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120.

ROYAL COURT (SUPERIOR NUMBER)
(exercising the appellate jurisdiction conferred upon it by Article 22 of the Court of Appeal (Jersey) Law, 1961.)

24th June, 1996.

Before: The Deputy Bailiff, and Jurats Bonn, Gruchy, Le Ruez, Potter, de Veulle and Quérée.

Alan Robert Mason

- v -

The Attorney General

Application for leave to appeal against a total sentence of 4 years' Youth Detention, passed by the Inferior Number on 22nd March, 1996, following guilty pleas to:

2 counts of	supplying a controlled drug, contrary to Article 5(b) of the Misuse of Drugs (Jersey) Law, 1978:.	
	Count 1 :	MDEA compound (Ecstasy), on which count a sentence of 4 YEARS' YOUTH DETENTION was passed;
	Count 2 :	MDEA/MDMA compounds (Ecstasy),on which count a sentence of 4 YEARS' YOUTH DETENTION, concurrent, was passed
1 count of	possession of a controlled drug (MDEA/MDMA compounds [Ecstasy]) with intent to supply it to another, contrary to Article 6(2) of the said Law (count 3), on which count a sentence of 4 YEARS' YOUTH DETENTION, concurrent, was passed	

Leave to appeal was refused by the Deputy Bailiff on 16th April, 1996.

Advocate S.J. Crane for the Appellant.
D.E. Le Cornu, Esq., Crown Advocate.

JUDGMENT

THE DEPUTY BAILIFF: At about 00.40 a.m. on the morning of Saturday 11th November, 1995, two police officers noticed the appellant driving his car in an erratic manner. He was stopped and two males who had been passengers got out of the car and walked away.

Upon speaking to the driver P.C. Forde suspected he had been drinking, which he admitted, but because only five minutes had apparently elapsed since his last drink, he was asked to wait in the police car for fifteen minutes. Whilst there, he asked one

of the police officers if he could switch off the lights of his car. It was agreed that this would be done by one of the police officers who noticed in the car an Embassy cigarette packet containing a torn Rizla packet.

Suspecting drug abuse, a search of the car was carried out and five white tablets were found. Mason was arrested and cautioned. When taken to Police Headquarters, a further nine white tablets in a plastic bag were discovered in Mason's pockets and cash in the sum of £524.65. A further and later search of Mason's car revealed a further two white tablets and what appeared to be a dealing list. A search of the appellant's home address revealed nothing further.

Mason was co-operative with the police when interviewed the next day, informing them that he had become involved in drug dealing purely for financial reasons. He had purchased two amounts of fifty Ecstasy tablets for £16 each and he had sold the majority for £20 each. He confirmed that the piece of paper found in the car was a dealing list.

The fifty tablets that he had purchased on the 23rd September had been sold within an hour. He had made a profit of £180.

Although under pressure from his supplier he did not succumb again until the 10th November, when he met his supplier and took fifty Ecstasy tablets with an apple motif on them. Later that evening, in order to give his customers some choice, he met another person in Le Masurier's car park and exchanged ten of the apple motif Ecstasy tablets for ten dove motif tablets. He had sold thirty-four of the second lot of fifty tablets.

These drugs, as Mr.Le Cornu has said, were dealt with purely for commercial gain and this was, in the opinion of D.C. de la Haye, a supply of Ecstasy on a significant commercial scale.

The Ecstasy proved on analysis to have been predominantly MDEA with a minority of tablets of MDMA.

The appellant pleaded guilty and was sentenced on each of two counts of supplying Ecstasy and one of possession of Ecstasy, to four years youth detention concurrent.

Leave to appeal was refused on the 16th April, 1996.

The appellant pleaded guilty from day one and now contends that the sentence arrived at was manifestly excessive and wrong in principle.

The appellant is twenty years old. He is well educated and comes from a caring and supportive family. When arrested he had little alternative but to resign from his work as a trainee accountant.

Advocate Crane argued before us, firstly, that the sentencing Court maintains at all times a discretion in exceptional circumstances to impose a non-custodial sentence. He said that the Court had a letter from a youth worker at Le Squez Youth Club who was involved in setting up the very first peer-led education group in relation to drug awareness. Mr. Crane considered that this was an unusually constructive alternative to youth custody, which the court below did not adequately consider. If it had done so, then an individualised sentence would have been imposed.

We can deal with this aspect of the appeal shortly.

