

Assault, supplying a controlled drug of Class B, namely cannabis resin, to another in contravention of section 3(3)(b) of the Misuse of Drugs Law 1974, as amended, failure to disclose certain information within seven days, as required by a notice served under section 46 of the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003 and knowingly permitting the smoking of cannabis resin as the occupier of a premises.

[2021]GRC070

**ROYAL COURT
FULL COURT**

5 July 2021

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

**Claire Helen Le Pelley, Terry John Ferbrache,
Steven John Morris, Joanne Marie Wyatt, David John Robilliard,
Tina Jane Le Poidevin, Paul Martin Burnard, Felicity Jane Quevâtre-Malcic,
Heather Reed.**

THE LAW OFFICERS OF THE CROWN

- v -

Louise Elizabeth GILBERT

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

JUDGE OF THE ROYAL COURT:

Background

Miss Gilbert, you appear today to face two Indictments.

The first Indictment contains a single Count that you, together with Darren Paul Rouget, on the 29th of May 2020 assaulted Leon Thompson, to which you have pleaded guilty (and I will call that “the Assault”). This offence carries a maximum sentence of life imprisonment.

The second Indictment contains three counts.

Count 1 is that on or about the 11th April 2020, you were concerned in the supplying of a controlled drug of Class B, namely cannabis resin, to another in contravention of section 3(3)(b) of the Misuse of Drugs Law 1974, as amended. You were found guilty of this offence following trial (and I will call it “the Supplying offence”). The maximum sentence for this offence is 21 years’ imprisonment.

You have pleaded guilty to Count 2 that, between the 19th May 2020 and the 28th May 2020, you failed to disclose certain information within seven days, as required by a notice served under section 46 of the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003 (which I will call “the RIPL

offence”). The maximum sentence for this offence is two years’ imprisonment, or a fine up to Level 5, or both.

You have also pleaded guilty to Count 3, that on the 10th April 2020, being the occupier of premises namely 4 Pont Vaillant Estate, Vale, did knowingly permit the smoking of cannabis resin at those premises (I will call that “the permitting smoking offence”). The maximum sentence for this offence is 21 years’ imprisonment.

The facts in relation to the Assault are that on 29th May 2020, you and your co-accused went to the home of the victim, the door was opened to you and your co-accused barged in and attacked Mr Thompson. In the course of the attack, your co-accused held a knife, picked up in the kitchen, to the victim’s throat. You both punched him repeatedly to the head. The incident was recorded on a mobile telephone by another person present and you can clearly be seen and heard to threaten and assault the victim and encourage your co-defendant to continue in his prolonged attack. The video footage speaks for itself. Fortunately, it was brought to an end by the intervention of third parties.

The version of events given by you to the Police in interview was far from the truth. The matters in relation to the Second Indictment are as follows: at 23:15 on Friday 10th April 2020, officers were sent to your address at 4 Pont Vaillant Estate, following a report of a house party and sighting of what were believed to be controlled substances inside. It is to be noted that Guernsey was in Covid-lockdown at that time.

On arrival, the Police could see a number of people in the lounge, including a man smoking a ‘bong’ made from a drinks bottle. Police gained entry and found a number of people including you, upstairs.

Officers found and seized a number of drug related items. A Police dog was sent into your house and led officers to a set of drawers, one of which was locked. You made the keys available. While outside, you made voluntary comments to an Officer to the effect that it was not your drawer, that it was Chris’ and that, “if you went into it you would get killed or possibly get shit for it and that when he phones it would be interesting”.

The drawer was opened and found to contain two blocks of Cannabis Resin, weighing 133.66g, a set of electronic scales and a brown envelope. You were arrested, cautioned and taken to the station. A number of other persons were also arrested.

As was your right, you chose not to answer most questions about the drugs. You said that the blocks of cannabis were nothing to do with you. You did give evidence at your trial.

Crown Advocate Russell has set out some detailed passages from the calls between you and your then partner (who was in prison), which indicate that you had knowledge of the presence of the blocks of cannabis. Ultimately the Court did not accept your version of events and found you guilty by a majority.

