

**ROYAL COURT
FULL COURT**

10 December 2019

**Before: Judge J R Finch OBE, Judge of the Royal Court and:
Terry George Snell, Niall David McCathie, David Allan Grut,
Jonathan Grenfell Hooley, David James Mortimer,
Joanne Marie Wyatt, Alan Stevenson Boyle, David John Robilliard,
Marilyn Jasmine King, Jurats.**

THE LAW OFFICERS OF THE CROWN

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**Advocate C G Dunford appeared for the Crown
Advocate L C Roffey appeared for the Defendant**

JUDGE OF THE ROYAL COURT:

Background

You appear here today for sentence on an Indictment containing three Counts: one of producing, i.e., cultivating cannabis, one of possession of cannabis and one of possession of cannabis resin. Count 1 carries a maximum of life, Counts 2 and 3, 10 years.

You are a 41 year old local man. In 2002 you received 4½ years for possession with intent to supply. That is your last recorded conviction. You were arrested on the 29th March this year and on Police bail. You were charged on the 1st August, committed to this court on the 23rd October and indicated early guilty pleas. You have been on unconditional bail throughout.

The case arises from the execution of a search warrant on 29th March of this year. One plant was defenestrated, chucked out of the window, and damaged beyond analysis. A cannabis cultivation area with 4 plants was found. We note the photographs. Another plant was in the garden in a small bricked enclosure. Cannabis and cannabis resin were found on the premises, to which Counts 2 and 3 refer.

The question of quantities then arises. We note the analytical evidence, which has been set out for us.

The evidence refers to 153.40 grams, the “bare minimum” achievable. We do note, however, that a more skilled cultivation would have achieved a substantially greater yield. The quality of the cannabis is not relevant as has been clear for many years from the guideline case of Richards, which binds this Court.

There was 4.34 grams of cannabis resin (Count 3), value £86.80 to £130.20, but a substantial amount of cannabis (Count 2), in total 36.6 grams, value £727.20 to £1,090.80, found in a jar in the bedside cabinet mainly. There was a ‘growing’ set-up which can be seen in the photographs, including lamps, scales, a temperature gauge and other materials. In your first interview you admitted the offences and stated the drugs were all personal use. You chose to exercise your right to silence in your second interview, as you are of course, fully entitled to do.

Sentencing Considerations

You will be aware and perhaps recollect from your earlier conviction that we are, as mentioned, bound by the Court of Appeal in the leading case of Richards. In cases of this type our task is to select a starting-point, based on the quantity and other relevant circumstances, before going-on to look at applicable mitigation. In relation to cultivation, the Guernsey Court of Appeal has helped us in the case of Fallaize and Others (2007). This gives guidance consistent with the approach in Richards. This is not a small amount for a couple of days' personal use. It added prospectively to the available stock in the Island. This later case is both clear and helpful and your learned Advocate referred to it and it is relevant today.

We have referred to your 2002 conviction. That was 17 years ago, but it was a very serious matter involving Class A drugs – MDMA tablets. We cannot ignore it, it is also a drugs matter and not ancient. It is in our judgment an aggravating factor which goes to an extent in increasing our starting-point. We do take the date into account and limit this enhancement.

For this amount the band, as a starting-point, is 3 to 6 years and we go to the bottom, i.e., 3 years. But the conviction enhances it to 3 years 6 months'. You should have learned your lesson; this figure aggravates all three Counts.

Mitigation

Your guilty plea was hardly unexpected in view of the evidence, but we are encouraged to give some effect to it. We give you credit for keeping away from the courts since your release last time. We note your talented Advocate's submissions and have also noted the Probation Report and other written materials put forward on your behalf. You are entitled to your views, but the law is made by the States of Guernsey and binds those in this jurisdiction. Erring on the side of leniency we give you a total discount of over one-third. We note both your 2002 case, which we have taken into consideration, as we say, in increasing the starting-point, but we are not double counting it here to your disadvantage.

Sentence

After anxious consideration, we do, on the facts of this case and your own unusual personal circumstances, demonstrate what the probation officer refers to in the Report as "exceptional leniency". You are lucky, and as I said you should have known better, especially as a single parent. The situation here has arisen for you and your son because of your offending. The custody threshold has certainly been well passed. It is not a good idea to cultivate cannabis at home where your son was. It is your responsibility to ensure he doesn't grow up thinking cannabis is the norm and fall into some sort of trouble himself. In view of what the Court has found as 'exceptional leniency', the order of the Court is as follows:

- In respect of Count 1 – 240 hours Community Service Order as a direct alternative to 18 months' imprisonment.
- In respect of Count 2 – 70 hours Community Service Order as a direct alternative to 2 months' imprisonment.
- In respect of Count 3 – 40 hours Community Service Order as a direct alternative to 1 week's imprisonment.
- All these sentences are concurrent.
- This all comes to the grand total of 240 hours Community Service Order with 18 months' in default. Which means that if you don't do each and every one of the minutes of your 240 hours, or you re-offend in any way you will be brought back here and the well of sympathy that has flowed out from the Court today will have dried up and you will get your 18 months' imprisonment, whatever the excuse. The only good excuse is a medical certificate.
- We order Confiscation and Destruction as requested by the Prosecution.
- Drug trafficking timetable to be agreed.

Judge J R Finch OBE
Judge of the Royal Court

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