

ROYAL COURT
(Samedi Division)

29

13th February, 1995

Before: The Deputy Bailiff and Jurats
Coutanche, Orchard, Hamon, Gruchy,
Le Ruez, Vibert and Rumfitt

The Attorney General

- v -

Alan Griffin

Sentencing by the Superior Number of the Royal Court, to which the accused was remanded by the Inferior Number on 27th January, 1995, following guilty pleas to:

- 2 counts of supplying a controlled drug, contrary to Article 5(b) of the Misuse of Drugs (Jersey) Law, 1978 (count 1 of the Indictment: MDMA; count 2: cannabis resin);
- 1 count of possession of a controlled drug (MDMA), with intent to supply it to another, contrary to Article 6(2) of the said Law (count 3);
- 1 count of possession of a controlled drug (cannabis resin), contrary to Article 6(1) of the said Law (count 4);
- 1 count of possessing utensils, for the purpose of committing an offence, contrary to Article 8 of the said Law (count 5); and
- 1 count of knowingly permitting the smoking of cannabis in his premises, contrary to Article 9 of the said Law (count 6).

AGE: 26

PLEA: Guilty

DETAILS OF OFFENCE:

Defendant found in his flat in possession of cannabis and 13 ecstasy tablets. A further 30 tablets found on his possession at Police Headquarters. The defendant ultimately admitted having supplied 77 tablets of ecstasy and having in his possession with intent to supply 43 tablets. He further admitted supplying half an ounce of cannabis together with the other offences charged.

DETAILS OF MITIGATION:

Exceptionally good character including good army career and strong parental support. Fell in to drugs habit after breaking up with girlfriend; only supplied drugs to a small circle of friends. Complete co-operation including plea of guilty and admission to supply offences. Six years accepted as starting point but further discount should be given for mitigating factors.

PREVIOUS CONVICTIONS: One minor motoring offence.

CONCLUSIONS:

- Count 1: 4 years' imprisonment.
- Count 2: 9 months' imprisonment.
- Count 3: 4 years' imprisonment.

Count 4: 1 month's imprisonment.
Count 5: 6 months' imprisonment.
Count 6: 9 months' imprisonment, all concurrent.

SENTENCE AND OBSERVATIONS OF THE COURT:

Count 1: 3½ years' imprisonment.
Count 2: 9 month's imprisonment.
Count 3: 3½ years' imprisonment.
Count 4: 1 month's imprisonment.
Count 5: 6 month's imprisonment.
Count 6: 9 month's imprisonment, all concurrent.

A totally exceptional case and not to be treated as a precedent for the future. In the light of mitigation the sentence on Counts 1 and 3 was reduced to 3½ years i.e. total 3½ years imprisonment.

The Attorney General.
Advocate B. Lacey for the accused

JUDGMENT

THE DEPUTY BAILIFF: Griffin is 25 years old. His family moved to Jersey in January, 1990, but had taken family holidays here since his infancy. He has been in gainful employment since then as a plumber's apprentice and during 1994 he had commenced an evening course at Highlands College to obtain his City and Guilds in plumbing. He has only one previous conviction: for a motoring offence. He left school with 8 CSE passes, and has served in the Army both in West Germany and Northern Ireland, rising to the rank of Lance Corporal in the Grenadier Guards.

The facts of the case have been well outline by the learned Attorney General. On 10th September, 1994, Police Officers called at his flat in Midvale Road after receiving complaints of excessive noise. Griffin was lying on the sofa. There was evidence of drug abuse in the flat with roach ends and torn cigarette papers lying around.

He was observed after being arrested and cautioned attempting to secrete 13 ecstasy tablets, a Class A drug, under the sofa. On searching the flat there was revealed several items indicative of drug abuse: a chopping board, kitchen knives with scorch marks on the blades, a cigarette rolling machine and various roach ends. More unsettling was a writing pad bearing various figures.

Eventually, after some denials, Griffin admitted that the writing pad was a deal list and that he had sold ecstasy for a price ranging from £15 to £25 per tablet. Griffin said that he had sold between 30 and 40 tablets. When asked to explain why the list indicated 70 tablets Griffin asked to see his lawyer. On emptying his pockets 30 ecstasy tablets were discovered.

He was detained overnight. The following morning, interviewed under caution, he informed the police that the ecstasy tablets found in his possession were part of an original batch of 50. He said that he had taken 2 himself but the others were on a sale or return basis at £15 per tablet and he sold them to friends either at cost or at £20 per tablet. He then admitted that he had supplied 32 ecstasy tablets on a previous occasion at the beginning of the year but denied selling the drugs for profit saying "I've made no profit at all except for supporting my own habit". After further questioning, he admitted that he had in total supplied, or had in his possession with intent to supply, a total of 120 ecstasy tablets. Of these 43 were those still in his possession. Evidence shows that the retail price of an ecstasy tablet is normally £25 and therefore the defendant's involvement in dealing in the ecstasy had a potential value of £3,000.

