6 pages.

COURT OF APPEAL

32.

15th February, 1994.

Before: **Sir Godfray Le Quesne, Q.C., (President),**
Sir Charles Frossard, K.B.E., and
R.C. Southwell, Esq., Q.C.

Andrew John Wood

-v-

Her Majesty's Attorney General

Application for leave for appeal against a sentence of 5½ years' imprisonment imposed on 16th December, 1993, by the Royal Court (Superior Number), to which the applicant was remanded to receive sentence following guilty pleas, on 26th November, 1993, before the Inferior Number, to, *inter alia*, 1 count of supplying a controlled drug [Lysergide] contrary to Article 5(b) of the Misuse of Drugs (Jersey) Law, 1978, (count 1 of the indictment laid against him.)

The Applicant also pleaded guilty to 1 further count of supplying a controlled drug [amphetamine sulphate] (count 2, on which he was sentenced to 2 years' imprisonment, concurrent); and to 3 counts of possessing a controlled drug, contrary to Article 6(1) of the said Law (count 3 [Lysergide]; count 4 [amphetamine sulphate] on each of which he was sentenced to 1 year's imprisonment, concurrent; and count 5 [cannabis resin] on which he was sentenced to 3 months' imprisonment, concurrent). No appeal was lodged against these sentences.

Leave to appeal was refused by the Bailiff on 14th January, 1994.

Advocate R.G.S. Fielding for the Applicant.
Advocate A.D. Robinson on behalf of the Attorney General.

JUDGMENT.

THE PRESIDENT: This is an application by Andrew John Wood for leave to appeal against the sentence of 5½ years' imprisonment passed on him by the Royal Court for supplying a controlled drug.

The drug in question was the Class A drug, LSD. At the same time the Applicant was also sentenced on one count of supplying amphetamine sulphate and three counts of possession of drugs; one each of these counts referring respectively to LSD, amphetamine sulphate and cannabis. On these counts shorter terms of imprisonment were imposed against which no appeal has been lodged.

On 23rd July, 1993, a warrant under the Misuse of Drugs (Jersey) Law, 1978, was executed at Wood's flat. In the flat 15 wraps of amphetamine sulphate were found in a football boot; three wraps of amphetamine sulphate elsewhere on the premises; and one square of LSD amongst a pile of banknotes.

More important for present purposes, three pieces of paper were also found each bearing certain names and, against each name, figures. In a statement made to the police the Applicant admitted that these pieces of paper were deal lists recording sales by him of LSD. The three pieces of paper mentioned, in all, ten customers. The amounts sold to them were considerable, amounting in some cases to 250 deals and in one case to 300. Obviously these quantities were not for personal use, but were to be resold by the purchasers.

The first list, the Applicant said, had been compiled just before Christmas, 1992, and the other two about June, 1993. He admitted that in all the three pieces of paper showed that he had sold 1,720 deals and received for them £6,280. Out of this sum his profit was £1,500. According to the police the street value of these 1,720 deals would have been just over £12,000.

From this it appears that at two periods the Applicant had acted as a wholesaler of drugs; not a wholesaler very far up the ladder of supply, but nonetheless a wholesaler of by no means inconsiderable quantities of a very dangerous drug. It is obvious that the only view which can be taken of this was that a serious and highly anti-social offence had been committed which was bound to be punished by a considerable term of imprisonment.

Mr. Fielding, in presenting the case for the Applicant, referred to two recent decisions of this Court on the question of the appropriate sentences to be imposed for possession of drugs with intent to supply them; the cases of Fogg -v- A.G. (8th April, 1991) Jersey Unreported C.of.A., and Clarkin, Pockett -v- A.G. (3rd July, 1991) Jersey Unreported C.of.A.

In the later of the two cases, that of Clarkin, the offence committed was possession of a Class A drug with intent to supply it. This Court held that when involvement in supply by the Defendant is comparable to that of Fogg, the starting point for the consideration of the appropriate sentence before effect is given to mitigation on any ground should be 8 to 9 yeàrs' imprisonment.

Mr. Fielding submits that this Applicant was less closely involved in the supply of drugs than Clarkin. If the Royal Court took nine years as its starting point that, Mr. Fielding submits, was too high a starting point. He submitted that the Applicant was entitled to receive the usual one-third reduction in sentence for a plea of guilty. Indeed, he says, he should have received more than that because of the circumstances of his explanation of the three pieces of paper which I have mentioned.

