

ROYAL COURT
(Samedi Division)

191.

18th October, 1996

Before: F.C. Hamon, Esq., Deputy Bailiff, and
Jurats Potter and Jones

The Attorney General

- v -

José Ricardo Ramos de Freitas

-
- 1 count of possession of a controlled drug, contrary to Article 6(1) of the Misuse of Drugs (Jersey) Law, 1978 (count 1: heroin).
- 1 count of possession of utensils for the purpose of committing an offence, contrary to Article 8 of the Misuse of Drugs (Jersey) Law, 1978 (count 2).

Plea: Guilty.

Age: 21.

Details of Offence:

Visiting an apartment where a search warrant was being executed, defendant was found to be in possession of 555 milligrams of heroin. On searching his flat utensils were found.

Details of Mitigation:

Youth [20 at time of offence]. No previous convictions. Plea of guilty and the fact that the defendant was voluntarily seeing his doctor to address his heroin dependency.

Conclusions:

1 year's probation with 100 hours community service and attendance at drugs awareness programme.

Sentence and Observations of the Court: Conclusions granted.

The Attorney General.
Advocate A. Messervy for the accused.

JUDGMENT

5 THE DEPUTY BAILIFF: In the early evening of 18th May, 1996, four police officers executed a search warrant under the Misuse of Drugs (Jersey) Law, 1978 at premises in La Route du Fort. While the search was in progress de Freitas knocked at the door. He was asked to remove his shoes and a small packet of diamorphine which contained 555 milligrams of the drug with a purity of 62% was discovered.

10 Although de Freitas denied it was his it clearly was his and he was found, on arrival at Police Headquarters, to be suffering from heroin withdrawal. There was a delay of an hour before he took part in a sterile question and answer session. He was duly charged with possession of the drug and after appearing in the Magistrates' Court, he was remanded to this Court on bail.

15 It appears that the amount of heroin found in de Freitas' possession is a personal amount of the drug and that is accepted by the prosecution, although it must be noted that the 555 milligrams could have provided up to 16 1/2 doses of this poison.

20 It appears that until the case of A.G. -v- Buesnel (21st August, 1996) Jersey Unreported, the Crown might very well have moved for a prison sentence in the present case. However, in that case the Superior Number said this:

25 *"In most cases possession of a Class "A" drug, even if the quantity is very small, should attract punishment. Whether that punishment involves a custodial sentence or the imposition of a fine or community service order will depend upon the particular circumstances of the offence and of the offender. If the quantity of drugs cannot be described as small, or other aggravating factors are present, a custodial sentence should usually be imposed. In certain cases, where the court is persuaded that the balance tips in favour of reform, a sentence requiring attendance at some educational or therapeutic course may be appropriate. In the case of young offenders, the statutory restrictions must be borne carefully in mind. Where the young offender is of previous good character and the amount of the drug in question is small (for example one or two Ecstasy tablets) the balance will usually tip in favour of reform. Even in such cases, however, it is possible that some additional punishment may be appropriate".*

45 This is, in our view, a very unusual case and although we are dealing with heroin we are minded to tip the balance of justice in favour of an attempt to reform, but we have to stress that this is a serious case; it involves heroin and we must not be thought to

be setting a precedent. But there are certain mitigating factors which are important to note and the learned Attorney has drawn these carefully to our attention. De Freitas was only 20 at the time these offences were committed; he has no previous convictions and he has pleaded guilty throughout. Furthermore, he has sought and continues to seek the assistance of his doctor with regard to his withdrawal from heroin. De Freitas, will you stand up, please. Because you appear to be sorry for what you have done and because you are reasonably mature we want you to be given this chance. We are therefore going to sentence you to 1 year's probation and 100 hours' community service with a condition that you attend the drug awareness programme. You will be in good hands, but if you do not follow the advice of your Probation Officer I have to tell you that you will have to come back to this Court. We hope that we do not see you again.

5

10

15

Authorities

A.G. -v- Buesnel (21st August, 1996) Jersey Unreported.

A.G. -v- Coates, Kuzak (3rd January, 1992) Jersey Unreported.

A.G. -v- Saunders & Ors. (31st May, 1991) Jersey Unreported.

Community Service Orders (Tariff) (Probation and After Care
Service Suggested Guidelines) (1990) JLR N.19.