

Supplying a controlled drug of Class A, namely MDMA to another, contrary to section 3(3)(a) and 3(3)(b) of the Misuse of Drugs (Bailiwick of Guernsey) Law 1974. Supplying a controlled drug of Class B, namely cannabis and cannabis resin to another and possession of a controlled drug of Class C namely tramadol, contrary to section 4(2) of the Misuse of Drugs (Bailiwick of Guernsey) Law 1974.

[2021]GRC080

**ROYAL COURT
FULL COURT**

7 September 2021

**Before: Catherine Maureen Fooks, Judge of the Royal Court and Jurats:
Claire Helen Le Pelley, David Percy Langley Hodgetts LVO, David James Mortimer,
Joanne Marie Wyatt, Marilyn Jasmine King, Paul Martin Burnard,
Heather Reed, Simon Ernest Bodkin.**

THE LAW OFFICERS OF THE CROWN

- v -

Andrew John GALLIENNE

Advocate R J Calderwood appeared for the Crown

Advocate S E Steel appeared for the Defendant

JUDGE OF THE ROYAL COURT:

Background

Mr Gallienne, you have pleaded guilty to 10 Counts on 1 Indictment.

Count 7 is being concerned between 1st January 2020 and 21st July 2020 in the supplying of a controlled drug of Class A, namely MDMA to another, contrary to section 3(3)(b) of the Misuse of Drugs (Bailiwick of Guernsey) Law 1974, as amended, the maximum penalty for which is life imprisonment.

Counts 3 and 6 are offering on 19th January 2019 and 8th September 2019 (which fall outside the above period) respectively, to supply a controlled drug of Class A, namely MDMA to another, contrary to section 3(3)(a) of the Misuse of Drugs (Bailiwick of Guernsey) Law 1974, as amended, the maximum penalty for which again is life imprisonment.

Counts 1, 4, 5, 8 and 9 are being concerned in the supplying of a controlled drug of Class B, namely cannabis or cannabis resin to another during the periods 4th May 2018 to 9th July 2018, 23rd January 2019 to 29th July 2019, 8th September 2019 to 1st January 2020, 1st January 2020 to 21st July 2020 and there are two separate Counts (one in relation to cannabis resin and one in relation to cannabis) respectively, contrary to section 3(3)(b) of the Misuse of Drugs (Bailiwick of Guernsey) Law 1974, as amended, and the maximum penalty for which is 21 years' imprisonment.

Count 2 is offering on 30th October 2018 (which is outside the periods of being concerned), to supply a controlled drug of Class B, namely cannabis resin to another, contrary to section 3(1)(b) of the Misuse of Drugs (Bailiwick of Guernsey) Law 1974, as amended, and the maximum penalty is 21 years' imprisonment.

Count 10 is possessing on 20th July 2020, a controlled drug of Class C namely tramadol, contrary to section 4(2) of the Misuse of Drugs (Bailiwick of Guernsey) Law 1974, as amended, the maximum penalty for which is 4 years' imprisonment.

The facts are that on 20th July 2020 Guernsey Police officers stopped and searched you in town. In your rucksack officers found £1,270 in cash and two pieces of cannabis weighing in total 2.33 grams, 27 orange MDMA tablets weighing in total 11.62 grams and three yellow tramadol capsules marked T50. Your iPhone was seized and you were arrested.

In your first interview you told officers that you were a "functioning drug addict" and that you were taking cannabis, tramadol and up to 6 MDMA in one day. You confirmed that the drugs found in your possession were yours. You claimed that the cash was accumulated wages which was being carried in cash as you have no bank account. You refused to provide your iPhone passcode and asserted that you were just a drug user not a dealer.

Investigators were able to get into your iPhone and the Prosecutor has outlined in detail the messages exchanged between you and others which form the evidence for each count. In summary, the messages show you offering to supply or being approached as a supplier, or in exchanges with others with whom you have a dealing relationship, about payment for drugs supplied to you for onward supply. There are 21 males and 9 females separately identified in the messages and there is a separate deal list which includes some of the 30 persons identified above. The point is made that the messages recovered cannot be deemed to be the complete picture of your activities over those periods. There is no count covering the cannabis and MDMA found in your possession as they are presented as being part of and evidence of the drug trafficking offences you face and there is no other firm information as to quantity of drug being supplied or offered for sale, beyond what is in the messages.

