

Supply, possession and possession with intent to supply class B drugs, possession of class A drugs and cultivation of class B drugs

[2019]GRC032

**ROYAL COURT
FULL COURT**

15th May 2019

**Before: Richard James McMahon, Esq., Deputy Bailiff and:
Claire Helen Le Pelley, David Percy Langley Hodgetts LVO, Terry John Ferbrache,
Steven John Morris, David James Mortimer, Joanne Marie Wyatt, Alan Stevenson Boyle, Peter
Francis Gill, Marilyn Jasmine King, Jurats.**

THE LAW OFFICERS OF THE CROWN

- v -

**Michael John MEAGHER
and
Richard Thomas CLARKE**

**Advocate C G Dunford appeared for the Crown
Advocate L C Roffey appeared for the First Defendant
Advocate S E Steel appeared for the Second Defendant**

DEPUTY BAILIFF:

Background

Michael Meagher and Richard Clarke, you appear this afternoon to be sentenced following your guilty pleas to the Counts on three Indictments, referred to as A, B and C, as follows.

On Indictment A, Counts 1 to 7 relate to Mr Meagher and Count 8 to Mr Clarke. Count 1 concerns supplying a controlled drug of Class B, being cannabis resin, on 31 July 2018 contrary to section 3(3)(a) of the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974, as amended. The person supplied was Mr Clarke. Count 2 covers other supply by Mr Meagher of cannabis resin around that time to persons unknown. Count 3 relates to possession of cannabis resin on 23 August 2018 with intent to supply, contrary to section 4(3) of the 1974 Law. Counts 4 and 5 cover simple possession, contrary to section 4(2) of the 1974 Law, on 23 and 24 August 2018 respectively. These both involve a Class A controlled drug, MDMA. Counts 6 and 7 also relate to simple possession on 24 August 2018 of Class B drugs, contrary to section 4(2), of cannabis resin and cannabis respectively.

These seven Counts deal with the offences to which Mr Meagher has pleaded guilty. The maximum penalty in respect of each of Counts 1, 2 and 3 is 21 years' imprisonment. The maximum penalty for Counts 4 and 5 is 14 years' imprisonment. The maximum penalty for Counts 6 and 7 is 10 years' imprisonment.

Count 8 on Indictment A relates to Mr Clarke being concerned in the supplying of a controlled drug of Class B, being cannabis and cannabis resin, to another, contrary to section 3(3)(b) of the 1974 Law between 2 July and 1 August 2018, for which the maximum penalty is 21 years' imprisonment. On Indictment B, which concerns only Mr Clarke, Count 3 concerns simple possession of a controlled

drug of Class C, being diazepam, and Count 4 concerns simple possession of cannabis, both offences having taken place on 11 September 2018 and being contrary to section 4(2) of the 1974 Law. The maximum penalties are 4 years' and 10 years' imprisonment respectively. Mr Clarke also asks that two further instances of simple possession on that day be taken into consideration, relating to MDMA and ketamine, the latter being of Class B. Finally, Indictment C, which again concerns only Mr Clarke, covers cultivation of cannabis on or about 11 January 2019, contrary to section 5(2) of the 1974 Law, for which the maximum penalty is 14 years' imprisonment.

Both of you are local persons. At the time of the various offences, Mr Meagher was 62 and Mr Clarke was 36 and each of you has since had a birthday. Mr Meagher has had a number of rather ancient convictions, some of which result from being a seasoned user of cannabis but has not been before any court for many years. Mr Clarke has a very long list of previous convictions, including most relevantly a sentence of 78 months' imprisonment imposed by this Court in the summer of 2006 for being knowingly concerned in importing a controlled drug and a 4-month sentence for simple possession imposed by the Magistrate's Court in October 2014.

Mr Meagher has been on bail throughout these proceedings. Mr Clarke was initially on bail but, following his arrest and being charged with the cultivation offence (Indictment C) on 15 January 2019, he has been remanded in custody since.

