Fraudulent evasion of the prohibition on importation of a Class A controlled drug, in contravention of the prohibition on importation imposed by section 2(1)(a) of the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974 and failure to comply with a notice served on you to disclose information under section 46 of the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003 and failure to surrender to bail.

[2020]GRC033

ROYAL COURT
FULL COURT

8th June 2020

Before: Richard James McMahon, Esq., Bailiff and:
Stephen Murray Jones OBE, Terry John Ferbrache,
David James Mortimer, Joanne Marie Wyatt, Alan Stevenson Boyle,
Peter Francis Gill, David John Robilliard, Marilyn Jasmine King, Jurats.

THE LAW OFFICERS OF THE CROWN

- v -

Jordan Elder MOORE-VIEIRA

Crown Advocate C G Dunford appeared for the Crown

Advocate L C Roffey appeared for the Defendant

BAILIFF:

Background

Jordan Moore-Vieira, you appear today for sentencing on three Indictments comprising a total of seven Counts, in respect of each of which you have entered a guilty plea.

Count 1 on the first Indictment relates to you being knowingly concerned, in August 2019, in the fraudulent evasion of the prohibition on importation of a controlled drug of Class A, being MDMA, or ecstasy, in contravention of the prohibition on importation imposed by section 2(1)(a) of the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974. The maximum sentence for this Count is life imprisonment. Count 2 relates to failing to comply in September 2019, with a notice served on you to disclose information under section 46 of the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003 (to which we will refer as a "RIPL" offence), for which the maximum sentence is two years' imprisonment. Count 3 relates to your failure to surrender to bail, as required, at the Police Station on 16 September 2019, for which the maximum sentence is 12 months' imprisonment.

The second Indictment comprises a single Count of assault that took place on 4 September 2019. This is a common law offence, and would, but for your other offending, have remained in the Magistrate's Court and so we approach it on that basis.

Count 1 on the third Indictment relates to you being concerned in October 2019 in the supplying of cannabis and cannabis resin, a Class B controlled drug, to another, contrary to section 3 of the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974. This Count carries a maximum penalty of 21 years' imprisonment. Count 2 relates to possession of MDMA on 15 October 2019, for which the maximum

sentence is 14 years' imprisonment and Court 3 is a second RIPL offence, committed between dates in late October and early November last year, which also carries a maximum sentence of two years' imprisonment.

The importation at the heart of the first Indictment was of a Monkey Shoulder bottle filled with what turned out to be MDMA in a liquid form. The weight of the liquid was 1.09 kg, but calculations have been performed demonstrating that the MDMA freebase in that liquid was in the range of 249 to 254 grams. The street value of the powder, in that form, and so without being cut, would be in the range of £19,920 to £25,400. This was a substantial importation. You then refused to provide the passcode to the mobile telephone you had with you when arrested and skipped bail, not being apprehended for about one month.

Shortly after the importation, you assaulted a man with whom you have a history. This is the second Indictment and the incident took place in a shop with innocent members of the public around. It occurred whilst you were on bail following the importation dealt with in the first Indictment.

On 15 October 2019, when you were located and arrested for failing to surrender to your bail, you had cannabis on your person, plus a small amount of MDMA, and more cannabis was found concealed underneath the bath in the premises where you had been living, along with drug paraphernalia, cash and another mobile telephone. You refused again to provide the passcode to access this device, hence the second RIPL offence, but the device was still capable of being analysed, with messages indicating dealing, which you have in any event admitted you were doing. The total weight of the cannabis resin found was 125.08 grams, together with 0.77 grams of cannabis and 0.85 grams of MDMA. The street value of the cannabis was between £2,517 and £3,775, with the MDMA being valued at £68 to £85.

You are a locally born man and all these offences were committed when you were 21 years old, although you are now 22. You have seldom worked and you were unemployed and in receipt of benefits at the relevant times. For a young man, you have a significant number of previous convictions, including for possession of controlled drugs, where you were sentenced to youth detention in 2017, for offences of violence and for bail offences.

Once you were apprehended, you have been remanded in custody since 17 October 2019. You formally entered your guilty pleas on 5 March 2020.

Sentencing Considerations

Although the Court is dealing with three distinct elements of offending, where each of the three Indictments could lead to terms of imprisonment that could be aggregated, we are conscious that such an approach might well lead to a total sentence that is too long. Accordingly, we have borne in mind that we should fix the total sentence today to reflect all of the offending behaviour we are dealing with and which is just and proportionate in all the circumstances. This means that the sentencing approach differs from what it would have been had the Court been concerned only with one offence, or even one of the Indictments containing three Counts.

