

Possession of and being concerned in the supply of control drugs and offering to supply control drugs, in respect of Class A, B and C drugs.

[2021]GRC053

**ROYAL COURT
FULL COURT**

21 October 2021

**Before: Catherine Maureen Fooks, Judge of the Royal Court and Jurats:
Claire Helen Le Pelley,
Steven John Morris, Joanne Marie Wyatt, David John Robilliard,
Marilyn Jasmine King, Tina Jane Le Poidevin, Paul Martin Burnard, Heather Reed,
Simon Ernest Bodkin.**

THE LAW OFFICERS OF THE CROWN

- v -

STUART MICHAEL PAGE

**Advocate J D McVeigh appeared for the Crown
Advocate S Maindonald appeared for the Defendant**

JUDGE OF THE ROYAL COURT:

Background

Mr Page, you have pleaded guilty to 13 counts on 3 Indictments which concern possessing, being concerned in the supply of and offering to supply control drugs covering the period between September 2019 and February 2021.

The most serious count is that of offering to supply MDMA (Count 4 of Indictment 1) which carries a maximum penalty of life imprisonment. There are two counts of being concerned in the supply of, or offer to supply cannabis, each of which carries a maximum penalty of 21 years. There are two counts of being concerned in the supply of, or offer to supply Class C drugs, each of which carries a maximum penalty of 14 years. There are five counts of possession of cannabis, one of resin (1.3 grams) and four of herbal cannabis (total 23.37 grams), each of which carries a maximum penalty of 10 years. Finally, there are 3 counts of possession of Class C drugs, 19 tablets of Diazepam and 14 of Lorazepam, each of which carries a maximum penalty of 4 years.

The facts, in relation to each Indictment are very similar, in that there were four searches of your home address: 4 January 2020, 12 May, 2020, 10 December 2020 and 23 February 2021, at which times the various drugs which form the basis of the possession charges on each Indictment were discovered, along with cash, phones and drug related items. During the first and third searches two specific mobile telephones were seized and the messages on them contain the evidence which supports the various counts of being concerned in the supply of or making an offer to supply, controlled drugs.

During the first and second searches £1,670 and £150 cash respectively were seized from your home.

You were interviewed at least once after each search. You answered largely ‘no comment’ to the questions put to you as is your absolute right. At one interview you indicated that the drugs found at the property belonged to another person and that you were dependent on both prescribed and non-prescribed drugs. At another interview, when the mobile evidence was put to you, you sought to distance yourself from those messages which suggested drug-dealing and blamed another person.

Put chronologically:

- September 2019 - offending covered by Indictment 1 commenced.
- 4 January 2020 - first search of your home and then you were on police bail from that time.
- 12 May 2020 - second search of your home (Indictment 2 offences).
- 14 September 2020 - your first appearance in the Magistrate’s Court regarding the matters included on Indictments 1 and 2 from which time you were on Court bail.
- 10 December 2020 - third search of your home and that covered part of Indictment 3 offences.
- 23 February 2021 – the fourth search of your home which covers the remaining Indictment 3 offences.

You are a local man of 46 years of age. You are signed off work through incapacity and live alone in rented accommodation.

You have numerous previous convictions including 47 for theft/dishonesty, the last of which is for shoplifting in 2018 and 2 for drugs, one for possession of Class A in 1999, for which you received a suspended sentence of 3 months which was subsequently activated, and one in 1993 for possession of a controlled drug for which you received 7 days’ Youth Detention.

You have been on bail throughout the proceedings.

Sentencing Considerations

The sentencing guidelines applicable to offences involving the supply of drugs are contained in the case of Richards. Those guidelines were recently considered by the Guernsey Court of Appeal in Barras, Watt and Orchard v Law Officers 2021 GCA045 and were re-affirmed as ‘current and appropriate’. This Court will continue to follow those guidelines.

You face a range of offences involving all classes of controlled drug. The most serious is the offering to supply Class A, MDMA. We will take this as the lead offence and treat all the others as aggravating it.

The lowest starting point in Richards for Class A is 7 years.