The facts giving rise to all of these Counts have been explained to us in detail and there is no need to repeat all of them. It suffices to say that Mr Meagher was observed in an act of supply on 31 July 2018 and shortly thereafter Mr Clarke attended at the same location in a vehicle. The transaction that followed was Count 1. After it had been retrieved following Mr Clarke attempting to dispose of it, the amount of cannabis involved totalled 49.2 grams. The street value of this amount, if using one gram deals, which is the basis on which all the street values of cannabis have been given, is put at between £1,000 and £1,500. (It would, of course, be lower if bought at the bulk price Mr Meagher has explained he paid.) Some of this cannabis was for onward supply by Mr Clarke, as demonstrated by the mobile telephone analysis, with that involvement being reflected in Count 8.

Mr Meagher admitted in interview that he was involved in supplying other persons, but "*not too many*". No quantity, however, can be given for what Mr Meagher had been supplying as covered by Count 2.

Counts 3 and 4 arose from a search of the Balloterie campsite on 23 August 2018. The amount of cannabis resin found was 486 grams, which had a street value of £9,720 to £14,580. The quantity of MDMA found was 1.68 grams, which had a street value of £134.40 to £168. The following day, Mr Meagher attended this location, which he subsequently accepted was where he kept his "stash", and was then arrested. He had left 10 MDMA tablets there (being Count 5), which had a street value of £150 to £200. The cannabis resin found in his possession totalled 57.27 grams, with a street value of £1,160 to £1,740.

A search of Mr Meagher's home address unearthed some scales bearing traces of drugs and papers which may have been lists of deals. In interview he acknowledged being a drug-user and explained that he bought in bulk because it was cheaper that way.

Turning to Indictment B, a search warrant was executed at Mr Clarke's home on 11 September 2018. The amounts of cannabis resin found in his possession totalled 1.72 grams, the street value of which is put in the region of £40 to £60. The 28 diazepam tablets found on him had a street value of £280.

The cultivation offence followed from the execution of a further search warrant where Mr Clarke lived where 14 plants at phased stages of growth were discovered in his room. When interviewed about these plants he explained it was a more cost-effective manner of feeding his habit and that he expected a yield of about 70 grams from each plant, which might be 50 grams when dried. Accordingly those 14 plants, the Prosecution say, could have yielded a total of 980 grams which have

a street value, again using the prices prevalent per gram deal, of £19,600 to £29,400, albeit lower if on a dried basis.

Sentencing Considerations

This Court has extensive experience of dealing with drug-related offences and is obliged to follow the sentencing guidelines for drug trafficking offences that were established by the Court of Appeal in 2002 in the case of *Richards*. The offences of simple possession, if viewed in isolation, are less serious and may have been dealt with in the Magistrate's Court. Given the range of offending that we have to deal with, the Court is mindful of the totality principle where the overall picture of each of your set of offences has to be considered. Where there are multiple drug trafficking offences committed at the same time (as in Mr Meagher's case), the approach is to assess the starting point for each drug and then determine a total starting point taking into account the overall quantity. The indicative starting point for a drug trafficking offence involving cannabis resin of up to 2 kg is 3 to 6 years' imprisonment.

For Mr Meagher, we take the view that Counts 1 and 2 can effectively be aggregated because they broadly relate to the same period of supply, with Count 1 being a specific example of supply to an identifiable individual. Because of the total amount involved, we take the view that the appropriate starting point is 3 years' imprisonment. Count 3 involves a significantly larger amount, but still within this lowest band. However, to reflect the larger amount, we consider a starting point of 4 years' imprisonment to be appropriate.

For Mr Clarke, Count 8 on Indictment A corresponds to Count 1 and, given the amount of cannabis involved, as a drug trafficking offence we regard the starting point as also being at the lowest end of that band, namely 3 years' imprisonment.

In respect of Indictment C, the cultivation offence, the Court has noted that some of these drugs would have been for personal consumption by Mr Clarke, but that there has also been a tendency for him to involve himself in being concerned in supplying others. We consider that the yield to which he has referred, resulting from his growing enterprise, represents a significant addition to the controlled drugs that would have become available within the Island had it not been discovered. In those circumstances, we view this offence seriously. Following the guidance given by the Court of Appeal post-*Richards* in *Marsh* (2007) relating to selecting starting points in cultivation cases, it is the increase in the available stock which is the appropriate basis and any personal consumption can be relevant as a mitigating factor. Accordingly, when selecting a starting point, the yield from these 14 plants puts this in the lowest category of below 2 kg and so we take a starting point of 4 years' imprisonment.

