

JERSEY / JUDGMENT

AG -v- Gilbraith and Rawlinson

[2017] JRC 155 (22 September 2017)

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JUDGMENT

THE commissioner: 1. You are both to be sentenced on joint charges of being concerned in the making of an offer to supply MDMA, being concerned in the making of an offer to supply LSD and being concerned in the supply of cannabis. 2. Gilbraith is also to be sentenced for possession with intent to supply of cannabis, possession of cannabis, possession of 4 tramadol capsules and two counts of offering to supply LSD. 3. MDMA and LSD are Class A controlled drugs, cannabis is a Class B controlled drug as is tramadol. In so far as the Class A drugs are concerned the prosecution do not treat this as a trafficking case, following a clear line of authority that the guidelines for trafficking offences should not be applied to offences under Article 5(c) of the Misuse of Drugs (Jersey) Law 1978, see the case of McDonough-v-AG [1994] JLR N7. The prosecution does treat the cannabis as a trafficking offence although the amounts fall below the lowest starting point in Campbell-v-AG

[1995] JLR 136 . 4. Both defendants are men of good character. The social enquiry report assesses Gilbraith as being at a medium risk of reconviction and Rawlinson at the upper end of the lower risk band of reconviction. Although both defendants pleaded guilty on an agreed basis, it was late in the day and after a considerable amount of work that had been done by the prosecution. 5. Rawlinson was aged 20 and 21 at the time of the offences and following AG-v-Cameron

[2008] JLR N 44 Article 4 of the Criminal Justice (Young Offenders)(Jersey) Law 1994 applies to him. 6. The prosecution, having taken into account the mitigation and the documents before the Court, seeks a total sentence of 12 months' imprisonment for Gilbraith and 150 hours' Community Service Order for Rawlinson, which is the equivalent of 9 months' imprisonment. The prosecution also seeks an order for costs of at least £500 each. 7. In terms of mitigation, taking Rawlinson first, we have taken into account his guilty plea, albeit it was late, his good character, his youth, his clear remorse and the references that he has provided to the Court. Advocate Heywood, on his behalf, does not resist the conclusions of the Crown and we agree that those conclusions are correct. We are therefore going to impose a Community Service Order on Mr Rawlinson and we trust that we will never see you again in this Court. 8. Turning to Gilbraith, the sentence sought by

the prosecution already, as we have said, takes into account the documents before the Court and his mitigation, namely his guilty plea, again late, his good character, his letter of remorse, his references and the particular support of his family. We think the conclusions of the Crown are correct in his case, but every court has a prerogative of mercy and in this case the circumstances of his family and his role within it are such that we are going, exceptionally and as an act of mercy, to impose the alternative of a Community Service Order. 9. Turning to the issue of costs, the prosecution as we have said seeks order for costs of at least £500 in the event of community service being imposed, because of the work it had had to undertake in preparing for the trial, which resulted in an amended Indictment and which has led to the pleas of guilty being accepted. Whilst we recognise that there may be circumstances on which costs might be awarded in criminal cases of this kind, in this case the defendants are of limited means; Advocate Pearmain for Gilbraith made it clear that any order for costs against him would not in fact be paid by him but by his family, who are of course innocent of these crimes. We think that ordinarily this aspect of a criminal case is dealt with in the amount the court allows by way of mitigation for the guilty plea rather than by imposing what might be perceived by defendants as an additional penalty. We are not therefore going to order or award costs. 10. Mr Gilbraith, on Count 1 you are sentenced to 180 hours' Community Service Order, which is the equivalent to 12 months' imprisonment. We impose the same sentence for Counts 2, 3, 4, 9 and 10, concurrent. We impose no penalty for Counts 6 and 7. That makes a total sentence of 180 hours' Community Service, which is the equivalent of 12 months' imprisonment. 11. Mr Rawlinson, on Count 1 we impose a sentence of 150 hours' Community Service which is the equivalent to 9 months' imprisonment. We impose the same sentence for Counts 2 and 3, concurrent, which makes a total sentence of 150 hours' Community Service, which is the equivalent to 9 months' imprisonment. 12. We dismiss Counts 8, 11, 12 and 13. 13. We order the forfeiture and destruction of the drugs seized. 14. There is no order as to costs. Authorities Misuse of Drugs (Jersey) Law 1978. McDonough-v-AG

[1994] JLR Note 7a. Campbell-v-AG

[1995] JLR 136 . AG-v-Cameron

[2008] JLR N 44. Criminal Justice (Young Offenders)(Jersey) Law 1994. Le Pavoux-v-AG

[2003] JLR Note 31 . Prentice-v-AG

[2004] JLR Note 3 . AG-v-Antunes and Ors

[2003] JLR 144 . AG-v-Stark

[2008] JRC 093 . AG-v-Egan

[2009] JRC 162 . AG-v-Cornick

[2012] JRC 064 . AG-v-Davies

[2015] JRC 039 . Page Last Updated: 05 Oct 2017 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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