ROYAL COURT
(Samedi Division)

13th February, 1995

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Before: The Deputy Bailiff and Jurats Coutanche, Orchard, Hamon, Gruchy, Le Ruez, Vibert and Rumfitt

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The Attorney General

- v -

Daniel Plowright

Sentencing by the Superior Number of the Royal Court, to which the accused was remanded by the Inferior Number on 27th January, 1995, following guilty pleas to:

2 counts of — being knowingly concerned in the fraudulent evasion of the prohibition on importation of a controlled drug contrary to Article 77(b) of the Customs and Excise (General Provisions) (Jersey) Law, 1972 (count 1 of the Indictment: MDMA; count 2: cannabis resin).

AGE: 27

PLEA: Guilty.

DETAILS OF OFFENCE:
Accused was stopped at the airport travelling on a false name. 8 packages were concealed internally containing 99 ecstasy tablets (value £2,475) and 1.85 ounces of cannabis resin (value £297); total value £2,772.00. Plowright contended the drugs were for his own use. Crown did not accept this but argued that it was, in any event, irrelevant for sentencing purposes having regard to Dolgin (1988) 10 Cr. App. R. (S)447 and Pringle (12th July, 1993) Jersey Unreported.

DETAILS OF MITIGATION:
Plowright was unemployed and a heroin addict. He came to Jersey to wean himself off heroin and brought the ecstasy and cannabis with him to assist in this. They were for his own personal use and he did not intend to sell them.

PREVIOUS CONVICTIONS:
Four previous convictions for dishonesty but no previous prison sentence and no previous drugs offences.

CONCLUSIONS:
Count 1: 4½ years' imprisonment.
Count 2: 1 year's imprisonment, concurrent.

SENTENCE AND OBSERVATIONS OF THE COURT:
Conclusions granted. Court accepted that it was not necessarily appropriate to give full one third discount for guilty plea where there was no realistic alternative. In this case the guilty plea was inevitable. Starting point was 6 years but the accused was not entitled to a full discount of one third. No hesitation in upholding the conclusions of 4½ years.

The Attorney General
Advocate D.M.C. Sowden for the accused

JUDGMENT

THE DEPUTY BAILIFF: We have considered anxiously the discussion between the learned Attorney and Advocate Sowden but we cannot see that a Probation Report is a pre-condition to this Court's assessing the sentence that is inevitably to be passed on the accused on a plea of guilty, particularly as there is going to be a custodial sentence. If there were likely to be any alternative then we would have no hesitation in allowing the adjournment.

It seems to us that the accused has made a choice. We were told by the Probation Officer that he made that very clear to the Probation Officer who attended upon him at the prison. He put it politely: he could not see the purpose of a Probation Report and wasting everybody's time if he was going to get a custodial sentence. Now, in those circumstances we are going to continue with the trial.

Plowright is 27 years old and was born in Liverpool. He came to Jersey Airport on an assumed name and Miss Sowden has explained to us that he had bought a ticket at a discount from a friend. However, he came into Jersey on an assumed name and his stay, according to the ticket, was to last two days. He gave a false address to those that stopped him at the Airport and told them that he was in Jersey for a few days to interview some people about an industrial compensation claim. He was searched and nothing was found but X-rays showed him to be carrying several packages internally. That afternoon he admitted travelling under a false name. He said he had come here, in his words, "to get away from Liverpool; I intended to get myself off the drugs lark, I know I bought drugs but you need drugs to wean yourself off them".

He was found to have a total of 8 packages within him containing 99 ecstasy tablets, a class A drug, and 1.85 ozs (52 grms) of cannabis resin. The street value, and we will say it again although we have said it already several times today, the street value will decrease as the number of drugs increases, but the street value of the ecstasy is at present apparently £25 per tablet so that the 99 tablets would have a total value of £2,475.

There are still areas of implausibility in what he told the police. The drugs that he bought have a commercial value of some £3,000; it is difficult to understand that a consumer would buy this amount in advance. In any event, on an income support of £91 per fortnight, and occasional earnings from a solicitors firm, it is virtually impossible for us to understand how he could have possibly purchased that amount of drugs.

He had £30 on his person to maintain himself and said that he was hoping to bump into somebody. In his words, "there's a load of Scousers here; you just go to a nightclub or a public house and you bump into someone in the town centre". That expression is to us beyond belief.

The Crown has considered the question of the guilty plea. But, as was said in R. -v- Dolgin (1988) 10 Cr. App. R (s) 447, in the head note to that case:

> ***"In a case of importing controlled drugs the fact that the drugs were intended for personal use only and not for resale is not a material factor in sentencing."***

This Court has every doubt that these drugs were for personal use only.