Mr. Fielding submits, rightly in our view, that since those pieces of paper bore only names and figures and no reference to what had been supplied, it would have been impossible, but for the statement of the Appellant, to identify them as records of the supply of LSD. In other words, Mr. Fielding submits, the Appellant co-operated with the police to an exceptional degree and made it possible for a charge of supplying LSD to be made against him when such a charge could not have been made unless his statement had first been recorded.

This, he submitted, should be regarded as equivalent to a Defendant giving himself up to the police. Further, he drew our attention to the fact that the Applicant was a man of almost good character. The fact is that there are three offences only recorded against him, all minor, concerning public order and he has no previous offence concerned in any way with drugs.

Taking all these matters into account, Mr. Fielding submitted, the starting point of the Court's consideration should have been lower than 9 years and the resulting sentence at which they arrived of 5½ years was excessive.

It will be apparent from what I have said that Mr. Fielding's argument relied fundamentally upon reference to earlier cases cited. It is necessary to refer to earlier cases when dealing with appeals against sentence in order to ensure, as far as possible, that the right degree of consistency is achieved between one case and another. Indeed it is for this purpose that both this Court and the Royal Court have, on occasion, when passing sentence, not only dealt with the particular offender before them, but have also laid down guidelines to be followed in subsequent cases.

It is necessary and important however to remember that reference to earlier cases is made in order to see the principles and guidelines which have been laid down there and to follow them. The purpose of referring to earlier cases is not to analyse the exact sentence which was then passed and the precise reasons why the Court arrived at it. This would be an impossible undertaking since sentencing is a discretionary exercise in every case and the reports do not include every feature which influenced the Court in exercising its discretion on earlier occasions.

We notice a tendency, particularly in appeals against sentence in drug related cases, to try to calculate the exact effect given by the Court in earlier cases to each factor and then to say that those effects must be reproduced in the case in hand. This is a misleading exercise since, as I have said, it is impossible from the reports to disclose every consideration which influenced the Court. It is also an exercise which, if it could be achieved, would be inconsistent with the discretionary nature of the sentencing function. That discretion, like all discretions, has to be exercised on proper grounds and with due regard to relevant principles, but the important fact remains that in deciding upon the sentence in every case the Court is exercising its discretion upon the facts of that case.

Starting from the guidelines established by this Court in its Judgment in the case of Clarkin, we consider that the correct starting point in this case was, as the Court said in that Judgment, a term of between 8 and 9 years. From that, according to a well-established principle, a deduction should be made of one-third for the plea of guilty, and it is relevant to notice that the plea of guilty was offered in this case at the outset, that is to say at an earlier stage than the plea offered in the case of Clarkin. In that case the plea of guilty was offered only after a challenge to certain evidence had been considered by the Court and rejected.

The co-operation offered by this Applicant to the police in his statement explaining exactly what the three pieces of paper were may not be precisely equivalent to the action of a Defendant giving himself up to the police, as the Applicant was under arrest at the time when he made his statement, but it is significant that the explanation which the Applicant gave of those pieces of paper made it possible for the charge of supplying LSD to be made. Upon the evidence then available to the police, it does not appear that it would have been possible for that charge to have been made without the explanation voluntarily given by the Applicant in his statement. This is a feature of the case which rightly constitutes mitigation and demands some modification of the sentence in addition to the ordinary reduction of one-third for a plea of guilty.

It is also right to bear in mind the character of the Applicant which, as I have said, although not a completely good character, was a character unmarked by any serious offence, or by any offence at all connected with drugs.

Weighing all these matters we come to the conclusion that the appropriate sentence in this case is a sentence of imprisonment for $4^1/_2$ years. We therefore consider that the sentence in fact imposed of $5^1/_2$ years was excessive and excessive to a degree which justifies reduction by this Court.

We desire to add and to emphasise this observation, to avoid misuse of this decision in future cases: it should clearly be understood that our decision in this case depends entirely on this case's particular features. We are laying down no new principle; far from that, we are following the principles already established by this Court, and our decision in this case will not constitute any authority for deciding what is the correct sentence in any future case in which the features of this case are not exactly reproduced.

For these reasons we grant the application and, treating the argument which we have heard as the argument of the appeal, we allow the appeal against sentence and reduce it from 5½ years to 4½ years.

AUTHORITIES.

Clarkin, Pockett -v- A.G. (3rd July, 1991) Jersey Unreported. C.of.A.

Fogg -v- A.G. (8th April, 1991) Jersey Unreported. C.of.A.

A.G. -v- Ferri (25th June, 1993) Jersey Unreported.

A.G. -v- Bevis (17th May, 1993) Jersey Unreported.

Hoult (1990) 12 Cr.App.R.(S.)180.