5 pages.

COURT OF APPEAL 122.

3rd July, 1995.

Before: R.D. Harman, Esq., Q.C., President,
Miss E. Gloster, Q.C., and
Sir Peter Crill, K.B.E.

Daniel Plowright

- v -

The Attorney General

Application for leave to appeal against a total sentence of 4½ years' imprisonment, passed on 13th February, 1995, by by the Superior Number of the Royal Court, to which the appellant 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: (MDMA) on which count a sentence of 4½ years' imprisonment was imposed;

count 2: (cannabis resin) on which count a sentence of 1 year's imprisonment concurrent was imposed.

Leave to appeal was refused by the Bailiff on 7th March, 1995.

Advocate S.E. Fitz for the appellant.
The Attorney General

JUDGMENT
(on application for leave to appeal against sentence).

THE PRESIDENT: On 27th January, 1995, this applicant appeared before the Royal Court and pleaded guilty to an indictment containing two counts. Count 1 charged that on 7th October, 1994, at Jersey Airport, he was knowingly concerned in the fraudulent evasion of
5 the prohibition on the importation of a controlled drug, namely

MDMA, otherwise known as Ecstasy. In count 2 he was charged that at the same time and place he was knowingly concerned in the fraudulent evasion of the prohibition on the importation of a controlled drug, namely cannabis resin. He was remanded to the 13th February, 1995, when he appeared before the Deputy Bailiff and Jurats. He was then sentenced to 4½ years' imprisonment on count 1, and 12 months' imprisonment on count 2, those sentences to be served concurrently. On 7th March, 1995, his application for leave to appeal against sentence was refused by the Bailiff. He therefore renews his application today before this Court.

The applicant is aged 27 and he comes from Liverpool. He has previous convictions for theft but not for drug offences. The facts of the present case follow an increasingly familiar pattern and necessarily involve at least one aggravating factor. On 7th October, 1994, the applicant had arrived at Jersey Airport, travelling under the assumed name of Stephen Walsh. He gave a false address and was in possession of a return ticket from Manchester which indicated that he proposed to remain in Jersey for two days. He said that he was in Jersey on account of an industrial compensation claim. Nothing was found on him when he was searched but he was detained and later X-rayed in hospital. He was then discovered to be carrying internally a number of packages containing a total of 99 Ecstasy tablets, a Class A drug, and 1.85 ounces, that is to say 52 grams, of cannabis resin.

At the trial evidence was given that the street value of Ecstasy tablets in Jersey is approximately £25 per tablet. Therefore the total street value of the 99 tablets was estimated to be approximately £2,475. Together with the cannabis the total value was therefore nearer £3,000. He had £30 in cash with him and said he hoped to "bump into" somebody from Liverpool. He said:

> *"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".*

It has been argued before us, among other matters, that the Sentencing Court did not have the benefit of a Probation Report and at the trial it was emphasised that drugs being less expensive to come by in England it was reasonable to believe his contention that the drugs were intended for personal use and not for resale. This of course is not a material factor when it comes to sentencing. In this connection we have been referred to R. v. Dolgin (1988) 10 Cr.App.R.(S.) 447, and A.G. v. Pringle (12th July, 1993) Jersey Unreported. Further, it is pointed out the applicant pleaded guilty. The significance of such a plea after the X-ray already referred to must necessarily be minimal. In the instant case it was acknowledged by Advocate Fitz that he had really no alternative. All these matters with the relevant guideline cases were very much in the minds of the Deputy Bailiff

and Jurats when it came to sentence. It is clear that they were taken into account and indeed the Deputy Bailiff went out of his way to refer to those authorities by name.

5 The applicant said that he had come to Jersey to wean himself off heroin to which he was addicted. There was, in addition, evidence before the Court that his only regular income was £91 per month Income Support at home. The starting point of 6 years' imprisonment was taken as being in line with the principles laid 10 down in Clarkin and Pockett v. A.G. (1991) JLR 213 CofA. A discount of 25% was allowed for available mitigation. This, in the circumstances, was arguably generous. Reference has been made in a number of cases which have come before this Court to the aggravating factor of drugs being carried internally. Since the 15 judgment in Campbell, Molloy and MacKenzie v. A.G. (4th April, 1995) Jersey Unreported CofA, the minimum starting point for trafficking in Class A drugs is now to be regarded as 7 years rather than 6 years. The new guidelines apply to cases then before the Court. Some allowance deserves to be given for this 20 applicant's guilty plea. The mitigation otherwise is not substantial.

The applicant, at the time of his trial, had declined to be interviewed by a Probation Officer to whom he said that a sentence 25 of imprisonment was inevitable and therefore in his opinion there was no helpful purpose to be served by such persistence. That was his decision and the Probation Officer was present at the trial to explain the position in the applicant's presence. In our judgment there is no merit in this application which is dismissed.

JUDGMENT
(on application of the Attorney General under
Article 35 of the Court of Appeal (Jersey) Law, 1961).

30 **THE PRESIDENT:** The Attorney General has reminded this Court today of the provisions of Article 35(4) of the Court of Appeal (Jersey) Law, 1961.

We are informed that the six weeks Rule is not being observed 35 by the Prison Authority. The Attorney General has told this Court that he proposes to remind the Authority of the provisions of the Law. We do not regard this case as one requiring this Court to extend the period of six weeks to be disregarded in computing the term of the sentence. But this Court will continue to have regard 40 for Article 35(4). No doubt the Prison Authority will do likewise.

In future applicants should be aware of the power afforded by proviso (b) of Article 35(4) and the Court will expect advocates who are instructed to present applications to ensure that their
5 clients fully understand the position.

Authorities
(Application for leave to appeal
against sentence)

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.

Campbell, Molloy & MacKenzie v. A.G. (4th April, 1995) Jersey Unreported CofA.

Clarkin and Pockett v. A.G. (1991) JLR 213 CofA.

Authorities
(Application under Article 35 of the Court of Appeal
(Jersey) Law, 1961).

Court of Appeal (Jersey) Law, 1961: Article 35.

Criminal Justice Act, 1948: s.38.

Prison (Jersey) Rules, 1957: Rules 110-114.

R. v. Bedford (1948) 33 Cr.App.R.(S.) 17.

Archbold (36th Ed'n): para. 916.

Archbold (1995 Ed'n): paras. 7-221 - 7-225.