

JERSEY / JUDGMENT

# Vipond v AG [2004] JCA 086 (14 May 2004)

**[2004] JCA 086**COURT  
COURT OF APPEAL

BEFORE

R. C. Southwell, Esq., Q. C., President;  
P. D. Smith, Esq., Q. C.; and  
The Rt. Hon. Sir Charles Mantell.

Ben VIPOND

-v-

The Attorney General

Appeal of Ben VIPOND against a sentence  
of 11 years' imprisonment passed on 12 February, 2004, by the Superior Number of the Royal Court, to  
which the Appellant was remanded by the Inferior Number on 25 July, 2003, on a guilty plea to:  
2 counts of:

possession of a controlled drug with intent  
to supply, contrary to Article 6(2) of the Misuse of Drugs (Jersey)

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**Law, 1978:**

count 1:

MDMA

[The Crown did not proceed with count 2  
of the indictment.]

Leave to appeal was granted by the Deputy Bailiff on 6 April, 2004.

Advocate C. M. Fogarty for the Appellant;

Mrs. S. Sharpe, Crown Advocate

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**JUDGMENT**

MANTELL JA: 1. On 27 May 2003, police officers attended the Merton Hotel in St Saviour where they arrested Ben Vipond in the Star Room Bar on suspicion of being in possession of controlled drugs. On searching his room the police officers discovered 11 packages which were eventually found to contain no fewer than 15,000 ecstasy tablets. That was the most ecstasy ever to be recovered in Jersey. On being interviewed the following day, Vipond said that he was "sitting on them basically, I was looking after them". In other words he claimed to be a minder. He said that he had come to Jersey on Monday 26 May 2003 and had been planning to leave on the evening of the 27th. He had previously been approached by a man in a pub or club in Exeter and asked if he would be prepared to "sit on some packages". The same man and a woman had brought the drugs to the Merton Hotel shortly before the arrival of the police officers. He had been told that someone would make contact with him and collect the packages. He was to be paid £500 and expenses. 2. Vipond was charged with being in possession of ecstasy with intent to supply. 3. On 29 May 2003 he pleaded guilty in the Magistrate's Court. He was remanded to the Royal Court for sentence. 4. On 12 February 2004 he was sentenced to a term of 11 years' imprisonment. 5. He now appeals against that sentence with leave of the Deputy Bailiff on the basis that it is arguable that a greater discount should have been allowed for the guilty plea. A further ground has been argued before this Court, namely that the Royal Court erred in adopting a starting point of 16 years. 6. Before the Royal Court it was submitted on behalf of the Attorney General that the Appellant was not entitled to the full discount for a plea of guilty because he had been caught virtually red-handed. It was further submitted that given the quantity of drugs involved and the role performed by the Appellant the starting point should be 18 years. The Appellant's Advocate argued that he was entitled to the full discount of one third and that given his limited role the appropriate starting point ought to be no more than 16 years. 7. In passing sentence and having commented on the substantial quantity of drugs involved with the commensurate potential for harm, the Royal Court reminded itself of those authorities relied on in Whelan's "Aspects of Sentencing in the Superior Courts of Jersey" to the effect that a minder can and usually does play a fundamental part in ensuring that dangerous drugs reach their intended market, namely the streets, and further indicated its view that in the present case the fact that the Appellant had been asked to come to Jersey where he was entrusted with £150,000 worth of drugs, suggested a closeness to the source of supply and a fairly deep involvement in drug trafficking activity. Then having noted guidelines issued by this Court in Bonnar

(2001) JLR 626 , assessed the appropriate starting point as one of 16 years' imprisonment. Of course, in so doing, the Royal Court was in effect acceding to the submission of Defence Advocate Tremoceiro. The Court then went on to accept the submission that the early indication of guilt and a consistent plea was of value and made an allowance of 4 years for that mitigating factor. A further year was deducted for the defendant's background mitigation and the fact that he had no previous convictions. The Starting Point 8. On this appeal the Appellant has the great advantage of being represented by Advocate Fogarty who complains that the Royal Court had no basis for forming or expressing the view that the Appellant was close to the source of supply. She characterises that assessment as a 'presumption'. She says that it is contrary to principle to attribute a role to a defendant which is unsupported by evidence or which has not been admitted. We have no difficulty with that elementary proposition. But here the Royal Court did not proceed upon a presumption. Rather it drew an obvious inference from uncontentious facts. Of course no major drugs supplier is going to be prepared to entrust a valuable consignment to an individual of whom he knows nothing, particularly where, as in this case, the role which the Appellant attributes to himself would seem to be entirely without purpose. The approach adopted by the Royal Court in this instance is one which has been upheld in the Jersey Court of Appeal on many previous occasions. In our view the complaint is without substance. 9. But in any event and even on the Appellant's own estimate of his involvement, can it really be said that a 16 year starting point is out of line with the guidelines provided by this Court in Bonnar ? In that case Southwell JA, giving the judgment of the Court, indicated that for upwards of 5,500 tablets of ecstasy a starting point of 14 years and more would be appropriate. Here the number of tablets involved was nearly three times as many and it seems to us that whatever view is taken of the Appellant's involvement a starting point of 16 years was by no means excessive. Mitigation 10. As the Royal Court remarked: "There is little to be said in mitigation apart from the defendant's admissions to the police of his guilty plea. We agree with Defence Counsel that the plea was a valuable plea even though the evidence against the defendant was strong. We propose to make an allowance of 4 years for that mitigating factor and allow a further one year for the defendant's residual youth and other background mitigation including the fact that he has no previous drugs convictions and there is an element of remorse." By that process the Court arrived at the sentence of 11 years' imprisonment. 11. Complaint is made that the Appellant was not given full credit for his guilty plea which would have allowed a reduction of 5 years 4 months rather than the 4 years deemed appropriate by the Royal Court. 12. We have some sympathy with that point of view. The drugs had not been found on or inside the Appellant's person and it would have been open to him to run a spurious defence such as duress or that he had been framed. However, the evidence against him was extremely powerful. Although he is entitled to some credit for his frank admission on being arrested, the drugs could hardly have got into his room without his knowledge and duress is not an easy defence to invent on the spur of the moment. Whereas another Court may well have accorded the Appellant a full third discount, we are unable to say that the Royal Court was not entitled to approach the matter as it did.

Accordingly we decline to interfere. 13. It follows that this appeal must be dismissed.  
Authorities. Bonnar and Noon -v- AG (26 th October 2001) Jersey Unreported; [2001/212]  
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[1991] JLR 31 Cearkin and Pockett -v- AG

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Cross and Tapper on Evidence, (9 th Edition) "Use of terminology of presumption": pp.  
120-136 Bennion : Statutory Interpretation, (3 rd Edition) Section 269 pp. 626-630 "Law  
should not be subject to casual change" Woolmington -v- Director of Public Prosecutions;  
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Unreported; [2000/136] Martin -v- AG (14 th January 1998) Jersey Unreported; [1998/8]  
Whyte -v- AG (17 th March 1999) Jersey Unreported; [1999/52] Asher Sivan and Others  
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