COURT OF APPEAL

8th April, 1997. 64.

Before: J.M. Collins, Esq., Q.C., (President)
J.G. Nutting, Esq., Q.C., and
J.P.C. Sumption, Esq., Q.C.

Lara Maria Giovanna Galante

- v -

The Attorney General

Application for leave to appeal against a **total sentence of 6 years' imprisonment**, passed on 25th November, 1996, by the Superior Number of the Royal Court, to which the accused was remanded by the Inferior Number on 11th October, 1996, following a guilty plea to:

2 counts of supplying a controlled drug, contrary to Article 5(b) of the Misuse of Drugs (Jersey) Law, 1978:

Count 1 : M.D.M.A., on which count a sentence of **6 years' imprisonment** was passed;

Count 2 : Amphetamine Sulphate, on which count a sentence of **2 years' imprisonment, concurrent**, was passed;

1 count of possession of a controlled drug, with intent to supply, contrary to Article 6(2) of the Misuse of Drugs (Jersey) Law, 1978:

Count 3 : M.D.M.A., on which count a sentence of **6 years' imprisonment, concurrent** was passed;

1 count of being the occupier of premises, knowingly permitted the smoking of cannabis or cannabis resin, contrary to Article 9 of the Misuse of Drugs (Jersey) Law, 1978 (count 4), on which count a sentence of **3 months' imprisonment, concurrent** was passed;

The accused also pleaded guilty to the following supplementary count which the Crown was given leave to add to the indictment on 25th November, 1996:

1 count of possession of a controlled drug with intent to supply, contrary to Article 6(2) of the Misuse of Drugs (Jersey) Law, 1978:

Count 5 : Amphetamine Sulphate, on which count a sentence of **2 years' imprisonment, concurrent** was passed;

Leave to appeal was refused by the Bailiff on 10th December, 1996.

Advocate P.S. Landick for the appellant.
The Solicitor General.

JUDGMENT

THE PRESIDENT: I now give the judgment of the Court in the appeal of Lara Maria Giovanna Galante.

On 11th October and 25th November, 1996, Lara Maria Giovanna Galante pleaded guilty first before the Inferior Number and then before the Superior Number of the Royal Court to two counts of supplying controlled drugs contrary to Article 5(b) of the Misuse of Drugs (Jersey) Law, 1978, (counts 1 and 2), two counts of being in possession of such drugs with intent to supply, contrary to Article 6(2) of the same Law (counts 3 and 5), and one count (count 4) of knowingly permitting the smoking of cannabis or cannabis resin on premises occupied by her, count 5 having been added before the Superior Number on the latter of those two dates.

In respect of counts 1 and 3 which related to the supply and possession with intent to supply respectively of MDMA, known as Ecstasy, being a Class A drug, the Court imposed a sentence of six years on each count to run concurrently. In respect of counts 2 and 5 which related to the supply and possession with intent to supply of amphetamine sulphate the Court imposed sentences of two years' imprisonment in each case, such sentences to run concurrently with each other and with the sentences of six years' imprisonment. Similarly concurrent was a sentence of three months' imprisonment in respect of count 4, the offence of knowingly permitting the smoking of cannabis on premises in her occupation.

The offences charged by counts 1, 2 and 4 were alleged to have taken place between 1st January and 9th June, 1996, whereas the offences charged by counts 3 and 5 were alleged to have been committed on 8th June, 1996, the date of Miss Galante's arrest. The offences so charged over a period in fact commenced in March, 1996, and covered a period of ten weeks.

Miss Galante to whom I shall refer from now on as the Applicant applied for leave to appeal against sentence to a Single Judge of this Court, which application was refused on 10th December, 1996. She renewed that application before us and we have treated the application as if it were the substantive appeal.

