Possession of controlled Class B drugs, being cannabis and cannabis resin, contrary to section 4(2) of the Misuse of Drugs (Bailiwick of Guernsey) Law 1974, as amended, cultivation of five cannabis plants without holding a licence to do so, contrary to section 5(2) of the aforementioned Law and failure to comply with notices served under section 46 of the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003.

[2020]GRC061

ROYAL COURT
FULL COURT

15 October 2020

Before: Richard James McMahon, Esq., Bailiff and:
Stephen Murray Jones OBE, Claire Helen Le Pelley,
Steven John Morris, David James Mortimer, Joanne Marie Wyatt,
Peter Francis Gill, David John Robilliard, Marilyn Jasmine King,
Tina Jane Le Poidevin, Jurats.

THE LAW OFFICERS OF THE CROWN

- v -

Callum James CURTIS

Crown Advocate C G Dunford appeared for the Crown

Advocate S Steel appeared for the Defendant

BAILIFF:

Background

Callum Curtis, you appear this afternoon to be sentenced in respect of two Indictments containing a total of six Counts, to all of which you have entered guilty pleas.

The First Indictment deals with one Count of possessing a controlled drug of Class B (cannabis) contrary to section 4(2) of the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974, as amended, for which the maximum sentence is 10 years' imprisonment and a second Count of 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 2 years' imprisonment. The First Indictment relates to offences committed in 2019.

The Second Indictment covers four offences committed on 12 June 2020. The first and third Counts also involve possession of a controlled drug of Class B (being cannabis and cannabis resin), both of which attract a maximum penalty of 10 years' imprisonment. The second Count relates to cultivating cannabis plants, five of them, contrary to section 5(2) of the 1974 Law, without having any licence to do so, for which the maximum penalty is 14 years' imprisonment. The fourth and final Count on this Indictment is a second RIPL offence, similarly attracting a maximum penalty of 2 years' imprisonment.

The 2019 offences arose because the police attended your flat following reports of a disturbance. Although various quantities of different drugs were found on that occasion, the only item to which

Count 1 relates is 0.47 grams of cannabis. However, during the course of the investigation following that search, you were served with a notice requiring disclosure of the key to a mobile telephone, with which you chose not to comply, seemingly because you did not wish to grass on others. You first appeared before the Magistrate's Court on 10 February 2020 and were admitted to unconditional bail, which has been continued throughout these proceedings.

The 2020 offences resulted from the execution of a search warrant. You explained that you had cannabis on your person, which was then found during a search of you, and the search of those premises led to various other small amounts being found. The total was a little over 9 grams. The street value of all the cannabis with which we are concerned today is not high, with the amount in question being between just under £200 and just under £300. The officers found that one of the keys you had was to an outbuilding at this address which, when accessed, contained a black growing tent with 5 cannabis plants at different stages of maturity growing under LED lighting.

You would have been sentenced in respect of the First Indictment earlier this year, but the second set of offences has led to a short delay. We accept that you pleaded guilty to each Count at what was effectively the earliest opportunity.

You are a local man now aged 26, although the 2019 offending occurred when you were still 25. You and your partner have a young child. You did not see the point of education and the courses you followed at the College of Further Education were not completed. Although you worked for a few years, your employment history thereafter has been sporadic, largely as a result of your health issues. You have explained that you took unlawful drugs on a daily basis as a form of self-medicating pain relief.

In your youth, you went off the rails, coming to the attention of the Courts, including a short sentence of youth detention for unrelated offences and, more recently a short community service order in 2017 for possession of a controlled drug.

Sentencing Considerations

The first matter to highlight is that the amounts of cannabis and cannabis resin to which the possession Counts relate would ordinarily be dealt with in the Magistrate's Court. Accordingly, the most serious offence with which we are dealing is the cultivation Count, although two RIPL offences also make the course of your offending troubling. We emphasise that we have not taken into account the other drugs found on the premises, particularly relating to the First Indictment, and the cash, because no Counts on either Indictment relate to them. Although the two Indictments cover distinct offending some months apart, we have decided it is appropriate to look at what you have done as an overall course of drug-related offending, applying the totality principle, rather than sentencing you distinctly on each Indictment and aggregating those sentences.

