

ROYAL COURT
(Samedi Division)

192.

2nd October, 1995

Before: The Bailiff, and Jurats
Blampied, Orchard, Vibert,
Rumfitt and de Veulle

The Attorney General

- v -

Gary James Postill

Sentencing by the Superior Number to which the accused was remanded by the Inferior Number, on 8th September, 1995, following guilty pleas to counts 1, 3, 5, 6, 7 and 8, and not guilty pleas (later withdrawn and guilty pleas substituted) to counts 2 and 4, of the following indictment:

5 counts of possession of a controlled drug, contrary to Article 6(1) of the Misuse of Drugs (Jersey) Law, 1978, [count 1 (MDMA); count 3 (MDA); count 5 (amphetamine sulphate); count 6 (cannabis resin); count 7 (herbal cannabis)].

2 counts of possession of a controlled drug with intent to supply to another, contrary to Article 6(2) of the said Law [count 2 (MDMA); count 4 (MDA)].

1 count of larceny (count 8).

The Crown withdrew counts 1 and 3.

AGE: 20.

DETAILS OF OFFENCE:

Defendant found with 18 tablets of ecstasy when arrested for shoplifting at British Home Stores. Also 2 paper wraps. The tablets were ecstasy. No evidence of actual sales but admitted "if I needed extra cash I would have sold a few of them". Potential value of the tablets £450. The 2 paper wraps contained 603 and 642 milligrams of powder containing 2.3% and 2.1% by weight of amphetamine sulphate respectively. Defendant later found with 558 milligrams of herbal cannabis and 1.9 grams of cannabis resin. Amounts clearly for personal use.

DETAILS OF MITIGATION:

Youth. 'Naive and of below average intelligence'. No actual harm done. Effectively good previous character. Remorse. SER optimistic that offences would be put behind him. Close parental support.

PREVIOUS CONVICTIONS:

Nothing relevant.

CONCLUSIONS:

Counts 2, 4 : 4 years' Youth Detention, concurrent.
Counts 5, 6, 7 : 9 months' Youth Detention, concurrent.
Count 8 : 1 week's Youth Detention, concurrent.
TOTAL: : 4 years' Youth Detention.

SENTENCE AND OBSERVATIONS OF THE COURT:

Counts 2, 4 : 30 months' Youth Detention, concurrent.
Count 5 : 9 months' Youth Detention, concurrent.
Counts 6, 7 : 3 months' Youth Detention, concurrent.
Count 8 : 1 week's Youth Detention, concurrent.

Custodial sentence unavoidable on the basis that the offence or the totality of the offending was so serious that a non-custodial sentence could not be justified. However this was at the lower end of the scale in A.G. v. Campbell etc. Instead of the starting point of 7 years moved by the Crown, appropriate starting point was 6 years from which 2 years would be discounted on account of the guilty plea and a further 18 months on account of youth and support from the family and other factors peculiar to this case. Sentence of 6 months concurrent in respect of the possession of the Class B drugs and 1 week concurrent in respect of the charge of larceny.

S.C.K. Pallot, Esq., Crown Advocate.
Advocate S.E. Fitz for the accused.

JUDGMENT

5 THE BAILIFF: This is a difficult case, which, if taken in isolation, might have led the Court to adopt an individualised sanction. The problem is that this is not an isolated case. The Court is aware that there is a very substantial drugs problem in the Island and only very recently the Court of Appeal laid down guidelines for this Court in sentencing for offences of trafficking in drugs, particularly Class A drugs, which we are bound to follow.

10 We have been unable, despite anxious consideration of the facts of this particular case, to avoid reaching the conclusion that a custodial sentence ought to be imposed. Having said that we have taken account of the case of Campbell, MacKenzie, and

Molloy (4th April, 1995) Jersey Unreported CofA in which the Court of Appeal said:

5 *"Much will depend upon the amount and value of the drugs
involved, the nature and scale of the activity and, of
course, any other factors showing the degree to which the
defendant was concerned in drug trafficking we
accordingly state that it is seldom that the starting
10 point for any offence of trafficking in a Class A drug on
a commercial basis can be less than a term of seven
years"*.

15 In our judgment this was at the lowest end of the scale of
drug trafficking. There was an intent to supply but it was an
intention to supply, in our view, only a very small number of MDMA
tablets, probably less than ten. We are satisfied that this
defendant's involvement in trafficking was peripheral.

20 We take accordingly a starting point in this case of 6 years'
Youth Detention. In mitigation we take account of the fact that
there has been a guilty plea for which we make an allowance which
is probably generous, bearing in mind the circumstances, of 2
years. Furthermore, we note the youth of the defendant, he was
25 aged only 19 when the offences were committed, we note that he is
to be treated as a first offender, and we note furthermore the
support which he has from his family which may help him to avoid
further offending, and we make an allowance of 18 months in that
respect.

30 Postill, you have heard what I have had to say about the
general problem in the Island with drugs and the policy of the
Court. The Court was impressed by the letter which you wrote to
us and we were also impressed by the details of your character
which were set out in the letter which we received from your
35 father. We hope that the sentiments which you expressed in your
letter are genuine. If they are, then you will make something of
your life when you have served the sentence which the Court feels
bound to impose. I have to tell you, in accordance with the
provisions of the Criminal Justice (Young Offenders) (Jersey) Law,
40 1994, that the Court considers that there is no other method of
dealing with you because the offence of trafficking in Class A
drugs is so serious that a non-custodial sentence cannot be
avoided. I also have to tell you, in accordance with the Law,
that, when you have served your sentence of Youth Detention, you
45 will be liable to a period of supervision, either by a Probation
Officer or by some other person.

50 I now pass the sentence of the Court. On count 2, you are
sentenced to 30 months' Youth Detention; on count 4, to 30 months'
Youth Detention, concurrent; on count 5, to 9 months' Youth
Detention, concurrent; on count 6, to 3 months' Youth Detention,
concurrent; on count 7, to 3 months' Youth Detention, concurrent;

and, on count 8, to 1 week's Youth Detention, concurrent; making a total of 30 months' Youth Detention. We further order the forfeiture and destruction of the drugs.

Authorities

Campbell, MacKenzie, and Molloy (4th April, 1995) Jersey
Unreported CofA.