

Unlawful supply of MDMA to another contrary to section 3 of the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974, the supply of cannabis and cannabis resin and three separate offences contrary to section 46 of the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law 2003 as Amended by failing to comply with three notices to disclose information in relation to mobile telephones.

[2020]GRC038

**ROYAL COURT
FULL COURT**

16 July 2020

**Before: Jessica E Roland, Deputy Bailiff and:
Claire Helen Le Pelley,
Jonathan Grenfell Hooley, David James Mortimer, Joanne Marie Wyatt,
David John Robilliard, Stuart Michael Crisp, Marilyn Jasmine King,
Tina Jane Le Poidevin, Felicity Jane Quevâtre-Malcic, Jurats.**

THE LAW OFFICERS OF THE CROWN

- v -

Zac Dean Arthur Rive

**Advocate J D McVeigh appeared for the Crown
Advocate P Lockwood appeared for the Defendant**

DEPUTY BAILIFF:

Background

Mr Rive, you have pleaded guilty to five Counts on the Indictment as follows:

- Count 1 is being concerned in the unlawful supply of MDMA to another contrary to section 3 of the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974 between the period 6 August 2019 and 29 November 2019. The maximum penalty for this is life imprisonment.
- The second Count is in relation to the supply of cannabis and cannabis resin, Class B controlled drugs which carry a maximum sentence of 21 years' imprisonment. Again, between the period of 6 August 2019 and 29 November 2019.
- Counts 3 to 5 are three separate offences contrary to section 46 of the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law 2003 as Amended (known as "RIPL"), in that you failed to comply with three Notices served upon you to disclose information in relation to mobile telephones. Each of the RIPL offences carries a maximum sentence of 2 years' imprisonment.

Counts 1 and 2 on the Indictment were the result of four separate arrests and separate searches at three different properties, where you were found with sufficient drugs of both Class A and Class B to be found guilty of supply of those drugs as well as significant sums of cash and scales and other equipment and items related to drugs supply.

After the initial arrest in August 2019 you were on bail, thus you significantly reoffended whilst on bail and on each occasion of your arrest you had a different mobile telephone seized by the police and

on each occasion you refused to provide the pass-code despite being in receipt of the requisite Notice under the law.

Sentencing Considerations

You have also asked for a further nine offences to be taken into account, as set out in the list provided. All these offences involve the possession of controlled drugs in Classes A and C which were found during the investigations.

We are bound by the authority of the Court of Appeal in Richards in dealing with cases such as these involving the supply of drugs into our community and, where there are two or more different drugs involved, the Court is bound to follow the guidance at paragraph 12 of Richards which says;

“...the court should assess the appropriate starting point in respect of each of the drugs, and then determine a ‘total’ starting point, taking into account the overall quantity. Thereafter the mitigation will be applied to arrive at the actual sentences to be imposed. The court then provides for the total length of sentence by imposing a greater term of imprisonment than otherwise would have been imposed for the more serious of the two offences (if such can be identified), to run concurrently with other sentences imposed. Consecutive sentences should not normally be imposed in such cases, since that may create a misleading impression that each offence is being sentenced more leniently than it is. The court must state in any such case both what the court considers to be the appropriate ‘total starting point’ and how it is arrived at.”

We are also aware, as your Advocate rightly reminded us, of the principles of totality and proportionality.

For Count 1 in relation to MDMA, we have treated this as the most significant and serious of the offences and our starting point is 7 years. This in turn is aggravated by the second Count in relation to Class B drugs, taking the total starting point as 10 years. In relation to the Class B count we take our starting point as 5 years as the appropriate place to begin.

In addition to the drugs offences there were three separate RIPL offences. Non-compliance of this type of Notice is taken extremely seriously in this jurisdiction. We proceed on the basis that these three offences are related to one another and so again apply the totality principle when considering the sentence they merit. However three Notices means there are aggravating factors here.

Mr Rive you are a self-confessed supplier, using the supply of drugs for others to fund your own habit. Although you are only 20 years you already have substantial previous convictions which include for drugs offences. Indeed you were on a Youth Detention Supervision Order at the time of your offending behaviour. We note from the Probation report that there is a very high risk of reoffending and that you present a risk of direct physical harm to the public through violence when intoxicated.

Mitigation

Whilst a plea of guilty was inevitable we do give you credit for it. We also give you credit for the fact you took responsibility immediately for the drugs that were under your control. This also goes to your credit. We also note that you deserve credit for the co-operation that you have shown during the course of this case and the manner in which you agreed for the drugs charges in the Indictment to be dealt with and with the possession offences to be treated as TIC’s which substantially reduced the amount of work for the Prosecution and Law Enforcement and this was specifically acknowledged by

the Prosecution. We also note your candid instructions to your Advocate about not wasting the Court's time with excuses.

We take particular note of your youth.

You were only 19 when these offences were committed and you spent your 20th birthday remanded in custody.

We have noted the careful submissions of your Advocate and we have read the Probation report which indicates that your drug misuse, including for self-medication, has continued for a considerable period of time, despite the fact that you are only 20. But the report and your Advocate also make clear that your life up to this point has been chaotic and without supervision and guidance and we take this all into account when considering your sentence.

It is disappointing that you have received an adjudication whilst you have been in prison for illicit drug use. However, we do note that since you have been in custody that you have been using the educational courses as well as seeking assistance with your mental health challenges – please continue to do this.

We must also note that due to your age that you are still subject to Youth Detention. However, even when taking into account your age, what you have done is so serious that a non-custodial sentence cannot be justified meaning that in accordance with the Criminal Justice Youth Detention (Bailiwick of Guernsey) Law 1990, a sentence of Youth Detention is capable of being imposed today.

Sentence

Mr Rive you have come today to Court realistically expecting to be sent to prison and we have no doubt that an immediate custodial sentence, despite your youth, is appropriate for these offences.

- Starting with the most serious offence in the supply of MDMA in Count 1 the sentence we impose is 6 years' Youth Detention.
- In respect of the second Count, the supply of cannabis, we impose a sentence of 3 years to run concurrently with Count 1.
- In respect of Count 3, the first RIPL offence, we impose a sentence of 9 months with Counts 4 and 5 also 9 months running concurrently to that offence.
- This leads to a total of 6 years and 9 months in Youth Detention.

In coming to that sentence we have taken into account the principles of totality, proportionality and the guidelines in relation to Richards. Those sentences will run from the 29 November 2019 when you were remanded in custody.

In accordance with section 4 of the Criminal Justice (Youth Detention) (Bailiwick of Guernsey) Law, upon release or completion of any parole period (if applicable), you will be subject to supervision by the Probation Service for a period of 3 months or the period you would have served if you had not received remission, whichever is later.

Mr Rive this is a cross-roads for you. Time in custody can be a time to access education and the support that your life thus far has been missing. Use the facilities that are there. If you want it to be, this could be the stabilizing force in your life, but that is up to you.

The Forfeiture and Destruction Orders which were sought by the Crown in respect of the tablets and the cannabis which were not opposed are also granted and we also note that you have agreed, Mr Rive, to the retention of your telephones.

The Court will also grant the application in relation to the Drug Trafficking Law under section 12 and again this has not been opposed by you. Accordingly working with your Advocate, you will have 28 days in which to provide the information and the Crown will have a further 28 days thereafter to serve its section 11 statement and then you will have another 28 days in which to respond.

Jessica E Roland
Deputy Bailiff

16 July 2020