

ROYAL COURT
(Samedi Division)

150.

21st August, 1996

Before: Sir Philip Bailhache, Bailiff, and
Jurats Blampied, Gruchy, Le Ruez, Herbert,
Rumfitt, Potter, de Veulle, Jones, and Quérée.

The Attorney General

- v -

Christian Henry Buesnel

- 1 count of possession of a controlled drug, (MDMA) contrary to Article 6(1) of the Misuse of Drugs (Jersey) Law, 1978 (count 2);
- 1 count of obstructing police officers in the execution of their duty, contrary to Article 17(5)(a) of the Misuse of Drugs (Jersey) Law, 1978 (count 3); and
- 1 count of possession of utensils for the purpose of committing an offence, contrary to Article 8 of the Misuse of Drugs (Jersey) Law, 1978 (count 4).

On 19th April, 1996, the accused appeared before the Inferior Number of the Royal Court and pleaded guilty to the above three counts and not guilty to one count of possession of a controlled drug (MDMA) with intent to supply it to another, contrary to Article 6(2) of the Misuse of Drugs (Jersey) Law, 1978, (count 1) and was remanded for trial before the Inferior Number, en police correctionnelle, on 18th June, 1996, on count 1 and thereafter for sentencing on counts 2-4.

On 18th June, 1996, the accused was tried and acquitted on count 1 and was remanded to appear before the Inferior Number for sentencing on counts 2-4 on 12th July, 1996.

On 12th July, 1996, at the request of the Crown, the Court remanded the accused to appear before the Superior Number on 22nd July, 1996, for a review by the Court of its sentencing policy in cases of mere possession of Class A drugs and thereafter for sentencing.

On 22nd July, 1996, (see Jersey Unreported Judgment of that date) the Crown renewed its invitation to the Court to review its sentencing policy in relation to cases of mere possession of Class A drugs. On the basis of the existing policy the Crown moved as follows:

- Count 2 : 3 months' imprisonment.
Count 3 : 1 month's imprisonment, consecutive.
Count 4 : 2 weeks' imprisonment, concurrent.
TOTAL : 4 months' imprisonment.

The Court imposed a Probation Order for one year with a condition of 100 hours Community Service concurrent on each count. Reasons to be given later.

The Attorney General.
Advocate D.E. Le Cornu for the accused.

JUDGMENT

(setting out reasons for decision made on 22nd July, 1996.)

5 THE BAILIFF: On the 22nd July, 1996, the Court, in respect of an indictment which included a count relating to the possession of a Class "A" drug (Ecstasy), sentenced Christian Henry Buesnel to one year's probation subject to a condition, *inter alia*, that he perform 120 hours of community service. The Court indicated that it would give its reasons at a later stage, the Attorney General having referred the matter to the Superior Number so that the Court's policy in connection with the possession of small quantities of Class "A" drugs could be reconsidered. We now proceed to give those reasons.

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15 The Attorney General reminded us of a dictum of Ereaut, Bailiff in delivering the judgment of this court in Attorney General v. Young (1980) JJ 281:-

20 *"Now in such a case, where it is only the penalties which have changed, and they have been increased here in the case of supplying and importing, then the Court conceives it to be its clear duty to reflect the will of the legislature at once. And therefore, even if there were thought to be some inconsistency between the sentence imposed on Yates on the one hand and that which was imposed on Young on the other, any such inconsistency is compensated for by the fact that we are dealing today with a new law which has increased the maximum sentences which can be imposed for certain offences that we are considering. I think that that in fact deals with all the matters which, as I have said, were very well put to us by counsel. It only remains to take this opportunity on behalf of the Full Court to say once again that those in unlawful possession of Class "A" drugs, that is to say, those drugs which are normally described as hard drugs, will receive custodial sentences from this Court unless there are exceptional circumstances, even if the conduct is in the least serious category, and of course importing will correspondingly attract longer sentences."*

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40 That dictum, albeit *obiter*, has been applied by the Court on numerous occasions. It is this policy, that unlawful possession of a Class "A" drug even in a small quantity will lead to a custodial sentence unless there are exceptional circumstances, which the Attorney General asks us now to review in the light of current circumstances. It is not in doubt that illicit drugs are more readily available and that their abuse is more widespread today than was the case in 1980.

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50 The Attorney has helpfully referred us to a number of factors, the most important of which in our judgment we set out below.

(1) The States have recently approved a strategy on drugs entitled "Working together against Drugs". Among the strategic objectives set out in the report are (page 19):

5 "(5) To develop more effective probation supervision practice with substance misusers.

 (6) To maximise the use of constructive educational or treatment-based sentences in appropriate cases."

10 and (page 22);

 "(8) To investigate alternative ways of dealing with possession and importation of small amounts of illegal drugs".

15 As the Attorney General rightly submitted, it is of course constitutionally for the Court to determine the appropriate sentence in any particular context and to establish its own sentencing policy within any restrictions laid down by the legislature. Nevertheless it is entirely proper that the Court should take careful note of any general policy adopted by the States and to reflect the views of right-thinking people.

25 (2) The States have recently enacted the Criminal Justice (Young Offenders) (Jersey) Law 1994. Article 4 of that Law obliges the Court not to impose sentences of youth detention on persons under the age of 21 unless certain criteria are satisfied. Although the courts have tried for many years to avoid imposing custodial sentences on young people unless absolutely necessary, this Law gives statutory force to the principle.

