



**Falla v The Law Officers of the Crown**  
Court of Appeal  
7<sup>th</sup> December 2018

**JUDGMENT**  
**43/2018**

Application for leave to appeal against sentence concerning the supply of controlled drugs

**IN THE COURT OF APPEAL OF GUERNSEY**

**(CRIMINAL DIVISION APPEAL No. 487)**

**3<sup>rd</sup> December 2018**

**Before:**

**Robert Logan Martin QC**  
**George Bompas QC**  
**Sir Wyn Williams**

**Between:**

**JACK WILLIAM GEORGE FALLA**

**Appellant**

**-v-**

**THE LAW OFFICERS OF THE CROWN**

**Respondent**

**Decision handed down: 3<sup>rd</sup> December 2018**

**Judgment handed down: 7<sup>th</sup> December 2018**

**Advocate for the Appellant: Advocate M. G. A. Dunster**  
**Advocate for the Respondent: Advocate R. J. Calderwood**

**JUDGMENT**

**Williams, J A:**

**This is the judgment of the Court**

1. On the 30th August 2018 at the Royal Court here in Guernsey, the appellant was sentenced to a term of 18 months imprisonment for a single offence of being concerned in the supply of a controlled drug of Class B, namely Cannabis Resin. He had previously pleaded guilty to that offence. Following sentencing the appellant lodged the appropriate notice seeking leave to appeal. The single Judge determined that the appropriate course was to refer the application to this court with a direction that should permission to appeal be granted the appeal would be heard immediately. We grant permission to appeal.

2. The appellant's involvement in the offence of being concerned in the supply of Cannabis Resin came to light as a consequence of investigations undertaken by the Guernsey Police into a missing person by the name of Alps. On the 10<sup>th</sup> January 2018 the police attended at the home of one Neil MacDonald, an associate of Mr Alps, in order to question him about the whereabouts of the missing man. The answers given by Mr MacDonald to the officers' initial questions quickly aroused their suspicions that he had relevant information which he was withholding. Accordingly, they pressed him for information with the result that Mr MacDonald admitted that he had been in recent contact with Mr Alps and that Mr Alps had asked him to dispose of or hide two bags. Voluntarily, Mr MacDonald produced the bags to the police officers; they were found to contain two shotguns and a box containing ammunition. One of the shotguns was 12 bore, the other was 'sawn off' i.e. its barrels had been deliberately shortened. Following the seizure of these items Mr MacDonald was arrested.
3. A comprehensive search of Mr MacDonald's home took place the following day. The officers involved in the search discovered 17.39 grams of Cannabis Resin wrapped in cling film, a handwritten list containing names, numbers and prices and two LSD tablets.
4. Following his arrest, Mr MacDonald was interviewed under caution. He was questioned first about how he had come to have the two bags containing the shotguns and ammunition. He told the interviewing officers that he had collected the two bags from Mr Alp's workshop after receiving a telephone call from Mr Alps in which he, Mr Alps, had sought his assistance. According to Mr MacDonald Mr Alps had told him that the contents of the bag were 'clean' but that *'he needed them out of the way'*. He had responded to the call for help but he had accepted what had been said to him at face value. He maintained that he collected the bags, kept them hidden but he also asserted that he had not looked inside the bags and that he had no idea that they contained shotguns and ammunition.
5. Mr MacDonald was then questioned about the drugs found during the search of his premises. In answer to those questions he admitted that the drugs were his. He accepted that he was an occasional user of Cannabis Resin which he took, so he said, approximately once per month in order to relieve back and shoulder pain. According to Mr MacDonald, the Cannabis Resin found at his house was part of some 20 grams he had purchased for his own consumption for which the purchase price had been £280. He told the interviewing officers that he had been in possession of the two LSD tablets for about 10 years and that he had just kept them *'for memories sake'*.
6. As was to be expected Mr MacDonald was also questioned quite closely about the list containing names, numbers and prices. His explanation for that list was that he had composed what he called a checklist as to what it might have been possible for him to do by selling drugs. However he denied that he had actually engaged in such activity and maintained that denial throughout the questioning.
7. Amongst other items seized from Mr MacDonald's home was his mobile phone. Over the days following his arrest the phone was examined forensically. The examination revealed messaging which caused the police to suspect that Mr MacDonald had been dealing in drugs. Text and audio messages with a number of individuals was strongly suggestive of dealing. It also became clear from the examination of the phone that Mr MacDonald was in frequent contact with the appellant and in summary there were a number of messages between the two which strongly suggested that they were engaged in the onward supply of drugs which they had acquired for that purpose.
8. So it was that on the 23rd January 2018 police officers arrested the appellant and proceeded to interview him under caution. At first the appellant denied any drug dealing activity either with Mr MacDonald or alone. However as the interview unfolded the appellant made a series of admissions to the effect that he had been arranging the supply of Cannabis to Mr MacDonald, that this had happened on at least two occasions when first 100 grams and then 50 grams of Cannabis had been obtained. These batches had then been sold on in much

smaller amounts to a number of individuals although, according to the appellant, these sales had been arranged by Mr MacDonald. Throughout his interviews the appellant consistently denied that he had profited from the sale of the drugs which he had obtained.