In both your cases, we regard the subsequent phases of your offending behaviour as aggravating factors. Having been apprehended on 31 July 2018, both of you should have realised that committing further offences thereafter would be viewed more seriously. This is especially relevant for Mr Clarke because the cultivation offence was committed after he was admitted to bail by the Magistrate's Court. Similarly, it is apparent from your respective offending records, that you have not learned any lessons about the dire consequences of continuing to rely on controlled drugs, which again is most obvious in Mr Clarke's case.

In respect of the various simple possession Counts, although committed separately to the supply or, as the case may be, cultivation offences, aside from Mr Meagher's possession of Class A drugs, which we regard as seriously aggravating the approach we take to his "stash" at that time, we do not feel that they add hugely to the overall seriousness of your offending and so we have generally factored them in under the totality principle.

Mitigation

What has been said on behalf of Mr Meagher by Advocate Roffey and on behalf of Mr Clarke by Advocate Steel has been listened to by us very carefully. We have noted also what is contained in the two Probation reports.

The Court is satisfied that both of you are entitled to full credit for your early guilty pleas. You sensibly chose not to waste anyone's time by protesting your innocence. However, both of you are habitual drug users who also pedal drugs as part of this ongoing cycle of fuelling your habits and we have had to balance that factor into the overall seriousness of your offending when considering the strength of the mitigation advanced by your Advocates.

The Report relating to Mr Meagher we find to be realistic. Helpfully, it assesses the risk of him reoffending as low to moderate and there is nothing to suggest that he presents a risk of direct harm to the public through violence. It suggests that he expects to be imprisoned today and that this outcome will offer him an opportunity to access rehabilitation. The explanation that has been offered that Mr Meagher rather "fell" into becoming a supplier of cannabis because he is a well-known user is, though, one we treat, as the author of the report expected, with a large dose of scepticism. Everyone has choices to make as to how to act and even a prolific user of drugs does not have to become a dealer, in the process making the drugs available to a wider circle of persons than would otherwise be the case.

By contrast, we consider the recommendation in the Probation Report on Mr Clarke to be unrealistic. The assessment is that there is a very high likelihood that he will reoffend. He has previously been violent and so could pose a level of harm to the general public, particularly following alcohol or substance abuse. In spite of those comments, the author proceeds to suggest that prison has not been an effective way to address Mr Clarke's criminogenic needs and so recommends a probation order. We fear this entirely overlooks society's understandable need to see him punished for what are the very serious offences he has admitted committing. If nothing else, the public deserve protection from his activities for a longer time than he has spent on remand.

In saying that, we recognise that both of you would have consumed some of the drugs found, which we reflect in the mitigation. We also mention that what has been written by Dr Gilmour in her psychological report, as expanded upon by Advocate Steel this afternoon, has been considered carefully by us and taken into account. We do not underestimate how difficult Mr Clarke's formative years were and that he has recently opened up about the effect on him. We trust that now he has done so, he will continue with the therapeutic assistance available to him so that, in time, he can put those demons to rest.

Sentence

This Court is satisfied that both of you knew what you were doing and understood the consequences that would inevitably follow when caught. You appear to have rather a cavalier attitude to cannabis despite being fully aware that it is unlawful to indulge in taking drugs and supplying them to others in the way that you have. Your views about the benefits of legalising this substance have no doubt played a part in your choices as to how you live your lives. Unless and until there is a change of political direction in that regard, this Court will continue to follow the guidelines given in *Richards* and *Marsh*, make repeated comments about how drugs are "a scourge on society" and stress the importance of the Court sentences having a deterrent effect, even if your cases that warning seems to have fallen on deaf ears. We are satisfied that the custody threshold has clearly been passed in relation to each of you and that the length of sentences to be imposed mean that only significant periods of immediate custody are warranted.