Non-compliance with the notices served leading to the two RIPL offences paints a picture of someone who is sufficiently alive to the consequences of permitting access to a mobile telephone and how it may implicate others. It is also indicative of someone who has something to hide about himself that he does not want those investigating what would be drug trafficking offending to discover. This Court regards such offending seriously because anyone who has nothing to hide would provide the passcode or key without hesitation. Failing to comply obstructs the full and proper investigation of the offences being looked into. The number of occasions on which this Court deals with this type of offence is rising and it must be common knowledge to people like you that a single offence usually attracts a sentence of imprisonment, added to whatever sentence is handed down for other offences, and multiple offences are regarded as aggravating one another. For these RIPL offences, we consider that the custody threshold is passed. Looking at all your offending in line with the totality principle, we are satisfied that the starting point for each of these two RIPL offences, where the second occasion occurred when you were on bail, should be 15 months' imprisonment.

In respect of the cultivation offence, the Court has noted your claim that all of these drugs were intended to be consumed by you. However, the Court has approached this cultivation enterprise with a degree of scepticism about that assertion, primarily because we consider that the five plants involved take this beyond what can be regarded as "a few" plants. Further, your association with other drug users leads us to regard it as inevitable that others would have consumed at least a portion of whatever was harvested from this crop. Guidance as to the correct approach to a cultivation offence was given by the Court of Appeal post-*Richards* in *Marsh* (2007), as referred to by Advocate Steel, where the emphasis was placed on the increase in the available stock with the personal consumption element becoming relevant as a mitigating factor. This was made clear at paragraph 47 of that judgment, which states:

> "*In the view of this Court it is the increase in the available stock which is the appropriate basis for sentence in cases such as those with which we are dealing today. Where an offender is able to show indubitably that the cannabis was for his own consumption, usually because of the very small amount discovered, that fact may be considered as a mitigating factor in sentence. By the same token where the evidence reveals usually but not invariably by reference to quantity that the offender is a dealer that fact will be treated in aggravation of punishment. But where as in many cases there is no certain conclusion which can be drawn one way or the other, the offender should be sentenced on the above basis and punishment should be assessed paying appropriate caution to quantity as identified above in cases of cultivation by reference to the current guidelines established in Richards.*"

This Court is satisfied that this is the correct approach to take in respect of this cultivation offence. We have not been given any details of the potential yield from five plants, but in previous cases something in the region of 50 grams per plant when dried has been mentioned. Accordingly, we are satisfied that anything in the region of ¼kg of cannabis falls within the lowest band relating to cannabis set out in *Richards*, where the range for starting points is 3 to 6 years' imprisonment. Further, we have noted that your decision to cultivate was motivated by seeking an indirect financial advantage because the price of acquiring cannabis was affected by reason of the lockdown restrictions. Again, the Court is satisfied that the custody threshold is passed but, bearing in mind the amount involved, we have decided to take a starting point of 3 years' imprisonment in respect of this Count before considering aggravating factors.

When considering the aggravating factors, the most obvious one relates to the offences committed in June 2020 when you were already on bail for the earlier offences from 2019 featuring on the First Indictment. It is quite clear to us that you paid no attention at all to having been caught and the potential consequences when you came to be sentenced for those offences. Instead, you merrily proceeded to continue your drug use and then were caught again, thereby compounding your overall offending in quite a significant manner. The Court has also noted that these later offences were committed in a household comprising your partner and young child, who we consider potentially to have been at risk of coming across any of the small amounts of cannabis that have been involved in some of the other Counts.

But in respect of the various simple possession Counts, although they were committed separately to the cultivation offence (although discovered at the same time in some cases), the Court does not feel that they add particularly to the overall seriousness of your offending and so, as already mentioned, we have generally factored them in under the totality principle.

Mitigation

The strongest aspect of your mitigation is that you have admitted your guilt and wasted no one's time. You will, therefore, receive full credit for your guilty pleas.