The value of the two blocks of cannabis resin is between £2,673.20 and £4,009.80.

At trial, you could not explain why you let people smoke cannabis in your house. You said, “I honestly don’t know why”. You denied that the cannabis smoked came from the drawer and said that the smokers had brought it with them, along with the bongs. We are of the view that it was more likely that the cannabis was pooled.

A number of phones were seized during the raid including your rose gold iPhone, the subject of the RIPL offence. You refused in interview and since, to give the PIN but, more than that, you deliberately got your Advocate to write to the Police claiming that it was not your phone.

You are a local woman of 20 years of age (19 on the dates of the offences). You left school with few qualifications and have worked “sporadically”. You live in social housing and are in receipt of benefits.

You have one previous conviction for assault and have been referred to the Convenor for assault and criminal damage. We accept your Advocate's submissions that the referrals are not to be equated with convictions.

You have been on conditional bail throughout the proceedings including a drinking ban and alcohol testing condition.

Sentencing Considerations

Assault is a common law offence. There is no guideline case. It has been said many times that Guernsey is entitled to set its own sentencing policy and this Court has always viewed assault involving blows to the head and the use of knives as serious.

The quantity of cannabis in the Supplying offence is 133.66g and this falls squarely within the Richards Guidelines which set the band for 0-2kg as 3-6 years' imprisonment.

Aggravating and Mitigating Factors

The Assault is a standalone offence, unconnected with the drugs and RIPL offences. There will be separate sentences for all three. We will set those sentences and then review the overall sentence by reference to the totality principle.

Starting with the Assault, we have watched the video footage of the Assault and agree with the Probation Officer that it was "distressing" to watch. You yourself could barely watch it. You were out of control. You are charged jointly and are therefore responsible not only for the blows you struck and your threats and insults to the victim, but also for your co-accused's behaviour, though we note that you did not touch the knife. It is our view that you were the driving force in the attack - you appeared to be enjoying it.

We consider that there are many aggravating factors:

- the assault was pre-meditated
- the victim trusted you and opened the door to you
- your co-accused then barged his way into the victim's home thus violating it
- the assault was of a sustained nature and long in duration
- the assault occurred at night and was carried out by more than one person
- there were repeated serious threats in the course of the assault
- the other person used a knife
- you made transphobic comments during the attack
- you were under the influence of alcohol
- you were, at the very least, under investigation for the drugs offences.

There is one mitigating factor, that, by pure luck, the injuries sustained were minor. This was a horrible assault on the victim.

Turning to the Supplying and Smoking offences, we will treat the Supplying and Permitting offences as arising from the same facts with the smoking, aggravating the Supplying offence (that Supplying offence is in itself aggravated by the fact that there was a Covid breach) but we will sentence those two offences concurrently.

We accept that there is some evidence of coercion in relation to the Supplying offence which is a mitigating factor. We note that you maintain your innocence.

We consider that the commission of the RIPL offence, which was calculated, is aggravated by your pretending that the rose gold iPhone was not yours and wasting the valuable time of the police. The sentence for the RIPL offence will be separate from the other offences.

You are under 21 years of age and we must therefore consider the terms of the Criminal Justice (Youth Detention) (Bailiwick of Guernsey) Law, 1990.

As your Advocate rightly said, a sentence of immediate custody should be a last resort. The Court is satisfied that the custody threshold in respect of your offending has been passed and that a custodial sentence is necessary, in the case of the Assault for the protection of the public and in the case of the Supplying offence because the offence is so serious that a non-custodial sentence cannot be justified.

We note that your co-accused received a sentence of 2 years' immediate custody for the assault. We therefore take the following starting points:

- for the Assault – 3 years
- for the Supplying, which has been increased to take account of the Smoking offence – 3 years and 3 months
- for the Smoking offence – 3 months
- for the RIPL offence – 12 months

Mitigation

The Court must first consider the impact of your guilty pleas on sentence. As was your right, you elected to be tried in respect of the Drugs offence (the Supply offence). You were found guilty and are not, therefore entitled to any guilty plea discount on that matter.