The importation of liquid MDMA is, as the Advocates have noted, something that the Court has not previously had to deal with. In respect of drug trafficking offences, of which this is a prime example, there are guidelines established by the Court of Appeal in ***Richards*** in 2002, but these relate to Class A drugs in powder or tablet form. Advocate Roffey has referred to what was said by the Court of Appeal in England in ***Ali*** [2014] EWCA Crim 3010 about calculating what would be produced in another form from the liquid, as supportive of the approach that this Court should not sentence you on the basis of the weight of the liquid alone. A similar approach was taken in ***Planken*** [2018] 1 Cr App R (S) 24, where what can only be described as a huge haul of controlled drugs included 81.7 litres of

liquid amphetamine, which was stated to be equivalent to 99 kg of powdered amphetamine and on which sentence was based.

We accept that the proper approach to take to the liquid MDMA in the present case is to recognise that this equates to 249 to 254 grams of powdered MDMA. As such, we do not proceed to consider the guideline about tablets, other than to recognise the bands would be slightly lower, but the street value would be higher. We have further noted that the MDMA extracted by this calculation would be of high purity and so an aggravating factor.

The Court therefore accepts that the ***Richards*** guidelines already cover Class A powders and deals with you on that basis. We have reminded ourselves that what is set out are guidelines and not an arithmetic straitjacket. An importation of approximately 250 grams of MDMA powder would lead to a starting point of between 10 and 14 years' imprisonment. (Because the weight is given as a range that straddles two bands (100 – 250 grams and 250 – 400 grams), we have combined both bands for these purposes, recognising the flexibility mentioned in para. 10 arising from the overlaps in the bands.) Whilst we have noted that you have demonstrated a total lack of respect for persons in authority, we consider that your attempt to destroy the bottle by knocking it off the table is an aggravating factor in respect of this offence. Further, your previous convictions show that you had not learnt your lesson and, if anything, your offending became more serious. As this Count is just one of a number of offences for which sentence is being passed, albeit the most serious individual offence, we have decided to aggravate the offence here further, by reference to all your drug-trafficking activities, so including factoring in the cannabis offence, as well as having regard to the aggravating factors just mentioned, and have decided that the most appropriate starting point for this offence is one of 14 years' imprisonment.

Dealing with Count 1 on the third Indictment, the supplying of cannabis, the applicable ***Richards*** guideline starting point for the quantity involved is one of around 3½ years' imprisonment. But having regard to para. 12 of ***Richards***, dealing with the situation where two different classes of drugs are involved, albeit not directly relevant, has been considered by us, as just described, and we will deal with it by way of a concurrent sentence, even though committed at a different time and that is part of the aspect of applying the totality principle to everything you face. The additional Count relating to the simple possession of a small amount of MDMA would be reflected as an aggravation to those primary offences but, because it effectively arises out of the same search, would lead to a short custodial sentence.

In relation to each of these drug trafficking offences, there is also a RIPL offence. In their own right, such offences are coming before the Court all too frequently, indicating an unwillingness on the part of those required to disclose passcodes to co-operate with the investigation under way. The inference from refusing to co-operate is that there is something to hide, leading to the conclusion that the offence is more serious than would otherwise be ascertained. It may also be a means of protecting others from being implicated, which we think is the position in your case. Although they are related to the primary offences each time, because they are distinct offences, the Court frequently imposes consecutive sentences and, where there is more than one instance, takes a starting point of 12 months' imprisonment, which is lower than it might otherwise have been for two such distinct offences.

The assault on Mr Mahy, if viewed in isolation, and given your record, would merit a short custodial sentence. This was an example of you losing any self-control that you might have. There was no provocation, and it appears to have resulted from you having a past involving him that means you considered you had to attack him. The fact that you were on bail for the MDMA importation at the time aggravates the offence and we have noted that you waited in the vicinity for a time, presumably with a view to continuing the attack outside the shop had the opportunity arisen. As something very distinct from the drug-related offending reflected in the other two Indictments, the normal approach is to impose a consecutive sentence.

In the scale of things, the failure to surrender to bail is comparatively minor, but the fact that you have previous bail offences makes this more serious. We regard it as placing into context your extremely poor attitude to complying with what the authorities require of you and would, if dealt with alone, also attract a short custodial sentence.

Mitigation

The most positive thing that can be said about you is that you have wasted no one's time by admitting your guilt and you will be given full credit for the guilty pleas entered at the earliest opportunity, even though we have noted your bravado in stating that you will do time for your mates.

The realistic Probation report and what has been said about you by Advocate Roffey, recognise that it is pointless seeking to persuade the Court that anything other than an immediate custodial sentence is appropriate. In your case, as you are readily aware, it is very much a question of "how long" rather than whether a custodial sentence is to be imposed.

