

JERSEY / JUDGMENT

The Attorney General v Vitor Manuel Seabra David Ferreira

COURT

Royal Court

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Inferior Number Sentencing – drugs – importation –**Class B.****[2015]JRC213****Royal Court****(Samedi)****16 October 2015**

Before :

J. A. Clyde-Smith, Esq, Commissioner and

Jurats Fisher and Ramsden

The Attorney General

-v-

Vitor Manuel Seabra David Ferreira

Sentencing by the Inferior

Number of the Royal Court, following a guilty plea to the following charge:

1 count of:

Being knowingly concerned in the fraudulent

evasion of the prohibition for the time being in force with respect to goods

under or by virtue of any enactment, contrary to Article 61(2)(b) of the Customs and Excise (Jersey) Law 1999 (Count 1).

Age: 34.

Plea: Guilty.

Details of Offence:

The defendant was stopped at the

airport and found to be carrying seven small packages of white powder. An analysis of the substance revealed

that it contained a synthetic cannabinoid known has MMB-CHMINACA which is prohibited from importation under the Open General Import Licence. MMB-

CHMINACA is not a controlled

substance. The packages weighed

98.3 grams in total.

Details of Mitigation:

Guilty plea; remorse; no previous

convictions for possession or supply of drugs.

Previous Convictions: Seven previous convictions for offences including dishonesty and motor offences.

Conclusions:

Count 1: 12 months' imprisonment.
Forfeiture and destruction of the drugs sought.
Recommendation for deportation sought.

Sentence and Observations of Court: Conclusions granted.
Her Majesty's Solicitor General appeared for the Crown.
Advocate S. E. A. Dale for the Defendant.

JUDGMENT

THE commissioner: 1. The defendant was stopped at the Airport and found to be carrying 98.3 grams of a synthetic cannabinoid known as MMB-CHMICA which we will refer to as CHMICA, a psychoactive substance which has similar effects to cannabis but we are advised by an expert is 100 times stronger, and which has been linked to recent deaths and hospitalisations in Europe, mainly Sweden, although not as yet, thankfully, in Jersey. This is not a controlled drug; its importation is prohibited under the provisions of the Open General Import Licence dated 28th May, 2015. The penalty for such an importation is a fine or imprisonment not exceeding 7 years. 2. The defendant has a record of convictions and is assessed at a high risk of reconviction and the Crown move for a sentence of 1 year. In terms of mitigation the defendant has pleaded guilty, although we think that was almost inevitable. He has been candid with the Probation Department about his record and he has written us a good letter of remorse and there are other references showing that he is trying to make progress with his difficulties. We have considered everything put forward on his behalf by Advocate Dale. 3. We accept that Chminaca is not a controlled drug and there is therefore no direct precedent for an offence of this kind. It seems to us that each case of an evasion will depend on the nature of the goods imported and the use to which they were or might be put. In this case we are dealing with a very dangerous substance and to illustrate that we quote from Michael Gafoor, Director of the Alcohol and Drugs Service, who said this:- "This is one of the most dangerous synthetic cannabinoids that we have seen in Jersey so far because of the unpredictable and potentially fatal effects it can have." 4. We have expert advice that CHMINACA is not usable in its raw form and it would therefore have been treated and could have yielded as much as 5 kilos of synthetic cannabis which could then have been distributed in Jersey amongst our population, probably mainly the young. We therefore regard this as a serious offence requiring a custodial sentence and have no hesitation in granting the conclusions of the Crown. 5. You are sentenced to 1 year's imprisonment. 6. We order the forfeiture and destruction of the drugs. 7. Turning to the issue of deportation, we have considered the two-stage test and have no doubt that the first part is met, namely the defendant's continued presence in the Island is detrimental. He was caught importing this dangerous

substance into the Island, capable of causing great harm to members of our community. He has been assessed at a high risk of reconviction and, quoting from paragraphs 26 and 27 of the social enquiry report:- “26 There are some clear markers which in my professional opinion elevate risk at this time. The main areas of concern are; his self-disclosed history of previous convictions, long standing history of substance misuse impacting on his offending behaviour, intermittent unemployment and having to claim benefit. 27 When analysing the defendant’s previous offending, the key aggravating feature in terms of risk is his drug use. It is my opinion that if the defendant were to reoffend in the future, the most likely scenario would be the likelihood of further drug related offending.” 8. As to the second part of the test, he has no connection with the Island and there is no-one here whose Article 8 rights would be in any way affected by his deportation. Advocate Dale informs us that his intention on release would be to return to the United Kingdom, where he came from, and his real concern is whether the Secretary of State may lift the exemption that would otherwise apply to him, thus resulting in his deportation from the United Kingdom. As made clear in AG-v-Benyoucef [2009] JRC 014 we must consider the interests of this jurisdiction and we cannot speculate on what the Secretary of State may or may not do. That will be a matter for him in the light of the circumstances at the time. As far as this jurisdiction is concerned, we have no doubt that the defendant’s deportation from Jersey should be recommended and we make that recommendation. Authorities AG-v-Benyoucef

[2009] JRC 014. Camacho-v-AG

[2007] JLR 462. Campbell-v-AG

[1995] JLR 136. AG-v-Blackburn

[2014] JRC 229. AG-v-De Freitas and Others [2014] JRC 158. AG-v-Diogo

[2014] JRC 153. Whelan on Aspects of Sentencing in the Superior Court of Jersey.

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