

JERSEY / JUDGMENT

AG v V [2022] JRC 163 (01 August 2022)

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JUDGMENT

THE commissioner: 1. In November 2020 Jersey Customs and Immigration were undertaking an investigation into the importation of controlled drugs and as part of that investigation they seized a package addressed to Clearview Street in St Helier. They executed a warrant at the Defendant's home address in November 2020. He was arrested, cautioned and his room was searched. In his room were found a number computer pieces of equipment, an empty postal package addressed to a James Smith, the address in Clearview Street, two orange tablets embossed with a #MeToo (exhibit), black foil sachet containing a small quantity of white powder (exhibit), a small rectangle of coloured paper and various other drug paraphernalia and drugs including £700 in cash which we are told came from a work scheme which the Defendant then aged 16 had been engaged in. 2. The Crown have taken account of the Criminal Justice (Young Offenders) (Jersey) Law which clearly applies to this Defendant because he was 16 at the date the offences were committed, 17 at the date of conviction and that Law still applies, notwithstanding that he is 18 today. 3. As a result of that Law the Court must not sentence the Defendant to a period of youth detention unless the provisions of sub paragraph (3) of Article 5 are met, and in this case it is clear the Crown has accepted that the terms of the Law are not met in the sense that there is another way of dealing with the Defendant and we accept that and so we are not going to impose a sentence of youth detention. 4. On the other hand, it is to be remembered that the offences for which the Defendant is to be sentenced are serious offences. Possession of a Class A drug, possession of a Class B drug, Amphetamines, possession of a further Class A drug, the first one was LSD, the second one is MDMA and the importation of Amphetamines, a Class B drug. 5. The Defendant organised the importation on the internet and there has been some debate by counsel as to whether this was or was not a sophisticated importation. The Crown say that it was because he identified the providers through the use of the dark web. The Defence say there was nothing sophisticated about this, at all, not least because young people are adept in the use of the internet and it is, for the most part necessary to go into the dark web in order to import drugs by the internet. We take the view that there was a degree of sophistication in this importation. It involved not only the dark web but also the USB that was used to facilitate it and we take the view that the covering up of the tracks was part of the sophistication on which the Crown properly relied. 6. The Defendant has had a number of medical difficulties which should have been diagnosed considerably earlier than they were. Those include in particular ADHD and ASD. And it is said, that, although not diagnosed, he learned in practice to self-medicate and that took him

into the commission of these offences. We think that argument goes only so far. We are not entirely satisfied that it is a complete explanation and we think, actually, the better explanation comes from a document that was found on his telephone created by him when he was 16. This document, described by Advocate Binet as being a document that a 16 year old might aspirationally create without having any intention of carrying it out, describes how a lot of money can be made in the drug trafficking industry, if I can put it that way, that it is important to gain relationships with other drug dealers and he had big plans and Jersey was only a part of it, as he put it in his document, "This is our way in, once we are in and making money that's when you will find out the size of the plans I have." If it was just bravado, it was very foolish bravado indeed.

7. The quantities of drugs involved in the importation and in the possession charges is small, so small that the established guideline cases *Campbell v AG* 1995 JLR 136 in the case of Class B drugs and *Rimmer v AG*

[2001] JLR 373 in the case of Class A drugs do not apply and we have regard therefore in looking at the appropriate sentence to impose to what the legislature has laid down in the Law. In relation to Class B drugs for importation up to 14 years' imprisonment, in relation to Class A drugs, of course for importation it would have been much higher, which does not apply on the facts of this case. But as I have indicated earlier the effect of the Criminal Justice Young Offenders Law means that we are not going to be sending this Defendant to youth detention.

8. He has a good deal of mitigation apart from the medical difficulties which he has faced. Obviously, a young man or the 2014 Law would not apply; he has no previous convictions; he has expressed remorse and he has pleaded guilty. He has a supportive family, and we are pleased to see his father in Court to support him today.

9. Advocate Binnie also pointed out correctly that it has taken a long time for this case to come to Court coming up to two years since the date of the importation. Although there was some criticism of the amount of community service for which the Crown contended, we think that the Crown's conclusions were absolutely correct.

10. We were not impressed with the suggestion that, because his co-defendant received 180 hours' Community Service for the importation of 102 Ecstasy tablets, a Class A drug, the 150 hours moved for by the Crown in relation a small quantity of Class B Amphetamines was excessive. We were not impressed by that, because the circumstances were different. The co-defendant provided her address but did not arrange the importation. On the other hand, this importation of Amphetamines was directly arranged by the Defendant, and so we think that the right course of action is to sentence as the Crown has suggested in its conclusions which is to say: (i) Count 3, possession of a small quantity of LSD, 50 hours' Community Service, equivalent to 1 month's youth detention; (ii) Count 4, possession of Amphetamines, again a small quantity, 40 hours' Community Service, equivalent to 1 weeks' youth detention, and a 12 month Probation Order; (iii) Count 5, possession of two Ecstasy tablets, 70 hours' Community Service, equivalent to 2 months' youth detention, and a 12 month Probation Order; (iv) Count 7, importation of Amphetamines, 150 hours Community Service, equivalent to 9 months' youth detention, and a 12 month Probation Order, all of which are to run concurrently, therefore, making a total of 150 hours' Community Service, equivalent

to 9 months' youth detention, and a 12 month Probation Order. 11. The Crown is also seeking a Declaration of Benefit and a Confiscation Order by agreement. There being no agreement on that matter a date of 8 th September, 2022 at 10am has fixed for a Confiscation Hearing and the Defendant must therefore be present, unless otherwise advised, for that hearing. 12. Just before leaving the question of the Defendant's medical issues, we are told and we believe it to be correct that General Practitioners cannot prescribe medication for ADHD. In this case we have seen a report from Dr Lyle which was provided in March this year. Advocate Binnie has told us that, that has been shown to the Defendant's General Practitioner who has referred it and the Defendant to Adult Mental Health but there is a year's wait before he can get to see anyone there. If that is right, and we think it may be, it seems to us to be very undesirable as an outcome. After all there has already been a full expert professional diagnosis and one would have expected that medication on the basis of that diagnosis should be able to be produced for this Defendant in very early course. The idea that you have to wait a year to have a further diagnosis where there is an expert diagnosis already in place seems quite extraordinary, and it is to be hoped that the Minister will see her way clear to putting that right. 13. V we want to talk to you. Will you come up here please, just come up here, come and stand on the step so that I can see you. I do not want to shout at you. 14. You are quite lucky in what has happened to you over this offence. You have done well by changing your life around, so we are told, and that is all to your credit. At the end of the day nobody except you can turn your life around. What has happened today you need to burn in your memory because if you continue down the line of drug trafficking as your plan when you were 16 suggested you were going to do, a lifetime of jail sentences and pretty appalling treatment awaits you. You need to remember that whatever your former friends or associates were doing, we take drug trafficking very seriously in this Court. Do not forget that. 15. V you have been put on community service and probation. If you breach the terms of the Community Service Order or the Probation Order, you are liable to be brought back to this Court and you could be sentenced again for these offences. So, make sure you do not. 16. We order the forfeiture and destruction of the drugs. Authorities Criminal Justice (Young Offenders) (Jersey) Law 2014. Campbell v AG

[1995] JLR 136 . Rimmer v AG

[2001] JLR 373 . Y v AG

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