

**ROYAL COURT  
FULL COURT**

**16 January 2019**

**Before: Richard James McMahon, Esq., Deputy Bailiff and:  
Stephen Murray Jones OBE, Claire Helen Le Pelley, David Percy Langley Hodgetts LVO, Jonathan  
Grenfell Hooley, David James Mortimer, Joanne Marie Wyatt, Peter Francis Gill, David John  
Robilliard, Marilyn Jasmine King, Jurats.**

**THE LAW OFFICERS OF THE CROWN**

- v -

**Nikodem Dawid MOZGALA**

**Advocate G S Perry appeared for the Crown**

**Advocate P F Cobb appeared for the Defendant**

**DEPUTY BAILIFF:**

**Background**

Nikodem Mozgala, you appear this morning to be sentenced in respect of a single Count of being concerned in the supplying to another of a controlled drug of Class B, namely cannabis resin, contrary to section 3(1) of the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974, as amended. This offence carries a maximum penalty of 21 years' imprisonment.

You are a Polish national and, when committing this offence between 3 July and 6 August last year, you were approaching your 21<sup>st</sup> birthday, which you have now had. Having grown up and been educated in Poland, you came to Guernsey in January 2017. You have been employed in the hospitality sector in various roles in kitchens, although it seems this has not always been with the benefit of a permit from the Population Management Office. We treat you today as being of previous good character.

Your offending came to light when you were arrested for a public order offence, being heavily intoxicated at the time, on 5 August 2018. Bags of the cannabis resin were hidden around your genitals in a plastic bag. The six bags contained a total of 18.41 grams of cannabis resin, the street value of which is put between £360 and £540. An analysis of your mobile phone extracted evidence from which drug dealing is apparent.

You have been in custody throughout the proceedings since a Court appearance on 2 October 2018.

**Sentencing Considerations**

In 2002, sentencing guidelines for drug trafficking offences, which includes forms of supply, were established by the Court of Appeal in the case of *Richards*, to which this Court is obliged to have regard. As that Court commented: "*sentencing is always a matter for the court's discretion. It is an art and not a science.*"

For a drug trafficking offence involving cannabis resin where the weight is below 2 kilograms, the guideline starting point is in the range of 3 to 6 years' imprisonment.

We recognise that the quantity of drugs found on you when arrested was comparatively small and, even with the evidence of previous dealing from the phone analysis, we are satisfied that you fall into this lowest band in *Richards*. Despite your intoxicated state, you were sufficiently aware to retrieve the drugs from where you were living and to hide them on your person where they were less likely to be discovered other than through the full type of search ultimately authorised. There has been no suggestion that you were being coerced into acting, so we conclude that you took a conscious decision to make extra money through involving yourself in this way with selling drugs on. In terms of your culpability, we regard you as playing a significant role in the overall chain of supply. In all the circumstances however, we take a starting point of 3 years' imprisonment.

### **Mitigation**

We have listened attentively to everything that has been said about you and on your behalf by Advocate Cobb.

We have taken into account what is written about you in the Probation Report. In doing so, we note the assessment that there is a high likelihood of general re-offending. However, you are not assessed as presenting a direct risk of harm to members of the general public.

In principle, your desire to help your family back home through sending money is laudable, but only if the money has been earned legitimately. Your history of self-medicating with cannabis to address the problems you face from time to time may be the background to your offending, but we do not regard it as an acceptable explanation for engaging in drug-dealing. However badly you felt about losing your job, your decision to buy and consume a whole bottle of vodka was, in our view, an inappropriate response. It demonstrates a lack of judgment, consistent perhaps with you still being comparatively immature.