In your second interview, you told the investigators that you had been working as a bartender since October 2019 and as a decorator/roofer since May 2020. You offered various explanations about your finances. You denied being a dealer.

You were born in England but have lived in Guernsey since infancy. You are 27 years of age (24-26 at the time of the commission of the offences). You were working as a decorator/roofer. At the time of your arrest and prior to being remanded in custody, you had no fixed abode. You have one child with whom you have no relationship currently.

You have one previous conviction for possession of a controlled drug, for which you were fined in the Magistrate's Court. You have some dishonesty convictions dating back to your teenage years. You are in breach of a suspended sentence of 6 months suspended for 3 years, imposed on 12th September 2019 for driving with no insurance, to which we will return after considering the sentence for the drug trafficking offences .

You were on conditional bail until 12th May 2021 when you breached your bail and were remanded in custody.

Sentencing Considerations

There are 10 Counts on the Indictment incorporating all three classes of drug. We will deal with the Class C drug separately. We will set starting points for the Class A, being concerned in the supply and similarly the Class B, being concerned in the supply offences, as these are the most serious and then look to set a combined starting point, taking into account the other offences and totality.

Your offending falls squarely withing the guideline case of Richards. The Court of Appeal in that case based its starting points on quantity, but in this case we do not have any clear overall quantity, rather we have the amounts found in your possession and the messages which disclose the level of dealing in

each type of drug in the relevant period and the sort of quantities in the offences of offering to supply, which fall in between the periods of the being concerned in supply.

It is the view of the Court that the dealing which you have undertaken for a protracted period is in the nature of a business for financial gain. There are several points to be made:

- 1) The number of people contacting you;
- 2) the number of people you were contacting offering drugs;
- 3) acquiring drugs in bulk, often on credit for re-sale;
- 4) restocking frequently;
- 5) selling on, sometimes in bulk;
- 6) your clear involvement in a chain of supply by way of relationships with other dealers and those further up the chain and we noted that one of those seems to have his own debt collectors;
- 7) your supplying to others on credit where you are owed as much as £400 by one individual.

These points all indicate a sustained involvement in drug dealing for financial gain and not just to fund your own habit. Your dealing appears to have been escalating in the months leading up to your arrest. By way of example, on 16th May you purchased 50g of cannabis for £950 and were talking of doing the same the next day and on 17th May you are messaging about paying £1,480 for 80g of cannabis. We note that on 15th May you are also looking to sell Class A drugs.

By July 2020, you are still dealing in both classes of drugs, for example, on 7th July there is a message about a whole bar of cannabis and you were arrested with 27 MDMA tablets which gives a good indication of the scale of the operation.

Your explanations to investigators about your finances were inconsistent and wholly unconvincing. It is of note that you say in one message, “this is how I make my doe at the moment”. It is not surprising that a Drug Trafficking investigation is being sought.

The Court has no hesitation in being satisfied that the custody threshold in respect of your offending has been passed.

We are encouraged by your Advocate to place your offending in the lowest of the Richards sentencing bands. The Prosecutor takes no issue with this, as it cannot be established that more than the top-end of the lowest band is involved in each case, but he suggests that the offending does not fall at the lower end of each band either.

The lowest band for MDMA in tablet form is 7-9 years for 1 to 500 tablets, and the lowest band for cannabis/cannabis resin is 3-6 years for amounts up to 2 kg.

We have determined that the starting point for Count 7 which is the most serious offence, should be 8 years and the starting point for Counts 1, 4, 5, 8 and 9 should be 4 years.

Turning to aggravating factors – you have one conviction for possession of a controlled drug and you are in breach of the suspended sentence in the Magistrate’s Court. But the greatest aggravating factor is the duration and scale of the operation. The Court also notes the supply to young persons. Taking into account those aggravating factors, we increase the starting point for Count 7 to 9 years.

We are dealing with not just the two classes of drugs in terms of being concerned in the supply, but also the offences of offering to supply. We will deal with the Class B offences by way of concurrent sentences and therefore we have factored this into the combined starting point.

Taking all of these matters into consideration, the combined starting point, but before mitigation and reflecting the totality principle is set at 9 years.

