

COURT OF APPEAL.

28th September, 1994

194.

Before: Sir David Calcutt, Q.C., (President),
J.M. Collins, Esq., Q.C., and
E.A. Machin, Esq., Q.C.

James George Neild

- v -

The Attorney General

Application for leave to appeal against a total sentence of 5 years' imprisonment imposed on 26th May, 1994, by the Superior Number, to which the applicant was remanded by the Inferior Number on 22nd April, 1994, following guilty pleas to:

- 1 count of possession of a controlled drug (lysergide) with intent to supply, contrary to Article 6(2) of the Misuse of Drugs (Jersey) Law, 1978 (Count 1 of the Indictment), on which count, the applicant was sentenced to 5 years' imprisonment; and
- 4 counts of possession of a controlled drug, contrary to Article 6(1) of the said Law (counts 2-5):
 - Count 2 (lysergide), on which count the applicant was sentenced to 1 year's imprisonment;
 - Count 3 (MDMA), on which count the applicant was sentenced to 1 year's imprisonment;
 - Count 4 (amphetamine sulphate), on which count the applicant was sentenced to 2 months' imprisonment; and
 - Count 5 (cannabis resin), on which count the applicant was sentenced to 1 month's imprisonment.

All the said sentences of imprisonment to run concurrently with each other.

Leave to appeal was refused by the Deputy Bailiff on 16th June, 1994.

Advocate S.J. Habin for the Applicant.
The Solicitor General.

JUDGMENT.

MACHIN, J.A.: Yesterday this Court announced that it would grant the application of Mr. Neild for leave to appeal relating to count 1 of the indictment, that it would treat the application as if it were the hearing of the appeal, and that the sentence of 5 years' imprisonment imposed by the Court below would be reduced to one of 4 years. We now give our reasons for that decision.

That count charged the Applicant with the possession of LSD with intent to supply, contrary to Article 6(2) of the Misuse of Drugs (Jersey) Law, 1978.

On 15th December, 1993, acting under a warrant, police officers searched the home address of the Applicant in St. Helier. They found hidden under a mattress two sheets of perforated paper, each containing 500 squares. These squares contained LSD with a total estimated street value of £7,000.

During an interview conducted the following day, the Applicant told the police that he had arranged a meeting between a dealer and someone he knew for the latter to buy some drugs. He later discovered that the dealer had sold his friend 'speed' (amphetamine sulphate); the purchaser had then left the island, leaving him with the responsibility of paying off a bill of £800. He stated that he had been threatened with violence if he did not pay off the debt. He was holding the LSD, he said, to repay this debt.

Further details of the interview are set out in question and answer form and the Crown do not challenge the truth of what the Applicant told the police on the two occasions when he made replies to questions asked of him.

The relevant questions and answers read thus:

The Investigating Officer said, on 16th December, 1993:

"Also recovered from underneath the mattress of the bed in your room were two sheets of paper each containing 500 individual squares having a strawberry design upon them and wrapped in clingfilm. This was seized and exhibited. What are these?"

"LSD" said the Applicant.

Q: *"Is it yours?"*

A: *"No".*

Q: "Whose is it?"

A: "I can't say".

5 Q: "How did it come to be in your possession?"

A: "I was told to collect it from an address in New St. John's Road". (He gave the number).

10 Q: "Were you directed to this address by the person who told you to collect the LSD?"

A: "Yes".

Q: "What exactly were you told to do?"

15 A: "To collect it at about 4 o'clock and he will be round at 6 o'clock to collect it".

Q: "When you say he'll be around to collect it at 6 o'clock, do you mean from your house?"

20 A: "Yes".

Q: "Did you know the package you were to collect contained drugs?"

A: "Yes, well, I assumed."

25 He said it was packaged in a pink A4 sized envelope. He was asked why he agreed to collect it and hold on to the LSD for someone, and he said: "Because I owed him money and he threatened to break every bone in my body if I didn't".

30 He was asked why he owed money and he said: "Because I put a lad in touch with him for some speed because I didn't want anything to do with selling it and the lad disappeared and he held me responsible for the debt."

35 Q: "So how much do you owe him?"

A: "He said £800 but I'd already given him £800 and he wanted some more."

