

ROYAL COURT
(Samedi Division)

10.

16th January, 1995

Before: The Deputy Bailiff, and
Jurats Orchard and Herbert

Police Court Appeal
(T.A. Dorey, Esq.,)

Robert William Graham

- v -

The Attorney General

Appeal against a sentence of 2 weeks' imprisonment passed on 28th October, 1994, following a guilty plea to:

1 count of possession of a controlled drug (cannabis resin), contrary to Article 6(1) of the Misuse of Drugs (Jersey) Law, 1978.

Appeal allowed; sentence quashed; a fine of £200 or 1 month's imprisonment in default of payment substituted.

Advocate S.E. Fitz for the Appellant.
J.G.P. Wheeler, Esq., Crown Advocate.

JUDGMENT

THE DEPUTY BAILIFF: This Appellant, Robert William Graham, appeals against a sentence imposed in the Police Court of 2 weeks' imprisonment for an offence of possessing cannabis resin.

5 The grounds of the appeal are that the sentence was either wrong in principle or manifestly excessive.

As the Crown Advocate has rightly pointed out it is, generally speaking, not for this Court to substitute its own view

of the matter unless it is satisfied that the sentence imposed by the Magistrate falls within one of those two categories.

5 In this case, however, there are two aspects of the procedure in the Police Court which appear to us to be unsatisfactory. We should perhaps add that neither of those unsatisfactory aspects can be laid at the door of the learned Relief Magistrate.

10 The first aspect is that it now appears that the Appellant was advised by the Centenier - for whatever reason - that it was unnecessary for him to obtain legal representation in the Police Court. The Appellant asked the Centenier whether he should obtain legal representation and was advised that the cost of employing counsel would exceed the reduction in fine which might be expected
15 to result from such employment. On that basis the Appellant did not instruct counsel to represent him and accordingly it is now put to us that important matters of mitigation which might have been placed before the Magistrate were not, in fact, placed before him.

20 The second unsatisfactory aspect is that when the Magistrate called for the Appellant's record, he was provided with a copy which contained a reference to a conviction for possessing a Class A drug (Lysergide) on 1st November, 1983. It now appears, from a letter which has been placed before the Court, that there is no
25 evidence to support the contention that the drug in question in 1983 was in fact Lysergide. The Appellant maintains that it was a Class B drug, namely cannabis.

30 Having regard to those matters we cannot be sure that if the learned Relief Magistrate had been fully apprised of the matters which have been placed before this Court he would necessarily have reached the same conclusion.

35 On that basis we allow the appeal and we quash the sentence of 2 weeks' imprisonment.

40 Ordinarily we would have exercised our power to remit this case to the Police Court in order that further consideration could be given to it and sentence imposed by a different Magistrate. However, having regard to the fact that the Appellant has twice returned from England to attend Court in connection with this prosecution and having regard also to the fact that only a very
45 small amount of cannabis resin is involved, we think that we ought to deal with the matter ourselves.

5 We have listened carefully to the mitigating factors laid before us by counsel for the Appellant and we accordingly substitute for the sentence imposed in the Police Court a fine of £200, or, in default of payment, 1 month's imprisonment. Miss Fitz, you shall have your legal aid costs.

No authorities.