In relation to this count, in common with the other “supply” counts, there is no quantifiable amount of drugs in these counts. The Court has to try to determine the level of dealing in each case, from the messages during the period covered by the count and the evidence in the round. In the messages presented to the Court on this count, there are three references to MDMA, one in December 2019 to your having accidentally left the drugs in a bag with other drugs for a customer, one 2-days later when you are offering MDMA crystal in two messages and again on 31 December 2019. The Court’s view is that your dealing in Class A drugs was continuing during that period, which is a very serious matter and highly damaging to our Island community. The Court cannot accept that you were just ‘showing off’.

The Court is of the view that all the offences represent a continuing course of conduct of dealing with drugs over a period and possessing them.

In the circumstances we take 7 years as the starting point and will then look to increase that to take account of the other offences and then any aggravating or mitigating factors.

In relation to the Class B supplying offences, the counts cover a period of just over a year from November 2019 (Count 2 Indictment 1) to December 2020 (Count 4 Indictment 3). The lowest sentencing band for the supply of Cannabis and Cannabis Resin is 3-6 years for quantities up to 2 kilograms and the Court considers that your offending falls within that band. If setting a separate starting point, we would have looked at the lower end.

There is no guideline in Richards in relation to the supply of Class C drugs. We consider that a starting point of approximately 18 months would have been appropriate were you facing only those counts.

The possession offences must be considered carefully as possession falls outside Richards and the Indictment 2 offences would have been dealt with by the Magistrate's Court. The quantity of herbal cannabis (Count 1 Indictment 1) found at your home, was not insignificant and you had a lot of Tramadol tablets, which were not your prescription medication. The reference to 'gabs' (Gabapentin) and evidence that you were selling Lorazepam and Diazepam in the messages forming the evidence on Count 4 of Indictment 3, suggests that you were content to sell (and we accept take in exchange), whatever you could.

The values of the drugs seized were not huge: £76 for the diazepam, £100.00 for the tramadol and up to £701.10 for the herbal cannabis and up to £91 for the cannabis resin, but your messages indicate that you were turning over your stock quickly.

In the circumstances, the Court will take a revised starting point of 8 years for the lead count (Class A) incorporating the other offences before considering the aggravating factors. It hardly needs to be said that the Court is satisfied that the custody threshold in respect of your offending has been passed and you have very sensibly conceded that.

Aggravating and mitigating factors

There are aggravating factors in your case, including the protracted period of offending and the range of drugs involved, but most significantly, on 28 October 2018, you had been made subject to a Community Service Order for theft, which Order was still active in November 2019 and was not completed until September 2020. Indeed, in one message you say that you will be able to deliver some cannabis "after Community Service".

The offences committed since 14 September 2020 were committed whilst you were on Court bail and awaiting sentence in respect of Indictments 1 and 2. The offences in Indictment 2 were committed while you were on police bail. You clearly have no respect for the police or Court bail system.

We consider that the variety of drugs, numbers of contacts, the evidence of chains of supply and the sums of money found at your home, indicate an operation which is more than just to fund your own habit.

The application of aggravating factors will increase the starting point to 9½ years. We will deal with your co-operation with the passcode separately below.

Mitigation

Plea

The Court must first consider the impact of your guilty pleas on sentence. We cannot in all the circumstances afford you full credit.

Mitigation

The Court has considered the carefully collated and sensible Probation Report prepared in respect of you. We have also listened to the very well-crafted and succinct submissions of your Advocate. She made some good points.

We considered the provision of your passcode to the police voluntarily to be very much to your credit and important mitigation in your case.

In interview with the probation officer preparing the report, you explained that you were using substances to manage physical ailments and avert various life stresses which had led you to requiring increasing quantities. You denied that your intention was to benefit financially. This does not ring true in the light of your communication with a number of individuals regarding various substances you have on offer and the cash you have at your home.

