Supply of a controlled Class B drug, contrary to section 3(3)(b) of the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974, as amended, possession of a Class B drug contrary to section 4(2) of the 1974 Law and failure to comply with a notice served under section 46 of the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003 with respect to failing to providing the passcode to unlock a mobile telephone.

[2020]GRC058

ROYAL COURT
FULL COURT

24 September 2020

Before: Richard James McMahon, Esq., Bailiff and:
Terry John Ferbrache, Jonathan Grenfell Hooley,
Peter Sean Trueman Girard, David James Mortimer, Alan Stevenson Boyle,
Peter Francis Gill, Stuart Michael Crisp, Paul Martin Burnard,
Felicity Jane Quevâtre-Malcic, Jurats.

THE LAW OFFICERS OF THE CROWN

- v -

Jake Ernie POULLARD

Crown Advocate C Dunford appeared for the Crown

Advocate P Lockwood appeared for the Defendant

BAILIFF:

Background

Jake Poullard, you appear today to be sentenced in respect of an Indictment containing three Counts. The first Count is being concerned in the supplying of a controlled drug of Class B, cannabis resin, to another, contrary to section 3(3)(b) of the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974, as amended. The maximum penalty for this offence is 21 years' imprisonment. The Second Count is for simple possession of a controlled drug of Class B (cannabis), contrary to section 4(2) of the 1974 Law, for which the maximum sentence is 10 years' imprisonment. The Third Count involves failing to comply with a notice served under section 46 of the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003 to provide the passcode to unlock a mobile telephone (what we will call a "RIPL offence"), for which the maximum penalty is two years' imprisonment.

The main offence of being concerned in supplying cannabis can be summarised briefly as arising from you being observed on the evening of 2 December 2019 by a police officer in a marked police car, who followed the vehicle into which you had got and in which you were then driven for a short distance before the officer indicated that that vehicle should stop. You ran off and, whilst being pursued, threw away a rucksack you had been carrying. Once you had been apprehended, the rucksack was located and found to contain 8.08 kg of what turned out to be cannabis resin. You have given a number of different explanations of your role relating to this significant amount of cannabis and what you intended to do with it. An unusual feature of this case is that there was mould growth on the exposed surfaces of the resin. Whatever those intentions were, the guilty plea you entered on 9 July 2020 amounts to you acknowledging you were concerned in supplying this cannabis. The street value has been put at between £161,600 and £242,400. During a search later that day at your home

address, a small amount of herbal cannabis, just 0.39 grams, was found and is covered by Count 2. A mobile telephone was also found and seized, which you have agreed belongs to you. When you were required to disclose the key to access that device, you refused, which is the RIPL offence in Count 3.

You are a local man, aged 24 when committing these offences, although you are now 25. You have had a difficult childhood, but did secure work when out of prison.

You have a long list of previous convictions. Most relevantly, you were last before this Court for another offence of being concerned in the supply of a controlled drug, for which you were sentenced to 30 months' imprisonment on 11 October 2017. You were released on 13 August 2018 and your period of supervision ended on 11 September 2019. We have been informed about the community service order imposed in June 2019 and the legal difficulties in having regard to that. We can confirm that we have ignored that offence and order in how we will deal with you today.

You have been in custody since the time you were charged on 18 May 2020.

Sentencing Considerations

As you will no doubt recall from your appearance here in 2017, being concerned in the supply of cannabis is a drug trafficking offence. In the case of ***Richards*** in 2002, the Court of Appeal established guidelines to which this Court is obliged to have regard. For cannabis, where the weight is between 5 and 10 kilograms, the guideline starting point is in the range of 7 to 10 years' imprisonment.

We have given careful consideration to whether the water ingress has had such an effect on the quality of the cannabis resin that we should depart from an approach of paying particular attention to the weight involved. Paragraph 11 in ***Richards*** sets out that the starting point should primarily be based on weight and only to a lesser extent on street price, adding that "*except in cases of very high purity or where there is reason to believe that the drugs will be cut before being passed on, the purity of the drugs will not be a factor that will be taken into account in sentencing.*"

In this case, although not in pristine condition, the whole of the consignment was still cannabis resin. We have concluded that the poor condition of the resin may have meant that not all of it would necessarily have been capable of being sold on at the same level as untainted cannabis, but we are satisfied that the whole consignment should still be regarded as being within the weight range just mentioned. Although not persuaded that it means dropping down to the lowest level in that range, 7 years, as Advocate Lockwood submitted, we do accept that the initial starting point should be towards the lower end of the band just mentioned. It is clear to us that the custody threshold in respect of this offence has been passed.