However, the defendant was, as we have said, adamant that he had only sold them for either £15, that is at cost, to friends or £20. If that is true his total proceeds would clearly have been less.

His supplying of 77 ecstasy tablets gives rise to count 1 and his possession of the 43 ecstasy tablets with intent to supply gives rise to count 3.

He has been remanded in custody since his arrest on 10th September, 1994. He has pleaded guilty, he is a first offender and the Class A drugs, it appears to be accepted by the Crown, were primarily sold in order to feed his own habit.

The principles upon which this Court will adjudicate cases of this nature are well established. If we look firstly at Clarkin & Pockett -v- A.G. (1991) JLR 213 CofA., at page 220 the Court said this:

"The circumstances of Pockett's case are that he was arrested in possession of 73 units of LSD. He had no previous conviction for any offence connected with drugs. He had been, as the Crown acknowledged, very frank and forthcoming from the moment of his arrest and his plea of guilty had been of value to the prosecution. Advocate Renouf in addition to emphasising these facts submitted to us that Pockett was a supplier on an altogether smaller scale than either Fogg or Clarkin and this should have lead to a difference greater than one year between the sentence passed on Pockett and the sentence passed on Clarkin. In Pockett's case the appropriate starting point should certainly be lower than that determined in in the case of Fogg -v- The Attorney General or in that of Clarkin. Furthermore, his plea of guilty, coupled with his co-operative behaviour from the moment of his arrest, deserved greater consideration than could be given to the much later pleas of guilty in those two cases. Bearing in mind on the one hand, the gravity of any offence of

possession of a Class A drug with intent to supply it, and on the other these factors to which I have just referred, as well as the other grounds of mitigation which were present, we consider that the appropriate sentence on Pockett would have been a sentence of 4 years' imprisonment."

And, earlier at page 219 the Court had said this:

"The possession of a Class A drug must always be a grave offence but if the involvement of the defendant in drug dealing is less than that in Fogg, if, as it is sometimes put, there is a greater gap between him and the main source of supply, the appropriate starting-point would be lower. It is very seldom that the starting-point for any offence of possessing a Class A drug with intent to supply it on a commercial basis can be less than a term of six years."

In this case the Attorney has taken as his starting point six years. He tells us that he has made allowance for the plea of guilty, previous good record and the co-operation by admitting to the offences of supplying. We agree with the learned Attorney that there are no valid grounds for distinguishing this case from the other two cases that we have mentioned.

Miss Lacey has given us what I would describe as a very impressive argument in mitigation. She tells us that the offences that have been committed are out of character; that when he first came to Jersey, he made a new circle of friends. He did not, in fact, even smoke cigarettes when he was in the army. The supply of the ecstasy - and we accept what she tells us - was primarily commissioned out of the need to supply himself. That is not anything that we would commend, but it is a point of mitigation in this case.

We have had an opportunity to read Mr. Griffin's father's letter to us, and an impressive letter it is. We have no doubt, however, that the supply of a dangerous Class A drug even to friends is normally a matter which would weigh very heavily in the balance against the good character of the accused.

But, this is a case which has concerned us. Here is a young man who, until he settled in Jersey, has not put a foot wrong. As I say, we have read his father's letter with care and his employers' letters, and we have noted his impeccable career in the Grenadier Guards.

We do not think, after anxious consideration, that this is a case which is exactly on all fours with Martin (15th December, 1994) Jersey Unreported, who had reoffended recently, previous to his sentence, nor do we know enough, as Miss Lacey pointed out to us, of the background to Pockett. We regard this case as totally

5 exceptional and in those exceptional circumstances, and without establishing any precedent for the future, we are prepared to reduce the sentence in this way; Griffin, on count 1: you will be sentenced to 3 1/2 years' imprisonment; count 2: 9 month's; count 3: 3 1/2 years' imprisonment; count 4: 1 month's imprisonment; count 5: 6 months'; count 6: 9 month's, all concurrent. We order, of course, the forfeiture and destruction of the drugs and the destruction of all those items that were found in the flat as mentioned by the learned Attorney.



Authorities

Clarkin & Pockett -v- A.G. (1991) JLR 213 CofA.

A.G. -v- Martin (15th December, 1994) Jersey Unreported.