

Unlawful supply of a Class B controlled drug, to another, contrary to section 3(1) of the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974, as amended and possession of Cannabis contrary to section 4(1) of the aforementioned Law.

[2021]GRC042

**ROYAL COURT  
FULL COURT**

**6 August 2021**

**Before: Richard James McMahon, Esq., Bailiff and Jurats:  
Jonathan Grenfell Hooley,  
Steven John Morris, David James Mortimer, David John Robilliard,  
Stuart Michael Crisp, Marilyn Jasmine King, Paul Martin Burnard,  
Felicity Jane Quevâtre-Malcic, Heather Reed.**

**THE LAW OFFICERS OF THE CROWN**

- v -

**Leo Piero DONALDSON  
(dob: 01.05.2003)**

**Crown Advocate F M Russell appeared for the Crown  
Advocate S Morgan appeared for the Defendant**

**BAILIFF:**

**Background**

Leo Donaldson, you appear this afternoon to be sentenced in respect of an Indictment containing two Counts, to both of which you pleaded guilty on your first appearance before this Court on 1 July 2021. The first Count relates to being concerned in the unlawful supply of cannabis, a Class B controlled drug, to another, contrary to section 3(1) of the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974, as amended. The maximum penalty for this Count is 21 years' youth detention. The second Count involves possession of cannabis, contrary to section 4(1) of the same Law, for which the maximum penalty is 10 years' youth detention.

The first Count arises from an analysis of messages on your and another's mobile telephones, which demonstrate your involvement in supplying cannabis to others. The period covered starts on 5 March 2020 and runs to when your home address was searched on 4 June 2020, as a result of an investigation into the activities of others, during which some drug paraphernalia was located in your room, including a large quantity of zip lock bags. Having been arrested, a later search of your person was conducted and a small ziplock bag was found stuck to your stomach, in which the small amount of cannabis, 0.05 of a gram, which forms the subject of the second Count, was discovered.

You are a local man, now aged 18. During the middle of the period covered by the first Count, you celebrated your 17<sup>th</sup> birthday. Since leaving school, you have been in employment for about a year. For today's purposes, we treat you as having no previous relevant convictions. You have been on unconditional bail throughout these proceedings.

**Sentencing Considerations**

The first Count is a drug trafficking offence. This Court looks first at this offence and your role in relation to it before turning to any personal mitigation. If the second Count were being dealt with in isolation, it would have remained before the Magistrate's Court and so we will simply take it into account in relation to the totality of what the first Count involves, the cannabis being accepted as for your personal use.

We do not know the amount of cannabis that you were supplying to others over this period of roughly three months. We have been invited to regard it as not being greater than the lowest of the bands set out in the guideline case of *Richards* from 2002, being up to 2 kg, where the Court of Appeal suggested that the appropriate starting point for such a quantity of cannabis falls within the range of 3 to 6 years' custody.

It has been suggested that you were involving yourself in what might be termed social supply to other family members and friends. This supply activity has also been linked to the first Covid-19 lockdown, but the earliest dates in this period of supply fall before that lockdown began, but then continued into it. We have also noted, however, that the content of the messages makes mention of cash amounts and so we find that there was still an element of financial gain involved in the supply you were undertaking.

It is not entirely clear what your role in relation to this enterprise was. The inference is that you were one of those who were being provided with the cannabis by others with a view to selling it on, even if some of the cannabis being supplied might not have resulted in any financial return.

For these reasons, we are satisfied that the custody threshold has been passed in respect of this first Count, but we accept that the total amount involved indeed falls within the lowest range of no more than 2 kg and, despite your active role in supplying to others over this period, will still take a starting point at the bottom of this range, namely 3 years' youth detention.

### **Mitigation**

The Court turns next to the personal mitigation in your case, where it has the benefit of the Probation Report prepared in relation to you. We also take into account what has been said by Advocate Morgan on your behalf and we have considered the letter you wrote and the other references submitted on your behalf.