Mitigation

Plea

The Court must first consider the impact of your guilty pleas on sentence. You entered guilty pleas to all Counts at an early stage and we afford you full credit for those pleas.

Personal Mitigation

The Court has considered carefully the informative and sensible Probation Report prepared in respect of you. We have also listened to the concise and sensible submissions of your Advocate. We have read and been impressed by your letter, which articulates well the struggles you have faced and demonstrates what is assessed as genuine remorse and resolved to change.

You described yourself as “a functioning drug addict”. Sadly, you got involved with drugs at a very young age, initially legal highs, as a way of coping with the significant trauma and difficulty which you suffered, as detailed in the Probation Report and outlined by your Advocate. Your drug use escalated to include a significant dependency on Class A drugs. Your drug use isolated you from your family and you have not had a settled home.

Your circumstances were such that you could not properly access education or finish your apprenticeship which is a shame as you are described as having considerable potential. That potential is your route out of the drug cycle. Despite the difficulties you have generally worked, which is to your credit.

You have the support of your partner who says that she will stand by you and the support of your grandmother. You will need them.

You are assessed as having a very high likelihood of re-offending, which we can and do take into account.

Sentence

The Custody threshold has clearly been passed and only immediate custody is appropriate in your case. In sentencing you we have taken into account the totality principle.

Mr Gallienne, you appear today to face a long list of offences for which the only appropriate penalty is immediate custody. You are a person with the potential to learn through education and we hear that you are excited about the Open University course which you have the opportunity to take. We hope that you will take every chance offered to you. Your Advocate says that you are genuinely motivated to change and we have seen that in your letter. The Probation Officer wants you to get help in prison from In-Dependence and the prison psychologist and again we encourage you to be open, and to use your words, “be hopeful” and to take that help so that, when you come out, you can lead a different life, the “quiet life” you have said you would like. So that, again using your words, “your past does not dictate your future”.

Taking into account all the above and applying a discount to reflect your plea and personal mitigation the sentences will be as follows:

- Count 7 - 5½ years immediate custody with effect from 12th May.
- Counts 1, 4, 5, 8 and 9 – 3 years’ imprisonment, concurrent with Count 7.
- Count 2 - 6 months’ imprisonment, again concurrent with Count 7.

- Counts 3 & 6 – 1-year imprisonment, again concurrent with Count 7.
- Count 10, the tramadol offence – the penalty will be 7 days’ imprisonment, again concurrent with Count 7.

All of these sentences are to run concurrently, meaning that, in total, the sentence will be 5½ years’ imprisonment with effect from 12th May 2021.

Breach of the suspended sentence

You are in breach of a suspended sentence of 6 months suspended for 3 years imposed on 12th September 2019 for driving with no insurance. It is to be noted that you were committing the drug offences before and after this sentence was imposed.

We would be entitled simply to activate the sentence but, applying the totality principle, we activate it, but order that it be served concurrently with the other sentences. The effect of this is that you will be imprisoned for a total period of 5½ years.

Supervision

In accordance with section 1 of the Criminal Justice (Supervision of Offenders) (Bailiwick of Guernsey) Law, 2004, upon release (or completion of any parole period if applicable), you will be subject to supervision by the Probation Service for a period equal to one quarter of the total sentence, or the period you would have served 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.

Forfeiture s3 Police Property and Forfeiture (Bailiwick of Guernsey) Law 2006

The Crown’s application pursuant to section 3 of the Police Property and Forfeiture (Bailiwick of Guernsey) Law, 2006 in respect of the 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 the analysis of it shows it has been used for the purpose of committing or facilitating the offences, as evidenced by your pleas. The Court has, as required by subsection (5), had regard to the value of the property £140 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, for forfeiture and destruction in respect of the blue tin and its contents is also granted. Again, the Court notes that this has not been resisted. The Court is satisfied that these items were lawfully seized and relate to the offences.

Summary of sentences

Thus, the summary of sentences is:

- 1 The total term of imprisonment is 5½ years from 12th May for the drug offences.
- 2 Activation of the Suspended Sentence, but to be served concurrently with the above.
- 3 Forfeiture and Destruction as requested.

Catherine Maureen Fooks
Judge of the Royal Court

7 September 2021