

ROYAL COURT
(Samedi Division)

85

1st May, 1997

Before: F.C. Hamon, Esq., Deputy Bailiff, and
Jurats Myles, Bonn, Le Ruez, Vibert,
Rumfitt, Potter, Jones and Quérée

The Attorney General

- v -

David William Mitchell

Sentencing by the Superior Number of the Royal Court, to which the accused was remanded by the Inferior Number on 18th April, 1997, following a guilty plea to:

- 1 count of being knowingly concerned in the fraudulent evasion of the prohibition on the importation of a controlled drug, contrary to Article 77(b) the Customs and Excise (General Provisions) (Jersey) Law, 1972:
Count 1 : MDMA.
- 1 count of assaulting an officer in the execution of his duty, contrary to Article 5(a) of the Customs and Excise (General Provisions)(Jersey) Law, 1972: (Count 2).

Age: 29.

Details of Offence:

Mitchell was arrested at the Airport. Initially gave false identity. Had 12 packages concealed internally containing 490 Ecstasy tablets. Street value: £9,760. Had brought drugs to Island in order to sell them to clear a debt. Whilst at hospital for purpose of X-ray attempted to escape. Customs Officer pushed, struggle took place on the steps of hospital. Officer suffered abrasion to nose requiring treatment at Accident & Emergency Department. Defendant attempted to bite officer's fingers when handcuffs placed on him. Defendant pleaded guilty but inevitable in the circumstances.

Details of Mitigation:

Guilty plea but Defendant caught *in flagrante*. Maintained that he had been threatened if did not bring drugs to Jersey. This account differed from that given to police. Claimed he was being pursued by loan shark. No evidence of financial profit from trafficking.

Starting point should be 8 years.

Previous Convictions: Numerous but no previous drug convictions.

Conclusions:

- Count 1 : 7½ years' imprisonment.
- Count 2 : 2 months' imprisonment, consecutive.

TOTAL : 7 years' 8 months' imprisonment.

Sentence and Observations of the Court:

Count 1 : 7 years' imprisonment.

Count 2 : 2 months' imprisonment, consecutive.

TOTAL : 7 years' 2 months' imprisonment.

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

JUDGMENT

5 THE DEPUTY BAILIFF: David William Mitchell arrived in Jersey by air from Manchester on 31st January, 1997, at 6.05 in the evening. He gave false identification on a landing card which seemed surprising to one of the police officers of the Special Branch Ports Unit, who felt that he had stopped him on a previous occasion. Mitchell, however, denied having been in Jersey before. Nothing was found in his luggage but he only had £40 on his person; he had no means of support other than that; and no accommodation had been booked and he had no means of establishing his identity.

10 He claimed his name was Williams but he eventually gave his correct name and offered to have an X-ray taken. That was carried out later that evening at the General Hospital and while he was changing he attempted to abscond; there was a violent struggle and an attempt was made by him to bite the fingers of Customs Officer Le Neveu. This Officer suffered a minor abrasion to his nose as well during the struggle.

15 The X-ray showed suspicious packages in his rectum. He asked for and was given the facility of speaking to a lawyer and eventually passed twelve cling-film wrapped packages containing a quantity of white tablets. He was agitated, received medical treatment and detained overnight. The next morning more of the truth was revealed. He told Police Officers that he had received the Ecstasy tablets on credit; had agreed a price with his supplier. He said that he had acted alone and had hoped to double his outlay. He refused to name his supplier and whilst now admitting that he had been to Jersey before - at Christmas, 1996 - he denied that he had brought any drugs with him then.

20 Some of the tablets whilst in his rectum had been contaminated by his body fluids and were fused together and crumbling but there were altogether 488 tablets of MDMA or Ecstasy. The average weight was 300 milligrams and each tablet contained an average of 95 milligrams of MDMA. This has a street value of £9,760 and for that reason alone is a significant

commercial amount. This is his first drugs offence of any significance. He is 29 years old and he apparently feels that being under threat is some form of mitigation.

5 We agree with Crown Advocate Le Cornu that following the Court of Appeal case of Campbell, Molloy and MacKenzie (1995) JLR 136 CofA the starting point in this case has to be nine years. It cannot be - despite the cogent arguments of Mr. Landick - that a person found with drugs inside his body can be put on a par with
10 someone who writes his own indictment and pleads guilty thereafter.

We have considered, however, the cases of AG -v- Rennie and Williams (9th September, 1996) Jersey Unreported and AG -v- Cabot (4th December, 1995) Jersey Unreported in particular, although
15 comparison with these two cases is not helpful because I am not certain that we always have the full details when we read the written reports. However, what we have done is to look at the totality of the sentence and in the circumstances - stand up,
20 please, Mitchell - we are going to sentence you to seven years' imprisonment on count 1; and two months' imprisonment, consecutive, on count 2. We order the forfeiture and destruction of the drugs.

Authorities

AG -v- McHardy (15th September, 1995) Jersey Unreported.

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

AG -v- Rennie and Williams (9th September, 1996) Jersey
Unreported.

AG -v- Cabot (4th December, 1995) Jersey Unreported.

AG -v- Cain (9th September, 1996) Jersey Unreported.

Carter -v- AG (28th September, 1994) Jersey Unreported.

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

Thomas: Current Sentencing Practice: Part A8: Relevance of Plea:
pp.10801-17.

Emmins on Sentencing (2nd Ed'n): pp.65-66.

Campbell, Molloy and MacKenzie (1995) JLR 136 CoFA.