9. Following the completion of these interviews with the appellant a further interview under caution took place with Mr MacDonald. In this interview he was challenged about the material which had been retrieved from his mobile phone and what the appellant had said under caution in interview. In answer to each question put to him Mr MacDonald replied 'No Comment'.
10. In due course the appellant was charged with a single offence of being concerned in the supply of Cannabis Resin. He was jointly charged with that offence with Mr MacDonald. His co-accused was also charged with four other offences. They were possessing a Class A drug, namely the LSD tablets, possessing the 12 bore shotgun, possessing the sawn off shotgun and possessing ammunition. Prior to sentencing Mr MacDonald also pleaded guilty to the charges brought against him.
11. We turn to the sentencing hearing. At this hearing Advocate Calderwood, who appeared for the prosecution, was not disposed to contradict the appellant's assertion that he had not profited from his involvement in the supply of Cannabis Resin. The case for the prosecution, as presented to the Royal Court, was that if 150 grams of Cannabis Resin had been the extent of the dealing with which the appellant had been involved, as was being asserted on behalf of the appellant and Mr MacDonald, such an amount had a value on the street of between £3,000 and £4,500. Further Advocate Calderwood agreed that it was reasonable to suppose that the purchase price for the appellant of that amount of drugs was likely to have been about £2,500 so that the amount of profit generated on any view was not great. That said Advocate Calderwood submitted that the possibility of financial gain was the only conceivable motive for the offending.
12. We should also stress that Advocate Calderwood was at pains to point out that the appellant's admissions in his interview under caution had been key to the success of the prosecution, both against the appellant and Mr MacDonald. He expressed himself in writing thus:-

*"It is only fair for the prosecution to acknowledge that Mr Falla's eventual admissions in interview were key to the prosecution of both gentlemen for this drug trafficking offence. A commercial quantity of drugs was not actually seized in this case so it would have been very difficult for the prosecution to prove exactly what these messages referred to without Mr Falla's admissions".* [The reference to messages was to those found on Mr McDonald's phone]

13. As we have said the sentence imposed upon the appellant for the one offence of being concerned in the supply of Cannabis Resin was 18 months' imprisonment. In the sentencing remarks on behalf of the Royal Court presented by Judge Finch he explained in detail how the court had arrived at this sentence. Essentially the court adopted a three stage approach. First, the court reached a conclusion about what the sentence would have been had there been a fully contested trial. The guidelines set out in the judgment of this court in *Richards and Others v The Law Officers [2000-02] GLR 247* suggested that the starting point sentence for an offence of being concerned in the supply of a Class B drug where the quantity of the drug supplied was up to 2 kilograms should fall within the range of 3-6 years imprisonment. In the circumstances of this case the court determined that the appropriate starting point was 3 years. Second, the court determined the discount from that starting point sentence to take account of the appellant's guilty plea. It concluded that the plea had been "timely" and accordingly that the discount should be one third. As to this in a sentence directed both at Mr MacDonald and the appellant Judge Finch said:-

*"Your guilty pleas are given full credit in respect of those, one third".*

In other words the guilty plea was taken into account by reducing the 3 year starting point

sentence to one of 2 years.

14. Finally, the court referred to other mitigating factors such as lack of previous similar convictions. It is a reasonable inference that these were considered to justify a further reduction of the sentence by 6 months hence the final term of 18 months' imprisonment.
15. The court rejected the submission made on behalf of the appellant that a non-custodial sentence would be appropriate saying that on the facts and in the light of various authorities a non-custodial sentence was unrealistic.
16. All the reasons given for reducing the starting sentence of 3 years to one of 1½ years or 18 months was set out in a single paragraph which is to be found under the heading 'Mitigation' in the transcript. This paragraph apparently was directed at both Mr MacDonald and the appellant. It is necessary to read out that paragraph in full.

