

Supply of controlled Class A and B drugs to another, contrary to the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974, offence of assault and unlawful possession of cannabis resin.

**[2021]GRC014**

**ROYAL COURT  
FULL COURT**

**10 February 2021**

**Before: Richard James McMahon, Esq., Bailiff and:  
Stephen Murray Jones OBE, Terry John Ferbrache,  
Peter Francis Gill, David John Robilliard, Stuart Michael Crisp, Marilyn Jasmine King,  
Tina Jane Le Poidevin, Paul Martin Burnard, Jurats.**

**THE LAW OFFICERS OF THE CROWN**

**- v -**

**Kalan Joshua MILLAR  
(D.O.B. 26.05.1999)**

**and**

**Jake Paul GALLIENNE  
(D.O.B. 11.11.1995)**

**Advocate R J Calderwood appeared for the Crown**

**Advocate P F Cobb appeared for the First Defendant**

**Advocate L C Roffey appeared for the Second Defendant**

**BAILIFF:**

**Background**

Kalan Millar and Jake Gallienne, you have pleaded guilty to the five Counts on the indictment, three of which relate to Mr Millar alone and the other two to Mr Gallienne. These offences arise out of events that took place on 31 August 2019 and the investigations that followed.

The first two Counts in respect of Mr Millar involve being concerned in the supplying of a controlled drug to another contrary to the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974. Count 1 relates to cannabis or cannabis resin and Count 2 to methylenedioxymethamphetamine (MDMA). These are respectively Class B and Class A drugs and so the maximum sentences for these offences are 21 years' and life imprisonment. They both relate to a period of just over a fortnight up to the end of August 2019. The other Count in respect of Mr Millar is an assault on Chandla-Leigh Casey. Being a common law offence, sentence is at large, so potentially up to life imprisonment, but the approach of the Courts is to treat offending of the type you have admitted as if it carried a maximum sentence of several years' imprisonment.

Mr Gallienne has also committed an offence of assault on Harvey Roger, which carries the same maximum penalty and, when he was detained, was found to be in possession of a small amount of cannabis resin (0.12 gram). The maximum penalty for that possession offence is 10 years' imprisonment.

The guilty pleas to the drug offences were entered on 9 July 2020. There was going to be a trial on the assault Counts until you changed your pleas to guilty on 8 December 2020, about a week before that trial was listed.

The Court has heard the detail of what happened during the early hours of 31 August 2019. Messrs Roger and Casey were walking back from Town when they passed the pair of you. You chose to follow them and Mr Millar, without Mr Gallienne's prior knowledge, approached them and had a conversation which led to Mr Roger dialling 999 to report an attempt to mug them. The two of you had moved away but then came back. Mr Gallienne punched Mr Roger, who was still using his mobile at the time, to his right cheek bone. Mr Gallienne then ran away, pursued by Mr Casey and also by Mr Millar. Mr Casey turned around to Mr Millar to keep him away from him, and Mr Millar swung his fist a couple of times, making contact with Mr Casey's shoulder or chest area on the second occasion. Both defendants then ran off.

Police Officers attended the area to search for the suspects and came upon the two of you shortly thereafter. On being told to stop, Mr Gallienne ran away. After hesitating briefly, and being named by one of the officers who recognised him, Mr Millar also ran away. Officers pursued you and Mr Gallienne was eventually found and arrested. The small amount of cannabis, accepted to be for personal use, was discovered in his possession. Mr Millar was eventually arrested the following day. His mobile telephone was seized and analysed. It contained messages showing that Mr Millar had been dealing MDMA and also cannabis or cannabis resin. The quantities involved are not known.

You are both local men. At the time of committing these offences, Mr Millar was 20 years old; he is now 21. Mr Millar has no previous convictions for drug-related offending, but he has a string of convictions for assaults, including on the police, most recently being sentenced to a total of 10 months' imprisonment in August 2018. Mr Gallienne was 23 at the time of committing these offences and is now 25. In May 2018, he was fined for being in possession of a controlled drug and in April 2017 he was sentenced to 12 months' imprisonment for an assault on an adult.

Mr Gallienne has been on conditional bail throughout. Mr Millar was also on conditional bail until he broke two of the conditions, apparently deliberately and with a view to starting to serve the inevitable custodial sentence he was facing. He has been remanded in custody since 28 September 2020.

### **Sentencing Considerations**

The approach this Court takes to both drug trafficking offences and offences of violence has regularly been explained to involve consideration of these offences in the context of Guernsey's situation. There is no direct read across to the level of sentences imposed elsewhere.

