connected with Drugs: pp.182-190
- R-v-Ahmad (1980) 2 Cr App R (S) 19
- R-v-Taylor & ors (1980) 2 Cr App R (S) 175
- R-v-Bennett (1981) 3 Cr App R (S) 68
- R-v-Virgin (1983) 5 Cr App R (S) 148
- R-v-Bowman-Powell (1985) 7 Cr App R (S) 85
- R-v-Gerami & Haranaki (1980) 2 Cr App R (S) 291
- A.G.-v-Young (1980) JJ 281
- R-v-Singh (1988) 10 Cr App R (S) 402