

ROYAL COURT
(Samedi Division) 171

1st September, 1997

Francis Charles Hamon, Esq., Deputy Bailiff, and Jurats
Myles, Gruchy, Le Ruez, Vibert, Herbert, Rumfitt,
Potter, de Veulle, Jones, Querée, and Le Brocq.

The Attorney General

- v -

Alan Martin.

Sentencing by the Superior Number of the Royal Court, to which the accused was remanded by the Inferior Number on 15th August, 1997, following a guilty plea to:

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 1: M.D.M.A.;

Age: 21 (D.O.B.: 16th August, 1976: 21 on date of sentencing; 20 when convicted on 8th May, 1997.)

Details of Offence:

Defendant arrested at the JMT bus depot by two police officers carrying out licensing duties. Defendant resisted officers and one officer's jacket was torn in the struggle. Defendant found to be carrying 22 Ecstasy tablets. Street value: £440.

Details of Mitigation:

Guilty plea but caught *in flagrante*. Aged 20 at time of offence and conviction. Remorseful. Supportive parents.

Previous Convictions:

Several, including one previous conviction for possession of cannabis.

Conclusions:

Starting point : 7 years.
Count 1 : 5 years' imprisonment.

Sentence and Observations of the Court:

Count 1 : 3 1/2 years' imprisonment.

Policy on drug taking well known. Amount was commercial. One previous drug related conviction. Starting point would be six years and although put up a struggle and was not co-operative at first, due to his youth and guilty plea, the court adopted an individualised approach.

[On 23rd August, 1996, the accused pleaded guilty before the Inferior Number of the Royal Court to 1 count of receiving, hiding, or withholding stolen goods (count 1b of the first indictment laid against him and a co-accused, Howard Patrick Selby); and to 1 count of assault (count 1 of the second indictment), and was remanded in custody.

On 19th December, 1996, the accused was sentenced on count 1b of the first indictment to 6 months' youth detention. Count 1 of the second indictment was amended by the Crown to a count of grave and criminal assault, to which the accused pleaded not guilty, but guilty to the original count of assault, which plea the Crown accepted, and was sentenced to 3 months' youth detention, consecutive.

On 28th February, 1997, the accused and one other, Mark Ferguson, pleaded not guilty to 1 count of grave and criminal assault on an inmate at Her Majesty's Prison at La Moye; the co-accused was remanded in custody, the accused was granted bail, pending trial before a criminal assize to start on 12th May, 1997.

On 8th May, 1997, the accused pleaded guilty to the present count, and was remanded in custody receive sentence after the conclusion of the criminal assize.

On 15th August, 1997, the Crown reduced the charge of grave and criminal assault against Ferguson to one of assault. Ferguson pleaded guilty and was remanded in custody to receive sentence before the Inferior Number on 29th August, 1997. The Crown withdrew the prosecution on the same charge against the accused, who was remanded in custody to receive sentence on the present count.]

D.E. Le Cornu, Esq., Crown Advocate.
Advocate P.S. Landick, Esq., for the accused.

JUDGMENT

THE DEPUTY BAILIFF: The policy of this Court towards the offence of drug trafficking is well-known. In the judgment of the Court of Appeal in Campbell, Molloy and MacKenzie -v- AG (1995) JLR 136 CofA at p.144 ll. 14-16 the Court said: "That policy is that offenders will receive condign punishment to mark the peculiarly
5 heinous and antisocial nature of the crime of drug trafficking".

Martin was seen with another person at the Weighbridge at five past nine in the evening on Friday, 28th February, 1997.
10 After a struggle, a bag of 22 Ecstasy tablets with an average weight of 263 milligrams and a street value totalling £440 were

found in Martin's possession. This is a commercial quantity of these mind-altering drugs.

5 Martin has pleaded guilty and had he not there might have been problems proving trafficking on the facts as they were set out to us.

10 We have sought the Crown's advice and it appears to us that we have to treat him as an adult, although Mr. Landick raised the question of whether he can be treated as a young offender. The argument may be academic, but Article 3(1) of the Criminal Justice (Young Offenders) (Jersey) Law 1994 states that "no court shall pass a sentence of imprisonment on a person under the age of 21". Martin is now over 21 and will have to be treated as a mature offender.

15 The references on his behalf that we have read only underline the tragedy but he is still a young man albeit with a bad record, although not drugs related except on one previous occasion.

20 We intend to be guided by the Court of Appeal and to take six years as the starting point in this case. There has been no co-operation with the police but his youth must play a part in our consideration. For the guilty plea we cannot allow a full one-third discount, but the small volume of drugs and the excellent reference allow us to take a more individualised approach than we might otherwise have done.

25 Martin, your future really is in your own hands. You must make a choice. We cannot make it for you.

30 There is not complete unanimity among the Jurats but there is sufficient unanimity for us to impose upon you a sentence of 3 1/2 years' imprisonment. The drugs will be forfeited and destroyed.

[On 5th September, 1997, the Royal Court granted the prayer of a representation by the accused, asking the Court to amend the sentence of 3 1/2 years' imprisonment to one of 3 1/2 years' youth detention, on the ground that Article 4(1) of the Criminal Justice (Young Offenders) (Jersey) Law 1994 allows the Court to pass a sentence of youth detention, but not imprisonment, on an accused who is under 21 when convicted. The accused was aged 21 when sentenced on 1st September, 1997, but was aged 20 when convicted on 8th May, 1997 and therefore the Court had acted ultra vires by passing a sentence of imprisonment.]

Authorities

Campbell, Molloy, and MacKenzie -v- A.G. (1995) JLR 136 CofA at
p.144: 11.14-16.

A.G.-v-Postill (2nd October, 1995) Jersey Unreported.

Criminal Justice (Young Offenders) (Jersey) Law 1994: Article
3(1).