30 (3) For reasons which are not clear, but which may reflect the Magistrates' perception of changing social circumstances, in the last year or so the Police Court has not been following the sentencing policy laid down by this Court in Attorney General v. Young (supra). It appears that, in a number of cases, binding over orders with a condition of attendance at the Drug Awareness Programme organised by the Public Health Authorities have been imposed. The Attorney General invites us to make it clear that, whatever policy is laid down, that policy must be applied by all the Island's courts.

35 (4) It is important that any variation in the Court's policy should not carry the wrong message that the Court no longer regards unlawful possession of Class "A" drugs as being a serious matter.

40 (5) Frequent abuse of Class "A" drugs, particularly heroin, creates addiction which in turn brings degradation and suffering in its wake. That suffering affects not only the addict but also his family and friends. The addict is often

driven to acquisitive crime in order to fund his habit. The Court should not make it any easier to take that first critical step on the downward slope.

5 The Court has given anxious consideration to these factors. We desire to make three preliminary points.

10 First, nothing in this judgment should be construed as purporting to derogate in any way from the policy in relation to drugs trafficking laid down by the Court of Appeal in Campbell, Molloy and Mackenzie -v- Attorney General (4th April, 1995) Jersey Unreported. C.of A.

15 Secondly, we entirely agree with the Attorney General that the dangers of abusing Class "A" drugs should be underlined. The dangers of heroin and other Class "A" opiates, and cocaine and its derivatives are so obvious as to need no emphasis. Even with lysergic acid (LSD) and the so called "designer drugs" the most common of which in Jersey are MDMA and MDEA, (Ecstasy), the known dangers are sufficiently great to justify any civilised society in proscripting their use.

20 Thirdly, the guidelines which we are about to lay down must of course be observed by the Police Court.

25 Our conclusion is that the policy laid down in 1980 in the case of Attorney General v. Young (supra) is too much of a straight jacket and does not allow sufficiently for the variety of circumstances which may be relevant both to the offence of possessing a Class A drug and to the offender himself. We have noted that in England the Court of Appeal has declined to lay down guidelines at all. In R. v. Aramah (1982) 4 Cr. App.R. (S) 407 Lord Lane C.J. stated:

35 *"Possession of heroin, morphine, etc. (simple possession): It is at this level that the circumstances of the individual offender become of much greater importance. Indeed the possible variety of considerations is so wide, including often those of a medical nature, that we feel it impossible to lay down any practical guidelines. On the other hand the maximum penalty for simple possession of Class "A" drugs is seven years' imprisonment and/or a fine, and there will be very many cases where deprivation of liberty is both proper and expedient".*

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50 In deference to the arguments carefully laid before us by the Attorney General, we think that we may perhaps go a little further than that. In most cases possession of a Class "A" drug, even if the quantity is very small, should attract punishment. Whether that punishment involves a custodial sentence or the imposition of a fine or community service order will depend upon the particular circumstances of the offence and of the offender. If the quantity of drugs cannot be described as small, or other aggravating

factors are present, a custodial sentence should usually be imposed. In certain cases, where the court is persuaded that the balance tips in favour of reform, a sentence requiring attendance at some educational or therapeutic course may be appropriate. In
5 the case of young offenders, the statutory restrictions must be borne carefully in mind. Where the young offender is of previous good character and the amount of the drug in question is small (for example one or two Ecstasy tablets) the balance will usually tip in favour of reform. Even in such cases, however, it is
10 possible that some additional punishment may be appropriate.

We applied those principles in this case. Buesnel was aged eighteen when these offences were committed. He was found in
15 possession of one Ecstasy tablet but admitted swallowing two others when apprehended by the police, thus giving rise to a charge of obstructing the police. He was also in possession of a home made "bong" and a knife on which traces of cannabis were found. The background report revealed a rather unhappy and
20 disturbed adolescence which had led to attempts at suicide. He was a first offender. Since his arrest he had of his own volition sought help from the consultant psychologist and had received counselling. During the nine months between his arrest and his presentation before this Court he was said to have repudiated any
25 contact with drugs, and to have made genuine efforts to reform his life. We took all those circumstances into account in imposing the sentence which was imposed.

Authorities

- A.G. -v- Young (1980) JJ 281.
- A.G. -v- Bull (26th April 1991) Jersey Unreported.
- A.G. -v- Hickson (7th June, 1991) Jersey Unreported.
- A.G. -v- Pinto (24th May, 1996) Jersey Unreported.
- A.G. -v- McDonough (24th May, 1996) Jersey Unreported.
- A.G. -v- de la Haye, Kearney (15th December, 1995) Jersey Unreported.
- R. -v- Aramah (1982) 4 Cr. App. R.(S) 407.
- R. -v- Diamond (1985) 10 Cr. App. R. (S) 152.
- R -v- Layton (1988) 10 Cr. App. R. (S) 109.
- R. -v- Cox (1994) 15 Cr. App. R. (S) 216.
- Home Office Statistics of Drug Seizures and Offenders dealt with in the U.K. 1993.
- Guidance to Magistrate's Association of England on Sentencing for possession of Class A Drugs.
- "Working together against Drugs", a strategy and implementation plan (President's Policy Group on the Misuse of Drugs).
- A.G. -v- Kramer (16th March, 1992) Jersey Unreported.
- Campbell, Molloy, MacKenzie-v-A.G. (4th April, 1995) Jersey Unreported CofA.