

Repeat breach of Court ordered Community Service and Probation Order.

[2022]GRC031

**ROYAL COURT
FULL COURT**

18th March 2022

**Before: Catherine Maureen Fooks, Judge of the Royal Court and Jurats:
Stephen Murray Jones OBE, Claire Helen Le Pelley, Steven John Morris,
David James Mortimer, Joanne Marie Wyatt, Marilyn Jasmine King,
Felicity Jane Quevâtre-Malcic, Heather Reed, Simon Ernest Bodkin.**

THE LAW OFFICERS OF THE CROWN

- v -

JAKE PAUL GALLIENNE

Advocate R J Calderwood appeared for the Crown

Advocate L C Roffey appeared for the Defendant

JUDGE OF THE ROYAL COURT:

Background

Jake Gallienne, you were sentenced by this Court on 10th February 2021 to 120 hours under a Community Service Order for an offence of assault, as a direct alternative to 6 months' imprisonment, plus a further 40 hours' Community Service for possessing a small quantity of cannabis. In addition, an 18-month Probation Order was made, which was intended to "*provide support to you as you strive to free yourself from excessive alcohol use and substance misuse*". That Probation Order will end in August 2022.

You breached those Orders by committing 2 offences of disorderly behaviour on 2nd May 2021 and on 5th August 2021 this Court sentenced you to an additional 40 hours' Community Service on each offence of disorderly behaviour, concurrent to each other but consecutive to the 160 hours above, thereby extending your Community Service to **200 hours** in total. Those new Community Service Orders were imposed as a direct alternative to 1 month's imprisonment on each of them, concurrent with each other but consecutive to the 6 months alternative, in respect of the assault offence sentenced on 10th February 2021, thus increasing the imprisonment as a direct alternative to the Community Service Orders to **7 months** in total. This court ordered the continuation of the existing Community Service Orders and Probation Orders, but added a condition of a 3-month weekend curfew to the Probation Order. Additionally, the Court imposed a £600 fine for the breaches of the Community Service and Probation Orders.

You appear today, having breached the Community Service and Probation Order again. It is to be noted that you have completed 136 hours of Community Service so the first Community Service Order of 120 hours (or 6 months) has been satisfied. You are only in breach, therefore, of the 40 hours' Community Service Order of February 2021 and the 80 hours Community Service Order (or 1 month) of August 2021. I will refer to these as "the Orders".

In the Magistrate's Court on 17th February 2022, you pleaded guilty to possession on 5th December 2021 of psilocin, (which is magic mushrooms) a class A drug in contravention of Section 4(1) of the Misuse of Drugs (Bailiwick of Guernsey) Law 1974 as amended contrary to section 4(2) of that Law. That offence carries a maximum sentence in the Magistrate's Court of 12 months' imprisonment or three times level 5 on the uniform scale (£30,000) or both.

The Judge of the Magistrate's Court did not deal with you for this new offence because you were in breach of the Probation and Community Service Orders imposed by this Court on 10th February and 5th August 2021. Instead, the learned Magistrate ordered that you appear before this Court, as he was entitled to do, pursuant to section 9(2)(c) and 9(3)(b) of the Criminal Justice (Community Service Orders) (Bailiwick of Guernsey) Law, 2006, as amended, (which I will call "the CSO Law") and similar powers found in section 12(2)(c) and 12(3)(b) of the Probation (Bailiwick of Guernsey) Law, 2018, (which I will call "the Probation Law"). We deal with the new offence of possession of a Class A drug in accordance with the sentencing powers of the Magistrate's Court, as required by section 10(3) of the CSO Law and section 13(3) of the Probation Law, and we also have to decide how to deal with you for breaching the Orders.

The offences for which you were sentenced in February occurred in the early hours of 31st August 2019. Along with your co-defendant, whilst under the influence of alcohol, you followed two men and you assaulted one of them. When arrested, 0.12 grams of cannabis, accepted to be for personal use, was found in your possession.

The offences for which you were sentenced in August 2021 occurred on two occasions on 2nd May 2021. On both occasions, one in the early hours of the morning, you came to the attention of the Police and it is apparent that you had consumed more alcohol than you should have done and that led to your reaction to being spoken to by the Police being wholly unacceptable. On the second occasion you had picked up half a brick and you were agitated and sounding off.

The facts of the offence for which you are to be sentenced today, are that on 5th December 2021 at around 02:45 a.m., two police officers came across you wandering along the middle of the road stumbling between the footpath and the centre of the road. Although they could smell alcohol, they suspected that you were under the influence of controlled substances. They searched you and found a brown paper envelope in your jeans pocket which contained a quantity of dried mushrooms which following analysis were confirmed to be 1.77 grammes of psilocin (magic mushrooms).

You are a local man, now aged 26. You have quite a list of previous convictions for a young man, including assault, resisting police and alcohol-related offences. You received prison sentences for assault and criminal damage, both committed while you were subject to suspended sentences for criminal damage, which sentences were activated and served by you. For the possession offence, you have been on unconditional bail throughout.

Sentencing Considerations

It is a huge understatement to say that the Court is not impressed to see you back again, a little over a year since you were first given a chance by this Court (in February 2021), to avoid custody and receive help and support for your issues. You breached those Orders within 3

months in May and you were given another chance, but you have breached again within 7 months in December.

The choices open to the Court this morning in respect of the Orders are in accordance with section 10(2) of the Community Service Law and 13(2) of the Probation Law and must be considered separately in respect of the February and August Orders. The options are:

1. To revoke the Orders, and to re-sentence you for the possession of cannabis and two offences of disorderly conduct originally sentenced in February 2021 and in August 2021 respectively; or
2. to keep the Orders in place, with or without modification and, in doing so, we should also consider any penalty in respect of the breaches.