For drug trafficking offences, being those committed by Mr Millar (but not Mr Gallienne's simple possession offence), in *Richards* the Court of Appeal set out sentencing guidelines and this Court has consistently followed them since. As explained in paragraph 12 of that judgment, where two different Classes of drug are involved, the Court assesses the appropriate starting point for each but does not just aggregate them, but proceeds to determine a "total" starting point, taking into account the overall quantity and how that affects the offender's culpability.

The amounts of the drugs being sold by Mr Millar are unknown. Whilst it would be possible to take the view that the amount might have risen to above the lowest band of weights, the analysis of the messages on Mr Millar's phone points towards comparatively low level dealing over this period of just over a fortnight. In those circumstances, the Court has chosen to use the lowest starting points of

7 years in respect of Class A and 3 years in respect of Class B in each of the categories. Dealing in two drugs aggravates the more serious of these offences, but only marginally in our view, meaning that we take a total starting point of 7 years and 6 months' imprisonment for the more serious Count 1. It is clear to us that the custody threshold has been passed in Mr Millar's case.

As regards the assaults, although the Sentencing Council's Assault Definitive Guideline as it operates in the Crown Court in England does not bind this Court, we recognise that it contains helpful guidance relating to the factors that make an offence more serious than first impressions. We appreciate that these were single blows without any lasting injuries but throwing punches can result in more serious consequences, particularly when delivered by someone who is intoxicated, where the person's ability to act rationally has already been lost. Most significantly, both of you have previous convictions for assaults, yet still you proceeded to act before thinking it through, and we consider those previous convictions are aggravating factors here. Running away from the police to evade capture is a further instance of taking action that make these more serious offences. As a result, we take as our starting point in respect of both assaults around 10 months' imprisonment. In saying that, we have noted that Mr Millar made threats about using a knife, but the blow landed by Mr Gallienne was more significant.

Whilst Mr Millar's drug trafficking offences were always destined to be dealt with by this Court, we appreciate that Mr Gallienne's offences would normally have remained in the Magistrate's Court and so bear in mind that aspect in his case. That said, for the assault, we are satisfied that the custody threshold has been passed.

In relation to both of you we have borne in mind the totality principle when considering how to deal with two quite different aspects of offending but which came to light as a result of the assaults. It is appropriate that the two types of offending be dealt with as distinct penalties, but we will adjust the overall outcome to reflect that these offences all came to light arising out of the assaults.

### **Mitigation**

The Court has paid careful attention to what has been said on behalf of each of you by your Advocates and has the benefit of the helpful Probation Reports that have been prepared.

In respect of your guilty pleas to the drug offences, we recognise they were given at the earliest opportunity and so you will receive full credit in respect of them. The guilty pleas to the assault Counts came later in the day and so will not attract that same level of credit, but the Court as well as the witnesses to be called were all saved the time and expense of a trial so there will be discount of in the region of 20 to 25% on these Counts.

In Mr Millar's case, we have noted that you have recently suffered a bereavement and so we extend our sympathies to you and your family for your loss, but we are also concerned that you do not appear to have been entirely frank with the author of the report, as Advocate Cobb has explained. You are assessed as having a very high likelihood of re-offending, which is troubling, and it is apparent that, especially when in drink, you present a risk of harm to others by way of violence.

In Mr Gallienne's case, you have been assessed as posing a high likelihood of re-offending and that the risk of harm to the public rises when you consume alcohol and engage in drug use, resulting in anti-social traits. We have noted you have a good work ethic and have been complying with the terms of your bail for what has been an extended period.

We have taken into account that you are both young, which is especially relevant in Mr Millar's case, and that, despite your previous convictions, there is scope for you both to turn over a new leaf moving forwards before it is too late. You have both expressed your remorse for what you did to your victims and recognise the stupidity of engaging in drunken aggression. Generally, you have been co-operative with the investigation.

## Sentence

Kalan Millar, as someone who has grown up here, you must be well aware that this Court continues to take drug dealing seriously. This is particularly so when it involves Class A drugs, where it is entirely appropriate that the sentences handed down should include a deterrent element. It is apparent to us that you knew what you were doing and so must have been prepared to take the risk and the consequences that follow. However difficult you found your financial circumstances, right-thinking people do not turn to drug dealing to earn a little extra income. If you now realise the crass idiocy of having done that, at least some good has come of this.