In A.G. -v- Young (1980) JJ 281, the Superior Number expressed its policy in this way:-

> ***"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, 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.***

That case, of course predates Campbell, Molloy, Mackenzie -v- Attorney General (4th April, 1995) Jersey Unreported CofA, and while Advocate Crane chose to select passages from that judgment which might allow a more lenient approach, we feel we need to repeat the words of the Court of Appeal at page 7, where it said:-

> ***"The Courts cannot by themselves provide a solution to the problem, but they can play their part by adopting a sentencing policy which marks the gravity of the crime. We desire therefore to make it absolutely clear what is the policy of the courts in this jurisdiction in relation to the sentencing of offenders who import or deal in drugs on a commercial basis. That policy is that offenders will receive condign punishment to mark the peculiarly heinous and antisocial nature of the crime of drug trafficking".***

The case of A.G. -v- Roberts and Gleeson (23rd November, 1992), Jersey Unreported predated the appeal Court judgment by three years. We cannot see in this case, which was motivated only by greed, any reason to depart from the firm guidelines laid down by the Court of Appeal. The proposal of the Le Squez youth leader seems very much, it appears to us, to have been a pilot scheme, and the letter is dated the day before the trial. Had the court felt that it was, as Advocate Crane has suggested, an unusually constructive alternative, it had the power to call the youth leader but did not do so. It is perhaps noteworthy that the Probation Report makes no mention of the scheme, and as we

recall the Probation Report was written a few days before that letter was sent. The proposal was put to the Court and rejected. We cannot see, after much reflection, that the Court erred in any way in that regard.

The second argument made by Advocate Crane is that the sentence imposed be reduced substantially. He contends that the starting point of 7 years was quite wrong, and that Mason, in the final assessment, should only have been sentenced to three years youth custody rather than four years.

Let us start with the pointer acknowledged by Advocate Crane. In Campbell, Molloy and Mackenzie -v- Attorney General it was stated that:-

> ***"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".***

That very term was taken as the starting point in A.G. -v- Dowbiggen and Glover, (21st December, 1995)Jersey Unreported. We find that the comparison of facts in different cases is not particularly helpful, but if Dowbiggen was found in possession of 109 Ecstasy tablets (carried internally) and Glover had 80 tablets in his underwear, it seems to us idle to argue that the appellant was found with "only 18 tablets". He had, on his own admission already sold 84 Ecstasy tablets.

The learned Bailiff said in the course of his judgment:-

> ***"At the end of the day, here is a defendant who was, for commercial motives, spreading or facilitating the use of dangerous class A drugs, no doubt amongst those of a similar age group to his own".***

If we can compare Glover and Dowbiggen, we can say that those two were coming into a different environment from which they lived and worked. Mason lived here, was comfortably inhabiting the island and was supplying his friends.

We do not regard the case of A.G. -v- Bisson, Crocker, Pritchard & Spencer, (11th April, 1996) Jersey Unreported as a precedent. From what Mr. Le Cornu has told us, there was apparently discord between the Court and the prosecution in that case and we must regard it as exceptional.

We have given anxious consideration to the matter, but we regard seven years for this offence as being correct. The Court had no doubt in A.G. -v- Dowbiggen & Glover that seven years was the correct starting point and we recall that Glover was seventeen with no previous convictions. The case that we are dealing with

was drug trafficking on a significant commercial scale purely for gain.

The only point upon which the appeal might turn and which could be significant, is whether sufficient credit was given to Mason on the available mitigation.

It is clear that the appellant pleaded guilty and, effectively wrote his own indictment. Advocate Crane argues that if the appellant had not volunteered the information that he did, to the police, he would have been likely to have been charged only with possession, he says that to us in his written submission. We are not certain that we agree with that as a sound contention. be that as it may, the Crown did allow a one third discount for the guilty plea, this, despite the fact that his involvement in drugs became apparent to the police officer who first went to his car on the night that he was stopped. The Court noted his co-operation, his youth, the fact that he had no previous convictions, that he had a stable and supportive family background, that he was starting out on a career as an accountant, that he was not a user of drugs, that he was free and frank in interview. For all this, the Court gave a further discount, after the one third of a further eight months.

If we look at the Court of Appeal in Carter -v- A.G. (28th September 1994), Jersey Unreported CofA, it said this:-

> ***"The Court now turns to such mitigation as there is. The applicant pleaded guilty to the indictment and for this he is entitled to a substantial discount. In Clarkin and again in Wood -v- A.G. 15th February, 1994, this Court made a reduction of one third for a plea of guilty. We accept that such a reduction is customary and in line with a well established principle. Nevertheless, we take the view that such a reduction is in no sense an inflexible rule and the precise deduction in each case must depend upon the circumstances in which the guilty plea came to be made. In some circumstances the evidence will make a guilty plea all but inevitable, but in other cases that may not be so".***

We have given very anxious consideration to the whole question of whether sufficient was allowed by way of mitigation by the Court below, but, although we have argued this through very fully this afternoon when we retired, I have to say that the learned Jurats feel that they must dismiss the appeal because there was nothing which is manifestly excessive or wrong in principle. Leave to appeal is given and the appeal is dismissed.

Authorities

A.G. -v- Dowbiggin, Glover (21st December, 1995) Jersey Unreported.

Wood -v- A.G. (15th February, 1994) Jersey Unreported CofA.

A.G. -v- Bisson & 3 others (11th April, 1996) Jersey Unreported.

A.G. -v- Roberts, Gleeson (23rd November, 1992) Jersey Unreported.

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

A.G. -v- Young (1980) JJ 281.

Carter -v- A.G. (28th September, 1994) Jersey Unreported CofA.