7th January, 1987.

(87/2)
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COURT OF APPEAL

Before: D C Calcutt Esq., Q.C. (President)
J M Chadwick Esq., Q.C.
R D Harman Esq., Q.C.

Appeal against Sentence by David André McConnachie

Advocate A Messervy for the appellant
Advocate S C Nicolle, on behalf of the Attorney General, for the Crown

PRESIDENT: On the 26th September, 1986, this applicant pleaded guilty to an indictment containing three counts, each of which alleged offences in relation to drugs.
In Count 1, it was alleged that, in May 1986, he had supplied cannabis to a Mr Christopher McNamee; in Count 2, it was alleged that, in May 1986, he had supplied to a brother of his, John McConnachie; in Count 3, it was alleged that, in May 1986, he was himself in possession of cannabis.
He came before the Royal Court on the 21st October, 1986, when he was sentenced to terms of imprisonment on Count 1 of thirty months, on Count 2 of eighteen months and on Count 3 of twelve months' imprisonment, the order of the Court being that those sentences should run concurrently so that he should serve, in all, a total of thirty months' imprisonment.
On the 30th October, 1986, he applied for leave to appeal to this Court. On the 11th November, 1986, he was refused leave to appeal by a single judge of this Court. He now renews that application before this Court.
The brief facts may be summarised in this way - this applicant attracted the attention of the Island police force by his activities in the month of May, 1986. On the last day of that month, the 31st May, a police officer arrested the applicant on suspicion of being in possession of cannabis and it was found that he was, in fact, in possession of two lumps of cannabis.
A few days later, on Monday, 2nd June, the applicant was interviewed by the police but he denied being involved in the supply

or distribution of cannabis, though he did, according to the police, enquire what length of custodial sentence he might expect to receive should he admit involvement. Later, when he was told that both his brother, John McConnachie, and McNamee were also in custody, the applicant then said that he had supplied over three pounds of cannabis to his brother and to McNamee and then again, according to the police, he enquired about sentence and was told that the matter would be determined by the Royal Court, that is to say, that it would not be determined summarily.

He then agreed to make a written statement under caution and, in the course of that statement, he, once again, admitted supplying both to his brother and to McNamee and there was, in the course of that statement, some reference to financial benefit accruing to him. It appears that he said, "I sold some to my brother or gave some to my brother".

So far as this applicant is concerned, we have had drawn to our attention the social enquiry report and we have paid careful regard to everything that is said in that report. The applicant was born in Jersey in July of 1962, so that he was twenty-three years of age at the time, he now being twenty-four years old. He has, unfortunately, been before the Courts on a number of previous occasions, though hitherto that has been confined to the Juvenile Court and to the Magistrate's Court. It is right to say that his offences largely concern motoring matters but they do not exclusively do that and there was, unfortunately, a conviction on the 24th October, 1983, for the possession of cannabis when a fine was imposed upon him, so it is not as though this applicant was either a first offender or even a first drugs offender and that deprives him of mitigation which might otherwise be available to offenders.

As against that, it is right to say that this applicant has never previously been sentenced to any term of custodial treatment.

So far as the seriousness of his offences are concerned, it is quite plain that he is not, in respect of these matters, a mere possessor of drugs but was himself a supplier and that he was, self-evidently, higher up the line of supply than were either his brother or McNamee and that does make his position more serious than either of those two men.

We have to consider what is the correct sentence in such cases and our attention has been drawn to a number of decisions, principally on this Island; we have considered the cases of Bouchard

and Yates and Price. We do not wish to go into the details of each of those cases, we have had them drawn to our attention but we do not believe that it is an over-useful exercise to descend into minute detail of comparisons between one case and another. It is quite plain to us that this appellant was dealing in drugs for profit; it follows, as it is accepted by his learnèd counsel, that a substantial custodial sentence is inevitable; we have considered whether or not, as was submitted to us, there is any true disparity between the sentence which was passed upon this applicant and the sentence which was passed on his fellow accused and we take the view that there is not such demonstrable disparity.

In those circumstances, it appears to us that we can see nothing wrong in principle with the sentence which was passed upon this applicant and, in those circumstances, this application will be dismissed.