In addition, we have borne in mind some aggravating factors in your case. The most obvious and significant one is that your recent experience of serving a custodial sentence for the same drug trafficking offence, where the amounts involved were considerably lower, clearly has had no effect on your willingness to engage in further drug-related offending shortly thereafter. Your decision to make a run for it and to try to rid yourself of the evidence also make your level of involvement in what took place more serious. Your subsequent poor attitude towards those conducting the investigation and overall lack of co-operation is another aspect about which we take a dim view when it comes to considering just how culpable your offending was. Accordingly, before considering any mitigation, the Court has taken a starting point of 8½ years' imprisonment.

The Second Count adds little by way of culpability for the much more serious First Count and, if taken in isolation, even with your previous offending, would have been dealt with in the Magistrate's Court. Having regard to the totality principle, we will deal with it by way of a concurrent sentence of what is effectively a nominal length.

The Third Count, the RIPL offence, is one that is becoming all too frequent an addition to the Indictment in drug dealing offending. We consider non-compliance with this type of notice to be a serious matter and those who choose to obstruct the proper investigation of offences must be prepared to take the consequences. The implication is that refusing to co-operate indicates that to have done so would reveal further information assisting those enforcing the law to investigate further. If there were nothing of relevance to be found, it would follow that the passcode would be provided. From what you said in interview, referring to taking the expected five months for that, you know full well that such an offence is usually dealt with by way of an additional term of imprisonment. Accordingly, we are satisfied that we should take a starting point for this offence of 9 months' imprisonment.

Mitigation

The strongest mitigation in your case comes from your guilty pleas at the earliest opportunity, for which we will give you full credit.

The probation report is not as complete as it might otherwise be because of your lack of co-operation. We have noted that you present a high likelihood of re-offending, but that you are not assessed as presenting any current risk of physical harm to the general public. You have not had the easiest of childhoods and your offending record shows that things started to go wrong for you from an early age. What has not been adequately explained is why you still do not seem to have learnt that crime simply does not pay.

We have also taken into account the further information provided to the Court by Advocate Lockwood where he has highlighted some of these matters and the emotional scars that you have sustained earlier in your life.

Sentence

Jake Poullard, it will come as no surprise to you that you will be given a prison term today, so your interest lies in how long the sentence will be. The amount and level of offending you have already packed into your life is quite astonishing. Your cavalier attitude to running risks and getting caught does you no favours. You may think that there is some sort of badge of honour in you taking the rap and doing the time for the RIPL offence, but that really is not the stance expected of a good citizen. This Court's hope is that once a sentence has been handed down, it causes the person receiving it to think seriously about how to become a good citizen. That is what rehabilitation is about. So what we find particularly disappointing in your case is that you have chosen not to use your last spell in prison to turn over a new leaf and turn away from drug dealing. Being frank, if you do exactly the same again when you are eventually released this time around, it really does not bode well for you because you will be back here and facing another long period in jail. Therefore we urge you to take stock, make the best of the help you will receive inside and be prepared to put your past behind you. If you do not, there is a real risk that you will eventually look back and realise what a wasted life you will have had. The choice of how you respond is yours, and only yours, but we really do want you to think carefully about what the future holds.

This was a very large stock of cannabis resin, where the number of those to whom it could eventually have been supplied would have been significant and would be a major cause of the misery that drug use brings. Whilst you and those with whom you associate may have firmly held views about whether recreational use should be de-criminalised, until the law is changed, this Court intends to respond to such offending consistently and so robustly. We believe that the sentences imposed can properly include an element of deterrence, in the hope that that message will lead to a more positive response from others, even if in your case it has so far fallen on deaf ears.

The sentences we impose are as follows:

In respect of Count 1, the sentence will be one of 5½ years' imprisonment.

In respect of Count 2 (possessing cannabis), it will be 2 months' imprisonment to run concurrently with the sentence on Count 1.

In respect of Count 3 (the RIPL offence), the sentence will be 6 months' imprisonment, but this sentence will be consecutive to the sentence on Count 1.

This means that the total sentence will be 6 years' imprisonment and we will make that run from when you first went into custody for these matters, which was on 18 May 2020.

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.

We have noted that there is to be no drug trafficking investigation.

The forfeiture and destruction orders in respect of all the drugs (the cannabis resin and cannabis) that were seized, as sought by the Crown, and which were not opposed, 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. The Court notes that this was not resisted. In any event, the Court is satisfied that this phone was lawfully seized and that it had 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, which has been agreed at less than £100, and the likely financial and other effects on you of making the order before deciding to grant the Crown's application.

Richard J McMahon
Bailiff

24 September 2020