*"Your guilty pleas are given full credit in respect of those one third. We also note, in your favour, your lack of similar convictions. We also note the submissions of your advocates and the large number of written references adduced for both Mr MacDonald and Mr Falla. All relevant matters have been taken into account. We have read the probation reports. We consider on the facts and authorities that non-custodial sentences are unrealistic, however, all in all your total discounts will be rather more than one third amounting to a generous fifty per cent reflecting all the mitigation we have heard".*

17. Before dealing with the grounds of appeal it is necessary to consider, shortly, the sentences imposed upon Mr MacDonald. He too was sentenced to 18 months imprisonment for the offence of being concerned in the supply of Cannabis Resin. In respect of the other four offences which he admitted, the firearms offences and the possession of LSD, Mr MacDonald was sentenced to short terms of imprisonment which were made concurrent to the 18 month term. There was a specific reason for the apparent lenient course taken in respect of the firearms offences. Mr MacDonald had pleaded guilty to the offences relating to the shotguns and ammunition on the basis that he did not know that he was in possession of guns and ammunition. That basis of plea was accepted by the prosecution and sentence proceeded upon that basis as is demonstrated by a paragraph on the second page of the transcript of the sentencing remarks of the Royal Court. Mr MacDonald has not appealed against his sentence.
18. The appellant appeals upon two grounds. Ground one is a complaint that a sentence of 18 months' imprisonment was manifestly excessive because the court failed to attach appropriate weight to the appellant's admissions and in particular his willingness to implicate Mr MacDonald in the drug trafficking offence. Advocate Dunster, on behalf of the appellant, argues that the court failed to follow clear guidance to be found in the case of *Richards* as to the correct approach to sentencing when a person not only admits his own guilt but also gives assistance in helping the authorities to prosecute others. In support of this contention our attention was drawn in the appellant's grounds of appeal to the passage quoted above from the submissions made by Advocate Calderwood to the Royal Court concerning assistance given by the appellant. Before us, these submissions were repeated it being said that the appellant's admissions were essential to the conviction of the appellant and were an important factor in bringing about the successful prosecution on Mr MacDonald.
19. Advocate Calderwood did not accept that the appellant's sentence of 18 months' imprisonment could be challenged on the ground either that the court adopted an excessively high starting point or that in the abstract a sentence of 18 months for the offence for which the appellant was convicted was to be categorised as manifestly excessive. Nonetheless he conceded before us, in agreement with the submissions made by Advocate Dunster, that the Royal Court did not follow the approach suggested as being appropriate in *Richards* when determining the custodial term to be served by the appellant and this, so he accepted, was to be categorised as an error of principle.

20. It is as well to begin our discussion of this ground of appeal by reminding ourselves of the relevant passages from the judgment of this court in *Richards*. The passages are to be found under the heading ‘*Credit for Assistance*’ and are set out at paragraphs 18-20 of the judgment.

18. *“Early and useful assistance in helping the authorities to prosecute others will almost invariably result in a substantial reduction in the sentence which would otherwise be imposed. Subject to the qualifications set out below we adopt the English approach set out in R v Guy. In that case the court referred to and followed R v King in which Lord Lane said (82 Cr.1 App. Rs at 122):*

*“One then has to turn to the amount by which the starting figure should be reduced. That again will depend upon a number of variable features. The quality and quantity of the material disclosed by the informer is one of the things to be considered, as well as accuracy and the willingness or otherwise of the informer to confront other criminals and to give evidence against them in due course if required in court. Another aspect to consider is the degree to which he has put himself and his family at risk by reason of the information he has given; in other words the risk of reprisal. No doubt there will be other matters as well.*

*The reasoning behind this practice is expediency.... It is to the advantage of law abiding citizens that criminals should be encouraged to inform upon their criminal colleagues..... [A]n expectation of some substantial mitigation of what would otherwise be the proper sentence is required in order to produce the desired result, namely, the information. The amount of that mitigation, it seems to us, will vary from about one half to two thirds reduction according to the circumstances as outlined above”.*

19. *But it is not just the willingness of the accused to give such information nor the risk that he or she runs that is relevant. Other circumstances of the case are beyond the accused’s control and may be very much a matter of chance. For example, the accused may not, in fact, have the opportunity to give evidence. In many cases the credibility of the accused will be weak by the nature of the crime in which he has been involved. It may be a matter of chance whether there is available corroboration which might make his evidence more credible. However none of these difficulties must be allowed to erode the principle we have expressed to the effect that in all cases where there is a genuine attempt to provide information, credit should be given.*

20. *“Moreover it must be made clear that discounts for this and other varieties of mitigation cannot simply be added to one another. The Court has to consider the totality of the sentence in the light of all the circumstances”.*

