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COURT OF APPEAL

69.

15th April, 1996.

Before: J.M. Collins, Esq., Q.C., President,
R.C. Southwell, Esq., Q.C., and
J.G. Nutting, Esq., Q.C.

Lee William McHardy

- v -

The Attorney General

Application for leave to appeal against **a total sentence of 5 years' imprisonment**, passed on 15th November, 1995, by the Superior Number of the Royal Court, to which the appellant was remanded by the Inferior Number on 6th October, 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 **5 years' imprisonment** was imposed;

count 2: (MDEA) on which count a sentence of **5 year's imprisonment concurrent** was imposed.

Leave to appeal was refused by the Deputy Bailiff on 18th January, 1996.

The Appellant on his own behalf.
Advocate A.D. Robinson on behalf of
the Attorney General.

JUDGMENT

THE PRESIDENT: This is an application for leave to appeal by Lee William McHardy from the sentences imposed on him by the Superior Number of the Royal Court on 15th November, 1995, he having pleaded guilty to two counts in an indictment, one charging him

with fraudulent evasion of the prohibition on the importation of a controlled drug, namely Ecstasy, and the other with the same offence in respect of Ecstasy with a different constituent compound; both those offences were alleged to have been committed on 8th July, 1995, at the Elizabeth Terminal, St. Helier.

An unsuccessful application for leave to appeal was made to the Deputy Bailiff who refused it on 18th January, 1996. He now renews his application before the full Court.

The facts are simple. The Applicant, who was 23 years old at the time, disembarked from a vessel at the Elizabeth Terminal, having travelled from Weymouth. He was stopped by customs officers and asked if he had anything to declare; he stated that he had not, and on questioning admitted that he had a conviction for being in possession of cannabis for which he had been sentenced to one month's imprisonment in 1991. After an initial attempt to conceal the fact on being searched, he revealed a plastic bag which was hidden in his underpants. It contained fifty Ecstasy tablets. He stated that they were in part for his own use but otherwise that he intended to sell them. He had paid £250 for them and he said that he intended to sell them at £10 each, which would of course result in a 100% profit on any tablets that he sold. In fact it might have been possible for him to make an even greater profit, the estimated street value being placed, on the evidence, at £1,000 to £1,250, but as a stranger to the Island he was not necessarily to know this.

This Court in Campbell, Molloy, MacKenzie -v- A.G. (4th April, 1995) Jersey Unreported CofA, laid down the guidelines for sentencing in drugs cases in this Island. In that case the Court heard of the dramatic increase in the amount of drugs coming into Jersey, which was a potentially attractive market for drug dealers. This was reinforced by evidence as to the comparative prices, which were higher than on the mainland, a feature which is already apparently illustrated by the facts of the present case. The Courts in this Island were conscious even before that case of the seriousness of the importation of or dealing in Class A drugs such as Ecstasy.

In the case of Campbell, Molloy and MacKenzie, this Court in its judgment stated ***"it is seldom that the starting point for any offence of trafficking in a Class A drug on a commercial basis can be less than a term of seven years".***

We see no reason to depart from this in the present case, and so we turn to consider whether there are mitigating circumstances sufficient to reduce the appropriate sentence to one of less than five years. The Court clearly took account of the Applicant's age and of his guilty plea, although in the latter case it is to be observed that he could hardly have raised a worthwhile defence once he was made subject to a strip search. After having been

convicted of a large number of offences of burglary, theft, taking away conveyances and one offence of being in possession of cannabis, it is right to say that he had not been in trouble since his last conviction which was in 1991. The Applicant has further shown to this Court an excellent report from his previous employers for whom he worked for several years and who spoke very highly of him and that is something we take into account. The sentencing court accepted also that he had co-operated with the customs officers, identifying his supplier by a nickname and a very general description and stated that that had been taken into account.

We consider that the court made sufficient allowance for these matters in arriving at sentences of five years' imprisonment concurrent in respect of these offences.

The Applicant who presented his appeal in person referred to a passage in the judgment of the learned Bailiff when passing sentence in which the learned Bailiff made reference to a recent case of an 18 year old girl who had been put into a coma by taking a single tablet of Ecstasy and the Applicant complained that this had influenced the Court's mind without the support of any evidence. However, reference to the terms of the judgment shows that this was not taken by the Court as a factor which served to increase the guidelines already laid down by this Court in Campbell, Molloy, MacKenzie; it was referred to only as a factor which served, in the court's view, to reinforce the wisdom of the Court in having laid down the guidelines which it had.

The Applicant also referred us to and he relied upon the case of Plowright -v- A.G. (3rd July, 1995) Jersey Unreported (CofA), where a sentence of 4½ years was upheld in this Court in the case of the importation of 100 tablets of Ecstasy by a man of 27 years of age, a man who, unlike the Applicant, had given a false explanation. However that was a case in which this Court was upholding a decision of the lower court which had itself been passed before the decision of this Court in Campbell to which we have referred and was still following the old guidelines in Clarkin and Pockett which took a six year starting point. Accordingly we do not consider that this case assists the Applicant.

We have also been referred by counsel for the Crown to the case of A.G. -v- Seddon (30th October, 1995) Jersey Unreported, which this Court considers very much in line with the present case. Accordingly we refuse the application.

We would add only this. It was urged on behalf of the Applicant in mitigation before the Royal Court that he was not aware of the levels of sentencing in this Island. We take this opportunity of declaring that this was not in our view a mitigating factor and in general terms it would be right to say

that if an offender elects to import forbidden drugs into the jurisdiction of this Court he or she takes the risk of being punished in accordance with the laws and practice of this Island.

Authorities.

A.G. -v- Seddon (30th October, 1995) Jersey Unreported.

Plowright -v- A.G. (3rd July, 1995) Jersey Unreported CofA.

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