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## AG v Dean

<b>Jurisdiction:</b>	Jersey
<b>Judge:</b>	The Deputy Bailiff
<b>Judgment Date:</b>	06 April 2009
<b>Neutral Citation:</b>	[2009] JRC 64
<b>Reported In:</b>	[2009] JRC 64
<b>Court:</b>	Royal Court
<b>Date:</b>	06 April 2009

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### Text

[2009] JRC 64

ROYAL COURT

(Samedi Division)

Before:

M. C. St. J. Birt, **Esq.**, Deputy Bailiff, **and** Jurats Le Breton, Clapham, King, Le Cornu **and** Newcombe.

The Attorney General  
and  
Norman Paul Dean

A. J. Belhomme, **Esq.**, **Crown Advocate.**

**Advocate** L. K. A. Richardson **for the Defendant.**

## Authorities

Whelan on Aspects of Sentencing in the Superior Court of Jersey.

*Bonnar and Noon -v- AG* [\[2001\] JLR 626](#).

*Morgan and Schlandt -v- AG* [\[2001\] JLR 225](#).

*AG -v- O'Hara* [\[2007\] JRC 204](#).

Sentencing by the Superior Number of the Royal Court, to which the accused was remanded by the Inferior Number on 19th February, 2009, following guilty pleas to the following charges:

2 counts of: Possession of a controlled drug, contrary to Article 8(1) of the Misuse of Drugs (Jersey) Law 1978. (Counts 1 and 3).

1 count of: Possession of a controlled drug with intent to supply, contrary to Article 8(2) of the Misuse of Drugs (Jersey) Law 1978. (Count 2).

**Age** : 37.

**Plea**: Guilty.

### Details of Offence :

Following a complaint about a noisy party the Police attended at a town flat with the landlord to evict persons who did not have permission to be there. Having entered the flat they found the accused. They formed the view he was heavily under the influence of drink or drugs. The flat was in a state of disarray. The accused was asked to leave and began packing his belongings. An officer checked the premises for damage which might have been caused. As he walked into the lounge he saw a white MDMA tablet (37 mg – street value £10) on the sofa behind the door (Count 1). The accused was arrested and conveyed to Police Headquarters.

A subsequent search of the flat revealed a further yellow MDMA tablet (54 mg – street value £5 to £8) in the top drawer next to the bed in the accused's bedroom (Count 1), and a rolled up sock tucked under the water tank in the loft inches from the opening containing a further 51 MDMA tablets (50 mg per tablet – street value £510 – wholesale value £306 to £510) (Count 1 – 26 tablets and Count 2 – 25 tablets), and a quantity of cash totalling £100.

Also recovered was a set of electronic scales with traces of cannabis resin (no separate charge), and paraphernalia from under the television in the accused's bedroom comprising a half litre food blender with 179mg of amphetamine sulphate at 2% purity around the interior of the bowl (Count 3), a coin bag containing 475mg of amphetamine sulphate at 0.6% purity (Count 3), a 500g box of glucose which had been opened and used, a razor blade with powder traces, carrier bags, further coin bags, two cut rolls of cling film (one of which was almost empty), a small desktop notepad with torn off/folded/cut pieces and a

tablespoon and teaspoon with traces of white powder.

During the interview the accused initially denied knowledge of the tablet found in the lounge but admitted the tablet found in his bedroom and the tablets from the loft were his. He claimed however they were for personal use.

The accused said the mixer bowl and paraphernalia was used by him for cutting speed for personal use. He said he used drugs as he sometimes became depressed. He would not say where he had bought the amphetamine or how much he had paid for it and he said he had not used amphetamine for about five months. The accused said he had probably purchased an ounce of amphetamine. He consistently denied dealing the drug.

The accused would not say where or from whom he had obtained the tablets and denied dealing MDMA.

During a subsequent interview the accused denied the money recovered from the loft represented the proceeds of drug trafficking and again denied dealing MDMA. He also again denied dealing amphetamine and further denied the mixer bowl and paraphernalia represented a mini amphetamine factory

Insofar as Count 2 was concerned the Crown categorised the accused as a small scale amateur trafficker. It did not view this as a case involving social supply.

#### **Details of Mitigation :**

Guilty pleas (although those on Counts 1 and 2 were not entered at the earliest opportunity). Remorse (letter from accused submitted after conclusions had been agreed).

#### **Previous Convictions :**

Record containing convictions before both Preston Magistrate's Court and Jersey Magistrate's Court (including convictions for possessing controlled drugs and being concerned in the importation of cannabis for which the accused had received small fines).

#### **Conclusions :**

Count 1: 12 months' starting point. 12 months' imprisonment.

