

JERSEY / JUDGMENT

AG v Gabb [2020] JRC 107 (05 June 2020)

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JUDGMENT

THE DEPUTY BAILIFF: 1. Michael Sean Gabb you are 18 years old, indeed you are 19 years old next month, and you appear before the Court today to be sentenced in respect of 7 drugs offences; 2 offences of importing herbal cannabis, 3 offences of possession with intent to supply a controlled drug, (MDMA, cannabis resin and herbal cannabis respectively), and 2 counts of supplying a controlled drug (cannabis and MDMA respectively). 2. Count 1 relates to your organising an importation by post of herbal cannabis into Jersey to the address that you shared with your mother and her partner. On 18 th October, 2019, that package was intercepted by officers of the Jersey Customs and Immigration Service and found to contain herbal cannabis weighing 2 ounces or 55.4 grams. A later search of your home revealed that you had received a similar consignment of 1 ounce of herbal cannabis just a few days before on 15 th October, 2019. The search of your home revealed the drugs which gives rise to Counts 3, 4 and 5. 3. In the garden of the property was shed which you used as the base for your home drug dealing operation. The 14½ MDMA tablets which constitute Count 3 were found in a cigarette packet under a mattress in that shed. Count 4 covers 2.56 grams of cannabis resin also found in the shed. Count 4 also includes 405.79 grams of cannabis resin found in your dealing rucksack found on your person when you were arrested, making a total of 406.98 grams of cannabis resin. Count 5 relates to 2.62 grams of herbal cannabis found in the shed together with 14.48 grams of herbal cannabis found in your dealing rucksack when you were arrested, making a total of 17.1 grams of herbal cannabis. Also found in your shed was a quantity of drug paraphernalia including zip lock bags and small plastic containers which themselves contained cannabis debris. 4. When you were arrested your dealing rucksack held, in addition to the cannabis resin and herbal cannabis we have already mentioned, 755 milligrams of MDMA in powder form and cash in the sum of £1,339.46 which was the proceeds of your drug dealing. 5.

Analysis

of your telephone after you were arrested showed that you had been dealing extensively in cannabis and MDMA for well over a year, since just after or at the time of your seventeenth birthday, and you had advertised your drugs for sale through various applications on your phone. In total 106 pages of recovered text messages referred to your selling of drugs. You sold drugs to a wide variety of people known to you, often on a weekly basis. There were photographs shown to the Court of substantial quantities of cannabis resin in particular and large quantities of cash

together with lists of individuals indicating quantities of cash that you were owed by them. Those photographs were all found on your phone. 6. In interview you admitted that the drugs were yours, that you had supplied cannabis to others including your girlfriend, that the bag seized from you was your drug bag and that you kept drugs, cash, deal bags and a knife to cut the resin in it. You said that you owed your dealer £4,000 for cannabis provided to you to sell to others. As to the MDMA pills, you said you were going to supply them to a group of friends. When confronted with your photographs of large piles of cash and dealer lists in your second interview, you exercised your right to make no comment but it has been confirmed to us today by your advocate that that large pile of cash captured in photographs on your phone was in fact the proceeds of your drug dealing, and the Crown has estimated that that bundle of cash may have been as much as £15,000 worth. 7. The total retail value of the 72 grams of herbal cannabis was between £1400 and £1800. The total value of the cannabis resin was between £6,100 and £8,140. The total street value of the 14.5 MDMA tablets was between £220 and £360 and the MDMA powder was valued at between £50 and £70. Accordingly the drugs were valued, for the purpose of onward sale at between £7,720 and £10,300. 8. You pleaded guilty and, as I have said, you admitted many of the offences for which you have been convicted in interview, but nonetheless these are serious matters and we accept the Crown's assessment of the appropriate starting points in this case. Counts 1 and 2, the importations, we agree with the Crown's starting point of 1 year in custody. For possession with intent to supply of the Class A tablets and powder at Count 3 we accept the starting point of 7 years' custody. That starting point was the subject of submissions by your advocate and we have referred to the case of *Bonnar and Noon v AG*

[2001] JLR 626 which indicates that the scale of starting points for calculating sentences in drug trafficking offences by reference to the number of units in the case of Class A drugs carried or sold in tablet or unit form should be as follows; for 1 to 500 units the starting point is 7 to 9 years' imprisonment. We note that the Court does have a discretion in exceptional cases to reduce or increase the starting point but we regard the 7 year starting point to be appropriate in this case. 9. For possession with intent to supply cannabis at Counts 4 and 5 we accept the Crown's starting point of 1 year and in respect of the prior supply of cannabis and MDMA we accept the Crown's analysis of the former as being substantial and ongoing and the latter as relatively small and occasional and agree a starting point of 1 year's imprisonment in relation to the counts at 6 and 7. 10. Mr Gabb, the Court is in no doubt that had you been aged 21 then you would receive an immediate custodial sentence today. However, the Criminal Justice (Young Offenders) (Jersey) Law 2014 ("the 2014 Law") has specific provisions which are relevant in your case. Those provisions are well known to the Court but in summary pursuant to Article 4 of the 2014 Law a young offender will only be subject to an immediate custodial sentence if; "(i) the person has an history of failure to respond to non-custodial penalties and is unable or unwilling to respond to them, (ii) only a custodial sentence would be adequate to protect the public from serious harm from the person, or (iii) the offence or the totality of the offending is otherwise so serious that a non-custodial sentence cannot be justified" Even as a young offender you have nonetheless in our view committed offences which have