21. In our judgment it was incumbent upon the Royal Court to follow and apply these paragraphs. What, if anything, did the court say about credit for assistance in the sentencing remarks? Judge Finch acknowledged, in terms, that the appellant’s admissions formed the basis of the charge. When the Royal Court referred to the charge against both the appellant and Mr MacDonald of being concerned in the supply of a Class B drug he said:-

*“We acknowledge that the [appellant’s] admissions formed the basis of this charge”.*

22. However, when setting out the mitigation which was to be taken into account in order to reduce the starting point 3 year sentence, no express reference was made to credit being given to the appellant for his assistance - see the passage from the sentencing remarks which we have previously quoted. Further this part of the sentencing remarks was addressed not just to the appellant but also to Mr MacDonald. In these circumstances we cannot read the phrase *“all relevant considerations have been taken into account”* as including a reference to the assistance given by the appellant or that consideration had been given to the amount, if any, of credit to be afforded to the appellant for that assistance. In that respect the position of the

appellant was quite distinct from that of Mr MacDonald and should have been clearly recognised and dealt with as such in his sentencing.

23. Having considered the Royal Court sentencing remarks as a whole we are driven to the conclusion that both Advocate Dunster and Advocate Calderwood are correct in their submissions to us which are to the effect that the Royal Court failed to follow and apply the principles laid down in *Richards* relating to credit for assistance when sentencing the appellant.
24. *Richards* follows a number of English authorities which suggest that early and useful assistance in helping the authorities to prosecute others will almost invariably result in a substantial reduction in the sentence which would otherwise be imposed. The English authorities, since the decision in *Richards*, do nothing to alter that line of authority. As a matter of generality the English authorities mentioned in *Richards* anticipated that the reduction in sentence would fall between one half and two thirds and more recent authorities have stressed that even where, as a matter of fact, the assistance turns out to be minimal, the giving of assistance should always be regarded as a proper mitigating factor.
25. In this case, as we have said, the law officers have described the assistance given by the appellant as a key to the prosecution of both the appellant and his co-accused. In these circumstances we have no doubt that a substantial discount in sentence was justified. However, we are mindful too that *Richards* reminds us that discount in sentence for assistance in bringing others to justice cannot simply be added to other discounts for other mitigating features of the case. The court must consider the totality of the sentence in the light of all the circumstances. In this context we respectfully agree with the statement of Sir John Nutting QC giving the judgment of this court (Richard Southwell QC, Sir John Nutting QC and David Vaughan QC) in *Coleman Cr. App 295* 11<sup>th</sup> April 2003:

*“In any sentencing exercise where starting points are used and discounts given, it is necessary for the tribunal to step back after the exercise is complete and test the result by a rubric which involves an assessment whether the mathematical computation has resulted in a just sentence. This is particularly important where two or more offenders are being sentenced for the same offence”.*

26. As it seems to us the appropriate sentence for the appellant’s offending, taking account of all relevant mitigating factors, was one of 12 months’ imprisonment. We accept that the Royal Court was correct to take as its starting point sentence a term of 3 years imprisonment. Such a starting point was wholly consistent with the starting point guidelines laid down in *Richards* given the weight of the drugs with which the appellant involved himself as a supplier. However, there were powerful mitigating features which were present in his case which had the effect of reducing the sentence which it was appropriate for him to serve. First, after some initial prevarication in his interviews under caution the appellant admitted his offending and implicated Mr MacDonald in what had occurred. It was accepted that the appellant’s answers in interview were key to a successful prosecution of Mr MacDonald as well as the appellant himself. There are sound public policy reasons why persons who provide assistance to the prosecuting authorities should receive substantial credit for so doing as *Richards* makes clear. Second, the appellant pleaded guilty at the first reasonable opportunity. Third, he was properly to be treated as a man with no previous convictions of any relevance and fourth, there were many positive aspects to his character as was attested to in many references supplied to the court.
27. Having reflected upon these powerful factors and taken all relevant information about the appellant into account, to repeat, we have reached the conclusion that the appropriate term for him to serve and the term which would be just and proportionate is 12 months’ imprisonment.
28. In the light of our conclusions on Ground 1, the second ground of appeal falls away. This was a complaint that it was unjust for the appellant to receive the same sentence as his co-accused given the more extensive nature on Mr MacDonald’s offending. Appeals on this

basis are, as in the instant case, heavily dependent upon the relevant facts. Accordingly, no useful purpose would be served by us addressing arguments which have become academic by reason of our conclusion on the first ground of appeal.

29. In our judgment this appeal succeeds to the extent that we quash the sentence of 18 months' imprisonment imposed upon the appellant and we substitute the sentence of 12 months.