### **Sentence**

Drug dealing in any form here in Guernsey is always viewed seriously by this Court. Anyone who plays a part in the supply chain has to face the consequences of their role. It sounds to us as though you were buying a fairly small amount of cannabis and then selling it on at a small profit to yourself. We appreciate that the quantities involved were low-level dealing, but as a result you were providing an outlet to those choosing to purchase from you that might not otherwise have existed for them and you allowed those from whom you purchased a relatively easy way to benefit from their own unlawful activities. We take a dim view of your reaction to the officers who were dealing with you, which was unpleasant and unnecessary. We do, however, give you full credit for your guilty plea and take into account that you are young, have expressed remorse and now accept that you have acted foolishly. If nothing else, we trust that this experience will be a lesson from which you will learn.

In respect of this Count of being concerned in the supplying of cannabis resin, you will be sentenced to 2 years' imprisonment, to run from 2 October 2018, which is when you were first remanded into custody.

In accordance with section 1 of the Criminal Justice (Supervision of Offenders) (Bailiwick of Guernsey) Law, 2004, upon release (or completion of any Parole period if applicable), you will be subject to supervision by the Probation Service for a period equal to one quarter of the total sentence or the period you would have served had you not received remission, whichever is less. If you fail to comply with the conditions of the supervision, you will be liable to further imprisonment, a fine, or both.

There is no request on behalf of Her Majesty's Procureur for a drug trafficking investigation.

The forfeiture and destruction orders in respect of the items seized, being the six clear bags and their contents totalling the 18.41 grams of cannabis resin and the other plastic bag, as sought by the Crown, are granted.

The Crown's application pursuant to section 3 of the Police Property and Forfeiture (Bailiwick of Guernsey) Law, 2006 in respect of the iPhone is also granted. This Court is satisfied that this phone was lawfully seized and that it has been used for the purpose of committing or facilitating the commission of an offence. The Court has, as required by subsection (5), had regard to the value of the property and the likely financial and other effects on you of making the order before deciding to grant the Crown's application.

## **Deportation**

We are required to consider separately the question of whether or not to recommend that you be deported.

We emphasise, as we have to in this type of case, that the Royal Court itself does not have the power to order deportation; its powers under the Immigration Act 1971, as extended to the Bailiwick of Guernsey, are confined to making a recommendation to His Excellency the Lieutenant-Governor.

Before making any recommendation for deportation, the Court must conduct a balancing exercise. The principles this Court must follow were established by the Court of Appeal in the case of *O'Dette* in 2007. It is necessary to consider in respect of you whether:

- (a) your continued presence is to the detriment of the jurisdiction;
- (b) the offence is serious enough to merit deportation; and
- (c) there is a risk of re-offending.

This Court, as a public authority, is also required to take into account the rights afforded to you by the European Convention on Human Rights and, in particular, by article 8, conferring the right to respect for family life, private life and your home. We have noted that you do not oppose the making of such a recommendation.

As explained in the report on behalf of Immigration and Nationality and by Advocate Cobb, your connections to Guernsey arise from the presence here of two of your four brothers and one of your three sisters. Your father, one brother and your other two sisters live in Poland, with your final brother being in Germany. The strength of your family connections is said to be close, but we regard those connections as not being compelling.

We note that the Probation Report refers to there being "*a high likelihood of general re-offending*". We are satisfied that you have problems with over-consumption of alcohol, which leads to objectionable public behaviour.

Although your drug dealing was towards the lower end of the spectrum, this Court is satisfied that the offence you have admitted is serious enough to merit deportation.

As a comparatively recent arrival here in Guernsey, our conclusion is that you have abused the hospitality afforded to visitors coming here to work. You do not have a child, or even a partner here, so the interference with your right to respect for your family life, if deported, is small, especially as you lived in a different location to your siblings before. Accordingly, we make a recommendation to His Excellency for your deportation at the conclusion of your sentence, which we consider to be a proportionate response in all the circumstances having regard to the offence, your personal situation and your family here.

The sentence this morning is 2 years' imprisonment running from the 2<sup>nd</sup> October 2018, forfeiture of the drugs and paraphernalia, forfeiture of the iPhone and a recommendation that you be deported.

**Richard McMahon**  
**Deputy Bailiff**

**16 January 2019**