40 Q: "What was your understanding of what he was going to do with the LSD?"

A: "I don't know, I was just told to pick up the package."

And then a little later the Officer said:

45 Q: "It seems to me a lot of money that you were going to clear as a debt, just for picking up an envelope. Why didn't he get it himself?"

A: "So he could use a mug like me. I'm scared of him, I've already had one battering off him, I don't want another one. He assured me I wouldn't see or hear of him again if I did this for him."

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He said that it was about four months' ago he incurred the debt and that he was just going to hold on to the LSD for about two hours until the man collected it.

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We refer simply to one further passage in an interview which took place the following day where the applicant said this:

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"I was on my way down to Lords to collect my wages and I met him on the way down there. He asked me if I had the money and I said: "yes". We went to my house and I gave him £600. He said: "What's this?" I said: "It's the rest of the money." He said: "It's not enough" and that he wanted another £200. Then he said: "What I want you to do for me is to go and pick up an envelope and we'll forget it." I said: "no" but he threatened me, he said he was going to break every bone in my body. I had already been beaten up once and I believed him so I agreed in the end on the condition that he wouldn't approach me again."

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At the termination of this interview the Applicant said, and it is material that we should point this out: "I am really sorry for all the trouble that's been caused. My whole life has been devastated through stupidity. I really am sorry."

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As we have said, the Applicant's version of events is not challenged by the Crown and we accept it, as we do also the genuineness of the Applicant's expression of remorse which we have just quoted. This case therefore is not the usual case of possession with intent to supply in that the Applicant did not intend to supply a user of LSD, but to supply a dealer from whom he had received the drugs for temporary custody. It may be that a more appropriate charge would have been one of being concerned in the supplying of a controlled drug, but a substitution of this

charge would not have affected our opinion on the appropriate sentence.

5 What we can and do say is that, in the circumstances, we do not find it appropriate to apply the guidelines laid down in Clarkin, Pockett -v- A.G. (1991) JLR 213, but untrammelled thereby we look at all the circumstances of the case to determine whether the sentence passed by the Court below was an appropriate sentence.

10 We bear the following matters in mind: First, the Applicant was not a dealer, he was assisting a dealer by taking temporary custody of this substantial quantity of LSD. Any activity which assists in the dissemination of this dangerous drug within the
15 Island must be severely punished by the imposition of a custodial sentence unless the circumstances are wholly exceptional. These circumstances are not. Secondly, the Applicant has pleaded guilty and must be given credit for that. That plea follows a full and frank admission to the Investigating Officer. Thirdly, the
20 Applicant acted, we have no doubt, partly in fear of physical violence if he failed to carry out the dealer's demands. We do not accept the submission of the Crown that this aspect should be disregarded because an earlier incident involving the dealer put the Applicant into the dealer's power. The fact is that he was
25 within that power and under threat if he did not obey. Fourthly, the Applicant has one minor conviction only, relating to the possession of a Class B drug in April, 1992. We disregard this conviction. Fifthly, the Applicant has shown remorse. We have read, with sadness, a letter from his mother in which she says
30 that the Applicant did not want her and his father to be present at the hearing because he is so ashamed and in which she says that the Applicant's time already spent in detention has taught him a lesson never to be forgotten. Would that this Applicant had

thought of the anguish which would be caused to his parents by his criminal folly, if discovered, as discovered it was.

5 / In the circumstances we have set out we consider that there
is substantial mitigation in this case over and above the effect
of the Applicant's guilty plea and we consider that the matters
favourable to the Applicant and which we have summarised were not
adequately taken into account by the sentencing Court, so as to
render that Court's sentence excessive. It is for these reasons
10 that we have reduced the sentence, as indicated earlier, from one
of 5 to one of 4 years' imprisonment.

Authorities.

Clarkin, Pockett -v- A.G. (3rd July, 1991) Jersey Unreported;
(1991) JLR 213.

Satvir Singh (1988) 10 Cr.App.R.(S.) 402 C.A.

A.G. -v- Santos Costa & Ors. (9th August, 1993) Jersey Unreported.

Schollhammer, Reissing -v- A.G. (14th July, 1992) Jersey
Unreported C.of.A.

Wood -v- A.G. (15th February, 1994) Jersey Unreported C.of.A.

A.G. -v- Fogg (1990) JLR 206.