In the Magistrate's Court, a standalone possession of a small quantity of Class A for personal use, where there are no previous convictions, would usually attract a financial penalty. In your case there are the aggravating factors of a previous conviction for possession of Class B drugs and you have committed the offence whilst subject to the Orders.

Mitigation

We will give you full credit for your guilty plea to the possession offence. The Court has read the previous reports and Court papers relating to your appearances in February and August 2021 and has the benefit of a helpful response to supervision report, bringing the Court up to date about you. We have listened carefully to the thorough and compelling submissions of your experienced Advocate.

You accept that you had the mushrooms but that you had not taken any of them and that your apparent intoxication when stopped by police was as a result of alcohol. As you were supposed to be addressing your alcohol and drug issues, this is deeply disappointing. It appears that you were using alcohol that evening as a coping strategy at a time of emotional difficulty. It is part of the work you are doing to stop you from relying on alcohol in that way.

You are undergoing regular alcohol and drug testing and it is to your credit that you have only failed the tests twice. You do not appear to be using drugs regularly at the moment which is an improvement since the first Social Enquiry Report.

From that report there remains a high likelihood of you re-offending. Indeed, that assessment was found in the reports in February and August and has proved accurate because you are back here again. You were intoxicated with alcohol but you did not behave as badly as you have done previously on being stopped and arrested, but you were nonetheless a nuisance. The Probation Officer considers that this offence does not represent an increase in risk. She believes that once your behaviour has been stabilised, your offending will reduce.

In August you had completed 55 hours CSO, now you have completed 136 of the 200 hours and the recommendation is not to add to those hours.

You continue to have a good work ethic and an understanding employer, though his patience is understandably wearing thin and we are told that your job may be lost were you to be imprisoned. The Probation Officer views this as a significant concern due to its destabilising effect on you. In terms of the work being done with Probation you are engaging well. You

have attended all sessions and are even now requesting additional sessions when you feel that you need support. You have engaged with the Criminal Justice Substance Service and in the referral to 'Healthy Minds' and the report is very positive. Your Advocate said it was a tremendous challenge for you to accept this referral. This also represents progress since the second Social Enquiry Report. The Probation Officer has confirmed that imprisonment would interfere with your accessing the help that you need and your Advocate highlighted the specific concern that the relationships you have built up with those helping you would cease. The point of the Orders was to give you the chance to access the support you need to change your behaviour and to make the break from criminal activity for the benefit of the community and yourself. The Court recognised last time that this progress was going to take some time. The Probation Officer considers that you are taking steps in the right direction, but acknowledges that the behavioural change you are trying to make is a process and sometimes you are not successful in managing your behaviour, hence the set-back.

The Court has to decide whether to follow the recommendation of the Probation Officer and continue with the Orders or whether, in breaching again, you have had enough chances and that the prison sentences should be activated.

Sentence

In respect of the possession of the Class A drug, the Court imposes a fine of £800, which is arguably generous. Having considered carefully all that has been said and written the Court is just about persuaded that it should not activate the 1 month custodial sentence in default of the Community Service Order in August 2021 for disorderly conduct. This Order continues, as does the (stand-alone) 40 hours Community Service Order from February 2021 in respect of the possession of cannabis. This leaves you with 64 hours of Community Service to complete.

The Court has taken the above view on the basis that the rehabilitative work that you are undertaking under the Probation Order has progressed sufficiently to give hope that it will be successful. With the greatest respect to the Probation Officer, the Court considers that the Order expiring in August 2022 is too soon, so the Probation Order will be extended to 18th March 2023, to allow an additional period of work with you, particularly in view of the recent set-back in December.

In view of the commission by you of another alcohol-fuelled offence in the early hours of the morning, the Court considered carefully the imposition of another curfew. Your Advocate had helpfully discussed that possibility with the Probation Officer in more detail. She indicated that it was not necessary, in her view, as its imposition last time was to address the particular risk to the public and police, of your alcohol-fuelled behaviour during the assault and disorderly behaviour offences. The Court therefore does not impose any additional condition of curfew. It is for you Mr Gallienne, to make sure that you avoid any repetition of such behaviour and by that I mean any alcohol-fuelled incidents in the early hours of the morning or at any other time.

Very exceptionally, in your particular case, the Court makes no separate Order in respect of the breaches of the Community Service and Probation Orders. The Court is told that you understand the effect of the continuing Community Service Orders and you will understand the effect of the extended Probation Order and the consequences of any further breaches.

Mr Gallienne, please will you stand and listen very carefully to this bit.

Your Advocate made the point that you may be thought to have ‘nine lives’ but you don’t, you have had ‘three lives’. This Court cannot envisage any circumstances in which you would have a fourth. You have all the help that you need and you need to take that help. Your future is in your hands.

So in all the circumstances the sentence will be as follows:

- In respect of the Class A possession there will be a fine of £800 payable as £100 today and the balance payable within 14-days, or there is 40 days in default;
- the Probation Order is extended on its current terms, without the addition of any conditions, to 18th March 2023;
- the existing Community Service Orders (i.e. the 40 hours’ from February 2021 and the 80 hours (or 1 month) from August 2021) are left as they are and;
- there is no separate penalty for the breaches.

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, which is not opposed, in respect of the drugs and packaging lawfully seized from your possession is also granted.

Catherine Maureen Fooks
Judge of the Royal Court

18th March 2022