Turning to Mr Meagher, we are satisfied that it is appropriate to deal with you for two distinct phases of offending. Starting with the end of July 2018, and considering the two offences in Counts 1 and 2 that are inter-related, bearing in mind the credit for your guilty pleas and the mitigation we have

found, the Court imposes a sentence of 21 months' imprisonment in respect of each Count. Those sentences however will run concurrently with each other.

Count 3 is slightly more serious because of the quantity involved. We have had regard to the simple possession offences committed at around this time as well when considering the totality of your offending, recognising that you had in your possession some Class A drug as well which, if viewed in isolation, would probably have resulted in a prison sentence of some months, and so constitutes a serious aggravating factor. We have, though, borne in mind the distinction between possession with intent to supply and simple possession. We do regard the location where you kept your "stash" as a further aggravating factor in your case. In respect of Count 3, again having regard to your guilty plea and mitigation, the sentence we impose on you is one of 2 years and 3 months' imprisonment. We will make that sentence run consecutively to the sentences on Counts 1 and 2 on the basis that this is part of a distinct phase of offending.

In reaching our decisions on these three Counts, we have paid regard to the total sentence to which you will now be subject.

In respect of Counts 4 and 5, as just mentioned, we note that these relate to the Class A drug, MDMA and so are more serious than the cannabis Counts 6 and 7. Accordingly, for each of Counts 4 and 5 you will be sentenced to 6 months' imprisonment and for each of Counts 6 and 7 you will be sentenced to 1 month's imprisonment. Having regard to the totality principle, each of these four sentences will run concurrently with the sentence in respect of Count 3.

The total sentence, therefore, imposed on you today is 4 years' imprisonment, that is the 21 months plus the 27 months, all of that will run from today.

Turning to Mr Clarke, we treat your offences as falling into three phases. The first is Count 8 on Indictment A, then Indictment B and then Indictment C. Again, we have made appropriate adjustments to reach an overall sentence that properly reflects all your offending.

We start with Indictment C on the basis that we regard this as the most serious single offence you have admitted. Bearing in mind the starting point, the aggravating factors we have mentioned, but giving you credit for your guilty plea and such further mitigation as we have been able to find, which includes accepting that a good proportion of the yield was for your personal consumption, the sentence we impose for the cultivation offence is one of 2 years and 3 months' imprisonment.

Moving back to Count 8, again taking into account the plea and mitigation, the Court imposes a sentence of 15 months' imprisonment. Because this is a distinct phase of your offending, we make that sentence consecutive to the sentence imposed in respect of Indictment C.

Finally, in relation to the two Counts on Indictment B, which would, but for the other matters, have no doubt been dealt with in the Magistrate's Court, and where we have also taken into consideration the two other offences (the TICs), in particular in the light of your record of drug related offending, we are satisfied that it is appropriate to impose short Prison sentences, making them concurrent with each other but consecutive to the two other sentences imposed today, and so sentence you to 3 months' imprisonment on each in accordance with the totality principle for what took place that day.

The total sentence, therefore, imposed on you today is 3 years and 9 months' imprisonment, that is 27 months plus 15 months plus 3 months, and that will be back-dated so as to run from 15 January 2019, which is when you were first held in custody.

In respect of each of you, 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.

The forfeiture and destruction orders sought in respect of all the drugs, including those to which the TICs relate, and the associated packaging and other paraphernalia, particularly the equipment that Mr Clarke had, and as sought by the Crown, are all granted.

The Crown's application pursuant to section 3 of the Police Property and Forfeiture (Bailiwick of Guernsey) Law, 2006 in respect of the mobile telephones seized from each of you are also granted, although neither has in any event been opposed. For the avoidance of doubt, that means Mr Meagher's Samsung and Mr Clarke's Black Doro phone. Having regard to the statutory requirements, this Court is satisfied that each of these items was lawfully seized from you and that in both cases the device 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 applications.

The timetable that has been proposed for the drug trafficking investigation sounds sensible to us and, therefore, we will direct that the Prosecutor's section 11 statement be served within 28 days of today and that both defendants serve their responses within 28 days thereafter and that the Advocates for the parties liaise to review the matter at the first suitable plea and directions hearing immediately thereafter.

Richard McMahan
Deputy Bailiff

15th May 2019