

JERSEY / JUDGMENT

AG v Carroll 04-Dec-2020 [2020] JRC 252 (04 December 2020)

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JUDGMENT

THE COMMISSIONER: 1. I heard legal argument on 3 rd December, 2020, on whether a Newton hearing was required in this case. The defendant had pleaded guilty to possession of an unspecified weight of MDMA powder with intent to supply, and two less serious possession charges. When his bedroom was searched the police found a blue plastic bag inside a zipped lunch bag in a laundry basket; it contained 34.5 grams of MDMA powder, empty small 'snap-seal' bags, 3 silver spoons and £1,051 in cash. Small quantities of MDMA powder and cannabis were found elsewhere in his bedroom. 2. The defendant has pleaded guilty on the basis that he is a recreational user of MDMA, consuming between 3 and 4 grams per weekend. Reading from his basis of plea:- "4. With regard to the MDMA that was seized by the police officers, I had recently obtained this from a supplier. I intended to use half of the MDMA myself in the coming weeks. I intended to supply the other half of the MDMA to a small circle of like-minded friends at the parties that we would attend together. 5. I had obtained the seized drugs from the supplier "on tick", in other words I had not paid for them yet. The cash found with the drugs was money that I had saved from my wages and I intended to put that towards the purchase price for the MDMA. I also intended to put the money that I would receive from my friends in due course towards the purchase price of the MDMA." 3. It is not clear from the last sentence of that basis of plea whether the money he received from friends covered the cost of the drugs he sold to them or the cost of all the drugs he had purchased, thus funding his habit. Whilst the Crown may be prepared to accept that the defendant is a recreational drug user and may have consumed some of the MDMA, it is not prepared to accept the defendant's assertion that he would only onward supply half of the drugs found, namely some 17 grams, consuming the rest himself. 4. If the defendant is to be sentenced on the basis that he had intended to supply 17 grams, then on the guidelines in *Rimmer v AG*

[2001] JLR 373 the starting basis would be 7 to 9 years on the basis of a weight between of 1 and 20 grams. If he is to be sentenced on the basis that he had intended to supply 35 grams then he would be sentenced on the basis of the higher band of between 20 and 50 grams which gives a starting point range of 8 to 10 years. 5. There is no dispute as to the weight of the MDMA which is subject to the supply charge, namely 35 grams, but the defendant maintains that he did not intend to supply half of it, the remaining half was for his

personal consumption. In effect he has only pleaded guilty to possessing 17 grams of MDMA with intent to supply. 6. On the face of it, the dispute between the Crown and the defendant is material to sentence as it will give rise to different starting point bands and ordinarily, I would order a Newton hearing. However, Advocate Pedley makes the point that in practice, because the bands overlap, the difference in the starting point may not be material and indeed may be the same. 35 grams would place the defendant in the middle of the 8 to 10-year band indicating a starting point of 9 years. 17 grams is at the higher end of the 7-9-year band indicating again a starting point of 9 years. 7. It is a matter for the Crown, of course, to the extent to which it is prepared to accept a defendant's assertion as to the quantity of drugs he would have in his possession for personal use, but I am not persuaded that the difference between the Crown and the defendant is material enough to sentence, to justify the ordering and cost of the Newton hearing. 8. Accordingly, I decline to order a Newton hearing and direct that the defendant shall be sentenced on the basis of his plea. I also direct the defendant to clarify for the Crown today, the issue that I had earlier highlighted Authorities *Rimmer v AG*

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