The Applicant was approached on the night of the 8th June, 1996, by two police officers, Police Constables Carter and Hewlett in the car park of the Bath Hotel which is near to Churchill's Wine Bar in Bath Street, St. Helier. She was told that she was being detained for a drugs search under Article 17(3) of the Misuse of Drugs (Jersey) Law, 1978, and she was asked to get out of her car. She did so and in the pocket of her jacket was found a bag containing tablets which were later found to comprise one tablet of Ecstasy and 17 tablets of amphetamine sulphate. She nodded when asked whether there were other substances in her car. This led to the discovery in the glove compartment of three bank bags each with a large number of tablets in them. Later it was ascertained that these three bags contained 147 Ecstasy tablets with an average content of 91 milligrams of MDMA per tablet. In addition, when she was taken to the police station a leather purse was found in her jacket pocket which had not been found earlier and which contained yet a further 54 tablets of Ecstasy and one of amphetamine sulphate. In total, therefore, she had with her in her pockets and in the car, 202

tablets of Ecstasy and 18 of amphetamine sulphate. The street value of all these drugs was given in the Attorney General's statement under Article 5 of the Drug Trafficking Offences (Jersey) Law, 1988, at £4,400. At the time of her arrest she was also found to have a total of £370 cash in her boots which she accepted she had received on the sale of drugs that evening.

The Royal Court was given an account of events which included an account of the Applicant having been seen by the police acting, in their view, suspiciously in a night club in the early morning of the day in question and then went on to describe her activities in the wine bar to which I have referred, that is to say Churchills, on the night of the same day, the 8th June.

It was stated that at about 10 p.m. she was sitting at a table near the entrance to the wine bar, being visited at that table by an unusual number of people. It was said that it was this which led the police to approach her in the car park.

On behalf of the Applicant it was contended by Mr. Landick, who appeared for her in this Court but not in the Royal Court, that the instructions which were given to her then advocate involved a challenge to this evidence as to her conduct earlier in the day and at the wine bar. However that may be, there would be likely to have been something in her conduct which caused the officers to follow her into the car park and require a drug search and it is to be observed that in her interview with Constable Burke and Constable Carter on the afternoon of the 9th June the Applicant said at first that she had sold 30 or 40 Ecstasy tablets and then said perhaps it was 20 on the day in question and that she had sold tablets in Churchills that night. That account was not and is not challenged and it is of no substantial significance therefore that there might have been an issue as to certain details of the police observation.

The interview of the 9th June, 1996, took place from just before 2 o'clock in the afternoon until just after 6 p.m. No objection was raised as to the admissibility of the record of that interview and no suggestion was made as to the propriety of the manner in which it was conducted by Constable Burke and Constable Carter. The applicant was informed of her right to obtain legal advice before the interview took place and she obtained such advice and was content to be interviewed without a legal representative present. Furthermore, at the start of her interview she was told that if she changed her mind, or wanted to obtain further legal advice, she was to say so and it would be arranged. It has been contended that she was badly advised but this is no concern of this Court even if it is correct - which we take leave to doubt - particularly in circumstances in which she had been found in possession of so substantial a quantity of drugs when she and her car were searched. Possession of such a quantity of drugs and of the money in her boots as were found could only lead to one conclusion, namely that she was dealing on quite an appreciable scale.

The legal advice which she received contributed substantially to the basis for an extent of the mitigation which, as we shall later indicate, we feel appropriate to take into account in arriving at the proper sentence to do justice in her case. From the interview it appeared that the Applicant had been dealing in drugs at what one might

call street level for the previous ten weeks or so. She had started to take drugs when living with the father of her older child, Chloe, a child who was four years old at the time of the offence, the man concerned being someone with whom she had lived until about 18 months prior to that date. However, she said that she did not take Ecstasy until she became pregnant with her younger child, an infant who was four months old at the time of the offence, and she began dealing in drugs very soon after he was born. She obtained drugs from three suppliers and sold them on for a profit. That profit was devoted wholly or substantially to financing her own habit of taking Ecstasy. She estimated that were she not dealing at a profit, she would have spent £400 per week on Ecstasy which at £20 per tablet would have represented of course 20 tablets per week.

The Applicant was introduced to dealing when she made her first purchase from the first of the three suppliers. He offered her ten tablets when she asked for one and said that if she sold the others she would get one or two free. In all she had obtained about 500 tablets from this supplier and whereas at the interview she said that this was in addition to the 147 tablets found in the bags and which she said were from the first dealer, it was said at the hearing before the Royal Court that she had been confused as to this and that they were within the total of 500. As to these 147 tablets, she said that the dealer had in effect thrust them on her because he did not wish to be in possession of them but that she did not want either to keep them or sell them and could not say for definite whether she would have sold them. The cost to her was £15 and she would sell them at £20 unless she just wanted to get rid of them in which case she would sell at cost price. She was not in a position at any stage to make an advance payment and so she paid her suppliers out of the proceeds of her sales.

