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ROYAL COURT (SUPERIOR NUMBER) 228.

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

16th December, 1997.

Before: F.C. Hamon, Esq., Deputy Bailiff, and Jurats Myles, Vibert, Herbert, Rumfitt, de Veulle, Jones and Quérée.

Joanne Marie Crozier

-v-

The Attorney General

Application for leave to appeal against a total sentence of 3½ years' **youth detention**, passed by the Inferior Number on 22nd August, 1997, following guilty pleas to:

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

Count 1: MDMA, on which count a sentence of 3½ YEARS' YOUTH DETENTION was imposed; and

1 count of possession of a controlled drug with intent to supply, contrary to Article 6 (2) of the Misuse of Drugs (Jersey) Law, 1978:

Count 2: MDMA, on which count a sentence of 3½ YEARS' YOUTH DETENTION CONCURRENT was imposed

Leave to appeal was refused by the Deputy Bailiff on 10th September, 1997; the application was renewed to the plenary Court, under Article 39 of the Court of Appeal (Jersey) Law, 1961, on 15th September, 1997.

Advocate J.C. Gollop for the Appellant
A.J.N. Dessain, Esq., Crown Advocate

JUDGMENT

THE DEPUTY BAILIFF: On 22nd August 1997, the appellant (as she now is) pleaded guilty to one count of supplying a Class A drug (Ecstasy) in Rumours Nightclub and to a second count of being in possession of a controlled drug with intent to supply, again in Rumours Nightclub.

She had received thirty-five tablets and sold eighteen. The proceeds of sale (£502) were in her possession. She was therefore dealing actively when arrested.

The circumstances of these offences were these. On Sunday 19th April 1997, in the evening, two plain clothes policemen entered Rumours Nightclub at the Weighbridge. The premises were extremely busy but one of the officers noticed a male known to him as a drug offender. A warning was passed by this man to Crozier but the police officers approached her and she attempted to dispose of some of the ecstasy tablets which the officers prised from her clenched fist. In her jacket pocket and the side pocket of her handbag were £520 in crumpled £10 and £20 notes. Wrapped ecstasy tablets were also found in her socks.

Seventeen ecstasy tablets when analysed contained between 82 and 98 mgs of ecstasy and might have had a total street value of £340.

The Deputy Bailiff refused leave to appeal on 10th September and the application for leave was renewed on the 15th September, 1997.

Originally the ground of appeal on count 1 was that the Royal Court had taken a wrong starting point of seven years. That is not now relied upon as a ground of appeal.

What the learned Court said in its judgment is this:-

> ***"We wish to emphasis once more that to take individual cases which are not guideline cases as the basis for an argument is not the appropriate way to approach sentencing. The proper approach, in our judgment, is to return to base camp which is represented for these purposes by the judgment of the Court of Appeal in Campbell, MacKenzie and Molloy v A.G. (1995) JLR 136 CofA. In that guideline case, the sentencing Court's duty was said to be to establish the extent of the defendant's involvement in drug trafficking. The Court of Appeal stated:***
>
> > ***"Much will depend upon the amount and value of the drugs involved, the nature and scale of the activity and, of course, any other factors showing the degree to which the defendant was concerned in drug trafficking."***
>
> ***Sentencing is not an exact science. The Court must apply its knowledge and experience to the particular facts of the case and try to reach a conclusion which is just and fair, having regard not only to the circumstances of the individual defendant but also to the public interest."***

The Court was clearly aware that the appellant was a first offender aged 19. It is clear to us that the Court intended the sentence to have a deterrent effect. The Court, in our view, was plainly entitled to take that view. Mr Gollop who has, in his usual cogent and helpful address to us, compared the conclusions in this case to those in AG -v- Adams (1st August, 1997) Jersey Unreported and Walker -v- AG (16th June, 1997) Jersey Unreported CofA and said that in the conclusions in those cases his client finds a real sense of injustice because of the apparent inconsistency.

We need to remind ourselves, however, that in Wood -v- AG (15th February, 1994) Jersey Unreported CofA, the Court of Appeal said this it is necessary to refer to earlier cases when dealing with appeals against sentence in order to ensure as far as

possible that the right degree of consistency is achieved between one case and another. Indeed it is for this purpose that both this Court and the Royal Court have on occasion when passing sentence not only dealt with a particular offender before them but have also laid down guide lines to be followed in subsequent cases. It is necessary and important, however, to remember that reference to earlier cases is made in order to see the principles and guidelines which have been laid down there and to follow them. The purpose of referring to earlier cases is not to analyse - as if it were an exact science - the sentence which was then passed and the precise reasons why the Court arrived at its decision. This would be an impossible undertaking since sentencing is a discretionary exercise in every case and the reports do not include every feature which influenced the Court in exercising its discretion on earlier occasions. We notice a tendency particularly in appeals against sentences in drug related cases to try to calculate the exact effect given by the Court in earlier cases to each factor and then to say that those effects must be reproduced in the case in hand. This is a misleading exercise since, as I have said, it is impossible from the reports to discover every consideration which influenced the Court. It is also an exercise which if it could be achieved will be inconsistent with the discretionary nature of the sentencing function. That discretion like all discretions has to be exercised on proper grounds and with due regard to relevant principles. But the important fact remains that in deciding upon the sentence in every case the Court is exercising its discretion on the facts of that case.

The taking of ecstasy tablets involves enormous risks and we have described the trade over and over again in this Court as an evil one.

In England, in the case of Allery (1993) 14 Cr App R(S) the Court of Appeal said this about the drug:-

> ***"Research is on to try to discover how this particular drug does cause death. It is a synthetic amphetamine derivative capable of causing convulsions, collapse, hyperpyrexia, disseminated intravascular coagulation and other very unpleasant consequences. It is also said to be capable of causing acute renal failure."***

People that deal in these drugs we must say again do so as their peril. Now all these factors have been taken into account but the learned Jurats by a majority are not able to conceive that sufficient allowance on mitigation was given in this case and therefore I am to say that leave to appeal is granted and sentence is reduced to one year.

Authorities

Campbell, Molloy, MacKenzie -v- A.G. (1995) JLR 138 CofA.

Mason -v- A.G. (24th June 1997) Jersey Unreported CofA.

Walker -v- A.G. (16th June 1997) Jersey Unreported CofA.

A.G. -v- Adams (1st August, 1997) Jersey Unreported.

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

McMahon -v- A.G. (30th November 1992) Jersey Unreported CofA.

Allery (1993) 14 Criminal Appeal R (S).