

mentions *R v Petherick* [2013] 1 Cr App R (S) 116 as the reason why immediate custody was disproportionate.

3. The first issue to determine is the application for an extension of time in which to make this application. Section 30 of the Court of Appeal (Guernsey) Law, 1961 requires an application for leave to be made within 10 days from the date the Court dealt with the Applicant. The Applicant understandably had other matters on her mind between the date when she was sentenced and the expiry of those 10 days, due to the birth of her child. In those circumstances, I have no difficulty in extending the time for this application by an additional 7 days so as to enable it to be considered. To do otherwise would, in my view, plainly be unjust.
4. The sentencing remarks explain how the Royal Court approached this sentencing exercise. On 13 June 2020, some 69.71 grams of cannabis were found during a search of the premises where the Applicant resided. The Court then relates to a period of around 4 weeks and, on the Applicant's admissions, she was selling approximately 60 to 70 grams each week. As such the Court extrapolated to a figure for dealing of around 240 to 280 grams by using a multiplier of four. It noted the band of starting points found in the guideline case of *Richards* 2000-02 GLR 247 in respect of this amount of 3 to 6 years' imprisonment. Although the second indictment related to a later importation of a smaller amount, being 13.59 grams of cannabis, the Court noted that the misuse of the postal system was an aggravating factor. This offence was also committed whilst on bail for the earlier offending covered by the first indictment, which was regarded as a notable aggravating factor. Having regard to all these factors, the Court took a combined starting point of 4 years' imprisonment. The Court stated that the starting point for the RIPL offence had to be realistic and so chose 8 months' imprisonment.
5. The mitigation advanced on her behalf, having regard also to the pre-sentence report and the letters produced, was combined with her guilty pleas and resulted in a discount of 50% from that starting point, which was stated to be "*larger than would normally be the case, principally because of your age and personal circumstances*". Reference was also made to a previous decision of this Court in *Shakespeare* relating to the effect of a sentence of immediate imprisonment on a parent and child.
6. By reaching a final sentence of 2 years and 4 months' imprisonment, the Court had no choice but to impose an immediate custodial sentence on the Applicant. The question for this application is whether the sentence that the Court should have had in mind should have been lower and so have enabled consideration of an alternative to an immediate custodial sentence.
7. In my judgment, there can be no criticism of the starting points taken. Having regard to the totality principle, the Court properly looked at these offences together. If viewed in isolation, the drug trafficking offences on each Count were both of a type where they fall towards the lower end of the applicable band of starting points in *Richards*. There has been no suggestion that these were very small quantities and so the Court was bound to start the exercise in the manner it did. The first Count on the second indictment may have been less serious in terms of culpability than the time spent in active supply the previous year, but it was committed at a time when the Applicant was being dealt with for that earlier offence, where she had been admitted to bail, and so that was a very significant factor making it far worse than an isolated postal importation of this amount. Indeed, a differently constituted Court might have taken a higher starting point but the 4 years for the drug trafficking offences falls within the range to be expected. Similarly, in the absence of any guidance from this Court as to the approach to be taken, using a starting point of 8 months' imprisonment for the RIPL offence appears to me to be towards the lower end of what might be expected. This is particularly relevant in light of the admitted dealing the previous year. The Applicant can probably also count herself as lucky that no further time in custody was added for the breach of the suspended sentence.

8. As a result, the focus inevitably has to be on the mitigation in the Applicant's case and whether it was sufficient to bring the final length of a prison sentence to 2 years or below.
9. By combining all the mitigation on behalf of the Applicant into an overall discount of 50%, it makes it slightly harder to understand how this discount was reached for the purpose of reviewing than it would be if each distinct aspect of the mitigation had been addressed separately. However, this is not an uncommon approach for the Royal Court to take.
10. The Applicant had entered guilty pleas. However inevitable they may have been, when entered or indicated early, this tends to attract a discount of one-third from the Court's starting point (see, eg, para. 15 in *Richards*). It may be that the other personal mitigation being taken into account as part of this process means the impact gets treated as being reduced when affording a defendant such a full one-third discount. What matters, of course, is the end result. Accordingly, in the absence of any fuller explanation, in addition to these pleas, the other principal aspects of the further mitigation were identified as being the Applicant's age, her personal circumstances and that all relevant matters had been taken into account.
11. The pre-sentence report sets out in some detail what those personal circumstances were. It explains that the Applicant has not always responded well to other attempts by the Court system to help her, but still indicated that, if the Court were minded to impose a community sentence, she was suitable for such a disposal. In particular, it is apparent from this material that the Court was well aware that the Applicant was due to give birth shortly after being sentenced. As such, although not explicit, it is apparent that the principles from *Petherick* were aired and considered.
12. Having regard to all the factors that are mentioned as having been raised and considered by those sentencing the Applicant, I do not consider that the final sentence imposed is one outside of what was a permissible range of sentencing for the totality of what was before the Court and so is not obviously manifestly excessive. It was effectively the offending reflected in the second indictment that significantly increased the seriousness of the matters for which the Applicant fell to be sentenced. In my view, the sentencing Court was entitled to bear in mind that those offences were committed at a time when the Applicant must have known she was pregnant. In those circumstances, the principles in *Petherick* need to be taken into account in context. The imposition of a sentence that did not entail immediate custody, eg, by way of an alternative disposal such as suspending the sentence or imposing a community service order, was much more readily available in respect of the first indictment alone, but the second indictment is why the final sentence became one of immediate custody.
13. Considering the discount properly to be afforded to the Applicant is not solely a mathematical exercise, although it has been described in that fashion. As I have indicated, the starting points taken might have been slightly higher and the default position in respect of the activation of the suspended sentence would have been to run any sentence consecutively. Accordingly, before moving to consider mitigation, the Court was entitled to find that the custody threshold had been passed by quite some way. As a result, by reference to *Petherick* and subsequent decisions, this was not a case in which the Applicant found herself on the cusp of custody where her circumstances might have led instead to a community sentence as opposed to custody. If any cusp is involved, it relates to whether a sentence of more than 2 years' imprisonment was warranted for the totality of her offending. The Royal Court was informed about the arrangements that were in place for her baby, once born, meaning that this is not a case where the Court lacked information. Ultimately, the Court had to weigh the legitimate interests of reflecting what the Applicant had done, where custody would be at the forefront of the sentencers' minds, and the family rights of her and her soon-to-be-born child. In this regard, I cannot conclude that the Court's exercise of discretion inevitably means that the Court's decision was a disproportionate outcome, as asserted by her ground of appeal.

14. For these reasons, I am not persuaded that, sitting as a single judge, I should grant the leave to appeal sought by the Applicant.
15. However, I am satisfied that the question of whether the totality of the mitigation advanced on her behalf covers some discrete issues that might be argued in greater depth. As a result, rather than leaving the Applicant to renew her leave application, if she is so minded, I will take the step of referring her application to the plenary Court to consider whether this is an appropriate case in which leave should be granted. In doing so, the plenary sitting will potentially have the benefit of more expanded submissions on behalf of the Applicant on those areas touched on in the mitigation than I currently have. In doing so, I will also grant the Applicant legal aid to enable this application for leave to be advanced at a suitable sitting of the plenary Court.

Richard McMahon
Bailiff