You entered early guilty pleas to the Assault and Permitting Smoking offences. You had little choice as the Assault was captured on video and the police broke up the smoking party. You initially pleaded not guilty to the RIPL offence but changed that plea to guilty late in the proceedings on 24th May 2021. Whilst the evidence proving that the phone was yours was served late, you knew full well that it was your phone and you should have pleaded from the outset if you wanted the full credit. In view of the late change and the deliberate nature of this offending, you are not entitled to full credit.

We afford you what we can in terms of credit for your guilty pleas.

The Court has considered carefully the Probation Report prepared in respect of you. We are not impressed that you failed to attend the read through of the report and have not engaged generally.

We have also listened carefully to the realistic and thoughtful submissions of your Advocate. We note that at the time of the offences, you are described as being on “self-destruct”, drinking to excess and self-harming. We note that a Care Requirement had just been made in respect of your child.

Your personal mitigation

The information about your background makes for sad reading. You have experienced a number of difficulties in your short life described as “chaotic” and as part of which you were a victim of an abusive relationship. You have tried to cope by using drugs and/or alcohol. It is said that you were in “a very bad place” at the time of the offences. You have said that you are no longer taking drugs or drinking alcohol and that you are a different person now. This is a positive and it can only be hoped that you can sustain the changes.

You have shown limited remorse although there are signs that you are at least developing some insight into how the victim of the assault felt.

The Court is concerned that you still seem unable to accept full responsibility for the offences you have committed, especially the Assault, your involvement in which you tried to minimise. When faced with the video footage, you had no choice but to accept your behaviour. It is no excuse to blame alcohol. You clearly have an issue with anger, and you need to deal with that. It is worrying to read that you have the propensity to harm others when distressed, compounded by alcohol, in other words when upset and drunk. Upset and drunk is a state you are likely to be in in the future if you do not take action now to deal with what makes you upset, how to cope with it and how to deal with alcohol.

You are disappointed in yourself and rightly so and you are scared about the outcome of today, also rightly so. BUT, you are still not ready to take the help you need from the Adult Mental Health Service. You should take that help.

You are a young person which is an important factor for this Court. We have to focus not just on the seriousness of the offences, your culpability, risk of reoffending and harm caused but also on your rehabilitation. It may be that, as you mature, you will be less of a risk to the community but, unless you deal with your issues, maturing may well not decrease that risk at all.

You said during your trial that you were subject to the coercive control of your partner to whom the cannabis at the house belonged. The Court did not accept your denial of knowledge of the cannabis, resulting in your conviction, but the Court does accept that you appeared genuinely to be in some fear, as is set out in the Probation Report, when you said “if I go in it [the drawer] I get killed”. As a young person you are more susceptible to outside pressures. That said, your involvement with drugs was not confined to being the unwilling custodian of two blocks of cannabis. When the police arrived, your house was full of people smoking cannabis and the paraphernalia that goes with it.

We note that you have not committed any further offences since last May. We also note that there is no request for a drug trafficking investigation.

You are assessed as having a high likelihood of re-offending and as posing a risk of direct physical harm to the public, especially when under the influence of alcohol, which we can and must take into account.

You have not kept all your appointments with Probation and even your GP who is trying to help you, and you are not yet ready to accept the help you need from the Adult Mental Health Service. Nonetheless, the recommendation in the report is that we suspend any sentence of imprisonment and combine that with a Probation order and there is a recommendation for a Community Service Order.

We have reminded ourselves constantly that we must take particular account of your age and the totality principle, but we cannot accept that recommendation.

The combination of the Supplying and Smoking offences, the Assault and the RIPL make it impossible, even factoring in the totality principle to get down to a sentence which allows for a non-custodial alternative.

Even if we could reduce the length of the overall sentence to allow for that consideration, we consider that it would be setting you up to fail, and that you would either breach the CSO, fail to attend Probation meetings or re-offend, thus triggering re-sentence. Further, such sentences would not mark the seriousness of the offences or protect the public.

