

JERSEY / JUDGMENT

AG -v- Botting and Moore [2016]

JRC 005 (08 January 2016)

[2016] JRC 005

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JUDGMENT

THE BAILIFF: 1. There are three Indictments before us in respect of these two defendants; the joint Indictment involving Mr Botting and Mr Moore were the two offences of conspiracy to evade the prohibition on the importation of a Class B drug, ethylphenidate, and the second count, conspiracy to evade the prohibition on the importation of a Class A drug, ecstasy. Drugs offences are extremely serious and where there is an offence of importation or conspiracy to import drugs this Court is always looking at the probability of a custodial sentence. 2. Mr Botting, in your case you have also been charged on the Second Indictment with a number of other drugs offences, two charges of production of cannabis and other charges of either supplying or being concerned in supplying or offering to supply ecstasy or cannabis, as the case may be. It follows from just those few remarks Mr Botting that you will realise that you have been thoroughly engaged in the drugs world and that is something which the Court is bound to view with the greatest concern. It does so particularly given the fact that you have previous convictions involving drugs, three of them. 3. The Third Indictment we are dealing with involves motoring offences in respect of you Mr Moore. 4. We are going to avoid a custodial sentence but I want you both to know how close you have come to it. 5. Mr Botting, we are fairly circumspect - we are not sure - about accepting the explanations you have given. We are giving you an absolutely last chance. You can count your life on it that you have never been as close to receiving a very substantial custodial sentence. One of the reasons that we are going to avoid in this case is that you have actually served 4 months or so in prison so far and we think that it gives us the opportunity of taking something of a chance with you and imposing a non-custodial sentence in respect of these offences. 6. Accordingly you are going to be given an amount of community service and you are going to be placed on probation for 12 months and I must warn you that if you do not perform the community service or that if you breach your probation order in any way at all, you are liable to be brought back to Court and sentenced again for these offences, in which case it is very likely the Court will impose a custodial sentence then. 7. Mr Moore, in your case you too are going to be placed on probation for 12 months and you are going to have an amount of community service to serve. We, of course, have taken into account in your case the fact that you are under 21 and therefore the Criminal Justice (Young Offenders)(Jersey) Law 1994 applies to you but again, you can be absolutely sure that we have looked very carefully indeed at whether these offences are not so serious that you

should have received a custodial sentence so you can count yourself fortunate today that you are not being sent to youth detention. You are, Mr Moore, a young man. These chances do not come along very often. Mr Botting, youth does not count in your favour, you are quite old enough to know better but these chances do not come along very often. The Court is putting quite a lot of trust in you and we think you should take that into account because if you breach it there are going to be some really quite nasty consequences. 8. Regarding the particular amounts of community service in relation to Count 1 (conspiracy to import ethylphenidate, which is a class B drug) it is a serious offence and we think that the quantities which are involved here were taking a notional starting point of 3 years' imprisonment, taking into account the guilty plea and the other mitigation we think we would have ended up if it had been a custodial sentence at 18 months in respect of you, Mr Botting, and accordingly you are sentenced to 240 hours' community service and you would have received 18 months imprisonment on that count. Mr Moore, taking into account the same mitigation and the same starting point but having regard to your youth, we would have imposed, and also having regard to the fact that you had less involvement in the offence, we would have imposed 12 months' youth detention, you are therefore sentenced to 240 hours' community service on Count 1 of that joint indictment. 9. In relation to Count 2 we think that the main offender here was Mr Moore and therefore we have approached it in this way. Taking a starting point of 3 years again, Mr Moore you would have been sentenced to 18 months' youth detention but accordingly you are sentenced to 240 hours' community service which is to run concurrently; Mr Botting you do not have the same mitigation of youth and so we would have sentenced you to 18 months' imprisonment, on this you, again will be sentenced to 240 hours' community service, again to run concurrently. 10. So in relation to that First Indictment you are both sentenced to 240 hours' community service on each count to run concurrently and a 12 month probation order. 11. Mr Botting, in relation to the Second Indictment these offences are again serious drugs offences. You are sentenced on Count 1 of the Second Indictment to 90 hours' community service, equivalent to 3 months' imprisonment. On Count 2; 90 hours' community service, equivalent to 3 months' imprisonment, Count 3; 180 hours' community service, equivalent to 12 months' imprisonment, Count 4; 240 hours' community service, equivalent to 18 months' imprisonment, Count 6; 240 hours' community service, equivalent to 18 months' imprisonment. Now Count 7, the growing of cannabis when you were already under charge for other offences, you will have a consecutive sentence of 90 hours' community service, equivalent to 3 months' imprisonment. All those, apart from Count 7, are served concurrently with each other and with 240 hours' so Mr Botting, as far as you are concerned, the total is 240 hours' community service plus 90 hours, consecutive on Count 7 of the Second indictment making a total of 330 hours' community service. 12. Mr Moore in relation to the Third Indictment and the driving offences, on Count 1 we sentence you on the basis that there were one or two days driving without insurance. You are sentenced to 50 hours' community service, equivalent to 1 month's youth detention and it is to be performed consecutively to the First Indictment. On Count 2 you are fined £200 or 1 month's youth detention in default and three months in which to pay. On Count 3 you are sentenced to 50 hours' community service, equivalent to 1 month's youth detention, concurrently with Count 1 so in your case the total is 240 hours from the First Indictment and 50 hours consecutive from the Third Indictment, making a

total of 290 hours' community service. We do not disqualify you in relation to the driving offences. 13. We order the forfeiture and destruction of the drugs. 14. Finally I would make the comment in relation to the fine imposed on Count 2 that under Article 6 of the Proceeds of Crime (Jersey) Law 1999 the court is entitled to postpone the determination of any benefit or confiscation in relation to the relevant offences and under Article 6(7) where the Court exercises its power it may nevertheless proceed to sentence or otherwise deal with the defendant in respect of the offences concerned. That seems to me to be absolutely plain that we have jurisdiction to impose a fine in this case. Authorities Criminal Justice (Young Offenders)(Jersey) Law 1994. Proceeds of Crime (Jersey) Law 1999. Bonnar and Noon-v-AG

[2001] JLR 626 . Campbell-v-AG

[1995] JLR 136 . AG-v-Buckley

[2008] JLR Note 34 . AG-v-Huish

[2014] JRC 194 . AG-v-Sutton

[2015] JRC 147 . AG-v-Thompson

[2015] JRC165. AG v Bowler

[2009] JRC 206 . AG-v-Egan

[2009] JRC 162 . AG-v-O'Shea

[2010] JRC 040 . Page Last Updated: 20 Jun 2016 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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