

Burglary of a commercial building, contrary to section 9(1)(b) of the Theft Law (Bailiwick of Guernsey) 1983, as amended and possession of controlled drugs taken during the aforementioned burglary, contrary to section 4(2) of the Misuse of Drugs (Bailiwick of Guernsey) Law 1974, as amended.

[2021]GRC037

**ROYAL COURT
FULL COURT**

5 July 2021

**Before: Catherine Maureen Fooks, Judge of the Royal Court
and Jurats:**

**Stephen Murray Jones OBE, Claire Helen Le Pelley,
Steven John Morris, Joanne Marie Wyatt, David John Robilliard, Stuart Michael Crisp,
Marilyn Jasmine King, Tina Jane Le Poidevin, Felicity Jane Quevâtre-Malcic.**

THE LAW OFFICERS OF THE CROWN

- v -

Kyle David HENDERSON

**Crown Advocate C G Dunford appeared for the Crown
Advocate S E Steel appeared for the Defendant**

JUDGE OF THE ROYAL COURT:

Background

Mr Henderson you have pleaded guilty to seven counts on one indictment.

The first Count is of burglary, contrary to section 9(1)(b) of the Theft Law (Bailiwick of Guernsey) 1983, as amended, of a commercial building commonly known as Stonelakes on the Bridge, on 14th February, 2021, in the course of which you stole a considerable quantity of medication. The maximum penalty for burglary is 14 years' imprisonment.

The remaining six counts concern the possession of controlled drugs which you took during that burglary, contrary to section 4(2) of the Misuse of Drugs (Bailiwick of Guernsey) Law 1974, as amended. Count 6 concerns possession of a Class B drug, which carries a maximum penalty of 10 years' imprisonment. Counts 2 to 5 and 7 concerned Class C drugs. Each of these offences carries a maximum penalty of 4 years' imprisonment.

Additionally, you have asked the Court to take into consideration one other offence concerning the possession of a Class B drug on the 13th of February 2021.

The facts are that at approximately 10.30 pm on the 14th February 2021, you went to the rear of Stonelakes via an alleyway on Commercial Road. You broke into the pharmacy via a Perspex roof, bending the Perspex backwards and removing a section to gain entry, leaving a hole approximately 15 to 22 inches wide. Rainwater entered the building through that hole and destroyed stock in the area beneath.

Once inside, you spent a considerable period of time looking around for medication and putting it into a bag. You also used scissors to break into the safe causing damage to the top lock.

Your activity inside the pharmacy was captured on CCTV. Your clothing and appearance were captured clearly and enabled officers to identify you at the time of your arrest. CCTV from outside Stonelakes shows a person wearing similar clothes in the alleyway at the rear of Stonelakes at approximately 5.37 pm earlier on the day of the burglary.

You were arrested at 8.10 am the following morning, wearing similar clothing and walking towards the Bridge. You were carrying what is described as a “bulging” rucksack which was later found to contain a significant quantity of that stolen medication. You told some pointless lies to the officers on your arrest as to your whereabouts at the time of the burglary and the origin of the rucksack.

As is your right, you answered ‘no comment’ to many of the questions put to you at interview. When you did answer, it was effectively to deny your involvement.

You are a local man of 35 years of age. You had been employed with a local building firm prior to lockdown in January 2021.

You have numerous previous convictions, including convictions for burglary (the last being in 2012 before the Norwich Court and there were also another 3 in 2008, also before that Court). You also have convictions for theft, drug offences and for robbery. The robbery was of Boots pharmacy and you also have a conviction in 2003 for burglary of the same Stonelakes which convictions will be considered in more detail below.

You have been in custody since 15th February 2021.

Sentencing Considerations

This community does not want to experience burglaries, let alone those of pharmacies on which it depends for medication. This is all the more so in lockdown when supply chains were disrupted.

Your extensive record is an aggravating factor, as it was when you appeared before this Court in June 2018 for robbery at a local Boots pharmacy and were sentenced to 3½ years imprisonment. Following completion of that sentence, you were sentenced to a further period of imprisonment (6 months) imposed by the Magistrate’s Court for possession of drugs from which you were only released on the 8th of January 2021. You committed the burglary of Stonelakes just over 5 weeks later on the 14th of February 2021.

It is clear, therefore, that, since and despite the sentence of 3½ years for the robbery and 6 months for the drug offences, you remain on your twin-tracks of offending - acquisitive crimes (burglary and theft) and substance abuse.

The offences were committed while you were subject to an Adult Custody Supervision Order.

We will sentence you on the basis of the most serious Count, the burglary, as the lead offence, and we will regard the 2nd to 7th Counts as aggravating the first Count and sentence you concurrently.

Taking the burglary first, although the English Sentencing Guidelines are not binding in Guernsey, they are of assistance in setting the seriousness of an offence in terms of aggravating and mitigating factors. In your case there is an extensive list of aggravating factors:

- the offence was committed whilst you were subject to supervision post release from prison.
- you had been released from prison for just over 5 weeks prior to the Commission of the offence.

- this is the third time that you have targeted a pharmacy and, specifically, the second time that you have targeted this Stonelakes. (It is to your credit that you volunteered that information this morning when asked.)
- you have numerous previous convictions for theft, burglary and robbery.
- you have caused damage to the roof of the pharmacy, the safe and precious stocks of medication by virtue of the water ingress through the hole you made in the roof. The damage to the premises exceeds £3,500.
- the burglary took place at night.
- a large quantity of medication was taken.
- you were intoxicated.
- the offence took place during COVID lockdown.
- there is evidence that you visited the property earlier in the day from which we infer that you were working out how best to gain entry.
- we also take into account the TIC as an aggravating factor.