We will give you full credit for your guilty plea. As already stated, we are treating you as effectively being of previous good character, which is a further positive factor in your favour. We appreciate that you are a young person, and note in particular your age when you committed these offences. You are in employment and are well-regarded by your employer. We are also aware that you did cooperate with the investigation by eventually volunteering the code for your iPhone, from which some of the evidence supporting the supply Count was extracted. You have expressed your remorse and you have a supportive family, where your upbringing has had an impact on you. All of these factors afford you strong personal mitigation.

We have further noted that you are assessed as having a low likelihood of re-offending and that the author of the Probation Report found you polite and respectful, which chimes with what others have written about you.

Reference has also been made to your liberal views about cannabis use. Indeed, some of the references we have read concentrate more on the perceived wrongness of what you have done even being an offence than concentrating on your personal qualities to which others have referred. It is important to remember that our society is founded on the rule of law. The legislature has enacted the offences you have admitted and this Court is obliged to apply those laws and will continue to do so consistently until they are changed. It does so in the light of the guidelines from the Court of Appeal. You, family members and others are, of course, entitled to express these views and can even lobby politicians to

seek to bring about legislative changes, but, until those changes are made, these offences exist and must be dealt with. In short, holding views like these do not, in our view, assist with your mitigation in relation to the offending for which we now have to sentence you.

## **Sentence**

Leo Donaldson, however difficult anyone's personal circumstances are, illicit drug use remains an offence. Those who use drugs illicitly depend on someone being prepared to supply those drugs to them. Without willing dealers, the supply chain would dry up and what we still regard as the misery that is caused by this type of offending would reduce or might even disappear. Whilst appreciating that the activities with which you were engaged last year may be towards the lower end of the spectrum, everyone involved in the supply chain inevitably plays their part in the drug culture operating in this Bailiwick. If you and others were turning to drug use to handle whatever situations you found yourself in, including those associated with the lockdown, plenty of others were managing those adverse circumstances without turning to crime. Guernsey Together is not founded on decriminalising cannabis use but on a real sense of clean community spirit. Unauthorised self-medication is simply no form of justification for what you were doing. This Court remains of the view that the sentences it hands down can, and should, continue to include an element of deterrence for others.

You know full well that supplying cannabis over a three-month period can attract an immediate custodial sentence. Indeed, even when taking into account your age and lack of relevant convictions, what you have done is, we find, so serious that a non-custodial sentence cannot be justified, meaning that, in accordance with the Criminal Justice (Youth Detention) (Bailiwick of Guernsey) Law, 1990, a sentence of youth detention is capable of being imposed today.

However, in your case, we have decided that we should not send you to the prison today. We have taken into account that you are young, have a good amount of other mitigation and that you have not previously faced custody, so we have decided that this is an appropriate case in which to make a community service order instead of imposing youth detention. In this way, we mark the seriousness of the offending and provide you with a means of making some reparation to the community. It also means that you can retain your employment and, we hope, put this experience of being before this Court to good use by never returning here, as you have promised.

In respect of Count 1 (the supply offence), the sentence is that you perform 240 hours of unpaid work under a Community Service Order, which is being made because of the seriousness of this offence.

In respect of Count 2 (the possession offence), we will not impose any separate penalty, being satisfied that the sentence on Count 1 suffices.

We note that you understand the strictures of such an order and have signed the relevant paperwork, so you understand its nature and effect, in particular 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 were to be convicted of a further offence while the Order remains in force.

The Order is being imposed as a direct alternative to a sentence of youth detention. In respect of Count 1, the alternative sentence that the Court was considering passing was one of 18 months' youth detention. The forfeiture and destruction orders sought by the Crown in respect of the cannabis and other paraphernalia mentioned are also 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 7 plus belonging to you is also granted. The Court notes again that this application was not resisted and in any event, the Court is satisfied that this device was lawfully seized from you and as the evidence showed, it had been used for the purpose of committing or facilitating the commission of an offence. We have taken into account as required by subsection (5)

of that section, the value and the likely financial and other effects on you of making the order before deciding to grant the Crown's application.

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

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

**6 August 2021**