The tablets in her jacket pocket and purse were from two sources, from one of which she had received a total of 150 tablets, including those in her pockets, some of which were Ecstasy and some amphetamines for which the pricing was the same, namely payment at £15 per tablet and sale at £20, and from the other of which she received a greater number. In the latter case she received 130 tablets in all of which about 80 were Ecstasy and the rest amphetamines.

When asked about the £370 found in her boots she said that that was the proceeds of the sales she had made that evening and this is consistent at £20 per tablet with her estimate that she had sold in the region of 20 tablets on that date.

The overall picture, therefore, is that the Applicant had some £4,400 worth of drugs in her possession and admitted to having previously supplied over £15,000 worth in ten weeks of habitual trading.

This Court in Campbell, Molloy, MacKenzie -v- A.G. (1995) JLR 136 CofA at p.136 considered the approach which could be expected of the Courts in drugs cases of varying severity for the foreseeable future. The Court, having stressed the evil nature of the drugs trade, went on to state that the policy of the Courts in Jersey was that offenders would receive condign punishment to mark the particularly heinous and anti-social nature of the crime of drug trafficking.

Mr. Landick, who appeared for the applicant, sought to persuade us that this was a suitable case for a sentence of corrective training, but we do not consider that this would be in any way appropriate and we do not think that there is any realistic alternative to a substantial custodial sentence. In Campbell the Court considered the appropriate starting point in the case of trafficking in Class A drugs, that is to say the starting point before mitigation, and stated that it was to be taken as being in the region of twelve years for a case similar to that of Fogg, an earlier case decided in 1991 in which the defendant had been arrested with 1,000 units of LSD in his possession which he set about selling at once on his arrival on the Island. Some cases would, it was said, be more serious and attract a higher starting point and some less serious and attract a lower starting point but the Court said that it would be seldom that trafficking on a commercial basis would attract less than a seven year starting point.

The Solicitor General, in moving the Crown's conclusions in the lower Court, took a ten year starting point and suggested a total discount of five years comprising allowances for the plea of guilty, the frankness of the applicant's responses to the police at the interview and the absence of any relevant previous convictions. The Royal Court, however, took a more severe course and imposed the sentences of six years in respect of each of counts 1 and 3 to which we have referred. It is not altogether clear but it would seem from the phraseology of the judgment that the Royal Court may have disagreed with the starting point rather than with the effect of mitigation. It is not however certain and we take this opportunity of suggesting that in future cases the Royal Court, when imposing sentence, and in particular when disagreeing with the conclusions, should make it clear whether they are disagreeing with the starting point or with the effect of the mitigating factors as presented in the Attorney General's conclusions.

We are further of the view that the Royal Court laid undue emphasis on their views of the Applicant in her capacity as mother of the two children which was not only an irrelevant circumstance but also left out of account the report of the Child Care Officer which was before the Royal Court and spoke well of the care which she showed of her two young children.

In the light of the uncertainty of the starting point taken by the Royal Court; the taking into account of that factor which should not have been taken into account in the way in which it was; and the further fact that the Royal Court were departing from the Crown's conclusions, we consider that this is a sentence which we should consider afresh and we have done so.

Taking the matter in the order as required by Campbell, we prefer to take the starting point as one of nine years before mitigation is considered. In doing so we take into account the whole of the background of the case which includes both the scale of her dealing, which was quite substantial, and the amount dealt in as well as the nature of her involvement. The more difficult question arises in relation to the discount to be made for the mitigating factors which are present in this case.

The applicant is a woman of 25 years of age. She had an unstable upbringing which was described by the Royal Court as "sad", a

