

ROYAL COURT

16th March, 1992

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Before: The Deputy Bailiff, and
Jurats Vint and Le Ruez

H.M. Attorney General

- v -

Andre Kramer

Police Court Appeal. Appeal against a sentence of seven days' imprisonment imposed on one charge of possession of a controlled drug contrary to Article 6(1) of the Misuse of Drugs (Jersey) Law, 1978.

Advocate Mrs. S.A. Pearmain on behalf of
the Attorney General.

Advocate P.C. Sinel for the appellant.

JUDGMENT

THE DEPUTY BAILIFF: This case involved a Class 'A' drug. The policy of this Court is clear. In the case of a Class 'A' drug, even for simple possession, there will be a custodial sentence

unless there are exceptional circumstances (or 'special reasons' as they were called in the Police Court). I prefer 'exceptional circumstances' because the term 'special reasons' has a certain technical meaning in some statutes and must relate only to the offence and not to the offender. The term 'exceptional circumstances' I interpret as referring to the circumstances of the offence or of the offender or both. It is that interpretation of special reasons which the Magistrate applied.

The Magistrate found that there were no special reasons. The Magistrate has to follow the policy laid down by the Courts and his decision cannot be faulted.

However, it is open to this Court, when sitting as a Court of Appeal, to resort to an act of mercy or clemency in a particular case, without eroding its sentencing policy in the matter of drugs offences.

The learned Jurats are satisfied that this appellant is naive and immature. They accept that the appellant in fact, as is suggested in the background report, holds very strong views about the dangers of drugs and feels somewhat of a hypocrite for being arrested for a drugs offence; that the purchase of the single capsule of ecstasy was caused due to his inability to say "no" rather than out of curiosity to experiment with the drug; and that he might well not have used the capsule.

The appellant is young and of previous good character, is in employment, and is living at home in a very sheltered environment.

As Mr. Sinel said, the appellant was more than usually co-operative with the police. We wish to make it clear, however, that the appellant's co-operation did not extend to naming names

or to giving any hard information such as to help the police. It was, as Mrs. Pearmain said, nothing but generalised information. It might have been better, having regard to threats made, for the full information to be disclosed in open court.

His one night of detention in police custody and his subsequent imprisonment for one day awaiting bail pending appeal have had an unusually strong salutary effect and the view of everybody concerned is that he will not offend again. The best advice available to the Court is that a period of imprisonment could be destructive in this case as his ability to cope with the prison environment is doubtful.

Therefore, as an act of mercy and without in any way criticising the Magistrate or creating a precedent, the Court has decided to allow the appeal, to quash the sentence of seven days' imprisonment, and to substitute a fine of £600, or in default of payment a term of four weeks' imprisonment.

Moreover, the Court is anxious that the fine should not be paid by the appellant's parents, but should be paid by the appellant personally, out of his earnings, and the Court orders that the fine should be paid at the rate of £75 per week, starting on Monday next, the 23rd March, 1992.

No Authorities.