

Application for leave to appeal against sentence, on the ground that the sentence of 8 years was manifestly excessive and an application for legal aid.

[2022]GCA022

IN THE COURT OF APPEAL OF GUERNSEY
CRIMINAL DIVISION

Between: **MARTYN STEVEN CLARKE** **Applicant**

-v-

THE LAW OFFICERS OF THE CROWN **Respondent**

APPLICATION FOR LEAVE TO APPEAL AGAINST SENTENCE AND LEGAL AID

Decision on the Papers

Decision of Richard James McMahon, Esq., Bailiff

Date of Decision: 16 May 2022

The Applicant is not currently represented

1. The Applicant, Martyn Clarke, faced an Indictment containing six Counts. Having entered not guilty pleas on each Count, late pleas of guilty to two of the Counts (1 and 3) were then entered, but there was a *Newton* hearing in respect of the facts relating to them. At the end of the trial on 9 March 2022, the Applicant was found guilty in respect of the other four Counts, by five votes to three each time, and the Jurats were unanimous in accepting the prosecution version of events on the two other Counts to which he had pleaded guilty. On 27 April 2022, the Applicant was sentenced to a total of eight years' imprisonment. That length of sentence was imposed in respect of Count 2, which related to being concerned in supplying THC, which is a Class A controlled drug, over a period of 5 days in January 2021, and the sentences for the other Counts were shorter and made to run concurrently. All Counts are drug trafficking offences.
2. The Applicant's Notice of Appeal is dated 2 May 2022. It appeals both his convictions and his sentence. In respect of the latter, it simply states that the sentence of eight years is manifestly excessive, although the final ground also raises an issue about monies being taken that he had received as compensation, but that strikes me as relevant to the confiscation order proceedings, which I understand have not yet concluded. In respect of the former, there is a ground relating to misinterpreting text messages as it relates to Count 2 and the THC, an allegation relating to the police interviews, and finally concerns raised about the quality of his legal representation.
3. The appeal against conviction operates as of right; no application for leave is required. Whilst it would be open to me to consider whether the grounds advanced in the Notice of Appeal have any merit before considering the position relating to legal aid, I recognise that these grounds

have been drafted by a litigant in person, so I consider that it is better to proceed on the basis that, if legal aid is granted, the grounds of appeal will either be perfected or the appeal against the convictions will be abandoned. In these circumstances, I will make no comment on the merits of any of the three grounds currently pleaded. Accordingly, I take the view that it is pragmatic to grant the Applicant legal aid to pursue the appeal against conviction. In this manner, the plenary Court ought to be better placed to consider matters than if I were to refuse to grant any further legal aid at all. In other words, a decision to refuse to grant legal aid would potentially lead to the Applicant, as Appellant, proceeding to argue his appeal against conviction without the assistance of legal representation, which I do not regard as being in the interests of justice.

4. Having taken that decision, I am also minded to refer the application for leave to appeal against the sentence of eight years' imprisonment to the plenary Court for it to consider whether leave to appeal should be granted. The grant of legal aid, therefore, covers both the appeal against conviction and the continuation of the application for leave to appeal against sentence.
5. If there were no appeal as of right against conviction, my decision would be different. The application for leave to appeal against the sentence of eight years' imprisonment would have been refused and legal aid would not have been granted. The Applicant would then have had to decide whether to renew the application before the plenary Court. I mention this now in order that the Applicant understands that I would not have found his appeal against sentence an arguable one, being satisfied that the sentence falls within the range open to the Royal Court to impose. In the event that the Applicant secures representation, these comments might assist.
6. The guideline case of *Richards* 2000-02 GLR 247 explains that, where drugs in different Classes are involved, there should be a combined starting point. The level of dealing had been ascertained from an analysis of the Applicant's mobile telephone. (At this stage, I have not considered whether the ground of appeal against conviction relating to misinterpreting these messages has merit, and proceed on the basis that the Royal Court reached the correct interpretation. If the appeal against the conviction on Count 2 were to be allowed, it would inevitably follow that the sentence of eight years' imprisonment is manifestly excessive.) The combined starting point was 10 years. Bearing in mind the band for Count 2 indicating a starting point of seven to nine years' imprisonment, I do not consider that aggregating all of this offending to reach a 10-year starting point can in itself be said to be manifestly excessive.
7. There were also aggravating factors present, particularly the Applicant's previous convictions. In those circumstances, before turning to personal mitigation, the sentence the Court must have had in mind would have been longer than 10 years. The discount referred to for personal mitigation is put at 20%. This appears to have arisen from a combination of agreeing evidence, so shortening the length of the trial, and the reference to the Applicant having had a difficult life. Another Court may not have been as generous as that. For example, in respect of Count 2, a not guilty plea had been maintained throughout and resulted in the Applicant's conviction. On that Count, therefore, there was no discount available for a guilty plea. What matters is not so much the route by which the Court reached the sentences to be imposed, concentrating on the overall length, and having regard to the totality principle, but whether that sentence is manifestly excessive. In my judgment, a total sentence of eight years' imprisonment for these six Counts following what was largely a full trial cannot be said to fall outside the band of sentences for such offending. That is why, if viewed in isolation as an application for leave to appeal against the sentence, there would have been no leave granted and legal aid would be refused. The Applicant may wish to bear this in mind in deciding how to proceed.
8. For the reasons I have given, I will grant the Applicant legal aid to pursue his appeal against conviction, if that is what anyone who is instructed to represent him advises is the way in which

to proceed, and such legal aid will extend to the leave application in respect of the sentence, which is now referred to the plenary Court.

Richard McMahon
Bailiff