Count 2: 6 years' starting point. 4 years' imprisonment, concurrent.

Count 3: 1 week's imprisonment, concurrent.

Total: 4 years' imprisonment.

Forfeiture and destruction of drugs sought.

#### **Sentence and Observations of Court :**

The accused had pleaded guilty to an intent to supply 25 MDMA tablets and to possession of a similar amount for personal use. In addition he had pleaded guilty to possession of

amphetamine.

The basis of his guilty plea to possession, with intent to supply, MDMA was that he intended to supply approximately half the tablets found in the loft to friends and then only to recover the cost of his habit. The accused claimed the dealer from whom he had obtained the tablets had been leaving the island and said he had taken advantage of the situation. The Crown had suggested a six year starting point. The Court agreed that was appropriate as this was an exceptional case.

In mitigation the accused had his guilty pleas and an excellent work record. He nevertheless had previous drug-related convictions. The Social Enquiry Report assessed him at low risk of re-offending. He had a job available to him and had made progress whilst in prison. The four year term moved for by the Crown in relation to Count 2 only took account of the guilty plea. In the Court's view the appropriate sentence was one of three years' imprisonment (taking into account all other mitigation).

The Court had gone on to consider whether Community Service was a viable alternative. This had been recommended by the Probation Service. In the Court's view this was an exceptional case because of the very limited nature of the accused's drug trafficking activity. He had served an equivalent of 9 months' imprisonment. It remained unusual for any trafficking in Class A drugs not to result in a prison term. In all the circumstances the Court would impose the following sentences:-

Count 1: 12 months' starting point, 180 hours' community service order.

Count 2: 6 years' starting point, 350 hours' community service order, concurrent.

Count 3: 40 hours' community service order, concurrent.

Total: 350 hours' community service order or 3 years' imprisonment in default.

Community service order to be completed within 2 years.

The Court had read the letter submitted by the accused and had taken him at his word. If he re-offended it would result in imprisonment in which case time on remand would not count.

Forfeiture and destruction of drugs ordered.

The Deputy Bailiff

- 1 Mr Dean you have pleaded guilty to possession of 25 ecstasy tablets with an intention to supply them and to possession of a similar amount for your own use and possession of traces of amphetamine sulphate.
- 2 The basis of the plea which is accepted by the Crown and therefore is the basis upon which we will sentence you is that you normally purchase ecstasy just for your own use but on this occasion your dealer was leaving the island and offered you the chance of acquiring

just over 50 tablets at a wholesale price and you took advantage of this. The basis of pleading to Count 2 is that you might well have sold up to half of these to friends or persons who asked you in order to cover your costs, although you had not in fact done so at the time of your arrest.

- 3 In this case the Crown suggests dropping below the normal minimum starting point of 7 years by 1 year and the Court agrees that it is exceptional in that way and 6 years is the correct starting point.
- 4 In mitigation we take into account your guilty plea, your excellent work record and we have seen the references which describe that. You do have previous convictions for drugs but you do not have many others. The background report assesses you as being at low risk of re-offending and we note you have a job to go to and also the progress you have made in prison and your determination to try and turn your life around. With the starting point of 6 years a full discount for the guilty plea would bring it down to 4 years with the result the Crown has allowed nothing for the other mitigation. We think in all the circumstances the correct prison sentence in total would be one of 3 years. The question we then asked ourselves is whether we can impose community service as an alternative to that, as urged by your Advocate. The probation service have recommended it. The Court is satisfied that this is an exceptional case in view of the very limited nature of the activity which you were going to undertake and the Court also takes account of the fact that you have already served the equivalent of 9 months imprisonment and therefore have been punished already in that way. In all the circumstances the Court does regard this as exceptional. It is unusual for any trafficking activity in relation to Class A drugs to attract a non-custodial sentence, but the Court is satisfied that this is an appropriate sentence in this case.
- 5 The sentence of the Court is on Count 1; 180 hours, on Count 2; 350 hours, which makes an allowance for the time you have spent in prison and on Count 3; 40 hours, all of those to be concurrent and you must undertake them within the next 2 years.
- 6 I want to end, Mr Dean, by referring to your own letter. You say “ *if the Courts were to give me a chance to put my life back on track I would not fail or disappoint the Court*”. The Court is taking you at your word Mr Dean. The Court trusts that you will not come back before it and you will not re-offend. What you must understand is that if you do, then you will undoubtedly be sentenced to a prison sentence and the time you have already spent in remand would not then count towards any sentence you serve; so it is very much in your hands.
- 7 We order the forfeiture and destruction of the drugs and we forfeit the list of paraphernalia as itemised by the Crown.