To both of you, we give a clear message that violence at any level will not be tolerated. You have both already ended up in prison for assaulting others, yet it is clear that that experience has not taught you any lessons. You clearly have a poor attitude to authority as demonstrated by running away when the police found you that night. The public should be protected from people like you reacting with their fists rather than using their brains, realising that walking away rather than being confrontational is the best solution. If you drink to such an extent that you cannot properly control yourselves, that is an aspect of your lives that you need to address. If you do not do so, you will become regular visitors in this Court, so let this appearance today be a wake-up call to each of you.

We will start with Mr Millar. As you are clearly aware, for the offences you have committed, only an immediate custodial sentence can follow. We have taken into account your guilty pleas and had regard to the mitigation given on your behalf, as well as the total sentence to be imposed in the light of all your offending.

In respect of Count 1 (being concerned in supplying cannabis), the sentence we impose is one of 18 months' imprisonment.

In respect of Count 2 (the MDMA), the sentence is one of 4 years' imprisonment, which will run concurrently with the sentence on Count 1.

Finally, in respect of Count 4 (the assault), the sentence will be one of 6 months' imprisonment, but this time it will run consecutively to the other sentences, making a total of 4½ years' imprisonment.

Although we are unimpressed by anyone who breaches bail conditions in order to be remanded into custody, we will backdate those sentences to run from 28 September 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.

The Crown's application pursuant to section 3 of the Police Property and Forfeiture (Bailiwick of Guernsey) Law, 2006 in respect of the Samsung mobile phone is also granted. The Court notes that this was not resisted. In any event, the Court is satisfied that the device was lawfully seized and that it was used for the purpose of committing or facilitating the commission of an offence, which is obvious from the analysis resulting in your pleas to the two drug trafficking offences. But as required by subsection (5), the Court has had regard to what it estimates to be the value of such a mobile and the likely financial consequences and other effects on you of making the order before deciding to grant the Crown's application.

There is in your case no request for a drug trafficking investigation.

Turning to you, Jake Gallienne, we recognise that the level of your offending is noticeably lower than Mr Millar's. However, your history of committing offences, and being in and out of the prison, is quite significant for someone your age. The offence of assaulting Mr Roger in an unprovoked attack on someone who was quite properly reporting to the police what had already taken place involving Mr Millar and you punched him in the face. Even allowing for the late guilty plea and other mitigation, we are satisfied that this offence is one for which a custodial penalty can be given.

That said, this Court will not send you to prison today, but instead will impose a community service order as a direct alternative to a custodial sentence. We do so because we believe that this will provide you with the opportunity to mend your ways and become a useful member of society. It will impact on your free time and will enable you to give something back to the community you have wronged. We will couple this with a probation order. Accordingly, the sentence we impose in respect of Count 5 (the assault) is that you perform 120 hours of unpaid work under a Community Service Order. This Order is made because of the seriousness of the offence of which you have been convicted.

The Court notes that you have indicated that you understand the nature and effect of a Community Service Order, the power of the Court to review the Order and the consequences that may follow if you fail to comply with any of the requirements of the Order, or if you are convicted of a further offence while the Order is in force.

This Order is imposed as a direct alternative to a sentence of imprisonment. The alternative sentence that the Court was considering passing was one of 6 months' imprisonment.

Turning to Count 2 (possessing cannabis), we also impose a community service order, but this time as a penalty in its own right rather than as a direct alternative to a sentence of imprisonment. This order will be for 40 hours of unpaid work and, because the violence and drug possession offences are distinct matters, we will run those hours consecutively, meaning that the total number of hours ordered under the Community Service Order will be 160 hours.

In respect of both these offences, we have been persuaded by the Probation Report that it is appropriate also to impose a probation order on you so that you are subject to a form of supervision enabling you to address the way you approach your life. If you were to fail to comply with the conditions attached to the order, you could be brought back to Court and dealt with again. Such an order will provide support to you as you strive to free yourself from excessive alcohol use and substance misuse. We will also attach the conditions suggested that requires you to attend the Criminal Justice Substance Service as directed and comply with drug and alcohol testing and treatment as required. We have noted that the length of such an order is recommended to be at least one year in the report and we have decided that it should actually run for a period of 18 months starting from today.

In relation to you Mr Gallienne, the forfeiture and destruction order sought by the Crown in respect of 0.12 grams of cannabis, which you did not oppose, is also granted.

**Richard J McMahon**  
**Bailiff**

**10 February 2021**