

JERSEY / JUDGMENT

AG -v- Howard [2015]

JRC 066 (30 March 2015)

[2015] JRC 066

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JUDGMENT

THE commissioner: 1. The defendant stands to be sentenced for the possession of 45 ecstasy tablets with intent to supply, with a street value of between £900 and £1,125. He had taken the tablets into Jersey Live concealed in his underpants. The Crown has accepted that he took the tablets into the festival at the request of another, who he did not name, to be handed over to the owner once inside. In return he would be reimbursed the cost of the ticket and would be given two tablets which he would have taken. 2. The defendant is aged 22. For the first 10 years of his life he enjoyed a close relationship with his father who, in 2004 when the defendant was 10, was sentenced to 13 years custody for drugs offences. After the father's release in January 2012, the father relapsed into heroin use, attending a detoxification unit in Harrowgate at a cost of some £4,000. In order to pay this debt the father asked the defendant, who was then aged 19, to assist in the importation of heroin into the Island. The defendant and his father were arrested and sentenced on 24 th January, 2013, and on that occasion the Court felt able to spare the defendant a custodial sentence. 3. Although the current offence was committed within the 2 year probationary period that was imposed in 2013, the defendant has completed all of his community service and the various courses that were recommended by the Probation Department. 4. It would seem that before this offence he had argued with his partner and the day of the offence was the anniversary of the death of his previous partner (the mother of his eldest child). He told the Probation Department that on that day he was "all over the place" and "not thinking straight". 5. The social enquiry report says this at paragraph 52:- "On the basis of what is known it is difficult to understand the decision Mr Howard took to commit this offence. He was aware how fortunate he was not to have received custody for the previous serious drug offence. It had appeared he had taken full advantage of the Court's leniency in that he had gained stability and was making a success of his life. He had gained stable accommodation, stable employment and had engaged well in the thinking skills course undertaken with this service. The indications were that he was not embroiling himself in offending behaviour and was looking to continuing a positive life with his long term partner and his two young children." 6. Following the guideline case of *Bonnar v AG*

- [2001] JLR 626 the starting point for this quantity of drugs is 7-9 years. The Crown say the defendant was actively involved in the supply of dangerous drugs to the public, mainly young persons, and the starting point should be 7½ years. Allowing for mitigation the Crown seeks a sentence of 3½ years. 7. In terms of mitigation the defendant has pleaded guilty although he was not fully cooperative with the police in that he refused to say where he had acquired the drugs and, in the Crown's view, he misled the police by failing to disclose he had a laptop which contained encrypted files which it has not proved possible to access. He is the father of two young children. Whilst on bail he and the older child have lived with his maternal grandmother and spending three nights a week with his partner and their younger child. 8. The Superior Number in Fowler-v-AG
- [2007] JRC 044 said this in relation to family hardship:- "9 Hardship to a family, including children, is often an inevitable consequence of sending an offender to prison and yet that is not a reason, by itself, for not imposing a prison sentence. Society requires that serious offences be punished adequately and the offender should think of the consequences before he, or she, commits the offence. However, as Thomas, in Principles of Sentencing , makes clear on page 212: "Family hardship may be a ground for mitigation of the sentence where the particular circumstances of the family are such that the degree of hardship is exceptional, and considerably more severe than the deprivation suffered by a family in normal circumstances, as a result of the imprisonment."" The prospects now for the care of the oldest child (who has already lost her mother) if the defendant were to be imprisoned is very uncertain. She may well be taken into care. 9. Advocate Marks has put forward a very strong case in mitigation and asked the Court to exercise mercy for the sake, in particular, of the oldest child. This is a very serious offence, taking a Class A drug into Jersey live, which is mainly attended by young people. The defendant was given a chance as recently as 2013 when he was involved, as we have said, in a serious drugs case, regrettably, very much at the instance of his father. It has to be said that much of the mitigation placed before us today was before the Court then. For the defendant, as the father now of two young children, to have consented to undertake this offence is grossly irresponsible. He should have thought of his two children before agreeing to take these drugs into Jersey Live, and I am sure he feels ashamed of the actions that he took. 10. The jurors were unable to agree at first as to whether imprisonment could be avoided, but after much discussion and by a majority, they have agreed to do so as an act of mercy and for the sake, in particular, of the older child. 11. We need to say this though to you that you have exhausted the mercy of this Court. If you come again before us you cannot expect your children and, in particular your oldest child, to rescue you from the consequences of your actions. I hope you understand. 12. We have agreed a starting point of 7 years in this case and you are going to be sentenced therefore to 456 hours' community service, which is the equivalent of 3 years' imprisonment and you will have 2 years in which to complete that community service. We are also going to place you on probation for 2 years on condition that you undertake the psychological work recommended by Dr Emsley and such other work for which you may be assessed as being suitable by the Probation

Department. 13. If you do not comply with the community service or do not complete it or in any way breach the terms of your probation and you come back before us, then you will almost certainly go to prison. 14. We discharge the previous Probation Order. 15. We also order the forfeiture and destruction of the drugs. Authorities Bonnar v AG

[2001] JLR 626 . Fowler-v-AG

[2007] JRC 044 . AG v Riley

[2014] JRC 248 . AG v Lusk

[2015] JRC 015 . AG v O'Shea

[2010] JRC 040 . AG v Howard and Howard

[2013] JRC 018 . Page Last Updated: 27 Sep 2016 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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