Whilst a sentence of immediate Youth Detention is a last resort, it is unavoidable in your case, even taking account of your youth and giving you a substantial discount for pleas and mitigation. The Court will, however, reduce the sentences to the minimum

We also consider it appropriate to impose a Probation Order with a Supervision Plan proposed with a view to your rehabilitation especially post release.

Sentence

Miss Gilbert, you are here because you have committed a number of offences, a nasty and serious assault on a person at his home, involving yourself in the supply of cannabis by at least looking after two blocks of cannabis, allowing your house to be used as a place to smoke cannabis and refusing to give your PIN to investigating officers.

You are a young person, now 20, 19 at the time of the offences. Were it not for your youth you would be going to prison for much longer today. Now is the time to get yourself sorted out. The Probation Order will help you with that and you must attend all meetings and do as you are told, otherwise you will be back before this Court. You need to accept responsibility for what you have done and take the help offered to change your life.

Taking into account what discount is available to you in respect of pleas, mitigating factors, your youth and your other personal mitigation, we sentence you as follows:

First Indictment Count 1 Assault – 1 year’s Youth Detention with immediate effect from today.

Second Indictment Count 1, being concerned in the Supplying of cannabis – 1 year’s Youth Detention from today, consecutive to the Assault sentence.

Count 2, permitting the smoking of cannabis – 2 months’ Youth Detention, concurrent to the Supplying sentence.

Count 3, the RIPL offence – 9 months’ Youth Detention from today, consecutive to all above sentences.

Total – 2 years and 9 months from today with a Probation Order of 18 months

We also order Forfeiture and Destruction of the exhibits as sought, specifically making reference to the Forfeiture only of the two blocks of cannabis.

Compensation is not a viable option in this case.

Youth Detention

We are satisfied that a custodial sentence is necessary as set out before, both in terms of the seriousness of the offences and the need to protect the public. These considerations arise because of your age under the Criminal Justice (Youth Detention) (Bailiwick of Guernsey) Law, 1990.

On release, you will be subject to the supervision of a Probation Officer for a period of 3 months starting from the date of your release, or the date upon which you would have been released 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.

As already mentioned, the Court is satisfied that it is appropriate to add a Probation Order into your sentence and we do so for the period recommended in the report of 18 months. Over that time there will be an opportunity to get a fuller understanding of your offending behaviour and how you can

respond more appropriately. It will enable work to be done around management of your emotions, use of violence and aggression and drug and alcohol misuse. Such an Order is imposed for the purpose of your rehabilitation to prevent you from offending further and to protect the public. We are satisfied that you have had explained to you, the purpose and effect of such an Order and the powers that follow if it is breached, including the consequences.

You must keep in contact with your Supervisor in accordance with the instructions you will be given from time to time and you do have to notify your Supervisor of any change of circumstances which may become applicable on your release. And, you must not do anything to undermine the purposes already mentioned for which the Order is made. If you were to fail to comply, you would be returned to Court which has the power to continue the Order, with or without variation, fine you or even revoke it.

The Crown's application, pursuant to section 3 of the Police Property and Forfeiture (Bailiwick of Guernsey) Law, 2006 in respect of the rose gold iPhone is also granted. The Court notes that this has not been resisted. The Court is satisfied that this item was lawfully seized and that it is reasonable to infer that it has been used for the purpose of committing or facilitating the commission of an offence. The Court has, as required by subsection (5), had regard to the value of the property and the likely financial and other effects on you of making the Order before deciding to grant the Crown's application.

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 in respect of the forfeiture only of the two blocks of cannabis and the forfeiture and destruction of the bong and 0.1g of cannabis is also granted. The Court notes that this has also not been resisted. The Court is satisfied that these items were lawfully seized and relate to the offences.

In summary, the sentences today are:

- Youth Detention – 2 years and 9 months from today
- Probation Order of 18 months
- Forfeiture and Destruction of the exhibits as just set out.

Catherine Maureen Fooks
Judge of the Royal Court

5 July 2021