Although the Court notes that you now seem to realise that your appalling behaviour to date cannot continue and that you will have time to mature and learn new ways of dealing with the problems you have faced to date, it is troubling to us to see an assessment for someone your age that indicates you present a very high likelihood of re-offending and that you pose a risk of harm to the public. We have taken into account that you have described a lifestyle that was unstable and chaotic, but your high degree of disregard for the law cannot, we feel, be blamed on circumstances and results from conscious decisions you have taken. You know you have let your family down quite spectacularly, but seem to us to show little remorse for the offences themselves.

Sentence

Jordan Moore-Vieira, over a period of a few months last year, you engaged in a spate of offending that can only be addressed by a long term in prison. You are still a young man and the Court's sincere hope is that you will now have time to reflect on how little good comes from breaking the law and that you will find new ways in which to equip yourself, when released, to become a law-abiding citizen. If you do not, and choose to return to crime, your life will inevitably become one in which you appear before this Court regularly and you will spend a good proportion of your life in jail.

You have had a cavalier attitude to drug use and chose to engage in drug dealing as part of the black economy. In doing so, you have been playing a significant role in contributing to the misery that flows from drug-taking. We are satisfied that you knew the risks you were taking and had consciously assessed the riches to be obtained if successful and the consequences if caught. We do not have much sympathy with the position in which you have placed yourself. This Court remains of the view that the sentences it imposes for all these types of offences should include an element of deterrence to others. No one investigating persons suspected of committing offences should have to put up with the type of abuse you handed out, which does you no credit at all.

As has already been said, we have concentrated on what the overall sentence should be and have constructed it as follows:

Starting with the most serious single offence, which is Count 1 on the first Indictment, importing the Class A drug, MDMA, the sentence we impose is one of 9 years and 4 months' imprisonment.

For Count 2 on that indictment, the first RIPL offence, we impose a sentence of 8 months' imprisonment, which is to run consecutive to the sentence on Count 1. This is slightly shorter than

might have been imposed for this offence normally, because of the need to have regard to the totality principle.

In respect of Count 3 on that first indictment, the bail offence, we impose a sentence of 4 months' imprisonment, but we will make that sentence run concurrent to the sentence on Count 1, again having regard to the totality principle.

For the single Count on the second Indictment, the assault, we impose a sentence of 3 months' imprisonment. This will also be made to run consecutive to the sentences imposed in respect of Counts 1 and 2 on the first Indictment and again, this could have been a longer term if it were not for all the other offending falling to be dealt with.

Turning to the third Indictment, in respect of Count 1, relating to supplying cannabis, the sentence we impose is one of 30 months' imprisonment, which, having regard to the totality principle, we will make this, exceptionally, to run concurrently to the sentences imposed in respect of Count 1 on the first Indictment.

In respect of Count 2 on that Indictment, possession of MDMA, we impose a sentence of 3 months' imprisonment, again to run concurrently with the sentences imposed in respect of Count 1 on the first and the third Indictments.

In respect of Count 3 on that Indictment, the second RIPL offence, we impose a sentence of 8 months' imprisonment, which will be made to run concurrently with the sentence on Count 2 on the first Indictment, again because of the need to bear in mind the overall sentence being imposed.

The Court has noted that you have been in custody since 15 October 2019, when you were arrested and will, therefore, run these sentences from that date.

What this means is that the total sentence today is one of **10 years and 3 months' imprisonment**. That is the aggregate of the sentences for the MDMA importation, the RIPL offences and the assault. So that is Counts 1 and 2 on the first Indictment and the Count on the second Indictment, and that period of 10 years and 3 months' imprisonment is backdated so as to start from 15 October 2019.

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 by the Crown in respect of the Monkey Shoulder bottle and its contents, all the cannabis resin and the small amounts of cannabis and MDMA, which were not opposed, are also granted.

The Crown's application pursuant to section 3 of the Police Property and Forfeiture (Bailiwick of Guernsey) Law, 2006 in respect of the two mobile phones is also granted. The Court notes again that this was not resisted and in any event, the Court is satisfied that both devices were lawfully seized and that each was used for the purpose of committing or facilitating the commission of an offence, which is obvious in relation to the Samsung phone found with the drug dealing paraphernalia, which was examined and is also a reasonable inference for the Court to draw in respect of the iPhone seized after the importation of the MDMA. The Court has, as required by subsection (5), had regard to the value of both items and the likely financial and other effects on you, of making the order before deciding to grant the Crown's application.

The Court will also grant the application under section 12 of the Drug Trafficking Law requiring you to provide information. This has not been opposed by you. Accordingly, you will have 28 days in which to provide that information and the Crown will have 28 days thereafter to serve its section 11 statement, and you will have a further 28 days in which to respond, after which the case will be listed for review.

Richard J McMahon
Bailiff

8th June 2020