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ROYAL COURT

71.

22nd April, 1992

Before: The Bailiff, and
Jurats Orchard and Gruchy

Police Court Appeal: Simon Andrew Rowland

Appeal against a sentence of five days' imprisonment imposed on one count of possession of a controlled drug, contrary to the provisions of Article 6(1) of the Misuse of Drugs (Jersey) Law, 1978.

Advocate S.C.K. Pallot on behalf of the
Attorney General.

Advocate R.J. Renouf for the appellant.

JUDGMENT

THE BAILIFF: The main ground of this appeal is that the appellant, who is 21, was not given the advantage of having a background report prepared before the learned Relief Magistrate sentenced him. He is a first offender and this Court has laid down in the case of AG -v- Rogers (13th November, 1989) that it is unusual for a first offender to be sentenced to prison without the Court having had the benefit of a background report. The Court went

on to say that if two principles conflicted, that is to say the principle of imposing a prison sentence on people who import cannabis or other drugs into the Island, (and let me add to that: on people who have drugs for their own use) and the principle that a person should not go to prison if they are a young person and a first offender, it is the second principle that should prevail, that is to say they should not be sentenced to prison without the Court first having had the benefit of a background report. We think this is such a case and we cannot say, after looking at the facts where this young man came to Jersey, found himself, as he told the police, in a strange environment and lonely; we cannot be sure that circumstances might not have been discovered in a background report that might have influenced the Relief Magistrate.

Accordingly we think it right to allow the appeal. We are of course conscious of the case of AG -v- Stratton & ors. (22nd November, 1991) Jersey Unreported in which this Court very clearly laid down its support for the principle of sending even first offenders for using class 'B' drugs to prison. The Court was very clear in what it said, and I quote:

"It has to be stressed by this Court, and I do so now, that young men and possibly women if they are involved as well, who are voluntarily involved in the Island drugs scene, run a considerable risk of losing their liberty; in fact, unless there are special circumstances, they will in all probability lose their liberty. A new, or relatively new, principle has been laid down by the Magistrates' Court that even a first offender with a class B drug, which is usually cannabis, may expect a term of imprisonment".

We do not seek to interfere with that principle. But in this case it must take second place to the undoubted principle

that first offenders, particularly young offenders and this man is young, should not be sentenced to any term of imprisonment without a background report being prepared first.

Because we are unable to say that, had the learned Relief Magistrate had a background report, he would inevitably have come to the same conclusion, the appeal is allowed. Therefore, rather than refer the matter back, we are going to substitute for the sentence of imprisonment a fine of £300, or in default one month's imprisonment.

Authorities

AG -v- Rogers (13th November, 1989) Jersey Unreported.

AG -v- Ramsey (17th September, 1991) Jersey Unreported.

AG -v- Kramer (16th March, 1991) Jersey Unreported.

AG -v- Thomas (15th November, 1991) Jersey Unreported.

AG -v- Stratton and ors. (22nd November, 1991) Jersey
Unreported.