

JERSEY / JUDGMENT

AG -v- Smart [2017] JRC 026A (17 February 2017)

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JUDGMENT

THE BAILIFF: 1. The defendant appears today for sentence on an Indictment containing five counts; two counts of supplying cannabis, in each case to girls then aged 15, a count of being the occupier of premises in which he permitted them to smoke cannabis, possession of some cannabis himself, a small amount, and using a motor vehicle while carrying passengers likely to cause a danger to persons either in the vehicle or on the road and the circumstances of that last offence were that he was driving the two girls to their respective homes late at night. 2. The Crown moves in relation to that last count for a fine of £330 or 21 days' imprisonment in default. No objection is taken from the defendant to that sentence and that is imposed. 3. As a result of the offences committed the defendant is in breach of a Probation Order imposed by this Court on 24 th August, approximately a month before the offences giving rise to the current Indictment. The Probation Order was imposed in respect of five counts of supplying controlled drugs and Commissioner Birt said:- "More serious is the supply of a total of 6.5 grams of cannabis to two 15 year old friends of your daughter and to an adult neighbour. The Court takes a serious view of people who contribute to youngsters developing a drug habit. Advocate Grace has spoken in mitigation; she referred to your guilty plea, your troubled background, and the fact that you had recently found a new job and accommodation and were hopefully achieving considerable stability in your life at this stage. You do need, as she says, to overcome your long-standing drug and alcohol habit. Now despite that mitigation, had it not been for what we are about to mention, the Court would have been left with no alternative, we feel, but to impose a custodial sentence of the length submitted by the Crown." The Commissioner then goes on to say that the exceptional feature on that occasion was that the defendant named the person who had supplied him with the cannabis. 4. This Court also takes the view that supplying young people with cannabis is a very serious aggravating factor indeed. For those who are introduced to cannabis there is no way of knowing where it might stop. For those who have already taken cannabis, as it appears both of the users in the present case had, it nonetheless confirms and helps them in regular drug-taking and assists them in a direction which is not only against the law but which is capable, in some circumstances, of causing them serious harm. 5. Advocate Marks says to us that we should pay great attention to the fact that these were very small amounts of cannabis indeed and of course the Court does usually pay a great deal of attention to the amount of cannabis involved; but in the

present case it is more than balanced by the fact that first of all this is a third offence of trafficking cannabis and that makes the quantity less significant - one previous offence of possession with intent to supply and the previous case which I mentioned a moment ago in respect of which he is now in breach of five counts of supply and then the current Indictment as well so the fact that it is a third offence of drug-trafficking of cannabis makes the quantity less significant. Secondly, the fact that the cannabis was supplied both on the last occasion and on this occasion to minors aged 15 and, thirdly, the fact that the cannabis is supplied merely a month after the defendant was in this Court and heard the Commissioner impose sentence of the previous offences. So we regard that combination of factors as being extremely serious. 6. We received an explanation from Advocate Marks which relies on the coincidence that on the day when the defendant just happened to be clearing out his shed and finding some cannabis in bongs which he had forgotten were there, the first girl should turn up at his flat that evening and also should have arranged for the second girl to meet her there. We have some difficulty in accepting that explanation. 7. Advocate Marks suggested to us that we should look to impose a Probation Order but it is clear from looking at the defendant's record that probation has been tried on more than one occasion and the defendant has not shown himself willing to take the opportunities which the Court has given him. In April 1998 he was bound over for six months for the possession of cannabis and breached it, binding over was then ordered to continue without penalty. A mere eight or nine months later he was before the Magistrate's Court again, it is not clear whether that was of itself a breach of the previous order but he was bound over for a period of three years for conduct likely to cause a breach of the peace and, in 2001 breached it. He was put on probation. In 2002 he breached it and he was put on probation again, the Probation Order was ordered to stand. In 2016 the Court imposed community service and probation and he has now breached it. So this Court does not consider that in the circumstance of that record it is appropriate at all to consider probation and community service in respect of offences which, as we have said, we regard as serious. The offence of supplying cannabis to young girls is a serious offence. 8. In the circumstances we are not satisfied that the conclusions of the Crown accurately or properly reflect the seriousness of the offence. On totality grounds we think the total sentence should 18 months' imprisonment and we are going to adjust the Crown's conclusions in the following way to reach that total. 9. On the previous Indictment on Count 1 you are sentenced to 6 months' imprisonment; on Count 2; 6 months' imprisonment, concurrent, Count 3; 6 months' imprisonment, concurrent, Count 4; 3 months' imprisonment, concurrent, Count 5; 3 months' imprisonment, concurrent, on Count 6; 6 months' imprisonment, concurrent, Count 7; 1 month's imprisonment, concurrent, (that was the sentence of 1 month which was ordered to be consecutive on the last occasion, the common assault), and 1 month's imprisonment, concurrent in relation to Count 8. 10. On the current Indictment on Count 1 you are sentenced to 12 months' imprisonment, consecutive to the sentences for the breach offences, on Count 2; 12 months' imprisonment, concurrent to Count 1, Count 3; 12 months' imprisonment, concurrent with Count 1, Count 4; 1 month's imprisonment, concurrent to Count 1 and on Count 5; £330 fine or 21 days' imprisonment in default, consecutive, making a total of 18 months' imprisonment. We have adjusted the sentence on Count 7 of the previous Indictment, the common assault charge, to a concurrent sentence partly because you have performed some of the community service and we

have taken that into account and partly having regard to totality principles so that makes a total of 18 months' imprisonment. 11. Mr Smart, we have given consideration to what your counsel has said, we acknowledge the guilty plea that you entered which was a useful valuable guilty plea and we particularly have given consideration to what Advocate Marks said in relation to your rebuilding your life, which you will need to do when you come out of prison, whatever time that is, whether it would be now or later. The Court is impressed with the efforts you have made in prison and that gives you actually a real chance to look forward with hope to the future because you will have time during the serving of the rest of the sentence to address alcohol dependency in particular and we strongly advise you to take whatever help the prison will give you in that respect. 12. We also order the forfeiture and destruction of the drugs. Authorities Louis -v-AG

[2010] JLR N 45. Louis-v-AG

[2010] JRC 170 . AG-v-Magrath and Magrath

[2009] JRC 203 . AG-v-Smart

[2016] JRC 143A . Magistrate's Court Guidelines.

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