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COURT OF APPEAL

10th January, 1994.

Before: Sir Godfray Le Quesne, Q.C., (President),
Lord Carlisle, Q.C., and
Sir Charles Frossard, K.B.E.

André Phillippe Gummer

-v-

Her Majesty's Attorney General

Application for leave for appeal against a total sentence of 3 years' imprisonment imposed on 23rd September, 1993, by the Royal Court (Superior Number), to which the applicant was remanded to receive sentence following guilty pleas, on 20th August, 1993, before the Inferior Number, to 2 counts of supplying a controlled drug contrary to Article 5(b) of the Misuse of Drugs (Jersey) Law, 1978, (count 1 of the indictment [L.S.D.] on which he was sentenced to 3 years imprisonment; count 2 [amphetamine sulphate] on which he was sentenced to 3 years' imprisonment, concurrent); to 2 counts of possessing a controlled drug with intent to supply it to another, contrary to Article 6(2) of the said Law (count 3 [L.S.D.], on which he was sentenced to 3 years' imprisonment, concurrent; count 4 [amphetamine sulphate] on which he was sentenced to 3 years' imprisonment, concurrent); and to 2 counts of possession of a controlled drug (cannabis resin), contrary to Article 6(1) of the said Law (counts 5 & 6 on each of which counts he was sentenced to 3 months' imprisonment, concurrent with each other and with the sentences imposed in respect of counts 1-4.).

Advocate Mrs S. Sharpe for the Applicant.
The Attorney General.

JUDGMENT.

THE PRESIDENT: This applicant pleaded guilty in the Royal Court on 20th August, 1993, to an indictment which contained six counts, two of them charged him with the supply of a controlled drug, in the first count L.S.D. and in the second count amphetamines. The third and fourth counts charged him with possession with intent to supply, of L.S.D. (the third count) and amphetamines (the fourth count).

The quantities involved in the supply counts were 20 tablets of L.S.D. which we were told the Applicant was selling for £6 - £7

each and two wraps of amphetamines which he was selling for £15 each.

In count 3, the amount of L.S.D. which he possessed with intent to supply was 30¹/₂ tablets and in count 4, 13 wraps of amphetamines.

This is therefore a serious case of supply of Class A drugs and of possession of Class A drugs with intent to supply them.

At the time of his plea the applicant was aged 20. The Court had therefore to observe the requirements of Article 18 of the Children (Jersey) Law, 1969, the effect of which is to limit the power of the Court to one of three things: - to impose a sentence of Borstal Training, or to impose a sentence of imprisonment either for a term not exceeding six months, or for a term of not less than three years.

The Article is still in force in those terms, although Borstal Training has been abolished. We were told that as a result of local legislation a sentence of Borstal Training now takes effect as a sentence of twelve months' Youth Custody and again as a result of the administration of Youth Custody in England, this would result in the release of anyone sentenced to Borstal Training after six months.

When the applicant came before the Court he had already been on remand in custody for four months and that period had therefore to be taken into account in the computation of any sentence which the Court might impose.

The court of trial took into account the applicant's age and the circumstances of his early life, which had subjected him to almost every possible disadvantage. They also took into account, as it was their duty to do, the seriousness of the offences with which they were dealing; they came to the conclusion that neither a sentence of Borstal Training, nor a sentence of six months' imprisonment would have been adequate in view of the seriousness of those offences. They therefore found themselves, as a result of Article 18 of the Law, with no discretion other than to pass a sentence of three years' imprisonment. That they did.

We have considered everything which has been said to us on behalf of the applicant, but have come to the conclusion that we cannot differ from the view of the court that neither Borstal Training nor six months' imprisonment would have been an adequate sentence for these offences.

We therefore find ourselves, as the Royal Court found itself, obliged to approve of the sentence of three years' imprisonment which was imposed. I repeat that it is impossible to interfere with that sentence because the Law made it impossible for the

Court having come to the conclusion it did about Borstal and the six months' sentence - to impose anything less than a sentence of three years' imprisonment. This application must therefore be dismissed.

We should like to add that we hope that counsel appearing for the Crown will inform the Attorney General specifically of our view that it is urgently necessary in the interests of justice that the legislature should reconsider the provisions of Article 18 of the Children (Jersey) Law, 1969.

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Authorities.

Children (Jersey) Law, 1969: Article 18.

A.G. -v- Saunders (5th August, 1993) Jersey Unreported.

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

A.G. -v- Siham (10th August, 1992) Jersey Unreported.

Schollhammer -v- A.G., Reissing -v- A.G. (14th July, 1992) Jersey
Unreported C.of.A.

A.G. -v- Dugler (16th July, 1993) Jersey Unreported.

A.G. -v- Diamond (22nd July, 1991) Jersey Unreported.

Schollhammer, Udoh -v- A.G. (22nd July, 1990) Jersey Unreported
C.of.A.