

Possession of a Class A controlled drug, resisting the Police and failure to comply with a Disclosure Notice.

[2020]GRC086

**ROYAL COURT
FULL COURT**

21 December 2020

Before: John Russell Finch, Esq., O.B.E., Lieutenant Bailiff and:

**Claire Helen Le Pelley,
Steven John Morris, David James Mortimer, Joanne Marie Wyatt, Alan Stevenson Boyle,
Peter Francis Gill, Stuart Michael Crisp, Marilyn Jasmine King,
Felicity Jane Quevâtre-Malcic, Jurats.**

THE LAW OFFICERS OF THE CROWN

- v -

Daniel David HENDERSON

**Crown Advocate F M Russell appeared for the Crown
Advocate P Lockwood appeared for the Defendant**

LIEUTENANT BAILIFF:

Background

You appear here today for sentence on an Indictment containing 3 Counts: possession of the Class A controlled drug MDMA; resisting the Police; and failing to comply with a Disclosure Notice under the RIPL legislation. The maximum penalties are 14 years, 3 months and 2 years respectively.

You are a 34 year old local man with previous convictions for a variety of offences, including the importation of Diamorphine for which you received 3 years' Youth Detention, following a reduction in your sentence by the Court of Appeal. In 2005 there was a conviction for possession of cannabis resin and later escape from lawful custody, assault and the last one in 2010, criminal damage.

You have remained on unconditional bail throughout these proceedings and intimated early guilty pleas.

The drugs in Count 1 were 24 tabs containing MDMA or Ecstasy. You were apprehended because of astute Police work by an off-duty officer. You resisted arrest and a former officer was able to help by indicating where the drugs were – in your left hand. Then, despite receiving Notice and an Order from the Royal Court, you failed to provide the access codes for your phone. Even refusing to sign anything and you gave a “no comment” interview.

Sentencing Considerations

This was not a small amount of drugs for personal use in a couple of days. You are, according to the Probation report, not remorseful about your resisting, as you did not hurt anyone. Your justification for unlawfully failing to provide your access code – and the Police were unable to get through – is that you

have “private” things on your phone you don’t want them to see. The Police, of course, are used to seeing “private things”.

The report also tells us that you do not claim from Social Security, but you get “handouts” from friends, whilst unemployed. You were unable to explain then why you did not claim. The members of this court have, unfortunately, a good deal of experience of drug cases. Taking the amount into consideration – not just 2-3 tabs, and your total refusal to comply with the legal requirement to provide access to your phone, we take a serious view of on the facts. The remedy was to disclose your access code. This type of offence is increasingly common lately and we have often stated that if the penalties were not increased it would be worth the while of offenders to refuse to provide details. We have to ensure that this is not so – we have said this often enough.

The resisting is not the type of offence officers (and those assisting them) should have faced when general lock-down was in force then, and we have noted the footage.

Each case has to be looked at on its own individual facts. The circumstances of your arrest and what you were doing attracted attention. Your previous Royal Court conviction is still an aggravating factor and there are three separate offences, and we shall sentence on them consecutively, bearing in mind the totality principle. We need also to bear in mind that you have been charged with possession on Count 1. In view of the facts as they were assessed by this Court, we start at:

- 18 months for Count 1 (looking at the number and the fact these are the most serious category of drugs – Class A);
- 3 months for Count 2 and;
- 12 months for Count 3;
- Total – 2 years and 9 months.

We need next to apply relevant mitigation.

Mitigation

Your guilty pleas are effective mitigation to which we must give the appropriate credit - however, the evidence was strong. We also note your lack of offending since 2010. We have considered the Probation report, which finds it difficult to provide “a robust offence analysis”. We also take on board all we have heard from your able Advocate. All in all, we consider a discount which is realistic, but in your favour, and we apply that and we come to around one-third, bearing, as we have said, the circumstances of the offences into consideration.

Sentence

You are now to be off the streets for a period commensurate to your offending. MDMA is not the type of substance we wish to see on the streets of this Island.

- On Count 1 the sentence is – 12 months’ imprisonment;
- On Count 2 the sentence is – 2 months’ imprisonment consecutive;
- On Count 3 the sentence is – 9 months’ imprisonment, consecutive. We stress these offences must be suppressed.
- Total: 23 months’ imprisonment from 21 December 2020.
- Forfeiture and Destruction, as required.
- Compulsory Supervision after release for one-quarter of the total sentence.
- We express appreciation to the off-duty officer and the former officer for their assistance.

**John Russell Finch, Esq., O.B.E.,
Lieutenant Bailiff**

21 December 2020