You have expressed remorse but we have to question whether that is genuine in the light of your continuing offending behaviour. We can put it no better than the probation officer, who says that you are: *“motivated to use substances and will surround himself with like-minded others. He's not likely to have had qualms about supplying others with drugs despite his current purported remorse.”* You were candid though, when you told her: *“I knew what I was doing it wasn't right .”*

In your interview you demonstrated that you understand the harm that drugs can cause but you carried on nonetheless because you chose to do so. Police and Court bail and the fact that you were undertaking a Community Service Order did not matter at all to you.

In your fourth interview you told the police that you were sick of the police constantly searching your address. We expect that they felt the same and your offending has taken up a lot of police time.

You are a person who enjoys working but unfortunately you have been unable to do so for medical reasons. Your ill-health has affected your life in various ways but has not prevented you from committing these offences.

We are told that you are currently very stable on your treatment prescription for opiate addiction and that you are submitting to drug tests regularly. This is positive, but the results of those tests and your own admissions disclosed that you are still using cannabis and illicit diazepam on top of your prescription.

You are not a person of previous good character, though you have very little recorded against you in terms of drugs and those convictions are old. You have spent a considerable time in custody over the years during which time you have accessed various services and support. At times you have also accessed support in the community but, when things start to go wrong for you, you resort to your old ways of coping which involve offending of one sort or another. Your offending needs to be stopped.

Unsurprisingly, you are assessed as having very high likelihood of re-offending which we must take into account. At 46 years old, that is disheartening – you should have learnt by now. That likelihood of re-offending may reduce if you are able to engage 100% with the treatment and support available to you. You have told the probation officer that you want to engage with the support available.

Sentence

The custody threshold is clearly passed and non-custodial alternatives are not appropriate in your case and that case, very sensibly, is not being advanced on your behalf.

In sentencing you we have taken into account the totality principle. You are no stranger to custody. You told the interviewing officers that you were mentally prepared for prison. It is entirely in your

hands what happens while you are in custody – the support is there for you - and also entirely in your hands what happens when you are released. You could decide that this is the last time you appear before this Court. We hope so for your sake and for the sake of the Community.

Taking into account all the above and applying what discount we have determined to be appropriate, the sentences, which will all be concurrent are as follows:

Indictment 1:

- Count 1 – 6 months' immediate custody.
- Count 2 - 2½ years' immediate custody.
- Count 3 – 1 year immediate custody.
- Count 4 - 6½ years' immediate custody (this is the lead offence).

Indictment 2:

- Count 1 – 3 months' immediate custody.
- Count 2 – 3 months' immediate custody.

Indictment 3:

- Count 1 – 3 months' immediate custody.
- Count 2 – 1 month immediate custody.
- Count 3 – 2½ years' immediate custody.
- Count 4 – 1 year immediate custody.
- Count 5 – 3 months' immediate custody.
- Count 6 – 1 month immediate custody.
- Count 7 – 2 months' immediate custody.

This makes a total of 6½ years immediate custodial sentence and all these sentences run concurrently.

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.

Forfeiture under the Misuse of Drugs (Bailiwick of Guernsey) Law 1974 as amended

The Crown's application pursuant to section 26 of the Misuse of Drugs (Bailiwick of Guernsey) Law 1974, as amended, for the forfeiture and destruction in respect of the drugs set out in the table 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.

Forfeiture s3 Police Property and Forfeiture (BOG) Law 2006 as

The Crown's application pursuant to section 3 of the Police Property and Forfeiture (Bailiwick of Guernsey) Law, 2006 in respect of the 2 Samsung mobile phones is also granted and the Court notes that this was not resisted. The Court is satisfied that these items were lawfully seized and that the analysis of them shows they have been used for the purposes of committing or facilitating the commission of an offence, as evidenced by your pleas. The Court has, as required by subsection (5),

had regard to the value of the property £160-£200 (together) and the likely financial and other effects on you of making the Order, before deciding to grant the Crown's application.

Mr Page, therefore, I repeat, the total sentence today is:

- **Imprisonment of 6½ years;**
- **Forfeiture and destruction of the two phones;**
- **Forfeiture and destruction of the drugs.**

As I have said, what happens thereafter is in your hands. We hope not to see you again.

You may now go with the officers.

Catherine Maureen Fooks
Judge of the Royal Court

21 October 2021