

ROYAL COURT
(Samedi Division) 46.

7th March, 1997

Before: F.C. Hamon, Esq., Deputy Bailiff, and
Jurats Le Ruez and Le Brocq

The Attorney General

- v -

David William McDonough

1 count of possession of a controlled drug, with intent to supply, contrary to Article 6(2) of the Misuse of Drugs (Jersey) Law, 1978:

Count 1 : amphetamine sulphate.

2 counts of possession of a controlled drug, contrary to Article 6(1) of the Misuse of Drugs (Jersey) Law, 1978:

Count 2 : diamorphine (heroin).

Count 3 : temazepam.

[The accused pleaded not guilty to count 3, which plea was accepted by the Crown].

Plea: Guilty.

Age: 34.

Details of Offence:

Defendant in possession of small personal amount of heroin on execution of search warrant at his home. Also found in possession of 28.91 grammes of amphetamine sulphate, street value £289, which he planned to sell. Defendant was in breach of a one year Probation Order imposed on 24th May, 1996, for possession of methadone [Class A]. *[See Jersey Unreported Judgment of that date].*

Details of Mitigation:

Defendant had purchased amphetamine sulphate for himself and was offered the drugs cheaply but there came a time when he formed an intention to sell. The defendant had some potential if he could be guided correctly. Credit should be given for the plea of guilty.

Previous Convictions:

Very poor record including four previous drugs convictions, namely three for possession and one for being concerned in the supply of heroin.

Conclusions:

Count 1 : 12 months' imprisonment.
Count 2 : 8 months' imprisonment, concurrent.
Breach of Probation : 6 months' imprisonment, consecutive.
TOTAL : 18 months' imprisonment.

Sentence and Observations of the Court:

Conclusions granted.

The Attorney General.
Advocate M.H.D. Taylor for the accused.

JUDGMENT

5 THE DEPUTY BAILIFF: On 24th May, 1996, this Court presided over by the
Bailiff sentenced McDonough to twelve months' Probation. A search had
discovered a bottle of methadone with a street value of £25. It was
argued that this was to cure and not to indulge addiction to heroin.
10 The Court did not follow the conclusions of the Crown which was for an
eight month period of imprisonment but felt that in this case there were
exceptional circumstances which could take the matter outside the strict
parameters of A.G. -v- Young (1980) JJ 281 which prescribed a custodial
sentence for anyone found in possession of hard drugs.

15 Within the Probation period, a search of McDonough's flat revealed
a wrap of 94 milligrams of heroin, a bank bag containing 22.19 grams of
amphetamine sulphate; some of the paraphernalia associated with drug
abuse; and 16 wraps of amphetamine sulphate. The heroin was for
personal use but the amphetamine sulphate was undoubtedly a commercial
20 quantity of the drug with a street value in total of £289.10.

McDonough had been given a valuable concession by this Court which
was, perhaps, surprising considering his record. He was placed in a
position of trust. We are now back with A.G. -v- Young where the court
25 stated:

*"Those who are in unlawful possession of Class A drugs that is
to say those drugs which are normally described as hard drugs
will receive custodial sentences from this Court unless there
are exceptional circumstances even if the conduct is in the
least serious category".*

30 We regret we feel that the Attorney General is absolutely
right; the heroin possession warrants eight months' imprisonment; the
amphetamine sulphate was possession with intent to supply and
warrants twelve months' imprisonment; but we do feel and we agree
with the learned Attorney that those two offences can be made
35 concurrent under the totality principle.

Mr. Taylor has said all that he can in the circumstances but a breach of probation in these circumstances is, in our view, very serious; a chance was given and it was not taken.

5 Stand up, please, McDonough. We therefore sentence you as
follows: on count 1, you are sentenced to twelve months'
imprisonment; on count 2, you are sentenced to eight months'
imprisonment, concurrent; and for the breach of probation, you are
10 sentenced to six months' imprisonment, consecutive. We further order
the forfeiture and destruction of the drugs.

Authorities

Campbell, MacKenzie, Molloy -v- A.G. [1955] JLR 136 CofA.

A.G. -v- Chainey (11th October, 1996) Jersey Unreported.

A.G. -v- de la Haye, Kearney (15th December, 1995) Jersey Unreported.

A.G. -v- Buesnel (21st August, 1996) Jersey Unreported.

A.G. -v- Young (1980) JJ 281.