

Cultivation of cannabis plants without a licence, contrary to Section 5(1) of Misuse of Drugs (Bailiwick of Guernsey) Law 1974, as amended; possession of the controlled drug cannabis, in contravention of Section 4(1) of the same Law and the supply of cannabis to another, in contravention of Section 3(1) of the Law.

[2021]GRC078

**ROYAL COURT
FULL COURT**

20 September 2021

**Before: Jessica E Roland, Deputy Bailiff and Jurats:
Claire Helen Le Pelley, Terry John Ferbrache, David James Mortimer,
David John Robilliard, Stuart Michael Crisp, Marilyn Jasmine King,
Felicity Jane Quevâtre-Malcic, Heather Reed, Simon Ernest Bodkin.**

THE LAW OFFICERS OF THE CROWN

- v -

Thomas George HOLLAND

&

Claire Louise SINGER

Crown Advocate F M Russell appeared for the Crown

Advocate M G A Dunster appeared for both Defendants

DEPUTY BAILIFF:

Background

Mr Holland and **Ms Singer** you have pleaded guilty to two joint counts namely that together, between 1st May 2020 and 20th of June 2020, you cultivated cannabis plants without a licence, contrary to Section 5(1) of Misuse of Drugs (Bailiwick of Guernsey) Law 1974, as amended, for which the maximum penalty is 14 years, and that together on 24th day of June 2020, you had a controlled drug, namely cannabis, in your possession, in contravention of Section 4(1) of the same Law. For that offence, the maximum sentence is 10 years' imprisonment.

Ms Singer, you have pleaded guilty to a third count, that between the 1st March 2020 and the 24th June 2020, you were concerned in the supply of cannabis to another, in contravention of Section 3(1) of the Law. The maximum penalty the Court can impose for Count 3 is 21 years' imprisonment.

On the 24th of June 2020 a search warrant under the Law was executed at your home. During the course of the search of your address, the officers located three cannabis plants at different stages of development, growing in a greenhouse situated in the rear garden. Also, in the greenhouse, was a bucket of related leaf matter, which was later confirmed as cannabis leaf and cannabis was also found in a number of other places within your home.

Your mobile phones were seized and examined, both of you having co-operated with providing your 'pins'.

In relation to **Ms Singer**, as has been set out in the Prosecution Outline, a number of messages were found on your phone indicating that you had been involved in the supply of cannabis to others. In addition, there were also messages relating to the cultivation of cannabis.

The total amount of cannabis seized in this case was 288.17 grams of cannabis and 0.75 grams of cannabis resin, making a total of 288.92 grams. At street level therefore the value of the cannabis seized in this case is somewhere between £5,780 and £8,670.

Mr Holland, you are a 38 year old local man, although you were 37 when you were arrested. You are self-employed, running your own company and you are engaged in the construction industry.

Ms Singer, you were 36 years at the time of the offences, but you are now 37 years of age. At the time of your arrest and now, you are the full-time carer for your and Mr Holland's child, having previously been a self-employed as a yoga teacher.

At the time of your arrest in June 2020, you lived together at a jointly owned property in St Saviour. You have been granted conditional Bail since June 2020.

Sentencing Considerations

Despite the casualness with which you were both involved with cannabis until your arrest; in accordance with the legislation and sentencing guidelines applicable to offences involving the supply, the cultivation and in the appropriate case, possession of drugs of Class B, these are very serious offences.

Your advocate is right to emphasise that although you are appearing together, that you must be treated separately.

Dealing with the most serious charge, which is the one of supply involving only **Ms Singer**, the Court considers that you do fall within the 3-6 year sentencing band for Cannabis and Cannabis Resin under the Richards guidelines.

Whilst there is no evidence of extensive dealing, nevertheless it is evident that you were willing to supply cannabis and did increase the stock available on the Island, given your involvement in the cultivation and your possession of the drugs which are aggravating features. However, the evidence demonstrates a lack of sophistication and the limited scope of your involvement in supplying. The Court considers 3½ years as your starting point.

For **Mr Holland** in relation to the two offences on the Indictment, your most serious offence is in relation to the cultivation of cannabis.

In considering the starting point for the cultivation charge, the Court has taken into account the guidance set out in Marsh which in turn refers the Court back to the Richards guidelines and this would place the offending in the 3-6 years band as a consequence of the quantities. However, the Court is mindful of the quantity in this case and also the comments of the Court of Appeal in Richards that this is not an inflexible code and that "sentencing is a matter for the court's discretion".

The growth of the plants was not a sophisticated operation and the focus of the cultivation in regard to you, was for your own use. The Court acknowledges the other aggravating features identified in Richards and/or Marsh are not present and therefore the Court considers 2 years as your starting point.

Mitigation

You have both entered guilty pleas at the earliest opportunity, although you had little alternative given the evidence found at your property. However, you both provided the passcodes to your mobile telephones which assisted with the investigations by the Police and your co-operation is important mitigation.

Ms Singer's previous convictions are not relevant and **Mr Holland**, although you have had previous convictions, including two for possession of a controlled drug some 10 years ago, neither of you have appeared before the Royal Court before or served a prison sentence.

Therefore, **Ms Singer**, you will be treated as being of good character.

Mr Holland, you are not entitled to the same amount of credit as **Ms Singer** which she will receive for her previous good character.

We do have sympathy for the delay in the Court being able to deal with this matter due to COVID and the additional anxiety this must have placed on you and your family.