In certain cases there normally is a discount on a guilty plea of one third. It is difficult to see how he could have pleaded anything other than guilty on the basis that the drugs were inside him when he was caught. So, in our view, and we agree with the learned Attorney, a massive credit is not available in this particular case. As the learned Bailiff said in the case of A.G. -v- Pringle (12th July, 1993) Jersey Unreported:

> ***"The importation of a Class A drug into Jersey is a serious matter. The Court has said on many occasion that it is immaterial whether the drug is for personal use or not. It adds to the quantity of drugs in the Island."***

On the question of the guilty plea the learned Attorney referred us to passages from R. -v- Lawson (1987) 9 Cr. App. R. (s)52, where at page 53, Lord Justice Croom-Johnson said:

> ***"The point that is taken by Counsel on this appeal is really two-fold. It is submitted first that, if one applies the guidelines in Aramah, the sentence was to some extent on the high side; at any rate marginally and perhaps more than that. It is also submitted that, if this sentence was appropriate on a plea of guilty and one then tries to imagine what the sentence would have been if she had pleaded not guilty, it would have been outside the guidelines in Aramah.***
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> ***One has to take the facts of each case into account when considering the value of a plea of guilty. It is suggested that here a plea of not guilty might have lead to a contested case in which it would have been said that the admissions contained in the interview with the Customs officers were untrue and that the drugs had been planted on the appellant. On the facts of this case we cannot see what possibility there would have been of a contested case raised in either of these allegations. It would have been quite impossible for the Customs officers to plant these packages in the places where they were found***

in the appellant. Once that is accepted there would have been no room for any contest about any admission made in the interview. The appellant was really caught absolutely in flagranto delicto and the choice was between a plea of guilty or nothing. Nevertheless it may well be that some allowance has to be made, and no doubt the learned Judge made it, for the fact that some of the time of the Court may have been saved by the avoidance of a last-ditch defence of one sort or the other. One cannot imagine what it could have been."

And, those words seem to us to be absolutely applicable to this case.

Then we look to R. -v- Hollington (1985) 7 Cr. App. R. (s) 364 at page 367; and the only words that we need to refer to although the learned Attorney referred us to a longer passage, are these:

"If a man is arrested in circumstances in which he cannot hope to put forward a defence of not guilty, he cannot expect much by way of discount."

And, then in the case of Carter -v- A.G. (28th September, 1994) Jersey Unreported CofA., which is a local case. The Court said this:

"In this particular case there can be no doubt that the offences, and particularly counts 1 and 4, were very serious. The quantity of drugs involved was not inconsiderable, either in amount or in value; and the Applicant did what he did purely for commercial gain for himself. The conclusion of the prosecution was that the appropriate "starting point" was 7 years. There can be no fixed number of years for a "starting point" in any particular class of case." And, we would stress those words. *"but the normal bracket for "supplying" is 6 to 9 years. In Clarkin, Pockett -v- A.G. (1991) J.L.R. 213 it was made plain that for a person in the position of Fogg, the "starting point" was 8 to 9 years. It has been submitted to us that the Royal Court should have taken 6 years as its "starting point", and that we should do the same. For our part, and in the particular circumstances of this case, we take the view that 7 years was an appropriate "starting point".*

The Court now turns to such mitigation as there is. The Applicant pleaded guilty to the Indictment, and for this he is entitled to a substantial discount. In Clarkin and again in Wood -v- A.G. (15th February, 1994) Jersey Unreported C.of A., this Court made a deduction of one-third for the plea of guilty. We accept that such a reduction is customary and in line with a well-established principle. Nevertheless, we take the view that such a reduction is in no sense an inflexible rule, and the

precise deduction in each case must depend upon the circumstances in which the guilty plea came to be made. In some circumstances the evidence will make a guilty plea all-but inevitable, but in other cases that may not be so."

We consider that a guilty plea in this case was no more than inevitable and the learned Attorney has taken 6 years as his starting point.

We have considered very carefully the line of cases submitted to us by Advocate Sowden and there may, apparently, be some inconsistency in those cases but it seems to us important that we take each case on its particular merits and we agree entirely with the learned Attorney that 6 years is the starting point for this case.

The learned Attorney has put to us that it is difficult to see how he could avoid knowing what the drugs were when he placed them in his own body. It is noted that he has no previous convictions; it is noted that he pleaded guilty but we agree entirely with what the learned Attorney has said: there can, in this case, be no full discount of one third because the full discount is totally inappropriate to this case.

Therefore, in those circumstances, we have no hesitation in upholding the conclusions of the learned Attorney and sentencing you to 4½ years on count 1; 12 month's on count 2, concurrent, and we order the forfeiture and destruction of the drugs.

Authorities

R. -v- Dolgin (1988) 10 Cr. App. R. (S) 447.

A.G. -v- Pringle (12th July, 1993) Jersey Unreported.

R. -v- Lawson (1987) 9 Cr. App. R. (S) 52.

R. -v- Hollington (1985) 7 Cr. App. R. (S) 364.

Carter -v- A.G. (28th September, 1994) Jersey Unreported CofA.

A.G. -v- Campbell (15th September, 1994) Jersey Unreported.

A.G. -v- Little (25th July, 1994) Jersey Unreported.

A.G. -v- Martin (15th December, 1994) Jersey Unreported.

A.G. -v- Hunter (5th January, 1995) Jersey Unreported.

A.G. -v- Kelly (16th January, 1995) Jersey Unreported.