The Probation Report highlights that you are assessed as presenting a very high likelihood of re-offending. It also refers to you being a risk of inflicting physical harm to partners. It is apparent that

you have views about drug use, especially cannabis use, that mean you are only now coming to realise what the consequences are for that stance. Those views are described as you having adopted an "uncompromising position" earlier this year, but they are now being modified as the potential impact of your choices hits home. Although we gather you have reduced your own consumption, you state that you are still using cannabis. Any lessons you say you have learnt have come very late in the day, despite these matters hanging over you for quite a while, but we give you some credit for finally waking up and recognising that if you do not change your ways your future looks extremely bleak.

We have noted further that the report questions how suitable you are if the Court were minded to consider a community service order. Although the recommendation is for a period of supervision (and Advocate Steel has urged upon us a disposal involving a suspended sentence supervision order), the author of the report also expresses some concerns about supervision because if, as seems likely, you continue your unlawful drug use, that will have an impact upon any supervision.

Advocate Steel has elaborated on some of the points we have read in the report in what he has said about you and on your behalf. We do note that you are now sorry for your actions, but need to put that remorse into context where we are also told about the views you expressed about drug use only a few months ago. We have also taken into account the letter from your partner and we are aware of the impact that any sentence that we hand down today will have on your family if you were to be sent to prison and we have noted the health issues that are addressed in the report.

Sentence

Callum Curtis, having grown up here, you will be well aware of the seriousness of what you have done. However difficult your health circumstances, there is never any excuse for resorting to unlawful drugs in the belief that the health service cannot meet your needs. Similarly, we are confident that you will be well aware of what happens to those committing RIPL offences. There must be a degree of deterrence so that others are not given the message that frustrating investigations into offending is acceptable, because it is not. When served with a disclosure notice, there is time to reflect on whether to comply or not, so we find that these offences are calculated choices to accept the consequences of non-compliance. What is particularly disappointing in your case is that you went and committed further and more serious offences, despite having been caught in 2019. You have had no regard for the law and your attitude really does need to change. We agree with the assessment of you that your recently changed position about stopping drug taking results only from your belated realisation of the predicament in which you find yourself. The stupidity of not recognising that you were already in a difficult situation, but one which was not likely to have as bad an outcome for you as it will be today, is something with which you will now have to live.

We realise that sending you to prison will impact on the rest of your family, but you should have thought about that before now, because we find that there is no other option available to the Court, even when being as lenient as we feel we can be. Our hope is that during the time you will spend in prison you will be able to come off drugs and find more appropriate ways to manage your health conditions and, by the end of your sentence, be ready to take your place as a useful member of our society.

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

To make things as simple as possible, we start with the cultivation offence (Count 2 on the Second Indictment), for which the sentence is 2 years' imprisonment.

Turning to the possession offences (Count1 on the First Indictment and Counts 1 and 3 on the Second Indictment), we impose a sentence of 1 month imprisonment on each, as a nominal sentence effectively, all to run concurrently with the sentence in respect of the cultivation Count.

Finally, in relation to each RIPL offence, the sentence will be one of 9 months' imprisonment, to run concurrently with each other, but running consecutively to the sentence imposed in respect of the cultivation Count.

The total sentence, therefore, imposed on you today is 2 years and 9 months' imprisonment, that is the 2 years for the cultivation offence, the drug offences and the 9 months for the RIPL offences.

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 that were listed on behalf of the Crown, and the associated paraphernalia, particularly the growing equipment, are all granted - they were not opposed.

The Crown's application pursuant to section 3 of the Police Property and Forfeiture (Bailiwick of Guernsey) Law, 2006 in respect of the two Samsung mobile telephones seized from you are also granted, although those applications were not opposed again. But we have had regard to the statutory requirements as we must and we are satisfied that each of those items was lawfully seized from you and that in both cases there is a proper inference to be drawn from the RIPL offences that each 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.

There is no request on behalf of Her Majesty's Procureur for a drug trafficking investigation.

Richard J McMahon
Bailiff

15th October 2020