In mitigation, you did assist the police by volunteering access to your phone and you have assisted us today.

An element of deterrence in sentencing is entirely justified. In the circumstances, a starting point of 6 years is appropriate.

Turning to the drugs, although the quantities involved would ordinarily result in the offences being those of possession with intent to supply, you have entered guilty pleas to possession only of the drugs and those pleas were accepted. We must sentence you on the basis of possession only. There is no guidance as to sentencing for such large quantities of drugs on a possession only basis. We take the view that possession of the drugs should be viewed as aggravating the burglary and that any separate sentence should be concurrent, and we do not propose to set a separate starting point for each Class of drug. Accordingly, we have taken this aggravating factor into consideration when setting the 6-year starting point for the burglary.

- The total quantity of Class C drugs is **2489 tablets**.
- The total quantity of Class B drugs is **2020 tablets**, including the 4 in your wallet.

We note that the Prosecution does not seek a Proceeds of Crime investigation. It is to be noted that, whilst the records at the pharmacy preclude there being an exact inventory of what you took, there were some drugs missing, which were not found in your possession.

There can be no doubt that the custody threshold in respect of your offending has been passed and, as sensibly conceded by you and your Advocate, there can be no consideration of any alternatives to immediate custody.

You have asked that we take into consideration the possession of a Class B substance which we do.

Mitigation

Plea

The Court must first consider the impact of your guilty pleas on sentence. Whilst you entered your pleas promptly, we cannot afford you full credit for your guilty pleas because the evidence against you was overwhelming.

The burglary was captured on good quality CCTV, which enabled investigators easily to match your clothing to that visible on the CCTV. You left your hat behind, which no doubt would have led to forensic evidence linking you to the scene. You used your mobile phone twice at the scene and officers

were able to triangulate those calls to place you there. You were arrested wearing the same clothing and carrying a rucksack bulging with the stolen medication

Personal Mitigation

The Court has considered carefully the realistic if depressing Probation Report prepared in respect of you. We have also listened to the sensible submissions of your Advocate who made all the available points.

In terms of your personal mitigation, there is little that can be offered on your behalf. We do recognize that yours is a long and sad background, stretching back to the age of 11 and a chaotic childhood. Your record is appalling.

It would seem that lockdown played its part in the circumstances leading up to the offending. It is clear however that what makes you offend is your drug use. This time there was also excessive alcohol consumption, which is no mitigation.

The writer of the probation report is able to say that you have, this time, been able to admit your wrongdoing and display a level of victim empathy which is positive, but there is a long way to go. Unfortunately, despite considerable intervention to help you address your issues, you still resorted to anti-social behaviour and substance abuse which led to offending - burglary - which has brought you back here. You have expressed remorse for stealing someone else's medication – a very well-made point.

You are assessed as having a very high risk of re-offending and that risk is increased when you are under the influence of illicit substances and/or alcohol. As your substance use is described in the report as “continual”, this is of grave concern to this Court.

Put simply, the report writer says that you will not stop offending until you are ready to accept the help you need to deal with your difficulties with drugs, alcohol and stress. You have had so many chances to change and you will have yet another chance to access support in custody. It is positive that you are already doing so. You will be able to receive treatment for your substance abuse and it is encouraging that you are accessing education. Only you can decide what happens when you are next released.

It was said in the sentencing remarks from your last time in this Court: “At present we hold out little hope that this will be the last occasion you trouble the police and courts of this island”. How prophetic that turned out to be and it may be that we should have even less hope this time, but change is possible if you choose to make it. It is said that your motivation to accept help and change has increased since the birth of your son. One can only hope so.

Meanwhile this Court has to protect the public from your offending. In sentencing you we have taken into account the totality principle. Compensation is not a viable option here which is unfortunate as there have been financial losses. You have said that you will pay those losses and we hope that you do.

Sentence

Mr Henderson, here you are again before this Court, having offended within just a few weeks of leaving prison. You have chosen again to target a pharmacy, one which you have burgled before. Drug abuse and alcohol consumption is what makes you offend and, until you stop using drugs and alcohol, you will be coming back here, and the public will be harmed each time by your offending. The community must be protected, so immediate custody is the only option in your case, and you face a long sentence. You have said that you are ready to change and we hope that you take this opportunity to do so.

Taking into account all the above and applying a one-third discount for the pleas, mitigating factors and personal mitigation, the sentences will be as follows:

- Count 1 the burglary, the sentence is 4 years with effect from 15th February 2021.
- Counts 2-7 the Class C drugs, the sentence is 3 months' concurrent on each count with Count 1.
- Count 6 the Class B drugs, the sentence is 4 months' concurrent with Count 1.
- All sentences will start from 15th February 2021.

The offence to be taken into consideration has been treated as a minor aggravating factor in relation to the burglary and therefore factored into the starting point, so no separate penalty is imposed.

- The total sentence is **4 years imprisonment** with effect from 15th February 2021.
- **Forfeiture and Destruction** of the drugs as requested.

Supervision

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 the shorter. 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 26 of the Misuse of Drugs (Bailiwick of Guernsey) Law 1974, as amended, in respect of the drugs, as set out in the Prosecution Outline, is also granted. The Court notes that this has not been resisted. The Court is satisfied that these items were lawfully seized and relate to the offences.

Mr Henderson, I repeat that the total sentence is:

- 1 one of immediate custody of 4 years imprisonment with effect from 15th February 2021 and;
- 2 forfeiture and destruction of the drugs as requested.

Please go with the officers.

Catherine Maureen Fooks
Judge of the Royal Court

5th July 2021