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COURT OF APPEAL

192.

28th September, 1994.

Before: Sir David Calcutt, Q.C. (President),
J.M. Collins, Esq., Q.C., and
E.A. Machin Esq., Q.C.

Peter Michael Carter

- v -

The Attorney General

Application for leave to appeal against a total sentence of 4½ years' imprisonment passed on 15th June, 1994, by the Superior Number, to which the accused was remanded by the Inferior Number, on 20th May, 1994, following guilty pleas to:

3 counts of — supplying a controlled drug, contrary to Article 5(b) of the Misuse of Drugs (Jersey) Law, 1978:

count 1 of the Indictment (M.D.E.A.),
on which a sentence of 4½ years' imprisonment was imposed.

count 2 (L.S.D.),
on which a sentence of 3½ years' imprisonment was imposed.

count 3 (amphetamine sulphate),
on which a sentence of 2½ years' imprisonment was imposed.

3 counts of — possession of a controlled drug with intent to supply it to another, contrary to Article 6(2) of the said Law:

count 4 (M.D.E.A.),
on which a sentence of 4 years' imprisonment was imposed.

count 5 (L.S.D.),
on which a sentence of 3 years' imprisonment was imposed.

count 6 (amphetamine sulphate),
on which a sentence of 2 years' imprisonment was imposed; and

1 count of — possession of a controlled drug (cannabis resin), contrary to Article 6(1) of the said Law (count 7),
on which a sentence of 6 months' imprisonment was imposed.

All the sentences to run concurrently with each other.

Leave to appeal was refused by the Deputy Bailiff on 6th July, 1994.

Advocate S.A. Meiklejohn for the accused.
S.C.K. Pallot, Esq., Crown Advocate.

JUDGMENT

THE PRESIDENT: On 26th September, 1994, the Court dismissed this application for leave to appeal against sentence. The Court now gives the reasons for its decision.

On 15th June, 1994, Peter Michael Carter, having pleaded guilty before the Royal Court to a number of serious drug-related offences, was sentenced to concurrent terms of imprisonment totalling 4½ years. He applied for leave to appeal against that sentence, but leave was refused. He now applies to this Court.

The Indictment contained seven counts, all relating to offences concerned with the misuse of drugs. The first three counts related to supplying different drugs, contrary to Article 5(b) of the Misuse of Drugs (Jersey) Law, 1978. Count 1 related to M.D.E.A., count 2 to L.S.D., and count 3 to amphetamine sulphate. Counts 4, 5 and 6 were parallel counts to counts 1, 2 and 3, and related, in each case, to the possession of a controlled drug with intent to supply it to another, contrary to Article 6(2) of the said Law. Count 7 was an offence relating to the possession of cannabis, contrary to Article 6(1) of the said Law. Sentences of imprisonment were ordered to run concurrently. The sentences on counts 1, 2 and 3 were 4½, 3½ and 2½ years' respectively; on counts 4, 5 and 6 they were 4, 3 and 2 years' respectively; and on count 7 it was 6 months' imprisonment. Accordingly, there was an effective sentence of imprisonment of 4¼ years'.

The circumstances in which these offences came to light were these. The Applicant was arrested at Fort Regent. He was then found to be in possession of two tablets of M.D.E.A., and 16 wraps of amphetamine sulphate. A search warrant was obtained, and his flat was searched with the result that further incriminating material was found. In interview, the Applicant admitted that he had sold Class A drugs to a value which exceeded £2,500, and that he had sold Class B drugs to a value of £1,200. The total street-value of what he had either admittedly sold or was found to be in his possession came to just over £4,000. The Applicant was not himself addicted to the use of drugs. He was in financial

straits, and wanted quick money: from his point of view, the operation was a purely commercial venture.

What, in these circumstances, is the appropriate "starting point"? It is important, in our view, to define first what we mean by "starting point". We take it to mean the number of years' imprisonment which is appropriate in the particular case before any matters which are truly matters of mitigation are taken into account, particularly before such credit as may be appropriate is given for a guilty plea. We would suggest that, for the future, "starting point" should be given this meaning, so that, for the future, there shall be no doubt that the "starting point" does not itself take into account a guilty plea.

In this particular case there can be no doubt that the offences, and particularly counts 1 and 4, were very serious. The quantity of drugs involved was not inconsiderable, either in amount or in value; and the Applicant did what he did purely for commercial gain for himself. The conclusion of the prosecution was that the appropriate "starting point" was 7 years. There can be no fixed number of years for a "starting point" in any particular class of case; but the normal bracket for "supplying" is 6 to 9 years. In Clarkin, Pockett -v- A.G. (1991) J.L.R. 213 it was made plain that for a person in the position of Fogg, the "starting point" was 8 to 9 years. It has been submitted to us that the Royal Court should have taken 6 years as its "starting point", and that we should do the same. For our part, and in the particular circumstances of this case, we take the view that 7 years was an appropriate "starting point".

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) Jersey Unreported C.of.A., this Court made a deduction of one-third for the 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.

Is there, in this case, other mitigation? The Applicant undoubtedly, as the result of his interview, disclosed a larger extent of wrong-doing than would have been known to the Police without his own account of the matter; and for his co-operation in this respect, he is entitled to some credit.

He is aged 22 years, and it has been urged upon us that his youthfulness should also be taken into account, and also that he is, effectively, a man without previous criminal convictions. We

have, nevertheless, to remind ourselves of what was said by this Court in Cappie, Hailwood -v- A.G. (20th January, 1992) Jersey Unreported C.of.A. There the Court said this:

> *"....those who import or attempt to import* (Class A drugs) *.... into Jersey as a commercial venture must, in spite of youth and previous good record, anticipate severe punishment."*

Reference has also been made to this Applicant's military service, but, having regard to the fact that he twice went absent without leave, we do not think that there is material mitigation in this respect.

In these circumstances this Court takes the view that the sentences of imprisonment which were passed on this Applicant, totalling 4½ years, were appropriate. It was for these reasons that the application for leave to appeal was dismissed.

Authorities

Whelan: "Aspects of Sentencing in the Superior Courts of Jersey": pp.29-30.

Clarkin, Pockett -v- A.G. (1991) J.L.R. 213.

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

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

Cappie, Hailwood -v- A.G. (20th January, 1992) Jersey Unreported C.of.A.

Fogg -v- A.G. (8th April, 1991) Jersey Unreported C.of.A.; (1991) JLR 31.