description which we consider to be something of an understatement. Her father left home when she was eleven years old. Her mother brought her lover into the matrimonial home and the consequence of this was that the applicant left home at 17 years of age. The psychiatric report from Dr. Faiz dated 2nd April, 1997, and which we allowed to be put in evidence, although not before the Royal Court, amplified this by describing her at this early age: she was sleeping rough in car parks, lavatories and the like. On one occasion during that time she attempted to take her life. At between 13 and 16 years of age she *"hung around with a punk crowd and shaved her hair off, drank alcohol and occasionally sniffed glue"*. Thereafter she has had difficulty in establishing a stable relationship, having had two children by different fathers, the first of whom is said by her to have behaved with violence to her and the second of whom, although kind to her, was someone with whom she felt she could not have a continuing relationship. She developed a further relationship with a young man with whom there have been two partings and reconciliations. Also, and this was not before the Royal Court, it appears that when she was about 16, she was raped by another man, that is to say a man other than the men to whom I have referred and, furthermore, that that rape took place in the presence of a number of others. She is left with the two children, Chloe aged four and a little boy of less than one year old. It is a sad feature that on any view they will be deprived of their mother's care for their early years, but this is the inevitable result of the commission of such serious offences as these by a woman circumstanced as is the Applicant. It is convenient here to mention that we accept that the smoking of cannabis by persons at her home was stated by her to the police only to have been committed after the children had gone to bed. We have no cause to dispute this.

The Applicant was able, despite the problems with which she was faced in her childhood, to obtain four 'O' levels and two GCSE's and this together with the fact that she took part-time employment even with the two children to be looked after and that she returned to work so soon after the birth of her son stand, to some extent, to her credit.

The application for the receipt into evidence of a psychiatric report from Dr. Faiz arose in this way: prior to the appearance of the Applicant before the Inferior Number, the advocate then acting for the Applicant was informed by the Judicial Greffier that he was unable to sanction the expense of a psychiatric report and that an application would have to be made before the Royal Court. No such application was made despite the fact that the Applicant, who had been on bail and indeed remained on bail until sentence, appeared before the Inferior Number and was remanded for sentence by the Superior Number. The reason for the failure to make such an application at that stage is not known to us, however, the fact that the series of offences started so soon after the birth of the applicant's son must have raised a question as to whether she was suffering from post-natal depression, as well as being in a depressed state in lay terms. She had informed the probation officer that she had hoped that the child would be aborted and indeed that she had hoped that the taking of drugs would have this effect and that these hopes were still in her mind while actually giving birth and this despite the fact that, from a moral point of view, she was not inclined to favour the idea of abortion. The matter was in fact dealt with by the making of enquiries by the probation officer of her general practitioner and her obstetrician and evidence was given in the probation report on a hearsay basis. This was, in our view,

unsatisfactory and it is by now impossible for Dr. Faiz to say more than he would be very surprised if she were not suffering from post-natal depression at the time when she committed these offences in the circumstances which he has described in his report and indeed in the circumstances outlined in her history in the probation report. We accepted in evidence not only his report but a letter supplementary to that report to that effect - that is to say that he would be very surprised if she were not suffering from some degree of post-natal depression. That being the case, we rejected an application to call medical evidence as to her state as long ago as March of last year; it would be quite unrealistic to expect anything further from Dr. Faiz's report and letter, bearing in mind that one is looking at her state as of twelve months ago and furthermore at a state overlaid by depression suffered by her as a consequence of her arrest and then sentence.

We consider therefore that there are substantial mitigating factors in this case which enable us to reduce the period of her imprisonment considerably from that imposed by the Royal Court. We take into account, of course, her plea of guilty, bearing in mind that although she was to a degree caught red-handed she might have persisted in a story that the drugs in the glove compartment of the car were not in her possession for the purpose of drug trafficking. We also take into account the fact that she admitted to her whole course of conduct since March when interviewed by the police; indeed it has been colourfully but accurately stated that she, in effect, drafted her own indictment. Furthermore, she has no relevant previous convictions. When these are added to the tragic history of her life so far we consider that the appropriate sentence is one of 3½ years' imprisonment on the principal counts in the indictment. Accordingly, the application for leave to appeal is granted; the sentences of imprisonment for six years on counts 1 and 3 are set aside and there is substituted for those sentences, sentences in each case of 3½ years. The other sentences have not been the subject of the appeal and stand concurrent with those 3½ year sentences.

Authorities

A.G. -v- Hillis (12th October, 1990) Jersey Unreported.

Fogg -v- A.G. (1991) JLR 31 CofA.

Campbell, Molloy, MacKenzie -v- A.G. (1995) JLR 136 CofA.

A.G. -v- Gilmour (14th June, 1996) Jersey Unreported.

A.G. -v- Burke (24th January, 1996) Jersey Unreported.