

JERSEY / JUDGMENT

AG -v- Fernandes [2015] JRC 198B (28 September 2015)

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JUDGMENT

THE commissioner: 1. You imported by post some 4,270 units of this synthetic LSD which was found at your flat. The police also found the sum of £16,870 in cash and it is clear, as you admit, that you have been selling synthetic LSD to others for profit. You had also imported a small amount of a synthetic Class B drug and both of them are these new psychoactive substances (NPS) and the Court has said on previous occasions that these are particularly troublesome because you never know what is in them. You have also pleaded guilty to the assault that we have heard about; you have two previous convictions for possession of cannabis and two previous convictions for assault. 2. The first issue we must decide is the starting point. The Crown has suggested 12 years by reference to the well-known case of AG-v-Bonner and Noon

[2001] JLR 626 where there is an 11-14 year range for between 4,000 and 5,500 units. Advocate Grace who has spoken on your behalf says we should take 11 years. We have concluded that the Crown's conclusions are correct. We have to take into account not only the amount but also the role that you fulfilled - you were the principal importer and dealer which you were doing for your own account, albeit in a comparatively modest way, your counsel submits. Nevertheless, we think the correct starting point is 12 years. 3. We then consider the mitigation and of course we take into account your guilty plea, for which you get full credit. We also take into account everything that is in the probation report and the psychological report and your letter which we have read today. 4. We note that you wish to take advantage of the courses which are available in prison and we hope very much that you will do that because if you do, then you will be better placed when you are released to find employment and try and put these events behind you. 5. Nevertheless, we think that the Crown has allowed ample deduction for all the mitigation and we are therefore going to grant the conclusions. Your advocate has suggested that the sentence for the assault could be made concurrent. We have to say that we think the Crown has been very generous in only moving for 1 month for the assault given that you have two previous convictions including one for grave and criminal assault; but we understand the reasons they have done so, because of totality, and we are not going to increase it but we are going to make it consecutive because it is completely separate. 6. On the First Indictment you are sentenced to 1 month's imprisonment. On the Second indictment, on Count 1; 1

month's imprisonment, on Count 2; 6 years' imprisonment, on Count 3; 6 years' imprisonment, all of those concurrent but consecutive to the sentence on the First Indictment, making a total of 6 years and 1 month's imprisonment. 7. The other matter we need to consider is deportation. Your advocate has said that you do not oppose the making of a recommendation for deportation; nevertheless we must still consider whether it is the right thing to do. We agree that your continued presence is detrimental, you have imported and dealt in Class A drugs, that of itself is usually sufficient to make a continued presence detrimental. In your case you are assessed as being at high risk of reoffending as well. 8. Turning to the second limb, you were brought up in Madeira, you have been here since the age of 19, your parents are here but no other family and, in our judgement, given your work record and the other matters, it is entirely proportionate to recommend deportation and that is what we do. 9. We also order the forfeiture and destruction of the drugs. Authorities Customs and Excise (Jersey) Law 1999. AG-v-Bonner and Noon

[2001] JLR 626 . AG v Huish

[2014] JRC 194 . AG v Gaish

[2006] JRC 109 . AG v Gomes

[2007] JRC 129 . Page Last Updated: 27 Sep 2016 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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