We have listened very carefully to the extensive mitigation made by your advocate as well as the information contained in the Social Enquiry reports and in particular, the content of the reports of both probation officers, that there is a low likelihood of re-offending from either of you and neither of you are being identified as being at risk of harm to the general public.

You have both supplied extensive references as well as medical reports. You both have the benefit of support from a wide network of family and friends.

Mr Holland is an employer and **Ms Singer** is clearly respected for the work and dedication she has shown in bringing up their child, who has complex health issues and you have enabled her to thrive.

It is not possible to read the challenges that this family has had over the last years and not be affected by them. However, the decisions that you made by turning to the cultivation of cannabis and, in **Ms Singer's** case, to supplying it, has only served to exacerbate the pressure on your family and place you both at risk of imprisonment with the consequential impact that would have your family. This shows a complete lack of judgment on both your parts.

The Court has benefited from having a considerable amount of information available from which to consider the proportionality of the effect on the child of this family. Much of the mitigation comes from information set out in those references in relation to both of you and also your family life which is of a sensitive nature.

In relation to **Ms Singer** in particular, the Court has considered all of the principles set out in Petherick which are applicable to this case and in accordance with Bourgaize v the Law Officers of the Crown 2014 (Jmt 49), the Court has specifically considered whether the imposition of an immediate custodial sentence would be a proportionate interference with family life, given the balance between those various factors.

This is not a case which starts on the cusp of custody. The Court is satisfied that the custody threshold in respect of your offending has been passed by both of you. Therefore, in relation to **Ms Singer** in particular, the Jurats have spent considerable time considering all that has been said on your behalf and the impact that an immediate custodial sentence may have, and in particular the words of the Deputy Bailiff (as he was then) in Bourgaize when he said:

“Accordingly, the Court takes the view that the approach to sentencing a person in respect of whom article 8 rights are engaged should follow the pattern indicated by adopting the principles set out in Petherick, but subject to the gloss that consideration should be given,

in a case where such a sentence is available once the appropriate length of a custodial sentence has been determined, as to whether to suspend that sentence rather than making it take effect immediately. Where truly exceptional circumstances are advanced on behalf of a defendant, as they were in this case, it is open to the sentencer to suspend a sentence which would normally attract an immediate custodial sentence. This is the type of disparity between different defendants that is justified rather than unjustified (see the fifth Petherick principle)."

The Court considers in relation to **Ms Singer**, that this is one of those truly exceptional cases.

The Court in sentencing you both takes into account the principles of totality and proportionality.

Sentence

Ms Singer

Taking into account all that I have said above, the sentences will be as follows:

- Count 3 which is the supply offence - 2 years' imprisonment, suspended for 3 years and a fine of £3000.
- Count 1 which is in relation to cultivation offence - 1 year imprisonment, suspended for 3 years to run concurrently.
- There will be no Order in relation to Count 3 which is the possession charge.
- The total will be **2 years suspended for 3 years plus a fine of £3,000.**

Mr Holland

Again, taking into account everything I have said above and noting that you are subject to different sentencing, the sentences will be as follows:

- Count 1 - 12 months suspended for 3 years and a fine of £2000.
- In relation to Count 2 there will be no order.
- So, the decision of this Court is that you will be subject to **12 months' imprisonment which is suspended for 3 years plus a fine of £2,000.**

Ms Singer

As I have said in respect of Count 3, the sentence we impose is one of 2 years' imprisonment but that will be suspended for a period of 3 years. That is the maximum length of suspended sentence available.

You will not have to serve this Suspended Sentence of imprisonment unless, during the next 3 years, you are convicted of an offence punishable with imprisonment. If you are convicted of such an offence, you will be liable to serve all or part of those sentences. A suspended sentence is not a let off. It will hang over your head for that period of time and those will be the consequences, so please do not forget that.

These Orders are being made because of the seriousness of the offending for which you have been convicted and taking into account the totality principle.

Mr Holland

I say the same for you. As I have said In respect of Count 1, the sentence we impose is one of 12 months' imprisonment but that will be Suspended for a period of 3 years. That is the maximum suspended sentence available.

You will not have to serve this Suspended Sentence of imprisonment unless, during the next 3 years you are convicted of an offence punishable with imprisonment. If you are convicted of such an offence, you will be liable to serve all or part of this sentence. A Suspended Sentence is not a let off and it will hang over your head for that period of time and those will be the consequences.

Again, this Order is made taking into account the seriousness of the offence for which you have been convicted and taking into account the totality principle.

The Forfeiture and Destruction Orders which were sought by the Crown in respect of the tablets and the cannabis, which were not opposed, are also granted and we also note the destruction of the telephone, as requested, which is not opposed.

The Court will also grant the application in relation to the Drug Trafficking Law under section 12 and again, this has not been opposed by you and as suggested by Crown Advocate Russell, you will have 28 days in which to provide the information and therefore that matter will be adjourned until the review after that date which is 4th November.

Advocate Dunster are your clients able to pay the fines immediately as indicated in your SER? This fine was agreed to be paid within 48 hours.

Ms Singer, as I have said, you have been sentenced to **2 years' imprisonment suspended for 3 years and a fine of £3,000.00** with the other sentence running concurrently.

Mr Holland, you have been sentenced to **12 months' imprisonment suspended for 3 years and a fine of £2,000**.

You are now free to go.

Jessica E Roland
Deputy Bailiff

20 September 2021