prima facie passed the custody threshold under (iii). 11. We note from the Social Enquiry Report that you have been suspended from your education course as a consequence of this offending and we note that your life has been blighted by addition to cannabis for which, in the Court's view, you only have yourself to blame. You describe yourself as walking around like a zombie during the time you were addicted to cannabis. You said that you had the support of your friends in your dealing of cannabis and that you are a "willing participant", in the words of the Probation Officer, in your drug use and your supply to others. We are concerned to note from the Probation Officer's report that "[your] friends and girlfriend did not dissuade [you] from what you were doing as they all stood to benefit from your access to drugs and therefore encouraged you to do so." 12. I hope that your friends take this case as a warning. You have found yourself in the Royal Court and we agree with the Crown that if a custodial sentence is to be passed today then it would be a significant one. We have had regard to the Crown's conclusions and we accept those conclusions as correct in relation to all counts on the Indictment with the exception of Count 3. In relation to Count 3, the offence of possession with intent to supply of MDMA, where the Crown say the appropriate custodial sentence would be 2½ years' youth custody, we take the view that having regard to your plea, youth, good character, mitigation and, in particular, all the additional mitigation before the Court today, that the right sentence of youth custody would be 2 years not 2½ years. And indeed to impose that sentence upon you today would be a lesson to you and those around you that dealing in drugs is not merely unlawful, but harmful to your health in the way that you and those close to you have discovered. 13. The reason that we are not going to impose an immediate custodial sentence upon you today is not only because of your age, but more importantly because the efforts you have made since your arrest. We note from the Probation Service that you have addressed your drug use, between October last year and March this year with the assistance of the Alcohol and Drug Service. You attended appointments and stopped using cannabis. We note that you self-referred to the Service following your arrest and the Service say that you have engaged well throughout their sessions. We were particularly impressed with the correspondence we saw from Mr Le Long of the Alcohol and Drug Service and we note that he said in his letter of 6 th March, 2020 to you "I'd like to take this opportunity to reflect on your engagement with our service. You have made many positive changes to your lifestyle in a very short space of time ... I have been impressed with your strength of mind in being able to change your lifestyle to help improve your wellbeing. You also secured yourself part-time work to support you alongside your college work, well done. It is not easy to study and work at the same time, this takes focus, concentration and organisation, well done on committing to what is good for you and what will help you achieve the life you wish for in the future." He went on to say "Your priority in working with our service was to reduce your cannabis use and stop using the drug completely. I think it is fair to say that you have achieved this and done so in a relatively short space of time. Your commitment to your work with our service and improving your wellbeing is admirable Michael. I have been impressed with your focus, openness and honesty in our meetings." 14. The Court had no hesitation in regarding your cooperation with the Alcohol

and Drug Service as a very strong feature that supports you today and indeed an exceptional one. And indeed since you stopped using cannabis your appetite has returned, you have become more interested in your studies and you have begun boxing training and cycling too. You have also returned to work now that the public health crisis which prevented you for doing so has eased. We do hope that you feel nothing but shame and guilt that your own family has had to pay between £3,500 and £4,000 towards the sum that you owed your drug dealer. That that has occurred is frankly appalling and I hope that you have reflected upon and we were pleased to hear that you have already begun to repay your family that sum that they have discharged on your behalf. 15. The Probation Officer says that a Probation Order would provide a structured work plan for you, including supporting and encouraging you to avoid turning to drug use and to build upon your recent success, focus on your problem solving skills and consequential thinking and develop your emotional resilience. 16. Accordingly, having regard to all the circumstances referred to, the appropriate sentence and the one that we impose today is a total of 312 hours' Community Service on Count 3 of the Indictment, 120 hours' concurrent on the remaining counts on the Indictment making a total of 312 hours' Community Service and, at the same time, you must comply with a Probation Order of 2 years, again concurrent on all counts. 17. We declare the benefit in the sum of £14, 953.64 and a Confiscation Order in the sum of £1,397.64. 18. We order the forfeiture and destruction of the drugs and associated paraphernalia seized in this case. 19. Your advocate said this morning that we will never see you again in this Court. We hope that is true. Authorities Bonnar and Noon v AG

[2001] JLR 626 . Criminal Justice (Young Offenders) (Jersey) Law 2014. Rimmer v AG

[2001] JLR 373 Campbell v AG

[1995] JLR 136 AG v Benyoucef

[2019] JRC 124 AG v Jones

[2019] JRC 024 AG v G

[2018] JRC 166 AG v Hutcheson

[2018] JRC 157A Valler v AG

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